

A blue-toned background image featuring a financial line chart with multiple data series and a grid. The chart shows various trends, including a sharp decline followed by a recovery and another decline.

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12 January 2022

Financial Regulation Monthly Breakfast Seminar

Overview

- 10 key regulatory focus areas for the year ahead
- Recent ESG developments
- HM Treasury's consultation on amending certain financial promotion exemptions
- FCA's conflicts of interest fine
- FCA review of wholesale data markets



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10 key regulatory focus areas for the year ahead
Nicola Higgs

10 key regulatory focus areas for the year ahead



The screenshot shows the 'Focus Areas' section of the report. At the top, there is a header 'Focus Areas' in yellow. Below it, there is a paragraph of text: 'In last year's publication, we highlighted the top regulatory focus areas for UK-regulated financial services firms during 2021, ranging from the impact of Brexit to the latest expectations on conduct and culture. This publication outlines the primary focus areas for 2022. There has been a marked shift away from dealing with immediate post-Brexit priorities to more fundamental consideration of the direction of travel of UK financial services regulation, and this is borne out across many of the topics covered in this year's publication. Further, relatively new topics such as climate change and environmental, social, and governance (ESG) issues are increasingly significant for financial services firms, and are likely to remain so for some time.'

Below the text, there is a section titled 'Scroll through or select a topic below' with a right-pointing arrow. This is followed by a grid of 10 numbered focus areas, each with an icon and a color-coded circle:

- 1 ESG (Yellow icon)
- 2 Regulatory Divergence (Blue icon)
- 3 The FCA's New Ethos (Blue icon)
- 4 Future Regulatory Framework Review (Blue icon)
- 5 Diversity and Inclusion (Blue icon)
- 6 IFPR (Yellow icon)
- 7 Operational Resilience (Yellow icon)
- 8 Financial Promotions Regime (Blue icon)
- 9 Consumer Duty (Yellow icon)
- 10 AML / Financial Crime (Blue icon)

At the bottom, there is a legend with three items:

- Blue circle: Regulatory change ahead
- Yellow circle: Key stage in the regulatory change or implementation cycle
- Light blue circle: Emerging trend

ESG

Key dates

- **1 January 2022:** Disclosure obligations under the EU Taxonomy begin to apply; FCA TCFD-aligned climate-related disclosure regime for asset managers and asset owners comes into effect for the largest firms
- **Q1 2022:** Consultation expected on technical screening criteria for the first two environmental objectives under the UK Green Taxonomy
- **Q2 2022:** FCA Consultation Paper on SDR and product labels expected
- **Q3/4 2022:** FCA Consultation Paper expected on prudential ESG disclosures
- **1 January 2023:** EU SFDR Level 2 measures take effect

UK	EU	Global
TCFD SDR Taxonomy Diversity & Inclusion	SFDR Taxonomy	ISSB IOSCO

Regulatory Divergence

Key dates

- **Early 2022:** HM Treasury to set out responses and next steps on the Wholesale Markets Review
- **Q1&2 2022:** FCA to consult on changes to its Handbook resulting from the Wholesale Markets Review
- **2022:** EU legislators to consider the European Commission's proposals for revisions to various EU regulatory frameworks, including MiFID II, CRD IV, and the AIFMD

- UK and EU are now amending legislation separately and in an uncoordinated way
- Capital Markets
 - UK → Achieving equivalence is no longer the aim
- MiFID II
 - UK → Wholesale markets review
- MAR
 - EU MAR Review – Amendments not applicable in the UK

The FCA's New Ethos

“The FCA must continue to become a forward-looking, proactive regulator. One that is tough, assertive, confident, decisive, agile.... It must have a culture that embraces risk and acts decisively... FCA will be prepared to test its powers to the limit”.

Nikhil Rathi, FCA CEO

- Authorisations
 - FCA is particularly focused on authorisations and new business, including authorisation applications by firms using the temporary permissions regime
- Decision-making and Enforcement
 - FCA has transferred certain decisions from the Regulatory Decisions Committee to senior management within the FCA
 - FCA has new powers that allow it to cancel regulatory permissions that are not being used under an expedited process
- Appointed representative regime
- Individuals

Future Regulatory Framework Review

Key dates

- **9 February 2022:** Future Regulatory Framework Review consultation closes for comment
- **2022:** HM Treasury expected to set out feedback and next steps

- Embedding onshored legislation within FCA / PRA rulebooks
- Designated Activities Regime
 - A truly radical proposal - HM Treasury would be able to designate an unregulated activity (for instance, services relating to alternative assets) and the PRA or FCA would then need to create and apply rules to both regulated and unregulated firms
 - HM Treasury considers it would be beneficial to have some regimes that do not require authorisation, but that impose certain regulatory requirements on anyone performing the relevant activities

Diversity & Inclusion

Key dates

- **Early 2022:** Policy Statement due on diversity and inclusion on public company boards and executive committees
- **H1 2022:** Joint PRA and FCA Consultation Paper expected on diversity and inclusion
- **H2 2022:** Policy Statement and final rules on diversity and inclusion expected

- Interplay with culture & conduct and ESG:
 - Nikhil Rathi has discussed adding a sixth question to the five conduct questions:
“Is your management team diverse enough to provide adequate challenge and do you create the right environment in which people of all backgrounds can speak up?”
- Adverse findings in relation to individuals’ conduct with respect to diversity and inclusion issues could affect fit and proper assessments

IFPR

Key dates

- **1 January 2022:** IFPR takes effect
- **1 February 2022:** Deadline for existing CRR firms holding AT1 capital instruments to notify the FCA of their intended use of those existing capital instruments under MIFIDPRU; deadline for applications by firms wishing to apply the group capital test on a temporary basis
- **2022:** Remuneration requirements apply from the start of first performance year from 1 January 2022; first ICARA reference date; first reference date for IFPR disclosures

- Capital requirements
- Governance
- Remuneration
- Risk management
- Investment policy

Operational Resilience

Key dates

- **31 March 2022:** New regulatory framework on operational resilience and new PRA Supervisory Statement on outsourcing take effect
 - **H1 2022:** PRA to consult on an online outsourcing register and on operational resilience incident reporting
 - **2022:** Discussion Paper expected on the oversight of critical third parties
-
- New Operational Resilience Framework applies to PRA-authorized firms, Recognised Investment Exchanges, FCA firms within scope of the enhanced SMCR, payment services firms, and e-money institutions
 - Outsourcing for dual-regulated firms
 - Hybrid Working driving information security focus

The Financial Promotion Regime

Key dates

- **Early 2022:** FCA expected to consult on rules for high-risk investments and for firms approving financial promotions
- **9 March 2022:** HM Treasury consultation on changes to the financial promotion exemptions for high net worth individuals and sophisticated investors closes for comment

- FCA has become particularly concerned about the products being promoted to less sophisticated investors, and launched a discussion in 2021 about how it could potentially strengthen the financial promotion rules for high risk investments
- HM Treasury has also consulted separately on whether to bring (unregulated) cryptoassets within scope of the financial promotion regime and we expect to see the outcome of this consultation during 2022
- Exemptions for HNWI and sophisticated investors expected to be a particular focus
- Regulatory gateway for approving third party financial promotions

Consumer Duty

Key dates

- **15 February 2022:** FCA CP21/36 closes for comment
- **By end July 2022:** Policy Statement to CP21/36 and final rules expected
- **30 April 2023:** Date by which FCA proposes firms should have fully implemented the Consumer Duty

- A new Consumer Duty in relation to retail clients – a ‘seminal change’ in the eyes of FCA
- The regime effectively will introduce product governance measures in areas where such requirements have not applied before
- FCA will expect there to be an annual report to the board assessing whether the firm is acting to deliver good outcomes for its customers that are consistent with the Consumer Duty
- Proposed new Conduct Rule to mirror the Consumer Principle will also establish individual responsibility for achieving good outcomes for customers

AML / Financial Crime

Key dates

- **Spring 2022:** Feedback due from HM Treasury's consultation on amendments to the Money Laundering Regulations, and amending legislation to be made
- **H1 2022:** Feedback due from HM Treasury's Call for Evidence on the UK's AML/CFT regulatory and supervisory regime

- **Enforcement – bolstered by recent successful criminal prosecution**
 - 7 = number of cases FCA is considering whether or not to pursue criminal proceedings
 - The number of open investigations for money laundering failings (both criminal and civil) has almost doubled in the last year
- **Reporting**
 - Number of Suspicious Activity Reports (SARs) reported to the National Crime Agency (NCA) has increased from 394,048 in 2017/2018 to 480,202 in 2019/2020



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Recent ESG developments
Anne Mainwaring

Delay to SFDR RTS

- The SFDR RTS have been further delayed until 1 January 2023
“Due to the length and technical detail of those 13 regulatory technical standards, the time of the submissions to the Commission, and to facilitate the smooth implementation of the delegated act by product manufacturers, financial advisers and supervisors, we would defer the date of application of the delegated act to 1 January 2023”
- Level 2 uplifts will therefore not take place until 1 January 2023 at the earliest
- However, the Commission has made clear that the first entity-level principal adverse impact report which is Level 2 compliant must be made by 30 June 2023 and the first reference period for the report will be 1 January 2022 to 31 December 2022

Delay to SFDR RTS

- Accordingly firms must collect data on the principal adverse impact indicators during 2022 in order to be able to report in June 2023
 - The Commission confirmed that, due to the delay, the transitional provisions originally provided for in the RTS are no longer relevant
 - Firms will need to collect data based on the principal adverse impact indicators included in the draft RTS
 - Data availability remains a key issue

Taxonomy updates

- The Taxonomy Climate Delegated Act with the technical screening criteria ("TSC") for climate change adaptation and mitigation were published in the Official Journal on 9 December 2021
- The TSC are unchanged from the version adopted by the Commission in April
- Note the negative disclosure requirements for non-taxonomy aligned products:
 - “The investments underlying this financial product do not take into account the EU criteria for environmentally sustainable economic activities.”*
- The Commission has also begun consultations on the draft text of a Taxonomy Complementary Delegated Act covering certain gas and nuclear activities

Taxonomy updates

- The Disclosures Delegated Regulation was published in the Official Journal on 10 December 2021
- The Delegated Regulation supplements Article 8 of the Taxonomy by specifying:
 - The key performance indicators for financial undertakings; and
 - The content and presentation of the information to be disclosed by all undertakings and the methodology to comply with that disclosure
- The Commission has also published an FAQs document to provide implementation guidance in relation to the disclosure requirements under Article 8 of the Taxonomy:
 - https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/sustainable-finance-taxonomy-article-8-report-eligible-activities-assets-faq_en.pdf

PS21/24: Enhancing climate-related disclosures by asset managers, life insurers and FCA-regulated pension providers

- On 17 December 2021 the FCA published its final UK TCFD rules for asset managers, life insurers and FCA-regulated pension providers
- The rules take forward the proposals set out by the FCA in CP21/17 with some amendments to reflect the feedback received
- Key changes include:
 - **Data availability and use of proxies/assumptions:** FCA agreed with feedback that for certain asset classes it may not yet be possible to calculate meaningful, decision-useful climate-related metrics and has therefore amended the rules to clarify that it will not require firms to disclose information (e.g., in relation to metrics or quantitative scenario analysis or examples) if data gaps or methodological challenges cannot be addressed through the use of proxies and assumptions, or if to do so would result in disclosures that are misleading

PS21/24: Enhancing climate-related disclosures by asset managers, life insurers and FCA-regulated pension providers

- Key changes include (con't):
 - **Core metrics and calculation methodologies:** FCA has amended the rules to require disclosure of core metrics using the TCFD's methodologies only and has also amended the requirement to disclose additional metrics from a 'best efforts' basis to 'as far as reasonably practicable'
 - **'On demand' disclosures and underlying data to clients:** FCA has amended the 'on demand' rule to enable clients to request a product-level climate disclosure at a single reference point consistent with public disclosures, or at a date mutually agreed between the client and the firm

PS21/24: Enhancing climate-related disclosures by asset managers, life insurers and FCA-regulated pension providers

- Key changes include (con't):
 - **Jurisdictional scope:** FCA has confirmed that the rules apply to in-scope FCA-authorized firms for their TCFD in-scope business carried out from an establishment maintained in the UK, irrespective of where the clients, products or portfolio are domiciled. The rules do not apply to third-country branches
 - **Portfolio management services:** definition of portfolio management services amended to clarify private equity and private market activities are captured where investment advice is on a 'recurring' or ongoing basis (e.g., investment, divestment and other lifecycle events)

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HM Treasury's consultation on amending certain
financial promotion exemptions
Jonathan Ritson-Candler

Renewed focus on the financial promotions regime

- Consultation published: 15 December 2021
- Closes for comment: 9 March 2022
- Latest in a line of proposed amendments to the financial promotions regime:
 - Follows FCA DP21/1 which requested feedback ahead of consultation expected early 2022 to strengthen financial promotions rules for high risk investments and firms approving financial promotions
 - In June 2021, HMT confirmed introduction of new financial promotions “gateway” requiring firms that approve unauthorised persons’ financial promotions to have specific FCA consent to do so
 - In January 2021, HMT also consulted on whether to bring unregulated cryptoassets within scope of the financial promotions regime
 - FCA calling for financial harms caused by fraudulent advertisements for financial products to be included in draft Online Safety Bill

Amending certain FPO exemptions

- HMT is looking to update the financial promotion exemptions for high net worth individuals (HNWI), sophisticated investors and self-certified sophisticated investors set out in articles 48, 50 and 50A of the FPO
- FCA has stated throughout 2021 that these exemptions, in light of the rise of online advertising of financial products, are being relied on by “*bad actors to target consumers with inappropriate high-risk investments or scams*” and that the exemptions are “*a significant vulnerability in the financial promotion regime*”
- HMT has decided to retain but update the exemptions

Proposed amendments to the exemptions for HNWI and sophisticated investors

	Current position	Proposed amendments
Income and net asset threshold for HNWI	An annual income of not less than £100,000, or net assets to the value of not less than £250,000 (ignoring primary residence, life assurance policies and pension)	Income threshold uprated to £150,000 and the net asset threshold to £385,000* *(an approach with higher thresholds (£175,000 income and £900,00 net assets also suggested - tbc)
Criteria for self-certified sophisticated investors	Investor to have made more than one investment in an unlisted company in the previous two years	Remove
	Investor is currently or has been in the two years before the date of the statement, a director of a company with an annual turnover of at least £1 million	Raise annual turnover requirement to £1.4 million

Proposed amendments to the exemptions for HNWI and sophisticated investors (cont.)

	Current position	Proposed amendments
Placing a greater degree of responsibility on firms to ensure individuals meet the criteria to be deemed HNWI or self-certified sophisticated	The firm making the promotion must believe, on reasonable grounds, that an individual to whom they are making the promotion is a HNWI / self-certified sophisticated and has signed the relevant statement	<p>The emphasis of the “reasonable belief” be shifted so firms communicating the financial promotion must have a reasonable belief that an individual meets the criteria, not simply that they have signed a relevant statement.</p> <p>It would be for the firm to determine how it comes to this conclusion, and to document this information accordingly. The investor would still be required to sign the investor statement, so there would be a responsibility on both the investor and firm to ensure the relevant conditions had been met</p>
Updating the HNWI and self-certified sophisticated investor statements	Statements, in prescribed form, to be signed by the HNWI or self-certified sophisticated investor	<p>Update format to make threshold criteria more prominent</p> <p>Simplify and clarify language</p> <p>Investors must select which criteria they satisfy and how (<i>e.g.</i>, HNWI to fill in their income / net asset value – no proof required but could be requested by firms)</p>



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FCA's conflicts of interest fine
Jon Holland

Recent FCA decision notice in relation to conflicts of interest

- Decision notice relates to BlueCrest Capital Management (UK) LLP
- BCMUK has referred the case directly to the Upper Tribunal using the expedited reference procedure (effectively bypassing the RDC) so the final outcome will not be known for some time
- Decision notice therefore reflects only the FCA's views at this stage since BCMUK has not yet made any representations

Background

- Hedge fund – which managed external and internal (open to partners and employees only) funds during the relevant period (October 2011 to December 2015 inclusive)
- External customer base of institutional investors from around the world
- Closed external business in December 2015 and returned funds to external investors
- BCMUK was the largest of several sub-investment managers appointed by the investment manager for the two funds covered by the decision notice (one external and one internal fund)

Background (cont.)

- External fund concerned was discretionary fund focussed on liquid securities in fixed income markets
- Capital was mainly allocated to units based on the “rates” and “relative value” desks
- External fund’s AuM reached a high of US\$14.5 billion in the relevant period

Background (cont.)

- Internal fund's capital was similarly allocated
- Internal fund's AuM reached a high of more than US\$2 billion by the end of the relevant period, with 55 individuals indirectly invested in the fund, including a small minority of portfolio managers (PMs), who received any investment returns from the internal fund annually
- Majority of rates and relative value PMs with an exposure to the internal fund traded on behalf of the internal fund

Background (cont.)

- By reason of Principle 8, BCMUK was responsible for managing conflicts between itself and its clients and between its clients
- During the relevant period a number of rates and relative value PMs were reallocated from the external to the internal fund
- By April 2012 (six months after launch) the majority of rates-based PMs were trading for the internal fund, not the external fund

Background (cont.)

- In addition to PMs the two funds allocated capital to a semi-systematic capital unit called RMT
- RMT attempted to replicate certain trading activities and strategies of a subset of PMs on the rates and relative value desks, including PMs allocated to the internal fund, with a view to realising P&L as close as possible to the expected P&L of a target portfolio
- Significant external fund capital was allocated to RMT to test its performance in early 2012
- Internal fund capital was allocated to RMT from August 2012

Background (cont.)

- After generating positive returns in 2012, RMT generated significant losses in 2013
- By August 2013, the internal fund had ceased all trading through RMT
- Conversely, by October 2013, almost 30% of the external fund's capital was allocated to RMT – and RMT remained the single largest capital unit within the external fund for most of the relevant period, despite an increasing disparity between RMT's target and actual returns

Background (cont.)

- Investors in the external fund were “*not proactively made aware*” of the existence of RMT, the fact that it was a semi-systematic capital unit, or the significant amounts of capital allocated to it by the external fund
- Disclosures to investors about the number of PMs allocated capital by the external fund were “*insufficient and misleading*”, because they included trades by PMs allocated to the internal fund and tracked by RMT
- A September 2013 Q&A document (a) stated that information about trader allocations should not be proactively disclosed to investors, but could be provided reactively; and (b) directed staff to avoid discussion of how RMT worked

Background (cont.)

- BCMUK's responsibilities included marketing and selling subscriptions for investment in the external fund to prospective investors, including through presentations, a due diligence questionnaire (DDQ) and a prospectus
- Although the presentations highlighted "*certain conflicts of interest*" as a risk factor for the external fund, no specific details about the conflicts of interest or their management were provided
- The DDQ directed prospective investors to the prospectus, which contained certain disclosures about conflicts of interest, without – for most of the relevant period - referring to existence of the internal fund or the conflicts arising from the reallocation of PMs

Background (cont.)

- A statement (from July 2013) in the prospectus that “*the Investment Manager does not have an obligation to ensure the fair treatment of investors*” did not and could not negate BCMUK’s regulatory obligations to its clients, including under Principle 8

Background (cont.)

- BCMUK's sales and marketing team were instructed to “*avoid [the internal fund] as a conversation topic [with investors] unless absolutely necessary*”
- A reactive Q&A about the internal fund prepared for the sales and marketing team contained “*unclear*” statements concerning the reallocation of PMs etc and a suggested response to the question “*does the [internal fund] present you with a conflict of interest*” that did not address the “*actual conflict of interest*” arising from the fact “*senior personnel invested in [the internal fund] were also the exclusive decision-makers as to which [PMs] would be allocated to [the internal fund], rather than the external fund . . . and would decide how [PMs] were to be allocated (or reallocated) between the funds*”

Background (cont.)

- Due diligence consultants (DDCs) appointed by BCMUK to produce periodic reports for clients were not proactively made aware of the existence of the internal fund
- One DDC “*inadvertently*” became aware of the existence of the internal fund and raised concerns about it in early 2014, prompting commentary in the financial media and, towards the end of 2014, guidance from another DDC advising clients to “*pull their money* [from the external fund] *because of a lack of transparency*”
- Some changes were made to the external fund DDQ and prospectus as a result

Background (cont.)

- Redemptions by investors during 2014 and 2015 reduced total AuM in all BlueCrest funds from a high of US\$22.8 billion to US\$8 billion by December 2015 and from US\$14.5 billion to US\$2.2 billion in the case of the external fund

Background (cont.)

- BCMUK was responsible for ensuring that it managed conflicts fairly
- BlueCrest had a conflicts of interest (COI) policy at group level and maintained a COI register
- COIs were one of the compliance issues discussed periodically by BCMUK's Regulatory Affairs Committee, which was established as a sub-committee of BCMUK's ExCo
- Responsibility for managing and monitoring individual COIs was allocated to the senior manager "*deemed 'closest to the management of the conflict'*"

Background (cont.)

- After the internal fund was launched, the COI register was updated to refer to a conflict (rated “*high*”) arising from the allocation of capital and PMs “*in a way that favours one fund over another*”
- The mitigating control was stated to be the approval of proposed allocations of capital by Group ExCo, subsequently expanded to list the factors to be taken into account when allocating capital
- The monitoring control was stated to be monitoring of PM and capital allocations by Group ExCo and local sub-investment managers, including BCMUK, subsequently expanded to include the reasons for and then the impact of proposed movements of capital units between funds

Background (cont.)

- The COI register was also updated to refer to a conflict arising from the management of proprietary funds open to investment from partners, employees and affiliates
- The mitigating and monitoring controls for this conflict were materially the same as for the conflict arising from the allocation of capital and PMs (i.e., approval / monitoring by Group ExCo and local sub-investment managers, including BCMUK)
- During the relevant period, all Group ExCo and BCMUK ExCo members held investments in the internal and (to a lesser extent) external funds, including BCMUK ExCo members identified as responsible for the conflicts above

Background (cont.)

- Compliance were primarily focused on external funds including the external fund
- Compliance were not aware of who was exposed to the internal fund or to what extent
- Compliance relied on staff investment in the external fund as an incentive against favouring the internal fund, but were unaware of the disparity in the level of exposure on the part of managers etc to the funds

FCA findings

- BCMUK breached Principle 8 by failing to manage conflicts of interest fairly between the investors in the external and internal funds
- Without sufficient conflict management controls, it was inappropriate for decisions about allocating capital and PMs between the two funds to be taken by individuals with conflicting interests
- BCMUK's systems and controls were insufficient to mitigate the risk of allocation decisions favouring the internal fund over the external fund
- BCMUK failed to identify the fact that its control (oversight by individuals who were themselves potentially conflicted) exacerbated, rather than mitigated, the risk

FCA findings

- BCMUK failed to provide sufficient disclosure to investors in the external fund
- The limited information provided to investors in the external fund about RMT was, at times, “*insufficient and misleading*” and failed to provide investors with the information required to scrutinise the conflict and assess how it was being managed

FCA sanction

- Imposition of a redress programme – presumably to compensate investors in the external fund for perceived underperformance relative to the internal fund?
- Level 4 seriousness – so 15% of BCMUK’s revenue in the relevant period, increased by 15% to reflect:
 - The FCA’s November 2012 thematic review on “*conflicts of interest between asset managers and their customers; identifying and mitigating the risks*”; and
 - The FCA’s November 2012 “*Dear CEO letter*” on the same topic, which prompted an attestation from BCMUK that was “*inaccurate and misleading given BCMUK’s failure effectively to manage the Internal Fund conflict*”

FCA sanction (cont.)

- Resulting in a penalty of GBP 40,806,700
- No discount for early settlement, because BCMUK has referred the decision to the Upper Tribunal

FCA sanction (cont.)

- *“Market confidence in the asset management sector relies, among other things, on public trust that asset managers will effectively manage and appropriately disclose conflicts of interest. Accordingly, the action set out in this Notice supports the Authority’s operational objective of protecting and enhancing the integrity of the UK financial system. It also supports its operational objective of securing an appropriate degree of protection for consumers”*

Observations

- Only one side of the story, but . . .
- First Principle 8 enforcement outcome for a while – and there can be a tendency to place less emphasis on issues that are not obviously top of the regulators' agenda
- Thematic reviews are gifts that keep on giving
- Juvenal was a smart guy

Observations (cont.)

- Where does this leave internal funds?
- BCMUK's approach to the process is novel – and interesting

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FCA review of wholesale data markets
Rob Moulton

Background

- Call for Input on accessing and using wholesale data launched March 2020
- Looked at the changing use of data and what this has brought – and will continue to bring – to wholesale markets, transforming business models, competitive dynamics, and how financial markets function
- Closed on 7 January 2021 (extended from May 2020 due to COVID-19)
- Feedback Statement and next steps published on 11 January 2022

Feedback

- Overall, views were mixed, largely reflecting respondents' positions in the market
- FCA did hear about some market features that it thinks warrant further investigation
- Focus is on:
 - **Trading data** – there are concerns that trading venues' ownership of data may confer market power, resulting in data charges that bring about increased costs for end investors, may be affecting asset managers' investment decisions, and may be limiting the efficiency of trading activity in a way that affects price formation
 - **Benchmarks and indices** – contracts may be unnecessarily complex and conditions not transparent, and there may be barriers to switching between benchmarks. This is leading to an increase in prices that are not commensurate with increasing costs or improved services of quality
 - **Credit Rating Agencies** – specific concerns include high and increasing fees, lack of transparency surrounding contracts, bundling issues, and a lock-in to the big three CRAs in the market driven by regulatory and commercial reasons

Next steps

- Information gathering and analysis exercise in Spring 2022, focused on the pricing of trading data, underlying costs, and the terms and conditions of the sale of trading data
- Market study in summer 2022, looking at how competition is working between benchmarks
- Market study later in 2022, looking at competition in the sale of credit rating data
- FCA to commission research on the nature of alternative data and advanced analytics

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