

News

BCLP LAUNCHES ITS 10TH FINANCIAL REGULATION EMERGING THEMES PUBLICATION: GLOBAL REGULATION, LOCAL SOLUTIONS

THE FCA'S EXECUTIVE DIRECTOR OF INTERNATIONAL DELIVERS KEYNOTE SPEECH

Feb 05, 2020

SUMMARY

Global law firm BCLP recently hosted its 10th annual Financial Regulation Emerging Themes seminar to celebrate the launch of its 2020 publication, entitled “Global Regulation, Local Solutions”. Nausicaa Delfas, Executive Director of International at the Financial Conduct Authority (FCA), delivered the keynote speech at the BCLP London office at Adelaide House, London Bridge. Ms Delfas is the FCA's lead on managing the process of handling the UK's withdrawal from the European Union.

The seminar consisted of three expert panels – featuring BCLP Partners from the UK, US and Germany – and examined the key challenges faced by the financial services industry today: FinTech and regulation, managing global reporting expectations, and new developments in regulatory enforcement in the US, UK and Germany. The 2020 publication includes over 20 articles examining developing themes in financial regulation in the UK and internationally, from “fair” pricing regulations to non-financial misconduct and from UK collective cartel claims to bribery and corporate hospitality.

Keynote Address: Nausicaa Delfas, FCA

Nausicaa Delfas' keynote speech focused on how global regulation, along with tailored solutions in local jurisdictions, will remain crucial.

“Since the financial crisis, and with the creation of the Financial Stability Board over a decade ago, UK policymakers have been at the forefront of establishing standards... Ten years on, we should take stock of where we are and consider not just what has been implemented, but how. The quality and consistency of local implementation is critical to the success of these

reforms... There is more work to do to ensure implementation is consistent both in the form and adoption timetable of the international standards.”

Discussing the topic of equivalence post-Brexit, Nausicaa explained:

“Our work to onshore the EU rulebook means that on day one, the UK will have the most equivalent framework to the EU of any country in the world. This provides a strong basis for the EU and the UK to find each other equivalent across the full range of equivalence provisions. And in future it’s not about whether we have identical rules but whether they have the same common, substantive outcomes. This is the established model currently used by the EU and it’s the approach that we strongly support... Regardless of where we end up, the FCA will continue to engage with the future EU agenda. This is because we share common regulatory and supervisory priorities, challenges and concerns.”

It is clear from Nausicaa’s speech that the FCA is supporting cross-border cooperation and will work with the EU and counterparts globally on the future regulatory agenda to achieve common goals, which include: the fight against money laundering; financial innovation; sustainable finance; and the future regulation of crypto assets, some of which are issues covered in BCLP’s Emerging Themes 2020 publication.

What is FinTech doing to regulation?

BCLP Partners Daniel Csefalvay (London) and Ben Saul (Washington DC) began the panel discussions by looking at how regulation has had to evolve to accommodate the FinTech revolution. Although technology has long been a keystone of financial services, Daniel stressed the challenge was for regulators to keep up with the significant technological advances. He cited the ICO market several years ago as an example of when regulators have ‘overreacted’ in the past, expressing the importance of a slow measured approach to ensure regulators understand the technology itself and the risk factors involved before attempting to regulate it.

Ben informed the audience that what is new is the pace at which the technology is evolving, stating that regulation is always a lagging indicator because it is, by necessity and prudence, more reactive than proactive. Looking at the US, Ben stated that there is no sea change in regulators’ approach to FinTech but he anticipates that there will be more to come from regulators on money laundering, sanctions and cryptocurrency. Additionally, Ben examined the differences between the UK and the US regulatory regimes, explaining that the national ‘sandbox approach’ seen in the UK, is mirrored mainly by State-level ‘sandboxes’ in the US. According to Ben, the state-level, US approach presents challenges to uniform decision-making and has caused regulators to develop formal networks to communicate across borders and share information.

Managing global reporting expectations

A second panel of BCLP's leading lawyers in the Investigations, Financial Regulation & White Collar Group discussed how regulatory reporting obligations is particularly topical in the current climate. Partner Oran Gelb (London) set out three reasons for this from a UK perspective:

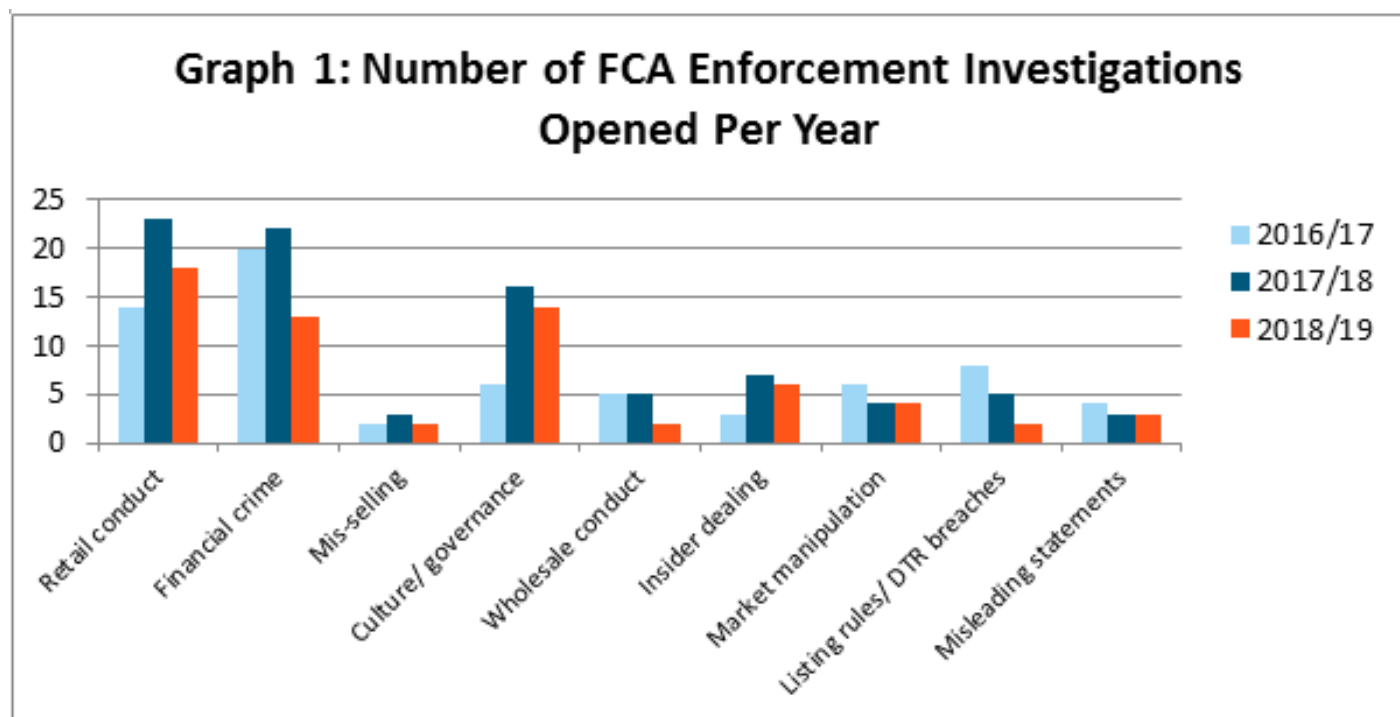
1. The recent increase in FCA Principle 11 and PRA Fundamental Rule 7 breaches;
2. The greater risk of regulators receiving information through other means, including including SMF notification, whistleblowers and gateways between regulators; and
3. The broad remit of notification obligations and the widened interpretation to include issues such as culture and non-financial misconduct.

Partner Mukul Chawla QC, BCLP's Chief Criminal Counsel (London) who was previously lead counsel to the Serious Fraud Office (SFO) in a variety of fraud and corruption cases, examined the increased focus by both the SFO and the US Department of Justice (DOJ) in encouraging corporates to self-report misconduct. Mukul highlighted, however, that there remain serious unresolved issues in the UK, for example, multinational reporting obligations create confusion because of the various enforcement agencies and regulators to whom they have to report, and the different corporate liability tests adopted across different jurisdictions.

Partner Ashley Ebersole from BCLP's Washington DC office described some specific reports required by regulators (such as Suspicious Activity Reports for broker-dealers and other financial institutions), and explained that cooperation programmes often incentivize firms and individuals to self-disclose issues to regulators. He also noted that disclosure obligations to shareholders may lead public companies to report compliance and other events in SEC filings and press releases. He closed by describing regulatory expectations regarding data security and cybersecurity controls, as well as disclosures of risks and events within this sphere.

What's new in regulatory enforcement around the world?

The final panel discussed trends within FCA enforcement. Partner Polly James (London) explained that culture and governance issues have risen substantially on the FCA's agenda shown by the number of open cases – there has been a noticeable increase of investigations on these topics by the regulator in the last three years (see graph 1).

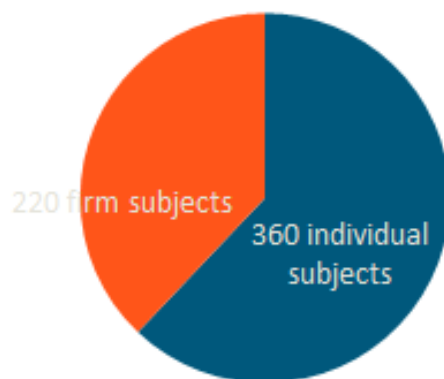


SOURCE: [FCA Freedom of Information Act disclosure dated 5 September 2019](#)

There is a clear indication that the FCA is increasingly interested in reports concerning workplace conduct, such as bullying and harassment, which is captured in the Senior Managers and Certification Regime (SMCR). Non-financial misbehaviour of this type is considered by the regulator as equally as important as, for example, market abuse. Polly summarised two key takeaways for 2020, firstly the importance of complying with the SMCR and secondly, the focus on culture. How are firms reacting? Many firms are commissioning culture surveys and protecting whistle-blowers within the company who report issues. However, she stressed that there is a lot more to be done. Moreover, the FCA has demonstrated a keen focus on ‘psychological safety’ and has even developed a webpage to stress its importance.

Partner and Co-Head of the Investigations, Financial Regulation & White Collar Group, Nathan Willmott (London) touched on enforcement investigations and discussed how individuals within firms are increasingly being held accountable for alleged wrongdoing alongside firms, with 360 individual subjects compared to 220 firm subjects (see graph 2). Looking ahead, the focus is on how firms are dealing with regulators. The FCA seems to be focusing particularly on transaction reporting; periodic reporting; and automated trade surveillance investigations.

Graph 2: Enforcement Investigations – Firms v Individual Subjects



SOURCE: [FCA Freedom of Information Act disclosure dated 26 February 2019](#)

The Panel also looked at regulatory enforcement within the USA and Germany. Partner and Co-Head of the Investigations, Financial Regulation & White Collar Group, Mark Srere, from BCLP's Washington DC office, discussed the different approach and focus in the US. Mark explained, *"All regulators in the US levy fines. The DOJ had three settlements of more than \$1bn last year for sanctions violations or money laundering. Sanctions violations will always draw attention from regulators in the US, no matter the administration."*

Partner Bernd Geier (Frankfurt) provided insight into the European approach and shared that the European regulators, including the BaFin, are heavily focused on market abuse and anti-money laundering issues. As the financial services industry enters a new decade, the issues discussed at BCLP's Annual Financial Regulation Emerging Themes seminar highlight the key challenges faced by firms in 2020. Partner and Co-Head of the Investigations, Financial Regulation & White Collar Group, Nathan Willmott, concluded that, *"There is a lot to absorb, in terms of the global consequences for our firms, of issues in a range of jurisdictions and how to manage them collectively. This continues to be a time of significant change and this pace of change is one consistent theme we've seen over the past decade."*

About the Financial Regulation Emerging Themes Publication and Seminar

Now in its 10th year, BCLP's Financial Regulation Emerging Themes publication is produced by the firm's Investigations, Financial Regulation & White Collar Group, jointly led by Partners Nathan Willmott (London) and Mark Srere (Washington DC). The 2020 edition features a collection of personal viewpoints and insights from members of the global team on new developments in the

regulatory landscape that will help businesses manage legal and compliance risks in the year ahead and beyond.

Speakers:

Keynote speech – Nausicaa Delfas, Executive Director of International and a member of the Executive Committee at the FCA

Panel 1 – What is FinTech doing to regulation?

- Daniel Csefalvay, Partner (London)
- Ben Saul, Partner (Washington DC)

Panel 2 – Managing global reporting expectations

- Mukul Chawla QC, Partner (London)
- Ashley Ebersole, Partner (Washington DC)
- Oran Gelb, Partner (London)

Panel 3 – Panel discussion: What's new in regulatory enforcement around the world?

- Nathan Willmott, Partner (London)
- Mark Srere, Partner (Washington DC)
- Polly James, Partner (London)
- Bernd Geier, Partner (Frankfurt)
- Andrew Tuson, Partner (London)

The event was attended by over 100 individuals from a range of financial institutions.

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MEET THE TEAM



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