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Insights

THE FCA'S NEW "GAME PLAN" – WHAT DO BANKS NEED TO KNOW ABOUT THE FCA BUSINESS PLAN FOR 2021/22?

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SUMMARY

Yesterday the FCA published its eagerly-awaited Business Plan for 2021/22 (the "**Plan**"), its publication having been delayed from April due to the pandemic and it being Nikhil Rathi's first business plan since he was appointed Chief Executive Officer of the FCA last October. And it has not failed to disappoint. The Plan launched with certain fanfare yesterday morning, accompanied by a high-energy and detailed speech from Rathi setting out a vision for a transformative and transforming FCA. A transformation that will allow the FCA to tackle head-on what Rathi references as the "profound forces [that] are reshaping financial services" and be poised to deal with future disruption, however that may materialise. In this blog we highlight some of the key priorities set-out in the Plan that will be particularly pertinent to our banking clients, before focusing on what we can expect from the promised "new" FCA under Rathi and its wider new leadership team.

THE FCA'S PRIORITIES

At first glance, firms will not be surprised by many of the FCA priorities that are set-out in the Plan. Indeed, having read the priorities in isolation, you would be forgiven in feeling that this was "business as usual" for the FCA, following on from their Business Plan for 2020/21 and the various papers they have delivered since then.

At their core, the FCA's priorities boil down to the following:

1. Consumers

Consumer protection remains a major priority for the FCA and the Plan contains further explanations as to how the FCA will seek to pursue the four consumer priorities originally set out in its Business Plan for 2020/21:

- enabling consumers to make effective investment decisions;

- ensuring consumer credit markets work well;
- making payments safe and accessible; and
- delivering fair value for consumers.

For further information on the FCA's focus on consumer protection, please read our blog on the FCA's proposed new Consumer Duty. The FCA's proposals here are far-reaching and will touch all firms operating in the UK financial market to the extent they relate to the lifecycle of products and services sold to "retail clients".

2. Wholesale markets

In the wholesale markets, the FCA will continue to critically review and consider changes to its rules in the aftermath of Brexit, whilst repeating its commitment not to diverge from the minimum standards under the EU framework. Specific focus will remain on:

- finalising the listing rules for SPACs;
- addressing the complex rules around pre- and post-trade transparency in the securities and derivatives markets; and
- listing rule changes to support Task Force on Climate-Related Financial Disclosures (TCFD) disclosures.

Alongside this, the FCA are focused on managing the orderly transition away from LIBOR, together with the familiar emphasis on reducing the risks of financial crime and ensuring access to products and services across the industry that offer choice, fair value and deliver what is expected and needed.

3. All markets

Similarly, other cross-sectoral priorities will be familiar, flowing in part from the priorities already identified above. There is a continued focus on:

- Environmental, Social and Governance issues and supporting the government's commitment to a net-zero economy;
- driving down fraud;
- ensuring firms remain operationally and financially resilient; and
- promoting gender and ethnic diversity both at the FCA itself and at the firms that it regulates. The FCA is setting itself targets in relation to publishing and meeting key indicators of diversity

within the FCA. Our recent blog examines the FCA, PRA and Bank of England's joint Discussion Paper on diversity and inclusion.

CHANGE IS A COMING?

What is, however, most striking about the Plan is that it appears to indicate that there will be a step-change in the FCA's approach under Rathi, with it becoming an increasingly more active regulator. And that is off the back of an FCA that we have already seen in recent times is not afraid to take decisive action and intervene.

In his speech launching the Plan, Rathi stated his ambition that "the FCA must continue to become a forward-looking, proactive regulator. One that is tough, assertive, confident, decisive, agile. One that acts, acts fast – and where we can't act, engages enthusiastically with those who can".

A seemingly re-invigorated FCA is not what many would have expected in a post-Brexit world where the UK is keenly seeking to demonstrate that it is open for business. Indeed, Rathi even acknowledged in his speech that some might consider his approach to be too "hands-on". However, his approach appears to be driven by a desire to learn from the lessons of the past. Having worked at the Treasury at the height of the 2008 global financial crisis, he explained that he is keen to avoid a repeat of a crisis that he regarded as being a consequence of a "laissez-faire" attitude to regulation.

To achieve the desired step-change in the FCA's approach, the Plan explains that the FCA will need to become more innovative, assertive and adaptive. As to what this might look like in practice, the Plan and Rathi's speech provide some interesting insights.

There will be significant resource investments within the FCA to increase its capabilities. Rathi describes how the FCA will invest £120 million into its data and technological capabilities over the next three years, to enable it to scale its operations and to share information more easily within the FCA and with its partners. All as part of the FCA's wider plans to be more increasingly innovative and harness the power of data. He also explained that the FCA would double its staff in Edinburgh in the next two years, establish a presence in Cardiff and Belfast, and potentially also open a new office in Leeds (initially with 100 staff).

Rathi also made clear that the FCA would not be shy about taking on legal challenges. He explained his view that, even where the FCA does not win these, this should not be regarded as a failure "because history shows that where our perception of risk prevented necessary action, we ended up with a bigger problem." The recent Business Interruption test case is a clear example of the FCA's approach here. But Rathi also referenced the FCA's first criminal proceedings under AML powers and the uptick in consumer alerts as other examples.

The key question for those in the banking sector will, of course, be precisely how the FCA's additional resource and renewed vigour will be directed. In broad terms, it can be assumed that this will be at the priority areas set out in the Plan as summarised above. Clearly the FCA will expect banks to prioritise these sector-specific and cross-sector priorities; integrating them into their business plans and giving them appropriate attention and resources from Board level down to the "nuts and bolts" of the organisation.

However, the Plan and Rathi's speech indicate that a particular focus of the FCA's work going forward will be on firms and their activities that fall close to the regulatory perimeter. For many of the larger and more established banks this may provide some relief. Rathi explained that the government has now agreed to jointly assess the state of the FCA's perimeter on an annual basis and that, even where undesirable activities fall outside of the FCA's perimeter, the FCA will not simply stand-by but would work with partner agencies and others to ensure that they can be stopped and punished. Similarly, there will be a renewed focus on exactly which firms are permitted FCA authorisation, including those transitioning from the TPR – the emphasis being on policing the gateway of firms into the regulatory system. For those foreign banks currently operating under the TPR, this will understandably be a cause for concern, as they potentially face additional scrutiny. We can be confident that the FCA's primary focus will be on firms operating at the extremities of regulation and those considered to pose the greatest risk to consumers and the stability of the UK financial markets. This will not be most banks.

The FCA, in particular, clearly has in their sights those firms that are using technology to generate and/or market new products to a new younger generation of financial services consumers. To protect these, and other, consumers, the FCA will now set up a "Regulatory Nursery" – a form of early-warning system to monitor firms doing entirely new types of business. The aim appears to be to support firms and foster the right kind of regulatory behaviour. The FCA will also look to increase their support for innovative companies wanting to test new products and services by opening its regulatory Sandbox to applications year-round and making the Digital Sandbox permanent.

CONCLUSION

Although the Plan indicates that all firms in the banking sector are likely to experience the effects of increased levels of FCA oversight and intervention in the coming years, it is perhaps firms offering or marketing more novel products and services to customers and operating on the edge of the regulatory perimeter that are likely to experience these the most. These will, of course, be smaller sized firms in many instances and will likely often fall outside the banking sector. Whether the FCA's seemingly more vigorous approach to regulation strikes the right balance between maintaining the appropriate level of consumer protection whilst permitting firms to innovate to the benefit of consumers, whilst fostering a welcoming and competitive UK financial market post-Brexit, awaits judgment.

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