

**“Vulnerability is the birthplace of innovation, creativity and change.”**

**Brene Brown**

The Joint Committee of the European Supervisory Authorities (ESAs) has set out recommendations for policy action necessary to address risks and uncertainties set out in its September 2018 report on risks and vulnerabilities in the EU financial system.

**Dear CEO LIBOR letter**

The FCA sent out a 'Dear CEO' letter about the discontinuation of LIBOR, asking regulated firms to nominate the senior manager within their firms who will take responsibility for undertaking a proportionate, board-approved 'comprehensive risk assessment of the potential prudential and conduct impacts associated with a transition in a range of scenarios, including LIBOR discontinuation'. While consistent in general terms with the SMCR, the novelty in this case is that the FCA has identified a specific, one-off issue for which it wants a nominated senior manager to be held responsible.

This extension of the application of senior manager responsibility to one-off issues of interest to the regulator should be noted.

These letters were sent to the largest banks and insurers in the first instance. Firms which have not received a direct email from their supervision team linking to the letters are not within scope of this request, however we encourage all firms that currently rely on LIBOR to read and reflect on this letter.

**FinCEN Grants Exemptive Relief from the CDD Rule for Certain CD Rollovers and Credit Renewals**

The Financial Crimes Enforcement Network (“FinCEN”) issued relief from the requirements of the customer due diligence rule (“CDD Rule”) to identify and verify the identity of beneficial owners of a legal entity customer that:

- roll-overs a certificate of deposit (“CD”);
- renews, modifies or extends the term a loan, commercial line of credit or credit card account; or
- renews a safe deposit box rental.

This relief supersedes temporary relief FinCEN earlier issued and attempts to resolves certain interpretive questions faced by financial institutions implementing the CDD Rule.

In issuing this relief, FinCEN has attempted to clarify the types of products and the circumstances to which the relief applies. For example, FinCEN defines a loan renewal, modification or extension as a situation in which a financial institution renews, extends, or otherwise modifies the loan “without substantively changing the terms.” With respect to the renewal, modification or extension of a loan, line of credit or credit card account, FinCEN states that exceptive relief applies only if such actions do not require underwriting review or approval. Where such steps are necessary, the exception does not apply, and the institution must conduct the identification and verification procedures the CDD Rule requires for all “new accounts.”

**Joint Committees of ESAs recommend action to address risks and uncertainties in EU financial system**

On 11 September 2018, the Joint Committee of the European Supervisory Authorities published a report on the risks and vulnerabilities in the EU financial system, which sets out recommendations for policy action. The ESAs advise the following policy actions by financial institutions and by EU and national competent authorities:

- Stress tests. Stress test exercises should continue to be conducted and developed further across all sectors, especially given rising interest rates and the potential for sudden risk premia reversals, which should be factored into the scenarios.
- Risk appetite. Supervisory authorities need to pay continued attention to the risk appetite of all market participants. Banks should accelerate addressing their stocks of non-performing loans (NPLs) and adapt business models to sustainably improve profitability, and financial institutions need to carefully manage their interest rate risk.
- Contagion risks. Macro and micro prudential authorities should contribute to addressing possible contagion risks, including continuing their efforts in monitoring lending standards.
- Brexit. It is crucial that EU financial institutions and their counterparties, as well as investors and retail consumers, plan appropriate mitigating actions to prepare for the UK’s withdrawal from the EU in a timely manner, including the risks associated with a no-deal scenario.

**European Commission communication on strengthening AML supervision and revised legislative proposal on EBA AML mandate**

The EC published a communication on strengthening the EU framework for prudential and AML supervision for financial institutions. In the communication, the Commission sets out a strategy for seamless supervisory co-operation between prudential and AML supervisors. A key aspect of this strategy is the proposal that the EBA should be given an enhanced mandate concerning AML supervision. Among other things, this will give the EBA an increased role in the investigation of breaches of AML rules and will enable it, as a last resort, to address enforcement decisions directly to individual financial sector operators. The Commission’s strategy also consists of:

- Revisions to the proposed CRD V Directive on improved information exchange and a duty of cooperation between AML and prudential supervisors.
- Short-term non-legislative initiatives to be carried out by ESMA, EIOPA and the EBA and the ECB.
- Long-term initiatives to be considered in the Commission’s review of the AML legislative framework.

**Annual Public Meeting 2018**

Andrew Bailey, Chief Executive of the FCA, delivered a speech at the FCA’s 2018 Annual Public Meeting.

Key highlights included:

- The FCA's guiding principles on Brexit include cross-border market access, support for consistent global standards and co-operation between regulatory authorities.
- Mr Bailey considers that operational risks represent a new source of risk to the FCA's objectives. He highlights issues relating to operational resilience, technological change and innovation (particularly cryptoassets), financial crime and data.
- The FCA intends to publish a fuller account of its findings concerning the Royal Bank of Scotland's (RBS) Global Restructuring Group (GRG) as soon as it can.
- The FCA cannot reach any conclusions on the investigation into the conduct of certain former senior managers at HBOS concerning the failure of the bank until the evidence review process is complete. The FCA is obtaining and reviewing a number of further potentially relevant documents as a matter of priority.
- The FCA is near the end of its investigative review of HBOS' Reading-based impaired assets team and is considering what action is appropriate.
- The FCA has not yet started the lessons-learnt exercise concerning interest rate hedging products (IRHPs) as relevant legal proceedings have not yet concluded.

### FCA appoints new Director of Competition

The FCA has appointed Sheldon Mills as its new director of competition. Sheldon is currently senior director, mergers and state aid at the Competition and Markets Authority (CMA).

At the FCA, Sheldon will be a central figure in delivering one of the organisation's operational objectives — to promote competition in consumers' interest. In addition to delivering market studies, for example those currently ongoing into the mortgage and wholesale insurance brokerage market, Sheldon will be responsible for the FCA's activities to enforce prohibitions on anti-competitive behaviour within the financial services industry.

### FCA consults on new rules for claims management firms to raise standards of conduct and protect consumers

The FCA are consulting on new rules for claims management companies to raise standards of conduct. They will become the regulator of claims management companies (CMCs) on **1 April 2019**.

The Senior Managers and Certification Regime (SM&CR) will apply to authorised CMCs from **December 2019** – firms should read the Consultation Paper for further information about when the SM&CR may apply to them and what action they will need to take.

Firms' culture and governance is a continuing priority for the FCA. The aim of the SM&CR is to reduce harm to consumers and help strengthen the integrity of the market by making individuals more accountable for their conduct. Nearly all employees of CMCs will have to abide by Conduct Rules and some senior managers will have to be approved by the FCA.

### Introductory speech on multilateralism and global coordination

Andrew Bailey, Chief Executive of the FCA, delivered a speech on multilateralism and global coordination: A case for balancing autonomy and co-operation in the interests of financial markets at Eurofi Financial Forum in Vienna.

Key highlights included:

- It would be a mistake to move away from open financial markets as they are needed to support trade in goods and services.
- A commitment to cross-border cooperation allows for standards to be set domestically where international standards do not exist.
- Some in the EU are suggesting that EU financial activity must take place in the EU, at a time when other countries internationally are removing unnecessary location policies.

### BEIS publishes response to consultation on corporate governance and insolvency

BEIS has published the government's response to its consultation on proposals to improve the corporate governance of firms that are in or approaching insolvency. The government plans to take forward several specific actions. These include strengthening transparency requirements around group structures, strengthening shareholder stewardship, strengthening the framework on dividend payments, and bringing forward proposals to improve board effectiveness and strengthen directors' training and guidance. BEIS stated that these measures will be set out in further detail in the autumn.

### Enforcement cases

#### FCA fines insurance intermediary and chief executive for failing to protect client money

The FCA published the final notices it has issued to an insurance intermediary and the chief executive responsible for client money. The FCA has fined the firm £684,000 and restricted it from charging renewal fees to its customers for 90 days, which it is estimated will cost the firm approximately £4,703,000. It has fined the chief executive £468,000 and prohibited him from having any responsibility for client money or insurer money in relation to any regulated activity. The FCA gave decision notices to the company and individual in January 2018 notifying them of its decisions to fine them for failing to arrange adequate protection for the firm's client money.

#### Six sentenced in FCA prosecution of £2.8m investment fraud

In a case brought by the FCA, 6 individuals have been sentenced to a total of 28.5 years' imprisonment for their roles in a share fraud carried out through a series of boiler room companies which led to the loss of more than £2.8m of investors' money. The instigator of the fraud received 11 years' imprisonment.

Between July 2010 and April 2014, members of the public were cold-called and subjected to high pressure sales tactics to persuade them to purchase shares in a company that owned land on the island of Madeira. The investors were told that the value of the shares would increase substantially when permission to build 20 villas was granted, thereby enhancing the land's value. Investors

were promised guaranteed returns of between 125% and 228%. None were ever paid. Investors' money was used to maintain the fraud and particularly to fund the lifestyle of the main beneficiary of the fraud. Over 170 members of the public invested over £2.8m in the shares. Many were elderly or vulnerable, and lost life-changing sums, in some cases all their life savings.

Mark Steward, Executive Director of Enforcement and Market Oversight at the FCA, said:

"These fraudsters callously targeted investors who were often elderly and vulnerable, lying to them to get them to part with significant sums of money. Despite efforts to conceal and destroy evidence, the FCA, in one of its largest ever investigations, was able to ensure that these criminals faced justice and ended up behind bars.

### FCA bans former Bank trader

The FCA has banned the trader from performing any function in relation to any regulated financial activity.

The former trader worked at a well known Bank where he traded interest rate derivative products referenced to benchmarks including EURIBOR. The FCA has found that he lacks integrity and therefore fitness and propriety to carry out such a role. He made requests to EURIBOR submitters to make high or low EURIBOR submissions, both internally to the Bank submitters and externally to traders at other EURIBOR panel banks. He did so to benefit the profitability of the trading positions for which he was responsible and, on occasion, the profitability of the trading positions of other traders.

He pleaded guilty to conspiracy to defraud in the criminal action on 2 March 2018 and on 20 July 2018 he was sentenced to 5 years and 4 months in prison. He was also ordered to pay £2.5 million by way of confiscation order. In light of the orders made in the criminal proceedings, and with the consent of the parties, on 14 September 2018, the Upper Tribunal directed the FCA not to impose a financial penalty on Mr Bittar, and otherwise ordered that the reference be dismissed. This means the FCA's initial decision to prohibit him is now a final decision.

### FCA fines Bank £16.4m for failures in 2016 cyber attack

The FCA has fined Bank £16,400,000 for failing to exercise due skill, care and diligence in protecting its personal current account holders against a cyber attack. The cyber attack took place in November 2016.

Cyber attackers exploited deficiencies in the Bank's design of its debit card, its financial crime controls and in its Financial Crime Operations Team to carry out the attack. Those deficiencies left the Bank's personal current account holders vulnerable to a largely avoidable incident that occurred over 48 hours and which netted the cyber attackers £2.26m.

The FCA found that the Bank breached Principle 2 because it failed to exercise due skill, care and diligence to:

- Design and distribute its debit card.
- Configure specific authentication and fraud detection rules.
- Take appropriate action to prevent the foreseeable risk of fraud.
- Respond to the November 2016 cyber attack with sufficient rigour, skill and urgency.

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- Company authorisation services
- Fund authorisation services
- Outsourced MLRO services
- Outsourced compliance solutions
- Regulatory project assistance (e.g. Investment Restrictions, Money Laundering, Client Money, ICAAPs)
- Compliance 'Health' checks
- Policy and procedures
- Systems and Controls
- GDPR assistance
- SMCR assistance
- Related training
- Financial Crime

### UK and Ireland

- Consumer Credit Authorisation, whether you have an interim authorisation or not
- Investment & Operational Risk management services
- Fund restructuring services
- ICAAP review and development
- ACD / Management Company structuring and governance review
- Fund and firm re-domiciliation advice
- AIFM Authorisation
- AIFM monitoring (including risk services)
- Dublin also provides Fund UCITS IV Reporting, MLRO and Company Secretarial Services.
- Related Training

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