

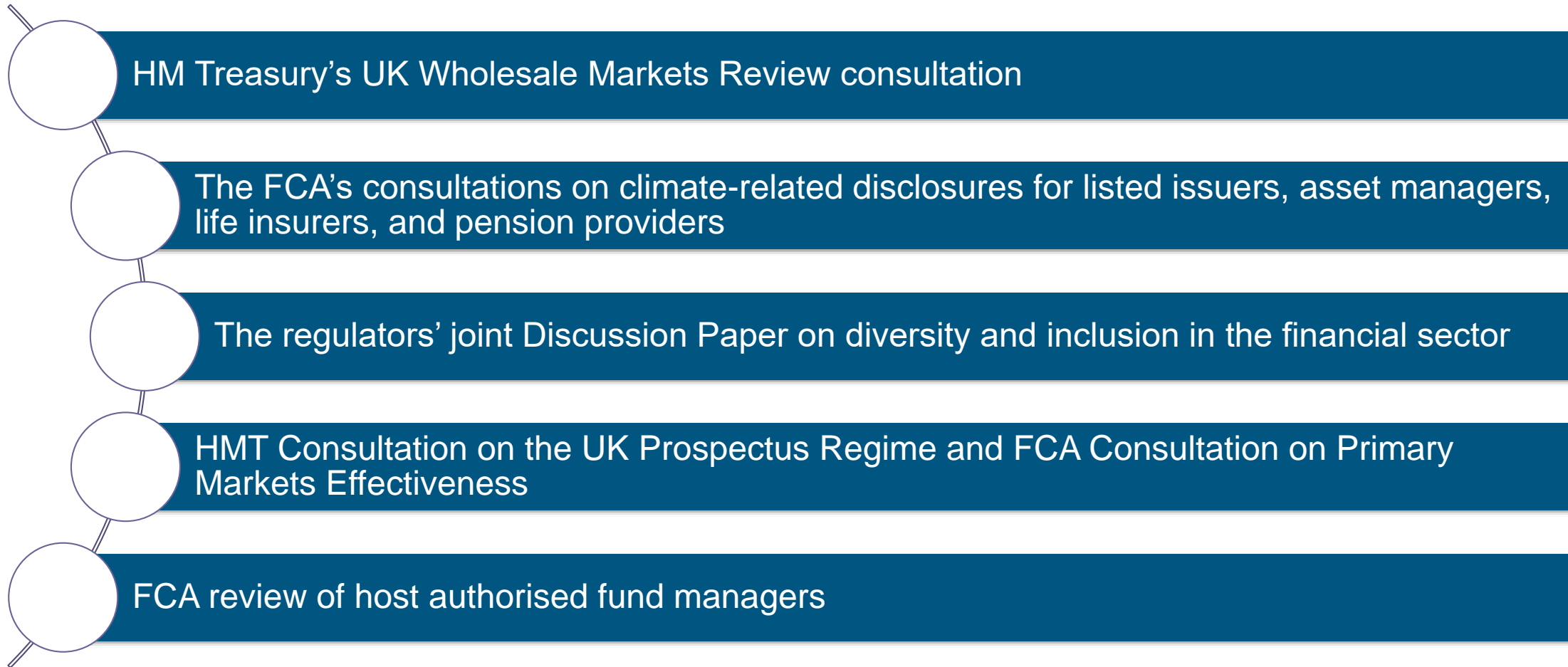


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14 July 2021

Financial Regulation Monthly Breakfast Webcast

Overview



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HM Treasury's UK Wholesale Markets Review
consultation
Gabriel Lakeman

Introduction

- HM Treasury published its Wholesale Markets Review consultation on 1 July 2021
- The review was established to determine how the UK's approach to regulating secondary markets needs to adapt post-Brexit

“.. our ambition had been to reach a comprehensive set of mutual decisions on financial services equivalence. That has not happened.

Now, we are moving forward, continuing to cooperate on questions of global finance, but each as a sovereign jurisdiction with our own priorities. We now have the freedom to do things differently and better, and we intend to use it fully”

Rishi Sunak, Mansion House speech 1 July 2021

Trading Venues

- The government wishes to clarify the regulatory perimeter and the conditions governing trading venues. The proposals include:
 - Clarifying the definition of a multilateral system
 - Considering whether the operating conditions for MTFs (that do not permit matched principal trading) and OTFs (that do not allow them to operate an SI within the same legal entity) should be changed
 - Considering whether a new venue or new market segment should be introduced for smaller SMEs

Systematic Internalisers

- The government is looking to simplify the regime, so that firms no longer feel the need to opt in simply because this is less costly than undertaking the quarterly calculations. The proposals include:
 - Reverting to a qualitative definition, whereby an SI is determined by its market activity for a particular asset class and does not have to undergo complex calculations
 - Determining the status of an SI at an entity level
 - Permitting SIs to execute client orders at the mid-point within the best bid and offer for trades below large in scale, provided the executed price is within the SI's quoted prices and the execution is in a size not larger than the quoted size

Equity Markets

- The government believes that there is scope to simplify the MiFID II transparency regime by removing restrictions that have not aided price formation. Specifically, the government's proposals include:
 - Removing the share trading obligation, allowing firms to trade shares on any trading venue in the UK or overseas or with any counterparty on an OTC basis, as long as best execution is upheld
 - Repealing the double volume cap (DVC). However, the FCA would retain its ability to limit dark trading if there is evidence that the volume of trading is undermining the efficiency of the price formation process

Fixed Income and Derivatives Markets

- The government intends to recalibrate the transparency regime for fixed income and derivatives markets to ensure that the right instruments are subject to transparency requirements. This recalibration would include:
 - Formally realigning the scope of the derivatives trading obligation (DTO) with the clearing obligation under EMIR and granting the FCA a permanent power to modify or suspend the application of the DTO
 - Revisiting scope of transparency requirements for derivatives, including potentially delinking from the concept of “traded on a trading venue” (ToTV) and instead relying on whether transaction is centrally cleared
 - Considering removing pre-trade transparency requirements depending on asset class

Commodities Markets

- The government plans to fundamentally review the commodities regime to ensure that market activity is not unnecessarily restricted, and plans to go further than the EU reforms in this area. The proposals include:
 - Removing derivatives not based on physical commodities from scope
 - Removing automatic inclusion of economically equivalent OTC contracts
 - Revoking the requirement for position limits to be applied to all exchange traded contracts, transferring the setting of position controls from the FCA to trading venues, and providing exemptions for liquidity providers and hedging activity

Next Steps

- Consultation will run until 24 September 2021 and responses considered in parallel with the Financial Services Future Regulatory Framework (FRF) Review
- HM Treasury does not set out a specific timeline for change, but indicates that, to implement the changes informed by this consultation, the government intends to bring forward legislation “as soon as parliamentary time allows”
- The FCA will undertake any further consultations about parts of the regime that fall within its rules and guidance from the second half of this year



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The FCA's consultations on climate-related disclosures for listed issuers, asset managers, life insurers, and pension providers
Nicola Higgs and Anne Mainwaring

UK ESG Snapshot

June 2021
FCA CP:
Climate-
related
disclosures

Q2/3 2021
Trust in the
market
for ESG
investments

Q4 2021
FCA PS:
Climate-
related
disclosures

Q1 2022
FCA CP:
Diversity in
financial
services

Q3 2022
FCA PS:
Diversity in
Financial
Services

End 2022
UK green
taxonomy

FCA 'guiding principles' for the design, delivery and disclosure of ESG fund products

UK will develop Technical Screening Criteria to define what activities are environmentally sustainable

CP 21/17: Enhancing climate-related disclosures by asset managers, life insurers, and FCA-regulated pension providers

- Sets out the FCA's proposals to introduce climate-related financial disclosure rules and guidance for asset managers, life insurers, and FCA regulated pension providers, consistent with the TCFD's recommendations and recommended disclosures
- Purpose is to require high-quality information on how climate-related risks and opportunities are being managed to drive investment towards greener projects and activities
- The FCA is proposing requirements for disclosures to be made at two levels – entity and product / portfolio level

What are the proposed disclosure requirements in CP 21/17?

- Entity level
 - It is proposed that firms make disclosures, annually, on how they take climate-related risks and opportunities into account in managing or administering assets on behalf of their clients and consumers
 - These disclosures must be made in a prominent place on the main website for the firm's business, and would cover the entity-level approach to all assets managed by the UK firm
 - The contents of the report must be consistent with the TCFD's recommendations – covering governance, strategy (including scenario analysis), risk management and metrics and targets
 - Firms would be permitted to cross-refer to disclosures made in another report where those disclosures cover the relevant content
 - Firms would also be able to make disclosures at a level of consolidation that the group considers would be most decision-useful for clients and consumers

What are the proposed disclosure requirements in CP 21/17?

- Product / portfolio level
 - Firms would be required to produce, annually, a baseline set of consistent, comparable disclosures in respect of their products and portfolios, including a core set of carbon emissions and carbon intensity metrics. Depending on the type of firm and/or product or portfolio, these disclosures would either be:
 - Published in a TCFD product report in a prominent place on the main website for the firm's business, and included, or cross-referenced and hyperlinked, in an appropriate client communication
 - Made upon request to certain eligible institutional clients

Who does CP 21/17 apply to?

- Scope – entity level disclosures
- Asset managers
 - FCA-regulated firms responsible for managing investments including:
 - Investment portfolio managers
 - UK UCITS management companies
 - Full-scope UK AIFMs
 - Small authorised UK AIFMs
- Asset owners
 - Life insurers (including pure reinsurers) in relation to insurance-based investment products and defined contribution (DC) pension products
 - Non-insurer FCA-regulated pension providers, including platform firms and Self-invested Personal Pension (SIPP) operators, to the extent that SIPP operators provide a ready-made selection of investments
- Note applicable exemptions

Who does CP 21/17 apply to?

- Scope – product / portfolio level disclosures
- Asset managers
 - Authorised funds (excluding feeder funds and sub-funds in the process of winding up or termination)
 - Unauthorised AIFs
 - Portfolio management services
- Asset owners
 - Insurance-based DC pension schemes
 - Non-insurance DC pension schemes
 - SIPPs, either insurance or non-insurance-based, where the SIPP operator offers investments to be held within its SIPP wrapper

Next Steps

- Comments are requested by 10 September 2021, and the FCA plans to publish a Policy Statement with final rules later in the year
- The FCA intends to implement the disclosure requirements in two tranches, as follows:
 - Application from 1 January 2022 for the largest firms (asset managers with AuM of more than £50 billion, and asset owners with £25 billion or more in AuM or assets under administration in relation to in-scope business), with an initial publication deadline of 30 June 2023 (on-demand disclosures would need to be provided from 1 January 2023)
 - Application from 1 January 2023 for other firms in scope of the proposals, with an initial publication deadline of 30 June 2024 (on-demand disclosures would need to be provided from 1 January 2024)
- Subsequent disclosures would need to be made by 30 June each year

CP21/18: Enhancing climate-related disclosures by standard listed companies and seeking views on ESG topics in capital markets

- Sets out the FCA's proposals to introduce climate-related financial disclosure rules and guidance for issuers of standard listed equity shares
- FCA proposes that the new rule – and associated guidance – in LR 14 directly mirror the structure and wording of the rule and associated guidance in LR 9.8.6R(8) and LR 9.8.6BG to LR 98.6EG for premium listed commercial companies

What are the proposed disclosure requirements in CP21/18?

- Requirement: include a statement in their annual financial report setting out:
 - Whether the issuer has made disclosures consistent with the TCFD's recommendations and recommended disclosures in their annual financial report
 - Where the issuer has made disclosures consistent with some or all of the TCFD's recommendations and/or recommended disclosures, an explanation of why, and a description of any steps taken / planned to be able to make consistent disclosures in the future and the timeframe
 - Where the issuer has included some, or all, of their disclosures against the TCFD's recommendations and/or recommended disclosures in a document other than the annual financial report, an explanation of why
 - Where in their annual financial report (or other relevant document) the various disclosures can be found

Next Steps

- FCA request for feedback
 - Extending the application of the requirements to:
 - Issuers of standard listed debt (and debt-like) securities
 - Standard listed issuers of GDRs
 - 170 issuers with standard listed GDRs are subject to the continuing obligation requirements in LR 18
 - Since GDRs represent the underlying shares in a company, which is typically a commercial company also listed on an overseas market, FCA welcomes views on whether issuers of standard listed GDRs (under LR 18) should also be considered for inclusion within the extended application of our disclosure requirements
 - Standard listed issuers of shares other than equity shares

Next Steps

- **BEIS consultation**
 - The Roadmap towards mandatory climate-related disclosures also set out plans for a legislative provision in the Companies Act 2006 and Limited Liability Partnership (LLPs) Act 2000, to underpin TCFD-aligned disclosures across the economy. BEIS recently conducted a consultation process on proposed TCFD-aligned disclosure provisions
 - BEIS has proposed mandatory TCFD-aligned disclosures by certain UK-incorporated companies and LLPs, aligned with the TCFD's recommendations, to come into force for accounting periods beginning on or after 6 April 2022
 - The proposed scope includes Public Interest Entities and companies with securities admitted to trading on the Alternative Investment Market (AIM) with over 500 employees, plus LLPs and private companies with over 500 employees and at least £500 million turnover. This creates a partial overlap with the scope of FCA existing and proposed Listing Rules. FCA is working closely with BEIS in order to deliver a coherent disclosure regime for those companies within the scope of both regimes
 - The FRC is the relevant enforcement authority for disclosures under the Companies Act 2006. FCA is also working closely with the FRC to develop a coordinated monitoring and supervision regime

Next Steps

- Comments are requested by 10 September 2021, and the FCA plans to publish a Policy Statement with final rules later in the year



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The regulators' joint Discussion Paper on diversity
and inclusion in the financial sector

Andrea Monks

Introduction

- “Diversity and Inclusion in the Financial sector – working together to drive change”- PRA, FCA and BoE
- Sir Jon Cunliffe, Deputy Governor for Financial Stability at the Bank of England:
‘Diversity and inclusion is beneficial for financial stability. Groupthink and overconfidence are often at the root of financial crises. Enabling a diversity of thought and allowing for an array of perspectives to coexist supports a resilient, safe and effective financial system’
- Nikhil Rathi, Chief Executive of the FCA:
We are concerned that lack of diversity and inclusion within firms can weaken the quality of decision-making. We look forward to an open discussion on how we should use our powers to further diversity and inclusion within financial services, to the mutual benefit of firms and their customers’
- Focus is cognitive diversity and an inclusive culture

Purpose of the Discussion Paper

- *“This Discussion Paper is an important step towards making rapid and more substantive progress across the financial sector”*
- Sets out policy options
- Responses by 30 September 2021
- Consultation on more detailed proposals in Q1 2022
- Policy Statement in Q3 2022
- Rules and Guidance to follow

Themes

- Regulatory impatience
- Regulatory teeth
- D&I as a risk management tool
- Outcomes for retail customers
- Importance of data

Suggested policy changes

- Leadership and culture
- Individual accountability
- Remuneration
- Disclosure
- D&I audits
- Supervisory practices



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HMT Consultation on the UK Prospectus Regime
Chris Horton

Consultations on the UK Prospectus Regime and Primary Markets Effectiveness - Overview

- Lord Hill Review in April 2021
- Kalifa Review of UK FinTech
- SPAC consultation closed in May 2021; Feedback imminent
- HM Treasury consultation on UK prospectus regime published on 1 July 2021; closes 24 September 2021
 - To facilitate wider participation in the ownership of public companies;
 - To improve the efficiency of public capital raising by simplifying regulation and removing the duplications that currently exist in the UK prospectus regime;
 - To improve the quality of information that investors receive;
 - To improve the agility of regulation in this area
- FCA consultation on primary markets effectiveness published on 5 July 2021; closes 14 September 2021
 - Discussing functioning of listing regime
 - Targeted changes
- Aim of attracting the most innovative and successful firms and helping companies access the finance they need to grow

Consultation on the UK Prospectus Regime - Overview

- Inherited from EU Prospectus Regulation and retained in the UK
- Admission to trading: Remove criminal offence to apply for admission to trading on a regulated market without a prospectus
- Public offers of securities
 - Retain criminal offence
 - New exemptions (admitted to regulated market or junior markets such as AIM)
 - New definition of offer to the public
 - Most public offers will become regulated by the FCA under its rules; Prospectus Regulation will remain for public offers by private companies
- Two stage process: government consultation followed by FCA consultation

Consultation on the UK Prospectus Regime - The new FCA powers on admissions to Regulated Markets

- Enable the FCA to regulate admissions of securities to trading on Regulated Markets
- What is a prospectus for?
 - *A document of record, available to the public free of charge, that provides potential investors with the information they need and that they can rely on to make an investment decision in a security*
- Proposing granting the FCA discretion to determine whether or not a prospectus is required when securities are admitted to trading on UK Regulated Markets
- Eg 20% threshold for further issues?
- Proposal to grant the FCA sufficient discretion to be able to recognise prospectuses prepared in accordance with overseas regulation in connection with a secondary listing in the UK
- Provisions that contribute to the establishment of the liability attaching to prospectuses should be located in statute

Consultation on the UK Prospectus Regime – Key Points

- Proposal to give the FCA the responsibility to make detailed rules on content
- The Government is minded to remove the requirement for the FCA to review prospectuses prior to publication
- Government minded to apply recklessness standard to forward looking information to encourage more disclosure
- Two options for SME Growth Markets:
 - Exemption from s. 85(1) for secondary offerings (as for main market companies)
 - Exemption from s. 85(1) for secondary offerings PLUS bring SME Growth Market prospectuses into line with new s.90 FSMA (incl forward looking liability)

Consultation on the UK Prospectus Regime – Key Points

- Proposed new public offer exemption for existing holders of securities
- Therefore all share for share offers and all secondary offerings would be exempted
- Consulting on three options for private company public offers
 - Requirement for the offer to be made through an authorised firm (no prospectus required, no size limit)
 - Requirement for the offer to be made through an authorised firm subject to a new bespoke permission ie a regulated crowdfunding platform (no prospectus required, no size limit)
 - Status quo option (prospectus required above £8m GBP)
- Consulting on three options for UK offers by overseas listed companies
 - Status quo option
 - A new deference mechanism ie defer to local rules if equivalent
 - No right to make a public offer into the UK

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FCA Consultation on Primary Markets Effectiveness
Chris Horton

FCA Consultation on Primary Markets Effectiveness – Discussion of 4 different models

- Model 1: Create a single segment for UK listed companies and set the minimum possible requirements for eligibility for listing; no sponsor, no premium listing requirements
- Model 2: Create a single segment for UK listed companies and raise both eligibility and continuing obligations for all UK listed companies to that in the premium segment
- Model 3: Maintain 2 broad segments for UK listed companies (enhanced version of the status quo)
 - With an alternative segment for start ups and acquisitive companies
 - Premium segment called senior segment
- Model 4: Maintain 2 segments for UK listed companies but allow the market to set minimum standards for the 'alternative' segment. (based on UK Listing Review proposal)
- FCA also inviting discussion on improving the process for listing debt and debt-like securities
- FCA also consulting on removing duplication between admission to the Official List and admission to a trading venue

FCA Consultation on Primary Markets Effectiveness – Targeted consultation points

- A targeted form of dual class shares structure (DCSS) within premium listing
 - Five years only
 - A maximum weighted voting ratio of 20:1
 - May only be held by directors of the company or beneficiaries of such a director's estate
 - Weighted voted rights only to be available in two limited circumstances: (i) a vote on the removal of the holder as a director at any time and (ii) following a change of control, on any matter (to operate as a strong deterrent to a takeover)
 - Conversion to ordinary premium listed shares upon transfer to anyone other than a beneficiary of the director's estate
- Increasing the minimum market capitalisation threshold for both the premium and standard listing segments for shares in companies other than funds from £700,000 to £50 million

FCA Consultation on Primary Markets Effectiveness – Targeted consultation points

- Reducing the required free float level from 25% to 10%
 - For premium listed companies, currently the FCA may take account of a market value which exceeds £100m in considering applications for a modification to the rule
 - FTSE Russell, a major UK index provider, changed their free float requirements in the UK index series in 2011, increasing the requirement for UK incorporated companies from 15% to 25%
 - Many countries have lower requirements
- Showing more willingness to allow waivers for the coverage of the 3-year track record
 - No immediate plans to change it to eg requirement for most recent year only
 - Consulting on changing the requirement for high growth innovative companies
- Minor simplification and modernisation to the Listing Rules, Disclosure Guidance and Transparency Rules (DTRs) and Prospectus Regulation Rules (PRR)

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FCA review of host authorised fund managers
Rob Moulton

FCA review of host authorised fund managers

- FCA visited a sample of AFMs that delegate investment management to third parties outside of their corporate group (host AFMs)
- Found weaknesses in:
 - **Due diligence** over delegated third-party investment managers and funds – firms performed poorly in this area, and the FCA is concerned that firms did not gather the level of detailed knowledge required to understand adequately the funds for which they would have responsibility
 - **Oversight** of delegated third-party investment managers and funds – the FCA saw poor oversight, including a lack of in-depth understanding of investment management activities and investment strategies by key people
 - **Governance** – firms were unable to provide evidence of robust governance procedures, NEDs did not provide sufficient challenge, and conflicts of interest policies were not effective
 - **Financial resources** – FCA found that several firms operate at low margins
- FCA describes findings as “significant”

FCA review of host authorised fund managers

- FCA to provide written feedback to all firms in the review, some will be required to undertake s.166 reports, and some may be asked to hold additional capital
- FCA will review progress after 12-18 months
- FCA also considering whether any rule changes are needed

FCA approach to legal risk

FCA Board minutes, 29 April 2021

*The Board was briefed on the current organisational approach to legal risk, and on the concerns around **whether the organisation has sufficient appetite for taking legal risk***

*The Board recognised that legal risk was one of many factors to be considered when deciding on the appropriate action for the FCA to take. It was noted that the FCA operated within the rule of law and should not engage in actions which are not legally defensible. **However, a willingness to take legal risk, especially in situations where the law is unclear or FCA action is intended to prevent imminent consumer harm, was entirely appropriate.** The Board therefore did not consider that the existence of legal risk should prevent the FCA from taking such action*

***The Board supported proposals to recalibrate the degree of legal risk the organisation is willing to take,** how to implement this in practice and the inclusion of legal risk appetite/tolerance in the FCA's Own Risk framework*

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[UK Regulators Launch Discussion on Diversity and Inclusion](#)

[HM Treasury Consults on UK Wholesale Markets Reform](#)

[FCA Seeks to Extend Climate-Related Disclosures for Listed Companies](#)

[FCA Proposes New Climate-Related Disclosure Regime](#)

[Climate \(and ESG\) Risk: The Growing Focus on Board Accountability](#)

[Taskforce Proposes New Approach to Financial Regulation in the UK](#)

