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Briefing note

March 2013

Corporate Update: Impact of the Financial Services Act 2012

From 1 April 2013 a new financial regulation framework will be operative in the UK. The Financial Services Authority (FSA) is being replaced by the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA), the Bank of England is to have overall responsibility for financial stability and a new Financial Policy Committee (FPC) of the Bank of England is being created. However, the Financial Services Act 2012 does more than just give effect to these regulatory reforms. In this briefing we provide a reminder of the new framework and summarise the main areas of change which will be of interest to listed companies, including the role of the FCA as the authority responsible for the Official List, the law relating to market manipulation and changes to the supervision of sponsors.

1. Overview

The Financial Services Act 2012 (**2012 Act**) implements significant changes to the UK financial regulation framework by amending the relevant provisions of the Financial Services and Markets Act 2000 (**FSMA**). In addition, the 2012 Act will:

- restructure and broaden the law relating to market manipulation and misleading statements and impressions;
- strengthen the regime for the approval, supervision and discipline of sponsors under FSMA;
- create a system of dual regulation for many financial institutions; and
- extend the scope of the special resolution regime under the Banking Act 2009.

2. Who's who in the new financial regulation framework

On 1 April 2013 the FSA will be replaced by the FCA and the PRA. The diagram on page 2 of this briefing shows the new regulatory framework which will take effect on 1 April 2013.

- The **Financial Conduct Authority (FCA)** will be responsible for conduct regulation and also for the prudential regulation of non-PRA firms (i.e. smaller investment firms, exchanges and other financial services providers). The FCA will take over from the FSA as the authority responsible for the Official List under Part 6 of FSMA.
- The **Prudential Regulation Authority (PRA)** is a subsidiary of the Bank of England. It will be

Key changes for corporates

1 April 2013:

- New UK financial regulation framework comprising Bank of England (including FPC), FCA and PRA
- FCA becomes the authority responsible for the Official List
- FCA assumes responsibility for the Listing Rules, Prospectus Rules and Disclosure and Transparency Rules
- Market manipulations laws restructured and broadened
- Changes to approval, supervision and discipline of sponsors under FSMA

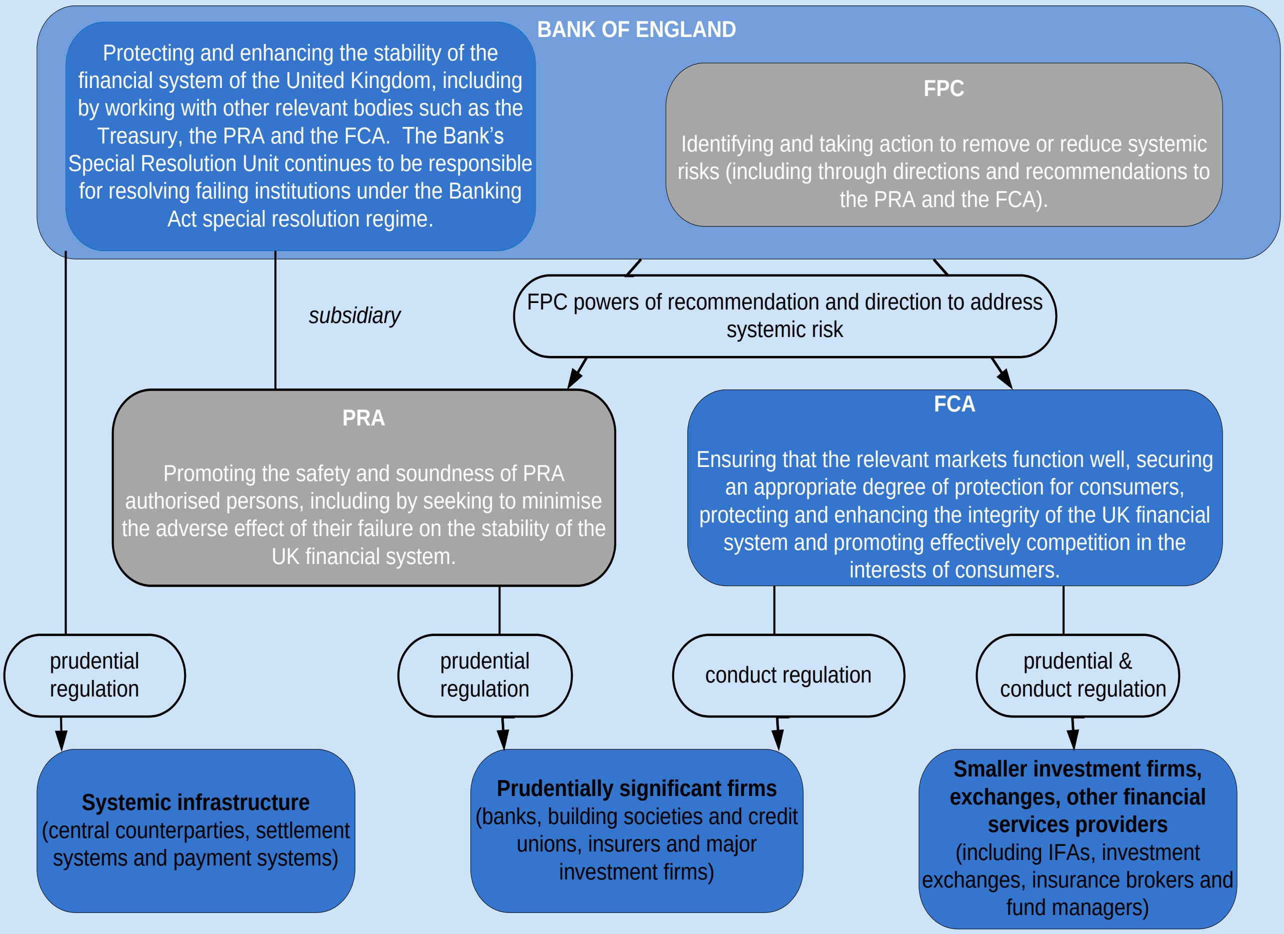
responsible for the prudential regulation of deposit takers, insurers and major investment firms.

- The **Financial Policy Committee (FPC)** will be primarily responsible for assisting the Bank of England in achieving its financial stability objective and will be given powers of recommendation and direction (to the FCA and the PRA) to address systemic risk.
- The **Bank of England** will have overall responsibility for financial stability. The Bank will also be the appropriate regulator for recognised clearing houses and will have the power to direct a UK clearing house in certain circumstances.

3. FCA as the authority responsible for listing

For listed companies (who are not regulated financial institutions), the principal change is that the FCA will take over from the FSA as the authority responsible for the Official List. Accordingly, it will be the FCA which supervises and monitors listed issuers' compliance with the Listing Rules and Disclosure and

Roles of the bodies in the new regulatory structure



This is a modified version of the diagram on page 10 of HM Treasury consultation "A new approach to financial regulation: building a stronger system", February 2011

Transparency Rules (**DTRs**) and which takes action for any breach of those rules.

In addition, the FCA will have responsibility for the Prospectus Rules and, as such, will be the regulator responsible for the approval of prospectuses.

The Listing Rules, DTRs and Prospectus Rules will form part of the new FCA Handbook. A copy of this has been made available online (along with the new PRA Handbook) at: http://www.fsahandbook.info/FSA/.

The Handbook text has not yet been updated to reflect changes to the Listing Rules and DTRs which are currently under consultation (for example, changes to the sponsor regime which are discussed in paragraph 6 below), but these changes are expected to be finalised and published in advance of 1 April 2013.

The FCA will be sited in the FSA's existing offices in Canary Wharf. It is not yet clear whether other contact details will change. A new FCA website is expected to be launched on 1 April 2013.

4. No substantive rule changes for Corporates

The Listing Rules, DTRs and Prospectus Rules are each being amended to reflect the fact that the FCA will be the regulator responsible for them. No further substantive amendments are being made to the Prospectus Rules.

There are some further changes being made to the Listing Rules and the DTRs to implement the new disciplinary regime applicable to sponsors (see paragraph 6 below) and amendments relating to the statutory regime governing primary information providers (known as recognised information services). Other than these, there are no proposed substantive amendments to the Listing Rules or DTRs with which listed issuers need to concern themselves.

As a practical matter, going forward, issuers will need to change terminology in their documentation from Financial Services Authority or FSA to Financial Conduct Authority or FCA, as applicable.

5. Misleading statements and impressions offences

The 2012 Act will restructure and broaden the ambit of the law relating to market manipulation and misleading statements and impressions.

The existing offence, contained in section 397 of FSMA relating to misleading statements and practices, is being repealed and replaced by three separate offences:

- misleading statements (section 89 of the 2012 Act);
- misleading impressions (section 90 of the 2012 Act); and
- misleading statements etc in relation to benchmarks (e.g. LIBOR) (section 91 of the 2012 Act).

Together, the new misleading statements and misleading impressions offences largely cover the same ground as the existing section 397 offence, save that the misleading impressions offence will be slightly broader as it includes misleading impressions *made recklessly* in addition to those made intentionally.

The new section 91 offence for misleading statements etc in relation to benchmarks is being introduced in response to the final report of the Wheatley Review of LIBOR, which recommended that the criminal law should be amended to cover manipulation of LIBOR.

The penalties on conviction for any of the three offences are the same as those under section 397 of FSMA – imprisonment of up to seven years or a potentially unlimited fine or both.

As the organisation responsible for conduct regulation, the FCA will assume the FSA's role of monitoring market conduct and taking action where it suspects market abuse or market manipulation has occurred. Note, however, that the market abuse regime set out in section 118 of FSMA is unaffected by the introduction of the 2012 Act. The existing Code of Market Code (MAR) will form part of the FCA Handbook.

6. Changes for sponsors

The 2012 Act introduces amendments to Part 6 of FSMA which will impact on the approval, supervision and discipline of sponsors by the FCA.

The FSA currently has the power to refuse a person's application for approval as a sponsor and the power to cancel a person's approval as a sponsor. It also has the disciplinary power to publish a statement censuring a sponsor.

With effect from 1 April 2013, the FCA will have the following new powers in relation to sponsors:

- the power to impose limitations or other restrictions on the services to which a sponsor's approval relates at the time of granting a sponsor's approval;
- the power to impose restrictions or limitations on existing sponsors;

- the power to suspend the approval of a sponsor or limit or restrict the services a sponsor may perform, if the FCA considers such action desirable in order to advance one or more of the FCA's operational objectives (broadly to ensure the efficient functioning of the markets) – this power applies to approved sponsors only and not new sponsor applicants; and
- the power to fine a sponsor or, for a period of up to 12 months, suspend a sponsor's approval or limit or restrict the services a sponsor may perform, or publicly censure a sponsor, if the FCA considers that the sponsor has contravened a requirement or restriction imposed on it by the Listing Rules.

Sponsors will also have the right to request a suspension of their approval. However, such action may impact on their ability to comply on an ongoing basis with the sponsor approval criteria, in particular the competence criteria, as sponsors need to demonstrate that they have carried out sponsor services in order to maintain the relevance of their experience.

Amendments are being made to Chapter 8 of the Listing Rules to reflect the changes referred to above. Further details about these changes can be found in the FSA's consultation paper CP12/37, which was published in December 2012.

7. Regulated Financial Institutions

The PRA will be the lead regulator for financial institutions such as banks and insurers. However, the PRA will need to consult with the FCA which will regulate these firms for conduct of business so both regulators will be involved. The FCA will be the appropriate regulator for intermediaries and smaller investment firms.

The PRA and the FCA have a duty to co-ordinate the exercise of their functions. The PRA may direct the FCA to refrain from exercising its regulatory or insolvency powers in relation to PRA-authorised persons if the PRA is of the opinion that the exercise of the power in the manner proposed may threaten the stability of the UK financial system or result in the failure of a PRA-authorised person in a way that would adversely affect the UK financial system.

Both the FCA and the PRA must take appropriate steps to co-operate with the Bank of England in connection with, among other things, the Bank's pursuit of its financial stability objective.

The 2012 Act clarifies the respective roles of the PRA and FCA on matters involving dual regulated firms, in particular on transfers of insurance or banking businesses under Part 7 of FSMA and makes clear that whilst the Part 7 process is mandatory for transfers of insurance businesses, it is optional for banking businesses.

Parents of regulated entities and potential buyers of financial institutions will also need to be made aware of the new powers of the regulators over parent undertakings introduced by the 2012 Act. These powers will allow the regulators to impose requirements in certain circumstances on financial, insurance or mixed holding companies which have majority control over, or are able to exert a dominant influence over, UK incorporated authorised firms.

These requirements are not intended to amount to regulation of the parent itself but can require the parent to supply information, provide further capital or liquidity or provide services to the regulated firm. The powers are expected to be used rarely according to the FSA and so in practice may have a limited impact, but are nevertheless something of which acquirers and parents of regulated entities should be aware.

8. Changes to the Banking Act 2009

Not all of the legislative change being made by the 2012 Act is scheduled for implementation on 1 April 2013.

The 2012 Act will also be making changes to the Banking Act 2009, including the extension of the special resolution regime (**SRR**).

Under the current SRR, actions may be taken by the Treasury and the Bank of England to address a situation where a UK-incorporated bank or building society has encountered, or is likely to encounter, financial difficulties. The 2012 Act will extend the scope of the SRR to include (in addition to UK-incorporated banks and building societies) certain systemically important UK investment firms, certain group companies of UK banks and UK investment firms, and UK-incorporated clearing houses.

It is not yet clear when the extension of the SRR to these other entities will be effective, but we understand it may be as early as summer 2013.

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