CLIFFORD CHANCE

Briefing note February 2015

FCA to investigate competition in investment and corporate banking services

The Financial Conduct Authority (FCA) has announced plans to launch a market study into investment and corporate banking in the UK. The study, which will formally launch in Spring 2015, is expected to be followed by a separate study of asset management services later in the year.

The first of many?

The study is the first to result from the FCA's review of competition in the wholesale sector, which was launched in July 2014.

The review covered various areas, including market infrastructure and asset management, as well as investment and corporate banking. Its findings, published on 19 February, identified potential competition concerns in all of those areas. However, the FCA has chosen to focus on investment and corporate banking services for the time being, as it considers that this area has the greatest potential to benefit from improvements in competition, given the size of the market and the reach and impact of the market players.

Key issues

- What issues has the FCA identified as requiring further investigation?
- What is the timing of the study, and what are its potential outcomes?
- Will investigations into other areas of the wholesale sector follow?

Focus of the market study

The FCA has identified two broad competition concerns.

The first is limited transparency over both price and quality. The FCA is concerned that this may hinder corporate clients' ability to assess value for money and to monitor whether they are getting best execution and whether issuing clients are able to monitor effectively whether the allocations being provided are consistent with their wishes.

Second, the FCA is concerned that bundling and cross-selling of investment and corporate banking services may make it difficult for new entrants to compete and may contribute to low levels of transparency, with clients unable to understand the relative prices of different services. For example, an investment bank may offer corporate broking services for free (or at low cost) in anticipation of the corporate client purchasing other services in future, on which excess profits can be made because the client is "locked-in". The FCA recognises, however, that such bundling and cross-selling is typically built on providers' investments in client relationships and understanding their business models, which is itself beneficial for clients.

Within this framework, specific issues highlighted by the FCA for further investigation include:

- the differences in bargaining power between smaller and larger clients / issuers;
- competition in equity and debt issuance. In particular, the FCA is likely to focus on the competition implications of the trend towards greater numbers of banks being involved in underwriting syndicates, as that issue was not extensively explored in the 2011 report of the Office of Fair Trading on equity underwriting; and
- potential conflicts of interest in share allocations during IPOs, or when issuing debt, which could result in investment banks favouring their prime brokerage or hedge fund clients, or their

own asset management businesses.

Next steps

The FCA has not yet formally launched the market study, but expects to do so in Spring 2015.

Upon launch of the study it will also define its full scope in a "terms of reference document". The FCA has indicated that the study will focus primarily on activities that are within its regulatory perimeter, such as investment banking activities including underwriting, i.e. the arranging, buying and placing of the securities. The scope of the market study may include activities that are outside its regulatory perimeter where these activities affect the functioning of the market in question, in particular the provision of corporate lending.

After launch of the market study, the FCA will have 6 months to investigate and publish a notice for consultation setting out whether it proposes to refer the markets for a detailed 18–24 month market investigation by the Competition and Markets Authority. The FCA will then have a further 6 months to decide whether to make that reference. It may decide to accept undertakings from market participants in lieu of making a reference, or to exercise its regulatory powers to address any concerns.

Other market studies in the pipeline

The FCA also identified various potential concerns in the areas of markets / market infrastructure and asset management. As regards markets and market infrastructure, the FCA does not see this as a prime candidate for a market study at present, preferring instead to wait and see how current regulatory reforms – such as MiFID II/MiFIR and EMIR – impact on the relevant markets.

As regards asset management services, however, the FCA does expect to undertake a market study later in the year, once it has better indications of how the industry will evolve to accommodate new regulations, such as MiFID II/MiFIR and AIFMD. It expects that the study will consider both the supply and demand side of asset management, and will focus on issues such as:

- the ability of institutional investors to negotiate fees and monitor asset managers;
- the role of investment consultants and potential conflicts of interest arising from the provision of advice and asset management services;
- the incentives and ability of asset managers to control costs incurred on behalf of investors; and
- bundling of ancillary services and the quality of services provided.

Comment

The FCA found that the level of concentration in the markets in which investment banks are active appears to be "typically moderate", with 10-15 participants active in the provision of many of the services identified. In most markets, this, combined with the presence of sophisticated purchasers, would normally suffice to ensure that competition is effective and, indeed, vigorous. Many respondents to the FCA's call for inputs argued that this was indeed the case for the wholesale financial services sector.

The FCA, however, considers that there remains considerable scope to improve competition in these markets, as in its view the relationship between concentration and the effectiveness of competition is "not straightforward" and the sophistication of corporate clients does not necessarily ensure that they have sufficient ability, experience or incentives to drive down prices.

Authors

Greg Olsen
Partner
T: +44 20 7006 2327
E: greg.olsen
@cliffordchance.com

Alastair Mordaunt
Partner
T: +44 20 7006 4966
E: alastair.mordaunt
@cliffordchance.com

Global Antitrust Contacts

Chair: Thomas Vinje

Australia
Dave Poddar
+61 28922 8033
dave.poddar@cliffordchance.com

Belgium
Tony Reeves
+32 2 533 5943
tony.reeves@cliffordchance.com

Thomas Vinje
+32 2 533 5929
thomas.vinje@cliffordchance.com

China
Richard Blewett
+86 10 6535 2261
richard.blewett@cliffordchance.com

Czech Republic
Alex Cook
+420 222 555 212
alex.cook@cliffordchance.com

France
Emmanuel Durand
+33 1 4405 5412
emmanuel.durand@cliffordchance.com

Patrick Hubert
+33 1 4405 5371
patrick.hubert@cliffordchance.com

Michel Petite
+33 1 4405 5244
michel.petite@cliffordchance.com

Germany
Joachim Schütze
+49 211 43555547
joachim.schuetze@cliffordchance.com

Marc Besen
+49 211 43555312
marc.besen@cliffordchance.com

Hong Kong
Emma Davies
+852 2825 8828
emma.davies@cliffordchance.com

Angie Ng
+852 2826 3403
angie.ng@cliffordchance.com

Indonesia
Linda Widyati
+62 212988 8301
linda.widyati@cliffordchance.com

Italy
Luciano Di Via
+39 064229 1265
luciano.divia@cliffordchance.com

Aristide Police
+39 06422911
aristide.police@cliffordchance.com

Japan
Masafumi Shikakura
+81 3 5561 6323
masafumi.shikakura@cliffordchance.com

The Netherlands
Steven Verschuur
+31 20 711 9250
steven.verschuur@cliffordchance.com

Frances Dethmers
+32 2 533 5043
frances.dethmers@cliffordchance.com

Poland
Iwona Terlecka
+48 22 429 9410
iwona.terlecka@cliffordchance.com

Romania
Nadia Badea
+40 21 66 66 100
nadia.badea@badea.cliffordchance.com

Russia
Torsten Syrbe
+7 495 725 6400
torsten.syrbe@cliffordchance.com

Saudi Arabia
Omar Rashid
+966 11481 9720
omar.rashid@cliffordchance.com

Singapore
Harpreet Singh
+65 6661 2028
harpreet.singh@cliffordchance.com

Nish Shetty
+65 6410 2285
nish.shetty@cliffordchance.com

Valerie Kong
+65 6410 2271

Spain
Miguel Odriozola
+34 91 590 9460
miguel.odriozola@cliffordchance.com

Miquel Montañá
+34 93 344 2223
miquel.montana@cliffordchance.com

Thailand
Andrew Matthews
+66 2 401 8800
andrew.matthews@cliffordchance.com

Turkey
Itir Çiftçi
+90 212339 0077
itir.ciftci@cliffordchance.com

Ukraine
Ulyana Khromyak
+380 44390 2219
ulyana.khromyak@cliffordchance.com

United Arab Emirates
Mike Taylor
+971 43620 638
mike.taylor@cliffordchance.com

United Kingdom
Alex Nourry
+44 20 7006 8001
alex.nourry@cliffordchance.com

Jenine Hulsmann
+44 20 7006 8216
jenine.hulsmann@cliffordchance.com

Alastair Mordaunt
+44 20 7006 4966
alastair.mordaunt@cliffordchance.com

Elizabeth Morony
+44 20 7006 8128
elizabeth.morony@cliffordchance.com

Greg Olsen
+44 20 7006 2327
greg.olsen@cliffordchance.com

Matthew Scully
+44 20 7006 1468
matthew.scully@cliffordchance.com

Luke Tolaini
+44 20 7006 4666
luke.tolaini@cliffordchance.com

United States
Timothy Cornell
+1 202 912 5220

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

© Clifford Chance 2015

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street, London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Casablanca ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Jakarta* ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh ■ Rome ■ São Paulo ■ Seoul ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

*Linda Widyati & Partners in association with Clifford Chance.