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SPECIAL POINTS OF INTEREST:

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- FSMA publishes a memorandum on financial planning

Dear Colleagues,

Dear Members,

2014 has gone and on behalf of the Board, all our best wishes are addressed to you for 2015 ! No doubt that another fruitful and interesting year full of challenges is ahead of us. As a Christmas present, we already received the fruits of ESMA's efforts, i.e. 1611 pages of its Final Technical Advice (TA) and a consultation on its draft Regulatory Technical and Implementing Standards (RTS/ ITS) regarding the Markets in Financial Instruments Directive (MiFID II) and Regulation (MiFIR).

Although as always, new laws and regulations are to be expected, the wish of the Compliance Officers is certainly to achieve a period of stabilization during which sufficient time can be allocated to the preliminary or advanced work for the implementation of already existing or further known provisions: FATCA, the 4th AML Directive, the Common Reporting Standard, MiFID II and MiFIR, the transversal Royal Decree, MAD and MAR, Assur-MiFID, the Banking law, several books of the Economic law Code, PRIIPS, the EU Regulation on data protection etc.

Even if MiFID II is only supposed to enter into force in early 2017, we are all aware of the time needed to reflect upon it, to set up gaps analyses and to have strategic decisions taken before the implementation starts with its numerous intervening parties and its necessary ICT developments.

If there is one lesson to be learned from MiFID I, it is that the soonest we start working on it, the best it is although some assumptions have to be made as long as all provisions are not final.

The same is valid for data protection, whose implementation is also announced beginning 2017, even though we understand that there are still huge debates about the content of the draft EU Regulation. Privacy becomes more and more crucial in an high-tech world where ICT security, cyber risk, clouds, big data etc. are mentioned all the time in the press.

These are in my opinion important projects to concentrate on in 2015 including the CRS which will be in force in January 2016.

I take this opportunity to inform you about our next seminar to be held on January 19th. We will have the great pleasure to hear Françoise Lefèvre and Etienne Dessy from Linklaters about the sanctions powers of the authorities which have been significantly reinforced in the course of the last years.

Talking about sanctions, the recent fines imposed on large banking groups have certainly not escape your attention.

And to finalize, the dramatic result of the story of the Managing Director of an asset manager below:

The FCA has banned Jonathan Paul Burrows, a former managing director at Blackrock Asset Management, as no longer fit and proper due to conduct outside his employment.

In November 2013, Mr Burrows was stopped at a train station in London when he had failed to purchase a ticket. Mr Burrows admitted that he had knowingly evaded the fare for his train journey on many occasions. As a result, the FCA held that Mr Burrows' behaviour showed a lack of honesty and integrity, and that he had failed to meet the fit and proper test for approved persons.

So, first thing on your planning 2015, renew your train subscription!

With warm regards,

Marie-France De Pover

FATF PUBLISHES RISK-BASED APPROACH GUIDELINES FOR THE BANKING SECTOR

On October 27, 2014 the FATF adopted at this plenary session, in Paris, a Risk-based Approach Guidance for the Banking Sector which gives clear guidance on how to properly implement the risk-based approach, and is explicitly meant to be read in conjunction with the FATF Guidance on AML/CFT and Financial Inclusion.

The risk-based approach means that countries, competent authorities, and banks identify, assess, and understand the money laundering and terrorist financing risk to which they are exposed, and take the appropriate mitigation measures in accordance with the level of risk.

This flexibility allows for a more efficient use of resources, as banks, countries and competent authorities can decide on the most effective way to mitigate the money laundering / terrorist financing risks they have identified. It enables them to focus their resources and take enhanced measures in situations where the risks are higher, apply simplified measures where the risks are lower and exempt low risk activities. The implementation of the risk-based approach will avoid the consequences of inappropriate behaviour.

This guidance will help in the design and implementation of this approach for the banking sector, taking into account national risk assessments and the national legal and regulatory framework. It will help develop a common understanding of the risk-based approach between supervisory authorities and banks. The practical examples in this guidance will further assist in understanding the various elements of this approach.

This guidance consists of three sections:

- Section I explains the key elements of the risk-based approach
- Section II provides specific guidance for banking supervisors
- Section III provides specific guidance for banks

Banks who implement the risk-based approach, in line with the guidance, will be well-placed to avoid the consequences of inappropriate behaviour.

Application of Insurance Mediation Directive 2002/92/EC has shown a number of provisions to require greater precision

EU COUNCIL SETS OUT ITS POSITION ABOUT INSURANCE MEDIATION

The Permanent Representatives Committee agreed on November 5, 2014, on behalf of the Council, its position on a draft directive establishing new improved rules on insurance mediation.

The agreement enables negotiations with the European Parliament to start, with the aim of adopting the directive at first reading. The text recasts and repeals directive 2002/92/EC on insurance mediation with a threefold objective. It seeks to improve retail insurance regulation in a manner that will facilitate market integration, and to establish the conditions necessary for fair competition between distributors of insurance products. It also sets out to strengthen policyholder protection, in particular with regard to life insurance products with an investment element.

Intermediaries play a central role in the distribution of insurance and reinsurance products. Various types of persons and institutions distribute insurance products, such as agents, brokers and insurance undertakings.

Application of directive 2002/92/EC has shown a number of provisions to require greater precision.

More specifically, the new directive is aimed at:

- extending the scope of application to all distribution channels, including proportionate requirements for those who sell insurance products on an ancillary basis;
- identifying, managing and mitigating conflicts of interest;

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INSURANCE MEDIATION
EU COUNCIL SETS OUT ITS POSITION (PART II)

- strengthening administrative sanctions, as well as measures to be applied in the event of a breach of key provisions;
- enhancing the suitability and objectiveness of insurance advice;
- ensuring that sellers' professional qualifications match the complexity of the products they sell;
- clarifying the procedure for cross-border market entry.

In order to ensure consistency between financial sectors, the draft directive takes account of rules established for markets in financial instruments.

The Council's text would not prevent member states from applying more stringent provisions to protect consumers, providing that such provisions are consistent with EU law.

Under the Council's general approach, member states would have two years to transpose the directive into national laws and regulations.

FIRST 'EQUIVALENCE' DECISIONS FOR CENTRAL COUNTERPARTY REGULATORY REGIMES ADOPTED

The European Commission has adopted on October 30, 2014, its first 'equivalence' decisions for the regulatory regimes of central counterparties (CCPs) in Australia, Hong Kong, Japan and Singapore.

The CCPs in these third country jurisdictions will be able to obtain recognition in the EU, and can therefore be used by market participants to clear standardised OTC derivatives as required by EU legislation, whilst remaining subject solely to the regulation and supervision of their home jurisdiction. Although rules may differ in the detail, international regulators are pursuing the same objectives to promote financial stability by promoting the use of CCPs that are subject to robust prudential requirements. Through the use of deference, as agreed by the G20, regulatory gaps, duplication, conflicts and inconsistencies which can lead to regulatory arbitrage and market fragmentation are limited.

The European Commission begins its assessment for equivalence if a CCP from a third country seeks recognition from the European Securities and Markets Authorities (ESMA).

Equivalence assessments are undertaken using an outcome based approach. This requires that the relevant rules operating in the third country satisfy the same objectives as in the EU, i.e. a robust CCP framework promoting financial stability through a reduction in systemic risk. It does not mean that identical rules are required to be in place in the third country.

This assessment is undertaken in cooperation with the regulators in the third country. If a determination of equivalence is made, it will be given effect through a legally binding

implementing act in accordance with Article 25(6) of the European Market Infrastructure Regulation (EMIR)).

> Central counterparties established outside of the EU will be able to clear standardised OTC derivatives

FATF PUBLISHES THE LIST OF THE HIGH-RISK AND NON-COOPERATIVE JURISDICTIONS

In order to protect the international financial system from money laundering and financing of terrorism (ML/FT) risks and to encourage greater compliance with the AML/CFT standards, the FATF identified jurisdictions that have strategic deficiencies and works with them to address those deficiencies that pose a risk to the international financial system.

EBA DISCLOSES PROBE INTO EU BANKERS ALLOWANCES

On October 15, 2014, the European Banking Authority (EBA) published the findings of its investigation regarding discretionary remuneration practices across the EU banking sector.

The report shows that some institutions have classified the so-called 'role-based' allowances in a way that increases the fixed component of remuneration, which may impact on the limitation of the bonus cap. As a result of this analysis, the EBA issued an Opinion to the European Commission and EU competent authorities calling for supervisors to ensure that institutions' remuneration practices on allowances comply with EU legislation.

According to the EBA investigation, competent authorities across the 28 EU Member States have reported that 39 institutions use 'role-based' or 'market value' allowances, which the institutions classify as fixed remuneration.

However, the EBA found that in most cases institutions had topped up the fixed remuneration of their staff and had introduced discretionary 'role based' allowances which have an impact on the limit of the ratio between variable and fixed remuneration required by the EU Capital Requirements Directive (CRD IV).

The report has been carried out within the framework of the EBA's market monitoring and assessment tasks and following a request by the European Commission to investigate the use of the so-called 'role-based' allowances, which were introduced after the EU's decision to limit the variable remuneration to 100% of the fixed component (200% with shareholders' approval).

The EBA explained that to be classified as fixed remuneration, these role-based allowances should have the following specific characteristics: be permanent, i.e. maintained over a period tied to the specific role and organisational responsibilities for which they are granted;

- pre-determined, in terms of conditions and amount;
- non-discretionary;
- non-revocable and
- transparent to staff.

Whereas findings in the report showed that most of the allowances, which were the subject of the EBA investigation, did not fulfil the conditions for being classified as fixed remuneration, namely with respect to their discretionary nature, which allows institutions to adjust or withdraw them unilaterally, without any justification.

The Authority stated in an official opinion, based on the findings in the report that if role-based allowances are discretionary, not predetermined, not transparent, not permanent, or revocable, they should not be considered as fixed remuneration but should be classified as variable in line with CRD IV.

The EBA clarified that institutions making use of such allowances should change their remuneration policies and reclassify the ratio between the fixed and the variable component so as to comply with EU legislative requirements.

Also, EU competent authorities that are aware of role-based allowances with the above characteristics being used in their jurisdictions are expected to take all the appropriate supervisory actions to reflect the findings of the EBA Opinion.

They should ensure that these are correctly classified as variable remuneration, so as to make certain that institutions are not circumventing the bonus cap and other requirements laid down in the EU Capital Requirements Directive.

EU competent authorities have until 31 December 2014 to use all necessary supervisory measures to ensure institutions review their remuneration policies so as to comply with the criteria highlighted in the EBA report and with the CRD IV requirements.

The EBA is currently revising its Guidelines on remuneration policies and practices

EBA CONSULTS ON STANDARDISATION OF FEE TERMINOLOGY FOR PAYMENT ACCOUNTS IN THE EU

The European Banking Authority (EBA) published on November 5, 2014, a consultation paper on Guidelines on national provisional lists of the most representative services linked to a payment account and subject to a fee.

The EU Payment Accounts Directive requires the EBA to develop standardised terminology and information documents related to payment accounts for consumers across the EU. As a first step, the EBA has developed Guidelines to help Competent Authorities identify the most representative services linked to a payment account and subject to a fee in their jurisdictions.

The consultation will run until 9 January 2015. The technical standards that will subsequently be developed will allow EU consumers to make better informed decisions when choosing their payment accounts.

The draft Guidelines published by the EBA aim to assist Competent Authorities (CAs) across the EU in their task of identifying fee based services in payment accounts, as set out in the Payment Accounts Directive. This foresees that standardisation of terminology at EU-level starts with services that are common to a majority of Member States.

CAs are required to establish a provisional list of the most representative services of a payment account that are subject to a fee and offered by at least one Payment Service Providers (PSP) in their own jurisdictions.

Lists should include at least 10, but no more than 20, of the most representative services and the draft Guidelines developed by the EBA aim to ensure the sound application of the criteria in the Payments Account Directive, and establish how CAs should apply them, what factors they should take into consideration, how they should report their list, and what supportive data should be obtained.

The Payment Accounts Directive foresees that CAs take into consideration the services that are most commonly used by consumers in relation to their payment account and that generate the highest cost for consumers, both overall, as well as per unit. These lists will be functional to the work of the EBA in developing EU-level standardisation of the terminology. The lists received by CAs will then be incorporated in two new information documents to be developed by the EBA: the Fee Information Document and the Statement of Fees. Separate consultations on these documents will follow in 2015.

It is important for consumers to be able to compare offers from different payment service providers

FCA FINES SESAME LTD FOR 'PAY-TO-PLAY' ARRANGEMENTS

On October 29, 2014, Sesame Ltd, the UK's largest network of financial advisers, has been fined £1,598,000 by the UK Financial Conduct Authority (FCA) for setting up a pay-to-play scheme. Sesame's arrangement effectively undermined the ban on commission payments brought in by the Retail Distribution Review (RDR). The pay-to-play scheme meant that the range of products recommended to Sesame clients under its restricted advice service was influenced by the amount of services Sesame had sold to product providers.

In December 2012, new UK rules, known as the Retail Distribution Review (RDR), were introduced to the financial advice market. Paying commission to advisers for selling a retail investment product was banned. The change was to ensure that customers receive advice which is not influenced by the amount of commission paid to advisers and that product providers compete on the price and quality of their products. This means that investors pay for advice directly.

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FCA FINES SESAME LTD FOR 'PAY-TO-PLAY' ARRANGEMENTS (PART II)

Additionally, advisory firms have to clearly disclose whether they offer independent or restricted advice and advisers are required to meet certain professional standards.

As a result of the reforms, Sesame decided that its network of advisers would offer a restricted service. This meant that advisers could only recommend a restricted number of products (known as a panel) from pre-selected providers, instead of offering products from across the whole market. To establish these panels, Sesame ran a tender process in which it asked providers what services they were prepared to pay the Sesame Group for providing.

During the selection process, Sesame told a number of providers that it expected them to spend an extra £250,000 a year on services to be placed on one of Sesame's restricted advice panels.

In one case, a provider included its budget for services from Sesame, for the years 2012 to 2016, in its initial response to the tender.

Sesame reviewed the response and the firm requested that the provider increase its budget for services by £750,000 per annum for the years 2014 to 2016.

As a result of the tender process, inclusion on restricted advice panels was influenced by how much providers were willing to pay Sesame for additional services. This practice had the effect of undermining the ban on commission payments. In so doing, Sesame failed to manage the conflict between its commercial interests and those of its clients.

Sesame settled the case at the first opportunity and, as a result, qualified for a 30 per cent discount. Were it not for that Sesame would have been fined £2,282,902, which reflects the fact that this is the fourth time the regulator has had to fine the network.

Sesame acted in pursuit of its own commercial interests

FCA FINES AND BANS PAUL REYNOLDS

The Decision Notice, states that the UK FCA has decided to fine Mr Reynolds £290,344 and ban him from performing any function in relation to any regulated activities on the basis that he is not fit and proper because he lacks integrity.

The Decision Notice reflects the FCA's view of what occurred and how the behaviour is to be characterised. It states that the FCA's belief is that between 2005 and 2010 while he was an approved person at Aspire Personal Finance Limited (previously known as Positive Financial Strategies Limited), Mr Reynolds:

- recklessly recommended high risk investment products to eight retail clients, when he knew that he could not justify their suitability;
- was knowingly involved in the falsification of the signatures of two clients on sophisticated investor certificates to suggest that the investment could be legitimately promoted;
- deliberately made investments on behalf of two clients without their knowledge or authorisation;
- deliberately produced inflated valuations of clients' investments in an attempt to mislead them and conceal the poor performance of the investments he had recommended;
- deliberately submitted loan facility and investment applications, on behalf of a number of his clients, which contained inflated incomes and other false and misleading information; and
- deliberately attempted to mislead the FCA by retrospectively creating various documents and misrepresenting that they were contemporaneous.

The FCA's opinion is that the impact of Mr Reynolds' actions on these eight clients was particularly serious

INTERNATIONAL ASSOCIATION OF INSURANCE SUPERVISORS ISSUES PAPER ON COMBATING BRIBERY

The International Association of Insurance Supervisors (IAIS) published in October 2014 a paper on combating bribery and corruption.

Bribery and corruption are challenges all over the world, and phenomena that cost economies huge amounts of money. They are areas of financial crime to which the financial sector, including insurance, is exposed.

The insurance sector is at risk to bribery and corruption in two ways. Firstly, policies could be funded from the proceeds of bribery and corruption. The risks of this are greater in life insurance and other investment-related insurance. Second, Board members, Senior Management and staff or other representatives of the insurer or insurance intermediary could be involved with bribery and corruption on their own behalf, on behalf of the firm or on behalf of third parties. Where insurers' and insurance intermediaries' employees and sales staff engage in activities (such as making payments or otherwise exerting undue influence) to win clients and business, there is a risk that such activity could cross the line legally or ethically, and potentially constitute bribery or corruption. Where insurers deal with public authorities or insure public institutions, the relevant laws on combating bribery and corruption – or "anti-bribery and corruption" (ABC) – can sometimes set particularly high standards in respect of dealing with such authorities. It should therefore be of concern to insurance supervisors that appropriate anti-bribery and anti-corruption measures are taken by the sector.

Given an increasing international focus on bribery and corruption, and in view of the risks they pose to the insurance sector, the Financial Crime Working Group considered it timely to explore how this activity affects insurers and insurance intermediaries as well as how insurance supervision can help to ensure that insurers and insurance intermediaries manage such risks effectively.

The insurance sector is at risk to bribery and corruption in two ways

CMA LAUNCHES MARKET INVESTIGATION INTO COMPETITION IN UK BANKING SECTOR

The UK Competition and Markets Authority (CMA) has launched, on November 6, 2014, an in-depth market investigation into competition in the banking sector. The market investigation will consider retail banking, in particular personal current accounts (PCA) and retail banking services for small and medium-sized enterprises (SMEs).

The CMA has concerns about the effectiveness of competition in these sectors and has decided to make a market investigation reference.

These concerns include:

- low levels of customers shopping around and switching;
- limited transparency, and difficulties for customers in making comparisons between banks, particularly for complex overdraft charges on personal current accounts;
- continuing barriers to entry and expansion into the sector, limiting the ability of smaller and newer providers to develop their businesses;
- very little movement over time in the market shares of the 4 largest banks, which provide over three-quarters of personal and business current accounts.

The CMA will investigate in detail and decide what action, if any, may be needed to improve competition for the benefit of personal and small business customers.

Effective competition in retail banking is, indeed, critically important for individual bank customers, small and medium-sized businesses, and the wider economy.

PRIIPS: EU COUNCIL ADOPTS TRANSPARENCY RULES FOR INVESTMENT PRODUCTS

On November 10, 2014, the EU Council adopted a regulation aimed at improving market transparency for retail investors.

The regulation is part of a package of measures to boost consumer trust in financial markets. It sets out to ensure that retail investors always receive the information they need to take informed decisions.

The text covers packaged retail and insurance-based investment products (PRIIPs), specifically investment funds, structured deposits and life insurance policies with an investment element.

Retail investors often face confusing and overly complex information about PRIIPs. Asymmetries of information make both risks and the cost of products difficult to assess or compare. Disclosures vary according to the legal form a product takes, rather than its economic nature or the risks it entails for retail investors. This can lead the purchase unsuitable products, thus undermining the efficiency of investment markets and leading to higher prices.

The regulation requires key information documents to be drawn up for PRIIPs. It lays down uniform rules on the format and content of key information documents and on their provision to retail investors.

Key information documents should indicate:

- the nature and features of the product;
- whether it is possible to lose capital;
- the costs and risk profile of the product;
- relevant performance information.

Format, presentation and content should be calibrated to maximise understanding of information and to allow retail investors to compare different PRIIPs. Retail investors should have an effective right of redress under the applicable national law.

Where applicable, investors should be informed whether the product contributes to projects with environmental or social aims.

The new requirements will be applicable two years after entry into force of the regulation.

Retail investors must receive appropriate information before taking decisions

EBA CONSULTS ON GUIDELINES ON PRODUCT OVERSIGHT FOR RETAIL BANKING PRODUCTS

On November 10, 2014, the European Banking Authority (EBA) published a consultation paper on draft Guidelines on product oversight and governance arrangements for retail banking products. The guidelines, which apply to both manufacturers and distributors of retail banking products, aim at ensuring that the interests, objectives and characteristics of consumers are taken into account when such products are designed and brought to market.

Developments in the markets for financial services in recent years have shown that failures in the conduct of financial institutions towards their customers can cause not only significant consumer detriment but also undermine market confidence, financial stability and the integrity of the financial system.

To address some of the causal drivers of conduct failure, and following the initial work carried out by the Joint Committee of the three European Supervisory Authorities in 2013, the EBA has developed detailed Guidelines for the product oversight and governance of retail banking products, which are mortgages, loans, deposits, credit cards, payment services, payment accounts and electronic money.

The Guidelines do not only address past failings but rather provide a framework for robust and responsible product design and distribution to avoid future cases of detriment.

The consultation will run until 10 February 2015. The EBA expect to publish its final guidelines in Q2 2015.

FCA FINDS SMALL FIRMS NEED TO MANAGE FINANCIAL CRIME RISKS MORE EFFECTIVELY

The UK Financial Conduct Authority (FCA) has found that many small banks and commercial insurance intermediaries fail to effectively manage financial crime risk.

While the reviews found some firms had made good progress in addressing areas of weakness and saw examples of good practice, there were significant shortcomings at other firms.

The FCA found:

- Despite extensive work over recent years to address key issues, there were significant and widespread weaknesses in most banks' anti-money laundering systems and controls, and in some banks' sanctions controls. Although senior management engagement had improved, a third of banks had inadequate resources; staff often had weak knowledge of money laundering risks; and some overseas banks struggled to reconcile their group policies with higher UK requirements. Since the FCA's review, several banks have replaced their Money Laundering Reporting Officers; four firms have temporarily restricted their business whilst they correct the weakness in their controls; and the FCA has instructed three banks to undertake an independent review of their systems and controls (a skilled person's review); and two firms have been referred to the enforcement division for investigation.

- Overall, most intermediaries' controls failed to manage bribery and corruption risk effectively. While some intermediaries' policies on remuneration, hospitality and training had improved since the last review, bribery and corruption risk assessments were often too narrow and many firms failed to take a rounded view of the risks associated with individual relationships. Half of the third party and client files reviewed were inadequate and senior management oversight was often weak.

The FCA does not tolerate conduct which imperils market integrity

THE ESAs PUBLISH A DISCUSSION PAPER ON KEY INFORMATION DOCUMENTS (KIDS) REGULATION

The Joint Committee of the three European Supervisory Authorities (EBA, EIOPA and ESMA) published on November 17, 2014, a Discussion Paper on Key Information Documents (KIDs) designed to help retail investors in the EU better understand and compare packaged retail and insurance-based investment products (PRIIPs) across the EU.

While retail investment products can help EU citizens in building-up savings and also contribute to capital markets that support economic growth in the EU, currently, essential information about the risks, rewards and costs of investment products can be overly complex, difficult to find, and hard to compare for retail investors across the EU.

The ESAs are mandated by the PRIIPs Regulation to develop draft Regulatory Technical Standards (RTS) on the content and presentation of the KIDs for PRIIPs. The aim of the KIDs is to provide EU retail investors with consumer-friendly information about investment products with the ultimate aim of improving transparency in the investment market. In order to ensure that all views and options are taken into consideration when developing the RTS, the ESAs are now seeking stakeholders' views on how these standardised KIDs should be developed.

This Discussion Paper is a first step in the ESAs' joint work on the broad issues to be considered in developing the RTS. The paper also includes a series of possible consumer-friendly information templates aimed at providing retail investors with clear and comparable information on the key features of investment products, including on what they might gain if they invest, the risks they are taking, and all the costs they will have to incur.

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EBA CONSULTS ON CREDITWORTHINESS ASSESSMENT UNDER THE MCD

On December12 , 2014, the European Banking Authority (EBA) published a consultation paper on draft Guidelines on creditworthiness assessments under the Mortgage Credit Directive (MCD).

These draft Guidelines provide details on how creditors across the EU should assess and verify consumers' creditworthiness before concluding credit agreements for immovable residential properties. The consultation will run until 12 February 2015.

The MCD requires that, before concluding a credit agreement, the creditor makes a thorough assessment of the consumer's creditworthiness and takes into appropriate account factors relevant to verifying the ability of the consumer to meet his/her obligations under the credit agreement.

The EBA has developed draft guidelines that are aimed at ensuring Competent Authorities implement the MCD consistently across the EU, by providing greater detail on how creditors should give effect to the relevant MCD provisions.

The draft Guidelines establish requirements for verifying consumers' income, documenting and retaining information, identifying and preventing misrepresented information, assessing the consumer's ability to meet his/her obligations under the credit agreement, considering allowances for the consumer's committed and other non-discretionary expenditures, as well as allowances for potential future negative scenarios and for identifying groups of loans with higher risk profiles.

These draft Guidelines are based on the EBA Opinion on Good Practices for Responsible Mortgage Lending published by the EBA on 13 June 2013, before the MCD was adopted.

The Guidelines are aligned to the relevant principles of the Financial Stability Board's Principles for Sound Residential Mortgage Underwriting Practices.

The EBA expects to publish the final guidelines in Q2 2015 and they will apply from the transposition date of the MCD of 21 March 2016.

Providing fair, clear and not misleading information to clients is essential for investor protection

ESMA REVIEWS SUPERVISORY PRACTICES ON MIFID INVESTOR INFORMATION

The European Securities and Markets Authority (ESMA) has conducted a peer review of how national regulators (national competent authorities or NCAs) supervise MiFID conduct of business rules on providing fair, clear and not misleading information to clients.

The peer review, published on December 11, 2014, focused on NCAs' organisation, supervisory approaches, monitoring and complaints handling in relation to information and marketing communications under MiFID. The Report found that there was overall a high degree of compliance amongst NCAs with the good practices identified in these key areas. However, a variety of approaches were observed, leading to different intensity of supervision. A number of areas for improvement were identified. They include:

- enhanced use of on-site inspections and thematic reviews;
- a specific focus on conduct of business issues in firms' risk assessments; and
- greater efforts to detect failings by firms in a timely manner.

The Report identifies a number of areas for future work by NCAs and ESMA which could promote a more coherent cross-EU application of the requirements. These include:

- establishing more efficient coordination and cooperation arrangements between different supervisory units within NCAs;

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ESMA REVIEWS SUPERVISORY PRACTICES ON MIFID INVESTOR INFORMATION (PART II)

- defining a clear set of information and marketing material to be supervised;
- assessing the frequency of NCAs' monitoring of investor information and marketing;
- assessing the adequacy of monitoring the distribution channels used by firms including in the cross border provision of services;
- requiring investment firms to submit to their NCAs details of all information and marketing material to be provided including material used for cross-border business;
- considering the use of integrated databases to assist in supervision of information and marketing to clients;
- assessing the frequency and consistency of the use of sanctions by NCAs; and
- assessing the implementation and effectiveness of the guidelines for complaints-handling for the securities (ESMA) and banking (EBA) sectors.

FSMA CLARIFIES THE RULES FOR ALTERNATIVE INVESTMENTS

The prospectus legislation is extended to a new category of investment instruments. The reason for this amendment is to improve the information provided to retail investors about alternative investments in moveable goods and farming operations. On the occasion of the entry into force of this new legal provision, the FSMA has published a Communication. The purpose of the Communication is to bring to the attention of offerors and intermediaries distributing alternative investments the financial-legal framework and to the resulting obligations that may apply to them as regards the approval of prospectuses and advertisements.

FCA FINES FIVE BANKS £1.1 BILLION FOR FX FAILINGS

On November 12, 2014, the UK Financial Conduct Authority (FCA) has imposed fines totalling £1,114,918,000 on five banks for failing to control business practices in their G10 spot foreign exchange (FX) trading operations: Citibank £225,575,000, HSBC Bank £216,363,000, JPMorgan Chase Bank £222,166,000, The Royal Bank of Scotland £217,000,000 and UBS £233,814,000 ('the Banks').

Between 1 January 2008 and 15 October 2013, ineffective controls at the Banks allowed G10 spot FX traders to put their Banks' interests ahead of those of their clients, other market participants and the wider UK financial system.

The Banks failed to manage obvious risks around confidentiality, conflicts of interest and trading conduct.

These failings allowed traders at those Banks to behave unacceptably. They shared information about clients' activities which they had been trusted to keep confidential and attempted to manipulate G10 spot FX currency rates, including in collusion with traders at other firms, in a way that could disadvantage those clients and the market.

The fines are the largest ever imposed by the FCA, or its predecessor the Financial Services Authority (FSA), and this is the first time the FCA has pursued a settlement with a group of banks in this way.

Since Libor general improvements have been made across the financial services industry, and some remedial action was taken by the Banks. However, despite our well-publicised action in relation to Libor and the systemic importance of the G10 spot FX market, the Banks failed to take adequate action to address the underlying root causes of the failings in that business. (continued on next page)

The FCA does not tolerate conduct which imperils market integrity

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FCA FINES FIVE BANKS £1.1 BILLION FOR FX FAILINGS (PART II)

The FCA found that between 1 January 2008 and 15 October 2013 the Banks did not exercise adequate and effective control over their G10 spot FX trading businesses. For example policies were high level and firm-wide in nature, there was insufficient training and guidance on how these policies applied to this business, oversight of G10 spot FX traders' conduct was insufficient, and monitoring was not designed to identify the behaviours found in our investigation.

The right values and culture were not sufficiently embedded in the Banks' G10 spot FX businesses which resulted in those businesses acting in the Banks' own interests without proper regard for the interests of their clients, other market participants or the wider UK financial system.

Traders at different Banks formed tight knit groups in which information was shared about client activity, including using code names to identify clients without naming them. These groups were described as, for example, "the players", "the 3 musketeers", "1 team, 1 dream", "a co-operative" and "the A-team".

Traders shared the information obtained through these groups to help them work out their trading strategies. They then attempted to manipulate fix rates and trigger client "stop loss" orders.This involved traders attempting to manipulate the relevant currency rate in the market, for example, to ensure that the rate at which the bank had agreed to sell a particular currency to its clients was higher than the average rate it had bought that currency for in the market. If successful, the bank would profit.

Firms can legitimately manage risk associated with client orders by trading in the market and may make a profit or loss as a result. It is completely unacceptable, however, for firms to engage in attempts at manipulation for their own benefit and to the potential detriment of certain clients and other market participants. The Final Notices include examples where each Bank's trading made a significant profit.

In setting the fine for each Bank the FCA considered, amongst other things: the Bank's relevant revenue, the seriousness of the breach, each Bank's disciplinary record and response to the wider issues around Libor, the degree of co-operation shown by each Bank, and knowledge and/or involvement of certain of those responsible for managing this part of the Bank's business.

The FCA has sought to take swift enforcement action against the worst offenders, and has announced it will carry out an industry-wide supervisory remediation programme for firms to drive up standards across the market.

The investigation lasted 13 months and involved over 70 enforcement staff

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