Trends in Regulatory Enforcement in UK Financial Markets
2017/18 Mid-Year Report

By Erin B. McHugh
Fine activity from the Financial Conduct Authority (FCA) remained at a low level over the 12 months ending 30 September 2017. However, the regulator has indicated that we should not view this as a return to “light touch” regulation. While the number of FCA investigations has substantially increased compared to prior years, we expect proportionately fewer of those investigations to result in an enforcement outcome, consistent with the FCA’s “evolving approach” to investigations.
Trends in Regulatory Enforcement in UK Financial Markets
2017/18 Mid-Year Report

Erin B. McHugh
January 2018

NERA Economic Consulting maintains a proprietary database of fines and other enforcement activity by the Financial Conduct Authority (FCA) and, previously, the Financial Services Authority (FSA). This includes data on fines from 1 April 2002. We undertake a detailed analysis of recent enforcement activity and how it conforms to stated priorities, revealing underlying trends that may not be apparent from a review of individual cases.

Introduction

In our last edition of this report, covering the period ending 30 September 2016, we noted that the low level of fines in the first half of the 2016/17 financial year might reflect a “transient lull in fines” as the FCA redirected its resources. However, fine activity by the FCA remained at a low level through 30 September 2017. In the first half of the 2017/18 financial year (i.e., the six months ending 30 September 2017), the FCA issued only four fines totalling approximately £0.3 million. No fines were imposed on firms during this period.

The FCA has indicated that we should not view the recent (lack of) enforcement outcomes as a sign of a return to “light touch” regulation. In the FCA’s 2016/17 Annual Report, the regulator confirmed that “[t]here has been no change in our approach to misconduct or financial penalties”. In fact, two large fines against firms have already been issued since 30 September 2017, indicating that fine activity by the FCA is on the upswing in the second half of the 2017/18 financial year.

While the number and size of fines issued by the FCA is down from prior years, the FCA’s use of other types of enforcement measures (such as variations or cancellations of authorisations or permissions) has increased, driven largely by the impact of consumer credit firm referrals.
As we had anticipated in our last edition of this report, insider dealing has been a focus area for the regulator in its criminal investigations. Both of the FCA’s criminal indictments in the first half of the 2017/18 financial year were for insider dealing, as were all three verdicts reached in the 12 months ending 30 September 2017.

**Looking Ahead: The Enforcement Outlook**

FCA Director of Enforcement and Market Oversight Mark Steward has stated that, when evaluating the FCA’s enforcement effort, what is important “is not the size of the outcome but the perception that detection and responsive action are both inevitable and speedy”. In this edition of our report, we supplement our usual analysis of the level of enforcement outcomes with an assessment of both the number and types of investigations that the FCA has recently opened. The FCA recently clarified its “evolving approach” to investigations. Implementation of this approach has resulted in a substantial increase in the number of investigations undertaken, though with proportionately fewer of those investigations resulting in an enforcement outcome.

Market abuse and financial crime appear to be key focus areas for the FCA based upon the number of investigations opened, consistent with statements to that effect by the regulator. We also expect the FCA to take a tough stance against offences with the potential to cause harm to vulnerable consumers. There are also a couple of open investigations into competition-related issues. Should the FCA find any breaches of competition law, the penalties could be substantial.

**Update on FCA Enforcement Activity**

With the exception of two very large fines (discussed below), fine activity by the FCA remained at a low level in the 12 months ending 30 September 2017. In fact, in the first half of the current 2017/18 financial year, the FCA imposed only four fines (see Table 1). These four fines were all issued against individuals and totalled approximately £0.3 million, an infinitesimal amount when compared to the aggregate fine amounts in prior financial years. No fines against firms were issued in the first half of the current financial year—a first for any semi-annual period in the last 15 years.
Table 1. Annual FCA Fines  
2011/12–2016/17, and First Half 2017/18

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Fines*</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Individuals</td>
<td>40</td>
<td>20</td>
<td>22</td>
<td>24</td>
<td>15</td>
<td>12</td>
<td>4</td>
</tr>
<tr>
<td>Firms</td>
<td>23</td>
<td>26</td>
<td>27</td>
<td>27</td>
<td>17</td>
<td>7</td>
<td>0</td>
</tr>
<tr>
<td>Totals</td>
<td>63</td>
<td>46</td>
<td>49</td>
<td>51</td>
<td>32</td>
<td>19</td>
<td>4</td>
</tr>
<tr>
<td>Aggregate Fines (£m)*</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Individuals</td>
<td>19.9</td>
<td>5.1</td>
<td>3.9</td>
<td>7.1</td>
<td>16.2</td>
<td>0.9</td>
<td>0.3</td>
</tr>
<tr>
<td>Firms</td>
<td>58.9</td>
<td>422.2</td>
<td>416.9</td>
<td>1,403.1</td>
<td>874.0</td>
<td>309.1</td>
<td>0.0</td>
</tr>
<tr>
<td>Totals</td>
<td>78.8</td>
<td>427.3</td>
<td>420.8</td>
<td>1,410.3</td>
<td>890.2</td>
<td>310.0</td>
<td>0.3</td>
</tr>
</tbody>
</table>

Notes and Sources:
Numbers may not sum precisely to totals due to rounding.
Financial years start on 1 April and end on 31 March.

1 Figures include a £129.0 million fine issued by the Serious Fraud Office (SFO) in connection with its deferred prosecution agreement (DPA) with Tesco Stores Limited in a parallel investigation to that conducted by the FCA.
2 Figures cover the first half of the 2017/18 financial year, from 1 April 2017 to 30 September 2017.

* The annual number and aggregate amount of fines shown here may differ from statistics reported by the FCA in its annual reports (for example, the FCA’s reported 2014/15 totals for number of fines and aggregate fine amount were 43 and £1,409.8 million, respectively). This is for three reasons. First, beginning with its 2009/10 Annual Report, the FCA assigns each fine to a financial year based on the publication date of the press release announcing the fine, whereas NERA uses the date of the final notice. Second, the FCA does not include in its count of fines those reduced to zero owing to financial hardship, whereas NERA does. Finally, NERA treats fines on sole proprietorships (i.e., businesses consisting of a single individual) as having been imposed on individuals, whereas the FCA classifies these as fines on firms.

Figure 1 below shows FCA fine amounts by semi-annual period, and distinguishes fines relating to interbank rate and FX manipulation from other types of fines. The aggregate amount of fines in the first half of the 2016/17 financial year (i.e., the six months ending 30 September 2016), £6.3 million, was low relative to prior semi-annual periods, even if the arguably extraordinary fines relating to interbank rate and FX manipulation in prior periods are excluded. In the second half of the 2016/17 financial year (i.e., the six months ending 31 March 2017), aggregate fines totalled £303.7 million—higher than in any of the prior semi-annual periods shown once fines relating to interbank rate and FX manipulation are excluded. However, this rebound was driven by two large fines against firms (a £163.1 million fine against Deutsche Bank and a £129.0 million fine against Tesco, described further in the next section), which comprised 96.2% of this aggregate fine amount.
In the first half of the current financial year, the aggregate amount of fines issued by the FCA dropped to its lowest level in at least 15 years, at £0.3 million (see Figure 1). In no prior semi-annual period in the last 15 years has the aggregate fine amount totalled less than £1.0 million.

In the sections that follow, we analyse enforcement against firms and individuals separately. In each case, we include a discussion of recent trends, including with respect to the largest fines imposed by the FCA. We also consider trends in the imposition of non-monetary sanctions by the FCA.

**Enforcement Against Firms**

In the second half of the 2016/17 financial year, the FCA issued four fines against firms totalling £303.6 million, bringing the total for the financial year to £309.1 million (see Figure 2). During the 2016/17 financial year, the median of the fines against firms—which can be interpreted as reflecting the “typical” fine—was £3.3 million. This was lower than the median fine in the three prior financial years (see Figure 2).
The four fines issued against firms in the second half of the 2016/17 financial year comprise:

- **An £8.2 million fine issued on 5 October 2016 against two units of the insurer Aviva for client money failings.** The FCA stated that Aviva had outsourced activities including the administration of client money and had failed to ensure that it could effectively control these outsourced activities.\(^8\) The FCA found that as much as £74.4 million of client money had been improperly segregated by the firm to which Aviva had outsourced these activities. Accordingly, the FCA imposed on Aviva Pension Trustees UK Limited and Aviva Wrap UK Limited a joint fine of £8.2 million (taking account of a 30% discount for early settlement).\(^9\) This was the first time the FCA had issued a fine against a firm for insufficient oversight of an outsourcer in relation to client money rules. Notably, this offence came after specific warnings from the FCA that neither responsibility nor liability for regulatory failings could be outsourced to third parties.\(^10\)

---

Notes and Sources:
Numbers may not sum precisely to totals due to rounding.
NERA classifies fines on sole proprietorships as fines on individuals.
Financial years start on 1 April and end on 31 March.
\(^1\) Annual average.
\(^2\) Figures cover the first half of the 2017/18 financial year, from 1 April 2017 to 30 September 2017.
\(^4\) The calculation of the median fine excludes fines reduced to zero because of financial hardship.
• A £3.25 million fine issued on 12 October 2016 against Sonali Bank (UK) Limited for failures in anti-money laundering (AML) controls. The FCA also found that the firm had failed to notify the regulator for at least seven weeks after it had become aware of a potential significant fraud at the bank. The FCA’s fine took account of a 30% discount for early settlement. The FCA emphasised in the Final Notice that it had previously given the bank clear warnings about its inadequate money laundering controls, and considered this an aggravating factor, which served to increase the fine amount.11

• A £163.1 million fine issued on 30 January 2017 against Deutsche Bank for failures in AML controls. Through a system of simultaneous “mirror trades”, Deutsche Bank customers were able to transfer approximately US$6 billion out of Russia to overseas bank accounts. The FCA found the manner in which the trades were conducted, in combination with the trades’ scale and volume, to be “highly suggestive of financial crime”.12 The fine of £163.1 million took account of a 30% discount for early settlement. The FCA noted that this was the largest fine ever imposed by the FCA or its predecessor, the FSA, for AML control failings.13

• A £129.0 million fine issued on 28 March 2017 against a unit of Tesco, imposed by the Serious Fraud Office (SFO) and arising from an investigation running parallel to the FCA’s investigation of the company for market abuse. Tesco plc and Tesco Stores Limited (collectively, “Tesco”) agreed with the FCA that they had committed market abuse in relation to an overstatement of expected profits made in a trading update. The FCA stated that the trading update “gave a false or misleading impression about the value of publicly traded Tesco shares and bonds”.14 Tesco agreed to a redress scheme for investors who purchased Tesco shares and bonds during the relevant period. The FCA estimated the total amount of compensation that might be payable under the scheme at approximately £85 million, plus interest.15 This marked the first time that the FCA used its powers under section 384 of the Financial Services and Markets Act to require a listed company to pay compensation for market abuse.16 The SFO fined Tesco Stores Limited £129.0 million as part of a deferred prosecution agreement (DPA) relating to “substantially similar” conduct to that investigated by the FCA.17 Given the circumstances (including the SFO’s substantial penalty), the FCA decided not to issue a further fine against Tesco. We include the SFO’s fine of £129.0 million in our analyses (i.e., we effectively treat the fine as an FCA fine for the purposes of this report).

The two fines relating to financial crime and AML are consistent with the FCA’s making this area a priority theme for the 2016/17 financial year in its Business Plan. The FCA’s priorities form the primary basis for the regulator’s discretionary work. Financial crime is defined in the Financial Services Act 2012 as including any offence involving (a) fraud or dishonesty; (b) misconduct in, or misuse of information relating to, a financial market; (c) handling the proceeds of crime; or (d) the financing of terrorism.18 The other six priority themes communicated by the FCA for the 2016/17 financial year were pensions, wholesale financial markets, investment advice, innovation and technology, firms’ culture and governance, and treatment of existing customers.19

In the first half of the current financial year, no fines against firms were issued by the FCA. However, two fines against firms were issued in the first few weeks of the second half of the current financial year (which began on 1 October 2017). Rio Tinto plc was fined £27.4 million for breaching Disclosure and Transparency Rules, while Merrill Lynch International was fined £34.5 million for failure to report exchange traded derivative transactions under the European Markets Infrastructure Regulation (EMIR). Both fines took account of a 30% discount for early settlement. It remains to be seen whether these fines portend an upswing in firm fines for the remainder of the 2017/18 financial year.
**Top 10 Fines Against Firms**

Interbank rate and FX fines continue to dominate the top 10 largest fines ever issued by the FCA against firms: six of the top 10 were assessed in connection with the FX manipulation scandal, and two were related to interbank benchmark rate manipulation. The large fine against Deutsche Bank issued in the second half of the 2016/17 financial year takes the eighth spot among the top 10. See Table 2, which also shows our categorisation of the type of alleged misconduct. For a description of our classification scheme, see the Appendix to our 2016/17 mid-year report.20

Table 2. **Top 10 Fines Against Firms**

<table>
<thead>
<tr>
<th>Fine Rank</th>
<th>Firm</th>
<th>Financial Year</th>
<th>Total Fine (£)</th>
<th>Category of Misconduct</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Barclays Bank plc</td>
<td>2015/16</td>
<td>284,432</td>
<td>Failure to Prevent Misconduct (FX)</td>
</tr>
<tr>
<td>2</td>
<td>UBS AG</td>
<td>2014/15</td>
<td>233,814</td>
<td>Failure to Prevent Misconduct (FX)</td>
</tr>
<tr>
<td>3</td>
<td>Deutsche Bank AG</td>
<td>2015/16</td>
<td>226,800</td>
<td>Market Manipulation (Interbank Rate)</td>
</tr>
<tr>
<td>4</td>
<td>Citibank N.A.</td>
<td>2014/15</td>
<td>225,575</td>
<td>Failure to Prevent Misconduct (FX)</td>
</tr>
<tr>
<td>5</td>
<td>J.P. Morgan Chase Bank N.A.</td>
<td>2014/15</td>
<td>222,166</td>
<td>Failure to Prevent Misconduct (FX)</td>
</tr>
<tr>
<td>6</td>
<td>Royal Bank of Scotland plc</td>
<td>2014/15</td>
<td>217,000</td>
<td>Failure to Prevent Misconduct (FX)</td>
</tr>
<tr>
<td>7</td>
<td>HSBC Bank plc</td>
<td>2014/15</td>
<td>216,363</td>
<td>Failure to Prevent Misconduct (FX)</td>
</tr>
<tr>
<td>8</td>
<td>Deutsche Bank AG</td>
<td>2016/17</td>
<td>163,076</td>
<td>Inadequate Security &amp; Safeguards</td>
</tr>
<tr>
<td>9</td>
<td>UBS AG</td>
<td>2012/13</td>
<td>160,000</td>
<td>Market Manipulation (Interbank Rate)</td>
</tr>
<tr>
<td>10</td>
<td>J.P. Morgan Chase Bank N.A.</td>
<td>2013/14</td>
<td>137,610</td>
<td>Transaction Reporting, Record-Keeping, &amp; Pricing Failures</td>
</tr>
</tbody>
</table>

Notes and Sources:
Fine amounts are in thousands.
Financial years start on 1 April and end on 31 March.

Table 3 lists the top 10 largest fines against firms, excluding fines relating to the alleged manipulation of interbank rates or FX. Two of the top 10 fines on this alternative list are from the 2016/17 financial year—the Deutsche Bank fine (ranked first) and the Tesco fine (ranked third). The recently issued Merrill Lynch fine is ranked ninth on the list (see Table 3).
Table 3. **Top 10 Fines Against Firms, Excluding Interbank Rate and FX Fines**  
1 April 2002 to Present

<table>
<thead>
<tr>
<th>Fine Rank</th>
<th>Firm</th>
<th>Financial Year</th>
<th>Total Fine (£)</th>
<th>Category of Misconduct</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Deutsche Bank AG</td>
<td>2016/17</td>
<td>163,076</td>
<td>Inadequate Security &amp; Safeguards</td>
</tr>
<tr>
<td>2</td>
<td>J.P. Morgan Chase Bank N.A.</td>
<td>2013/14</td>
<td>137,610</td>
<td>Transaction Reporting, Record-Keeping, &amp; Pricing Failures</td>
</tr>
<tr>
<td>3</td>
<td>Tesco plc(^1)</td>
<td>2016/17</td>
<td>128,993</td>
<td>Market Manipulation</td>
</tr>
<tr>
<td>4</td>
<td>The Bank of New York Mellon (International) Limited</td>
<td>2015/16</td>
<td>126,000</td>
<td>Mishandling Client Assets</td>
</tr>
<tr>
<td>5</td>
<td>Lloyds Banking Group</td>
<td>2015/16</td>
<td>117,431</td>
<td>Mistreatment of Customers &amp; Mishandling of Complaints</td>
</tr>
<tr>
<td>6</td>
<td>Barclays Bank plc</td>
<td>2015/16</td>
<td>72,069</td>
<td>Inadequate Security &amp; Safeguards</td>
</tr>
<tr>
<td>7</td>
<td>Royal Bank of Scotland plc(^2)</td>
<td>2014/15</td>
<td>42,000</td>
<td>Transaction Reporting, Record-Keeping, &amp; Pricing Failures</td>
</tr>
<tr>
<td>8</td>
<td>Barclays Bank plc</td>
<td>2014/15</td>
<td>37,745</td>
<td>Mishandling Client Assets</td>
</tr>
<tr>
<td>9</td>
<td>Merrill Lynch International</td>
<td>2017/18</td>
<td>34,524</td>
<td>Transaction Reporting, Record-Keeping, &amp; Pricing Failures</td>
</tr>
<tr>
<td>10</td>
<td>J.P. Morgan Chase Bank N.A.</td>
<td>2010/11</td>
<td>33,320</td>
<td>Mishandling Client Assets</td>
</tr>
</tbody>
</table>

Notes and Sources:
- Fine amounts are in thousands.
- Financial years start on 1 April and end on 31 March.
- \(^1\) This £129.0 million fine was issued by the Serious Fraud Office (SFO) in connection with its deferred prosecution agreement (DPA) with Tesco Stores Limited in a parallel investigation to that conducted by the FCA.
- \(^2\) This fine was the result of a joint investigation by the FCA and the Prudential Regulatory Authority (PRA). The PRA imposed an additional £14 million penalty for prudential failings, making the aggregate fine £56 million.

**Non-Pecuniary Measures Against Firms**

In addition to issuing fines, the FCA also has other tools at its disposal to carry out enforcement against firms. For example, the FCA can vary or cancel a firm’s permission to carry out regulated activities. For descriptions of the various enforcement measures available to the FCA, see the Appendix to our 2015/16 mid-year report.\(^{21}\) Figure 3 shows the number of FCA fines as well as these other (non-pecuniary) enforcement measures by financial year.
While the FCA issued no fines against firms in the first half of the current financial year, the FCA is on track to reach a substantially higher level of total enforcement measures against firms than that observed in any of the prior 10 financial years. This increase is driven largely by variations, cancellations, refusals of authorisations, approvals, and permissions (shown in Figure 3). The FCA attributed the substantial increase in cancellations of permissions already observed in the 2016/17 financial year to the impact of consumer credit firm referrals.\(^1\) The number of firms regulated by the FCA almost tripled when the FCA took over regulation of consumer credit firms in April 2014, from 27,000 to 77,000.\(^2\) Consumer credit firms previously regulated by the Office of Fair Trading were transferred to the FCA with interim permission to carry out consumer credit activities. The firms were required to apply for full authorisation by 31 March 2016.\(^3\)
The FCA may use more than one enforcement measure against a firm in respect of particular misconduct. For example, in addition to fining Sonali Bank (UK) Limited on 12 October 2016 for failures in AML controls, the FCA also restricted the bank from accepting new customers for almost six months.

**Enforcement Against Individuals**

In the second half of the 2016/17 financial year, the FCA issued three fines against individuals totalling £144,102. The three fines comprise:

- **A £17,900 fine on 12 October 2016 against Steven George Smith in connection with his role as compliance officer at Sonali Bank (UK) Limited.** This was related to the fine discussed above against the firm. Mr Smith’s fine took into account a 30% discount for early settlement. He was also prohibited from performing both senior management and controlled functions for compliance oversight and money laundering in relation to any regulated activity.

- **An £89,004 fine on 22 November 2016 against Tariq Carrimjee for failing to escalate the risk that his client might have been intending to engage in market abuse.** The FSA had initially given Mr Carrimjee a Decision Notice on 26 March 2013 notifying him that the regulator had decided to withdraw his individual approvals and prohibit him from performing any function in relation to any regulated activity. Mr Carrimjee was also issued a fine of £89,004 for breaching Statement of Principle 1 (by acting recklessly and without integrity). He referred the Decision Notice to the Upper Tribunal on 23 April 2013. In a decision dated 4 March 2015, the Tribunal upheld the fine, but determined that Mr Carrimjee had breached Statement of Principle 2 (by failing to act with due skill, care, and diligence) rather than Statement of Principle 1. The Tribunal remitted the matter of any ban to be imposed on Mr Carrimjee back to the FCA for a decision in light of the Tribunal’s findings. On 26 November 2015, the FCA gave Mr Carrimjee a further Decision Notice, which notified him that the regulator had decided to impose a partial ban, prohibiting Mr Carrimjee from performing the compliance oversight and money laundering reporting functions in relation to any regulated activity. The matter was again referred to the Upper Tribunal by Mr Carrimjee on 21 December 2015. On 20 October 2016, the Tribunal dismissed Mr Carrimjee’s reference, upholding the FCA’s partial ban, and a Final Notice was then issued by the FCA on 22 November 2016.

- **A £37,198 fine on 29 March 2017 against Christopher Niehaus, a former investment banker at Jefferies International Limited, for sharing confidential client information.** Mr Niehaus had used the instant messaging application WhatsApp to share the information. The FCA acknowledged that the information was not disclosed for the purpose of it being used by the recipients, but rather because Mr Niehaus “wanted to impress them”. The fine took into account a 30% early settlement discount.

In the first half of the current financial year, the FCA issued four fines, all of which were against individuals, for a total of £278,591. If fines on individuals were to continue at that pace in the second half of 2017/18, the resulting aggregate fine would be lower than in any of the prior nine financial years, even if those prior totals are calculated excluding the top 10 largest fines issued by the FCA against individuals. As Figure 4 shows, not since the financial years 2002/03 to 2007/08—the so-called “light touch” era—have total fines against individuals been so low. Note, however, that the median fine against individuals of £80,846 in the first half of the current financial year exceeds that in four of the last five financial years. This implies that the aggregate fine amount in the first half of the current
The financial year is low due to the (small) number of fines, rather than the size of those fines. Indeed, if there were only eight fines imposed on individuals in the 2017/18 financial year, this number would be lower than in any financial year since 2007/08.

The four fines issued against individuals in the six months ending 30 September 2017 comprise:

- **Two fines issued against Lukhvir Thind and Niall O’Kelly (of £105,000 and £11,900, respectively)** for engaging in market abuse in connection with their roles at a collapsed spread-betting company. This is in line with the FCA’s statement in its 2017/18 Business Plan that “[p]reventing, detecting, and punishing market abuse” is a high priority for the regulator.  
  - Lukhvir Thind was a chartered accountant and Financial Controller at financial spread-betting company Worldspreads Limited (WSL). WSL’s holding company, Worldspreads Group plc (WSG) was quoted on AIM, the London Stock Exchange’s international market for smaller growing companies. The FCA’s Final Notice stated that Mr Thind had falsified financial information to conceal client money shortfalls, rendering the company’s annual accounts for
2010 and 2011 materially inaccurate. Mr Thind’s fine of £105,000 took account of a 30% discount for early settlement. Mr Thind was also prohibited from performing any function in relation to any regulated activity.

- Niall O’Kelly was Chief Financial Officer at WSL and WSG. According to the FCA’s Final Notice, Mr O’Kelly’s wrongful conduct included instructing Mr Thind to conceal client money shortfalls, as described above. Mr O’Kelly was also closely involved with preparing and approving the documentation required for the flotation of WSG’s shares on AIM in August 2007. The FCA’s Final Notice stated that WSG’s AIM admission documentation contained materially misleading information and also omitted material information. It further stated that had accurate information about WSG’s financial position been given to the market, WSG’s flotation might have been delayed or cancelled, “or investors might not have purchased shares at all”. Mr O’Kelly’s fine of £11,900 reflected a 30% discount for early settlement as well as evidence of serious financial hardship. Mr O’Kelly was also prohibited from performing any function in relation to any regulated activity.

- A £75,000 fine issued on 10 July 2017 against David Samuel Watters for pension transfer failings. Mr Watters was a compliance oversight officer at FGS McClure Watters (FGS) and later Lanyon Astor Buller Ltd (LAB), both of which provided advice on pension transfer exercises—i.e., transfers from defined benefit (DB) to defined contribution (DC) schemes. The FCA stated that approximately 500 customers that received advice from FGS or LAB transferred their pensions to a DC scheme, and that “[i]n many cases, it may have been unnecessary”. The FCA found that Mr Watters had failed to ensure that the advice process was compliant with the relevant regulatory requirements and that the advisers were properly monitored. LAB also agreed to contact affected customers and pay any appropriate redress.

- An £86,691 fine issued on 19 September 2017 against Charles Palmer for failings in his role as director and de facto CEO of a network of financial advisors providing pension-switching advice. In an initial Decision Notice dated 25 September 2015, the FCA alleged that approximately 40,000 underlying customers were exposed to the significant risk that their advisors would give unsuitable advice as a result of Mr Palmer’s failings. Mr Palmer referred that notice to the Upper Tribunal on 22 October 2015, contending that he was not personally culpable for the failings identified by the FCA (i.e., that others held regulatory responsibility for those areas). Nevertheless, the Tribunal dismissed Mr Palmer’s reference, and in doing so upheld the FCA’s original decision to fine him and ban him from performing FCA significant influence functions in relation to any regulated activity.
These last two fines in relation to pension failings are consistent with the FCA’s focus on vulnerable consumers, a cross-sector priority for the regulator in 2017/18, as is discussed further below.

**Top 10 Fines Against Individuals**

There have not been any new entrants to the top 10 fines against individuals since the 2015/16 financial year. The highest fine against an individual in the 12 months ending 30 September 2017 was the £105,000 fine against Lukhvir Thind, which would need to be more than 10 times as high to qualify for inclusion in the top 10 (see Table 4).

Table 4. **Top 10 Fines Against Individuals**

<table>
<thead>
<tr>
<th>Fine Rank</th>
<th>Individual</th>
<th>Financial Year</th>
<th>Penalty (£)</th>
<th>Disgorgement/Removal of Benefit (£)</th>
<th>Total Fine (£)</th>
<th>Category of Misconduct</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Shay Jacob Reches</td>
<td>2015/16</td>
<td>1,050</td>
<td>13,130</td>
<td>14,180</td>
<td>Mishandling Client Assets</td>
</tr>
<tr>
<td>2</td>
<td>Rameshkumar Goenka</td>
<td>2011/12</td>
<td>4,138</td>
<td>1,971</td>
<td>6,109</td>
<td>Market Manipulation</td>
</tr>
<tr>
<td>3</td>
<td>David Einhorn</td>
<td>2011/12</td>
<td>3,000</td>
<td>638</td>
<td>3,638</td>
<td>Insider Dealing</td>
</tr>
<tr>
<td>4</td>
<td>Ravi Sinha</td>
<td>2011/12</td>
<td>1,500</td>
<td>1,367</td>
<td>2,867</td>
<td>Fraud or Other Deliberate Misconduct</td>
</tr>
<tr>
<td>5</td>
<td>Simon Eagle</td>
<td>2010/11</td>
<td>1,500</td>
<td>1,300</td>
<td>2,800</td>
<td>Market Manipulation</td>
</tr>
<tr>
<td>6</td>
<td>Alberto Micalizzi</td>
<td>2014/15</td>
<td>2,700</td>
<td></td>
<td>2,700</td>
<td>Fraud or Other Deliberate Misconduct</td>
</tr>
<tr>
<td>7</td>
<td>Michiel Wieger Visser</td>
<td>2011/12</td>
<td>2,000</td>
<td></td>
<td>2,000</td>
<td>Market Manipulation</td>
</tr>
<tr>
<td>8</td>
<td>Stefan Chaligne</td>
<td>2012/13</td>
<td>900</td>
<td>363</td>
<td>1,263</td>
<td>Market Manipulation</td>
</tr>
<tr>
<td>9</td>
<td>Sachin Karpe</td>
<td>2012/13</td>
<td>1,250</td>
<td></td>
<td>1,250</td>
<td>Mishandling Client Assets</td>
</tr>
<tr>
<td>10</td>
<td>Samuel Nathan Kahn</td>
<td>2011/12</td>
<td>884</td>
<td>211</td>
<td>1,095</td>
<td>Market Manipulation</td>
</tr>
</tbody>
</table>

**Non-Pecuniary Measures Against Individuals**

Similar to what we have observed with firms, the total number of enforcement measures against individuals has increased, and is on track to reach its highest level since the 2011/12 financial year (see Figure 5). This increase is driven by cancellations of permissions (shown in Figure 5). As with the increase observed in relation to firm enforcement, this increase is likely due in large part to the FCA’s taking over regulation of consumer credit companies.

Individuals fined by the FCA are often also prohibited from performing some or all regulated activities. Of the seven fines issued by the FCA against individuals in the 12 months ending 30 September 2017, five were accompanied by prohibitions (as discussed above).

Another prohibition was that issued to Damian Clarke on 1 June 2017, prohibiting him from performing any function in relation to any regulated activity. Mr Clarke is a former equities trader at Schroder Investment Management Limited who was sentenced to a prison term of two years after pleading guilty to nine counts of insider dealing.
Figure 5. FCA Enforcement Activity Against Individuals by Type of Sanction
2007/08–2016/17, and First Half 2017/18

Notes and Sources:
For financial years 2007/08–2013/14, data are taken directly from the “Enforcement Activity” appendices to FCA annual reports. For 2014/15 and thereafter, data were compiled by NERA from final notices. Therefore, for financial years prior to 2014/15, the annual numbers of financial penalties shown here may differ from statistics reported by NERA in Table 1. Moreover, the numbers presented in Figure 5 for financial years prior to 2014/15 (taken from the FCA annual reports) are slightly different than to the numbers for 2014/15 and after (compiled by NERA). This is for several reasons. First, beginning with its 2009/10 Annual Report, the FCA assigns each fine to a financial year based on the publication date of the press release announcing the fine, whereas NERA uses the date of the final notice in Table 1 and in the figures presented in Figure 5 for 2014/15 and later. Moreover, the FCA does not include in its tallies fines that were reduced to zero owing to financial hardship, whereas Table 1 includes such fines. Finally, NERA classifies fines on sole proprietorships as fines on individuals, whereas the FCA classifies these as fines on firms. The outcomes represent single enforcement actions against individuals. For example, three enforcement actions within the same case (i.e., fine, public censure, and prohibition against an individual) are counted as three distinct outcomes.

Financial years start on 1 April and end on 31 March.

1 Does not include Threshold Condition outcomes where the FCA only cancels a sole proprietorship’s Part 4A permission or its registration. Threshold Conditions are fundamental requirements that firms must meet and maintain for authorisation. The FCA can vary or cancel a firm’s permission in cases where the firm fails to meet these requirements. See The FCA Handbook, Financial Conduct Authority, 1 March 2016, Section 2.3.1, available at: https://www.handbook.fca.org.uk/handbook/EG/2/3.html?date=2017-09-01.

2 Figures cover the first half of the 2017/18 financial year, from 1 April 2017 to 30 September 2017. The scaled-up figure represents the annual total number of outcomes that would be taken if the number of outcomes in the second half of the 2017/18 financial year equals the number in the first half.
Trends in FCA Criminal Prosecution

Two individuals were indicted by the FCA in the second half of the 2016/17 financial year:

- **On 18 November 2016, Charanjit Sandhu was the sixth individual to be charged with conspiracy to defraud and other offences in relation to a “boiler room” investigation.**
  The five other defendants were charged in June of the same year by the FCA. The offences related to “the promotion and sale of shares through a succession of four alleged ‘boiler room’ companies”.42

- **On 17 January 2017, Dharam Gopee was charged with operating as an unlicensed consumer credit lender.** Specifically, he was alleged to have acted as a “lender of last resort” to consumers who were experiencing financial difficulties, lending in excess of £1 million over four years without authorisation. In many cases, he registered charges over the borrowers’ homes as collateral for the loans, enabling him to take possession in case of non-payment. This indictment is the first time the FCA has taken criminal action in a case related to its consumer credit powers.43 The FCA’s action also illustrates its tough stance on those considered to be exploiting vulnerable consumers, as discussed further below.

The first half of the 2017/18 financial year also saw the indictment of two individuals (see Table 5). If this pace of indictments continues in the second half of the financial year, the FCA will indict only half the number of individuals indicted in the 2016/17 financial year, but roughly the same number as in the two prior financial years.

### Table 5. FCA Criminal Indictments

2002/03–2016/17, and First Half of 2017/18

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Indictment of Individuals</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Insider Dealing</td>
<td>12</td>
<td>14</td>
<td>4</td>
<td>8</td>
<td>1</td>
<td>3</td>
<td>3</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Land Banking</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>8</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Other Indictments3</td>
<td>20</td>
<td>1</td>
<td>0</td>
<td>3</td>
<td>3</td>
<td>1</td>
<td>0</td>
<td>7</td>
<td>0</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td>32</td>
<td>15</td>
<td>4</td>
<td>11</td>
<td>12</td>
<td>4</td>
<td>3</td>
<td>8</td>
<td>2</td>
</tr>
</tbody>
</table>

Notes and Sources:
Data are from FCA press releases, supplemented by a review of news articles.
The table includes only named defendants. Indictment years start on 1 April and end on 31 March.

1 If the indictment date is not reported in the FCA’s press releases, the arrest date is used instead.
2 Figures cover the first half of the 2017/18 financial year, from 1 April 2017 to 30 September 2017.
3 Includes cases of mis-selling, stealing, fraud, illegal deposit taking, and failure to cooperate with the FCA.

The two indictments in the first half of the 2017/18 financial year were both in relation to the same insider dealing investigation. Fabiana Abdel-Malek (a former UBS compliance officer) is alleged to have improperly disclosed information to day trader Walid Anis Choucair in relation to the trading of five stocks. Both of the accused were charged with insider dealing on 16 June 2017. They pleaded not guilty on 24 July 2017, and are to stand trial in October 2018.44
Table 6. FCA Criminal Verdicts
2002/03–2016/17, and First Half of 2017/18

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Outcomes</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Insider Dealing Convictions</td>
<td>5</td>
<td>5</td>
<td>1</td>
<td>12</td>
<td>1</td>
<td>3</td>
<td>1</td>
<td>5</td>
<td>0</td>
<td>33</td>
</tr>
<tr>
<td>Land Banking</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>8</td>
<td>0</td>
<td>0</td>
<td>8</td>
</tr>
<tr>
<td>Other Convictions(^1)</td>
<td>9</td>
<td>0</td>
<td>4</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>19</td>
</tr>
<tr>
<td>Acquittals</td>
<td>1</td>
<td>3</td>
<td>0</td>
<td>5</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>4</td>
<td>0</td>
<td>17</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>15</td>
<td>8</td>
<td>5</td>
<td>18</td>
<td>7</td>
<td>6</td>
<td>9</td>
<td>9</td>
<td>0</td>
<td>77</td>
</tr>
</tbody>
</table>

Notes and Sources:
Data are from FCA press releases, supplemented by a review of news articles.
The table includes only named defendants.
Verdict years start on 1 April and end on 31 March.
\(^1\) If the verdict date is not reported in the press releases, the sentencing date is used instead.
\(^2\) Figures cover the first half of the 2017/18 financial year, from 1 April 2017 to 30 September 2017.
\(^3\) Includes cases of mis-selling, stealing, fraud, illegal deposit taking, and failure to cooperate with the FCA.

While no new verdicts were reached in FCA criminal proceedings during the six months ending 30 September 2017 (see Table 6), the second half of the 2016/17 financial year included three verdicts:

- **Mark Lyttleton pleaded guilty to two counts of insider dealing on 2 November 2016.**\(^45\)
  Mr Lyttleton is a former investment portfolio manager at BlackRock Investment Management (UK) Limited. Mr Lyttleton was sentenced to 12 months imprisonment on 21 December 2016. A confiscation order was also made for £149,861.\(^46\)

- **Manjeet Mohal and Reshim Birk pleaded guilty to three counts of insider dealing on 30 November 2016.** Mr Mohal, a business analyst at technology firm Logica Plc, was alleged to have informed his neighbour, Reshim Birk, of his employer’s imminent acquisition by CGI Holdings Europe Limited in 2012.\(^47\) Mr Birk was reported by the FCA to have made over £100,000 profit from trading shares and options ahead of the official announcement of the acquisition.\(^48\) On 13 January 2017, Mr Mohal was sentenced to 10 months imprisonment and Mr Birk sentenced to 16 months imprisonment, with both terms suspended for two years. A confiscation order of approximately £163,000 was also made against Mr Birk.\(^49\)

In our last edition of this report,\(^50\) we identified insider dealing as a likely area of focus for the regulator, noting that the FCA had recently opened a number of new criminal investigations into insider dealing. Indeed, both of the FCA’s indictments in the first half of the 2017/18 financial year were for insider dealing, and all of the verdicts reached in the 12 months ending 30 September 2017 were convictions for insider dealing. We expect insider dealing to continue to be a focus area for the FCA going forward, as discussed further in the next section.
Looking Ahead: The FCA’s Enforcement Priorities

On 18 April 2017, following consultation from market participants, the FCA published its Mission document. With the Mission, the FCA has attempted to provide greater clarity as to how the regulator prioritises its interventions in financial markets. The Mission confirms that the FCA may intervene in unregulated activities (i.e., activities outside of the FCA’s direct remit) if the regulator believes an issue is “serious”. While this suggests some potential for a widening of the scope of activities in which the FCA may intervene, the Mission also states that the regulator may choose to prioritise issues that fall within its direct remit.

FCA’s Evolving Approach to Investigations

One of the other points clarified in the Mission is the role of an enforcement investigation as a diagnostic tool. The Mission states, “When we open an investigation, we have not concluded that there have been breaches. Rather, we investigate the evidence and then form a view about whether there has been misconduct”. This clarification reflects recommendations made in the 2014 HM Treasury review and the 2015 independent report by Andrew Green QC into the regulator’s enforcement actions following the 2008 failure of HBOS (the “HBOS report”). The HBOS report stated that when considering whether or not to conduct an investigation, the FSA would attempt to “assess the likelihood of winning”, and that this approach “had a tendency to discourage the FSA from starting investigations even though the threshold test for investigating was met and even though the public importance of investigating was high”. The Mission makes clear that this is not the FCA’s current approach, stating that the regulator does not “pre-judge outcomes”. An analysis of “harm or potential harm to market users” is used by the regulator to decide whether to open an investigation.

FCA Director of Investigations Jamie Symington stated in a speech following publication of the Mission, “It is inevitable that the implementation of this approach [i.e., the FCA’s evolving approach to investigation] will lead to more investigations being opened”. Data from the FCA show that the number of investigations opened in the 2016/17 financial year is more than double the level opened in the prior year (see Figure 6).

Figure 6. Number of Cases Opened by Financial Year
2002/03–2016/17

Notes and Sources:
Data are from the Enforcement Annual Performance Account for all financial years.
All figures exclude Threshold Conditions Team (TCT) cases. TCT cases involve regulated firms that fail to meet the FCA’s minimum standards (i.e., Threshold Conditions).
Financial years start on 1 April and end on 31 March.
Mr Symington also stated that, while more investigations are now being opened, it is likely that proportionately fewer of those investigations will result in an enforcement outcome. And, in fact, data from the FCA already show the impact of the FCA’s evolving approach. Among the cases that were concluded in each financial year, the percentage of cases closed with no further action being taken by the regulator increased significantly in 2016/17, to 62% from 24% in the prior financial year (see Figure 7).

Figure 7. **Number of Cases Closed with No Further Action by Financial Year**

2011/12–2016/17

The FCA may choose to take no further action against the subject firm or individual if the regulator determines there is “insufficient or no evidence of wrongdoing” or does not “consider it to be in the public interest to take disciplinary action”. The FCA has also indicated its willingness to use the full range of its powers—i.e., not limit its responses to imposing fines or prosecuting individuals. Therefore, it remains to be seen how the FCA’s evolving approach to investigations affects enforcement outcomes. The FCA’s forthcoming “Approach to Enforcement” publication may provide more clarity as to what we should expect.
Likely Areas of Focus for the FCA

On 18 April 2017 (the same date the FCA published the Mission), the regulator published its 2017/18 Business Plan. The Business Plan identified six cross-sector priorities for the FCA’s discretionary work:

- Firms’ culture and governance
- Financial crime and anti-money laundering (AML)
- Promoting competition and innovation
- Technological change and resilience
- Treatment of existing customers
- Consumer vulnerability and access

These cross-sector priorities provide some insight into potential future areas of enforcement. To shed further light on potential areas for future FCA enforcement, it is instructive to examine the types of investigations recently opened by the FCA. Figure 8 shows the number of investigations opened by the FCA in the 2016/17 financial year by category (as classified by the FCA).

Figure 8. Number of Cases Opened in Financial Year 2016/17 by Category

Market abuse and financial crime together constitute more than half of the investigations opened in the 2016/17 financial year. We highlight these two areas, as well as two other likely areas for enforcement—consumer vulnerability and competition—in the sections that follow.

Consumer Vulnerability and Access

The last of the FCA’s 2017/18 cross-sector priorities, “consumer vulnerability and access”, is a new priority area for the FCA. The FCA stated its intention to prioritise the needs of vulnerable consumers in the recently published document “FCA Mission: Our Future Approach to Consumers”. This is the first in a series of documents the FCA will publish to explain its regulatory approach. The FCA has defined vulnerable consumers broadly as “people who can readily be identified as significantly less able to engage with the market, and/or people who would suffer disproportionately if things go wrong”. The FCA has indicated that any consumer could be vulnerable at some point in his or her life. The FCA warns, “We will take any deliberate exploitation of vulnerable or excluded consumers very seriously. Our response will include using the toughest enforcement action open to us”. We may, therefore, see further enforcement action against firms or individuals where there is the potential for vulnerable consumers to be harmed (for example, in the areas of consumer credit and pension transfers). For example, Provident Financial plc recently announced that the FCA is investigating treatment of customers in financial difficulties by the firm’s vehicle financing unit.
Market Abuse

While not specifically identified as a cross-sector priority for 2017/18, market abuse was nonetheless characterised as a “high priority” area for the FCA in the Business Plan. Market abuse investigations represented 43% of the total number of investigations opened in 2016/17, with insider dealing investigations representing the single largest category (see Figure 8).

The Market Abuse Regime (MAR), which took effect on 3 July 2016, expanded the scope of the previous UK market abuse framework to cover new markets, platforms, and conduct. While certain market participants were already required to report “suspicious” transactions to the FCA, MAR expands the scope of transactions required to be reported and also requires reporting of “suspicious” orders. The FCA considers a transaction or order to be “suspicious” if there are “reasonable grounds” to suspect it might constitute market abuse (e.g., market manipulation or insider dealing). In the last six months of 2016 (following MAR coming into force), the FCA received almost 1,900 suspicious transaction and order reports (STORs), representing a 71% increase over the number of suspicious transaction reports (STRs) received in the first half of that year.

Mr Steward stated in a 20 September 2017 speech that the additional data the FCA is now receiving with regards to potentially suspicious transactions has “led to more cases being selected for investigation”. The FCA has also shown that it takes reporting failures seriously. The FCA recently issued a warning notice to Interactive Brokers (UK) Ltd stating that the broker had failed to identify and report transactions “which it had reasonable grounds to suspect amounted to market abuse in the form of insider dealing”.

We noted in our last edition of this report that the FCA’s market cleanliness statistic for 2015 showed that share prices moved abnormally ahead of almost one out of every five UK public takeover announcements. This was the highest level since 2011. In 2016, the market cleanliness statistic remained at the same level as in 2015. This may be a further reason for the FCA to continue focusing attention on insider dealing. The FCA has stated in regards to the 2016 market cleanliness statistic, “[w]e will continue to monitor the results and gather market intelligence to enable us to draw robust conclusions about the underlying trend in insider trading”.

Mr Steward stated in a September 2017 speech that over the past year the FCA has opened more investigations into capital market disclosure issues—in particular, “where poor disclosure can mislead the market and become market abuse”. We may, therefore, see more enforcement actions similar to the Tesco action in the near future.

Financial Crime and AML

Financial crime and AML remains a priority area for the FCA in 2017/18, as it was in the prior two financial years. Investigations into potential financial crime represented 15% of the total number of investigations opened in 2016/17 (see Figure 8).

On 31 December 2016, new reporting requirements in the form of the REP-CRIM annual financial crime data return came into force. The return examines various aspects of regulated firms, including the controls and systems they have in place to prevent financial crime, the risks to which they are exposed, and their management of those risks. The FCA’s 2017/18 Business Plan states, “Where firms have poor AML controls, we will use our enforcement powers to impose business restrictions to limit the level of risk, provide deterrence messages to industry, or both”.

The FCA is also particularly focused on taking enforcement action against firms and individuals perpetrating scams—for example, those targeting consumers’ pensions. This is consistent with the FCA’s stated focus on vulnerable consumers discussed above.
**Competition/Anti-Competitive Behaviour**

In our 2015/16 year-end report, we noted that the FCA had opened its first enforcement investigation under the Competition Act, after acquiring new powers to enforce competition law on 1 April 2015. In April 2017, five aviation insurance brokers announced they were being investigated by the FCA on suspicion of sharing competitively sensitive information in the aviation insurance sector.

FCA Director of Competition and Economics Mary Starks confirmed that the FCA had two open cases under the Competition Act as of 24 July 2017. On 29 November 2017, the FCA issued a statement of objections to four asset management firms: Artemis Investment Management LLP, Hargreave Hale Ltd, Newton Investment Management Limited, and River & Mercantile Asset Management LLP. The FCA alleges that these firms shared their plans (including intended pricing) for one or more Initial Public Offerings (IPOs) and one other share placement when they should have been competing for the shares. The FCA noted that this is the first case the regulator is bringing using its competition enforcement powers. The FCA will make a final decision as to whether the firms have infringed competition law after considering the firms’ responses to the statement of objections. The FCA also recently referred investment consultancy services to the Competitions and Markets Authority (CMA) for a full investigation, following finalisation of the FCA’s Asset Management Market Study.

Given that there are only a couple of open investigations, we do not expect a large number of competition-related enforcement outcomes in the near term. However, should the FCA find any breaches of competition law, the penalties could be substantial—as much as 10% of a company’s worldwide turnover.

In the sections that follow, we highlight some additional considerations with regards to the outlook for fines against firms and individuals, respectively.

**Outlook for Fines Against Firms**

While fine activity against firms appears to have recently picked up in intensity after the six months ending 30 September 2017 (during which time there were no such fines), we may not see a return to what Mr Steward recently referred to as the “halcyon years” (for example, 2014/15, where fines against firms exceeded £1.4 billion). Many of these fines were agreed upon by firms at an early stage to close the investigation, with no associated enforcement action taken against senior managers. In a January 2017 speech, Mr Steward explained that implementation of the Senior Managers and Certification Regime (SM&CR) is creating a “different dynamic” that may have implications for the level of fines against firms. In particular, he noted that now that the SM&CR is in place, “firms may well be reluctant to spend such high sums to resolve investigations where those resolutions do not also resolve cases against senior managers who may also be in our cross-hairs”.

Also, as previously noted, the FCA has expressed its willingness to use the full range of its powers against firms, using means other than fines where considered appropriate. The FCA has pointed to its action against Tesco for market abuse—i.e., requiring a redress scheme while not imposing any fine beyond that already imposed by the SFO—as an example of such a situation. It remains to be seen how these developments will affect the level of fine activity against firms going forward.
Outlook for Fines Against Individuals

The FCA considers the implementation of the SM&CR to be “central to promoting a culture of accountability”\(^92\). Now that the SM&CR is firmly in place (and, in fact, set to expand), we may see increased enforcement activity against individuals. Since March 2016, the SM&CR has been applied to banks, building societies, credit unions, and PRA-designated investment firms. In July 2017, the FCA published a consultation paper proposing to apply the Core regime, consisting of three elements, to all financial services firms regulated by the FCA and their employees.\(^93\)

Under the first element, the Senior Managers Regime, senior managers will need to be approved by the FCA before starting their role. Each senior manager will also need to have a document detailing their areas of responsibility. The second element, the Certification Regime, will apply to those who are not senior managers, but who nonetheless can have a substantial impact on customers, markets, or the firm. Under this regime, firms are required to check and certify at least once a year that these employees are suitable to do their job. Finally, the third element, the Conduct Rules, will apply to almost every person working in financial services and will include rules such as “acting with integrity” and “treating customers fairly.”\(^94\)

Proposals for the insurance sector were published in a separate consultation paper.\(^95\) In December 2017, the FCA published consultation papers, which discuss how the regulator plans to transition additional firms and their senior staff over to the SM&CR.\(^96\) Following consultation, the FCA plans to publish a Policy Statement in summer 2018 with final rules covering the extension of the SM&CR.

As we noted above, the FCA’s “evolving approach” to investigation has resulted in a substantial increase in the number of investigations opened by the regulator. Approximately 66% of the FCA’s current enforcement caseload is comprised of investigations into individuals, which could signal increased enforcement actions.\(^97\) These cases may, however, take some time to resolve as individuals tend to contest enforcement actions more often than firms.\(^98\) Effective 1 March 2017, the FCA’s enforcement process was changed such that the Regulatory Decisions Committee (RDC) will now receive partly contested cases, where firms or individuals under investigation may agree on certain elements of a case while contesting others. The RDC is expecting the SM&CR to increase the number of cases that it sees.\(^99\)

NERA will continue to monitor and analyse these developments as they unfold.
Notes

1 Ms McHugh is an Associate Director at NERA Economic Consulting. The author would like to thank Robert Patton for valuable feedback on earlier drafts, and Trang Nguyen, George Moschopoulos, Trudy Pham, and Ashe Meno-Kanyi for research assistance.

2 On 1 April 2013, the Financial Services Act 2012 came into force, and the FCA superseded the FSA as financial enforcement regulator. In this paper, unless indicated otherwise, we use “FCA”, “the Authority”, or “the regulator” to refer to both the FSA and the FCA collectively. Unless otherwise indicated, information presented in this paper relating to fines is taken from NERA’s database of final notices obtained from the FCA and FSA websites.


6 “Practical Implications of US Law on EU Practice”, speech by Mark Steward delivered on 19 January 2017 at the Practising Law Institute’s Annual Seminar.

7 As discussed further below, the Tesco fine was issued by the Serious Fraud Office (SFO) in connection with its deferred prosecution agreement (DPA) with Tesco Stores Limited in a parallel investigation to that conducted by the FCA. The FCA and the SFO were investigating substantially similar conduct. Given the circumstances (including the SFO’s substantial penalty) the FCA decided not to issue a further fine against Tesco. We include the SFO’s fine of £129.0 million in our analyses (i.e., we effectively treat the fine as an FCA fine for the purposes of this report).


15 Ibid.

16 Ibid.


23 FCA takes over regulation of consumer credit firms—research shows 9m people are in serious debt and 1.8m in denial, Financial Conduct Authority, 1 April 2014, available at https://www.fca.org.uk/news/press-releases/fca-takes-over-regulation-consumer-credit-firms-research-shows-9m-people-are.


26 In 2011/12, the FCA imposed a fine of £6.1 million on Mr Carrimjee’s client, Rameshkumar Goenka, a Dubai-based private investor who used layering to manipulate the prices of global depository receipts linked to baskets of Russian companies and Indian securities. See Table 4.
29 Ibid.
35 Ibid, para. 2.3.
39 Ibid.
41 Ibid.
45 Caroline Binham, “Former BlackRock manager pleads guilty to insider trading”, Financial Times, 2 November 2016, available at https://www.ft.com/content/a75616e6-a0e5-11e6-891e-abe238de8e2.
47 Allegations were dropped against a third man involved in the investigation, Surinder Pal Singh Sappal. Caroline Binham, “FCA charges three with insider dealing in Logica shares”, Financial Times, 29 April 2015, available at https://www.ft.com/content/2d7659e0-ee66-11e4-98f9-00144feab7de.
52 Ibid.
57 Ibid.
58 Figures exclude Threshold Conditions Team cases.
59 “Our investigations – the evolving approach”, speech by Jamie Syrmington, 15 June 2017.
60 Figures exclude Threshold Conditions Team cases.


65. Ibid, p. 29.


71. Ibid.


80. Ibid, p. 41.


85. Ibid.


89. Ibid.

90. Ibid.


94. Ibid, Part 1, Section 1.12, p. 4.


About NERA

NERA Economic Consulting (www.nera.com) is a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges. For over half a century, NERA’s economists have been creating strategies, studies, reports, expert testimony, and policy recommendations for government authorities and the world’s leading law firms and corporations. We bring academic rigor, objectivity, and real world industry experience to bear on issues arising from competition, regulation, public policy, strategy, finance, and litigation.

NERA’s clients value our ability to apply and communicate state-of-the-art approaches clearly and convincingly, our commitment to deliver unbiased findings, and our reputation for quality and independence. Our clients rely on the integrity and skills of our unparalleled team of economists and other experts backed by the resources and reliability of one of the world’s largest economic consultancies. With its main office in New York City, NERA serves clients from more than 25 offices across North America, Europe, and Asia Pacific.

Contact
For further information and questions, please contact the author:

Erin B. McHugh, CFA
Associate Director
London: +44 20 7659 8736
New York City: +1 212 345 2990
erin.mchugh@nera.com

To receive publications, news, and insights from NERA, please visit www.nera.com/subscribe.

The opinions expressed herein do not necessarily represent the views of NERA Economic Consulting or any other NERA consultant.