

Financial Services Regulatory Alert

October 26, 2016

FCA Publishes "New" Mission Statement

On 26 October 2016, the FCA published a Mission Statement titled "Our Future Mission". The aim of the publication is to "establish a set of guiding principles" that explain how the FCA pursues its strategic and operational objectives and decides on its priorities and the tools used to deliver them. Although not a formal consultation paper, the FCA has sought comments on the Mission Statement by 26 January 2017. It is anticipated that it will use the Mission Statement as guidance in its next Business Plan.

The FCA Mission Statement

Ensuring that markets function well

The FCA accepts that it is not possible to create markets and firms that never fail. It plans to ensure that it applies a combination of forward-looking judgement in Supervision and backward-looking judgement in Enforcement where rules have been breached. When failures occur, they should be orderly and not undermine the FCA's statutory objectives. The FCA's preference is to use its competition policy tools where its actions will improve functioning of markets as a whole.

What the FCA regulates

The FCA observes that many of the problems in the market from 2008 onward have been caused by regulated firms acting outside the regulatory perimeter (e.g., FX, LIBOR). The FCA has the power to intervene in these activities, but will prioritise intervention outside the perimeter when it believes its objectives are threatened (i.e., where the unregulated activity is illegal or fraudulent or has the potential to undermine confidence in the UK financial system; calls into question to suitability of a firm; or is closely linked to, or may affect, a regulated activity).

Financial conduct regulation and other areas of public policy

The FCA notes that some factors may impact consumers, but lie outside its regulatory remit. It will establish where it should use financial conduct regulation to address these issues and where it should leave matters to be resolved by public policy-making.

Protecting consumers

The FCA is focussed on "ensuring the appropriate degree of protection for consumers". What is appropriate protection will depend on both the capability of the consumer and complexity of the product or service.

Consumer redress

The FCA believes it has a role (with the FOS and the FSCS) to ensure that consumers can receive redress through cheaper and quicker routes than through the courts. In deciding whether redress should be effected, it will consider:

- how quickly and urgently the redress is needed
- the number of consumers affected
- if the activity that led to the harm occurs inside or outside the regulatory perimeters.

Vulnerable customers

The FCA intends to give some consumer groups in some markets higher levels of protection than others and will keep its view of who is perceived as “vulnerable” under review.

Defining harm

In assessing harm, the FCA will consider the impact it has, either in terms of the numbers affected or the severity of the harm likely to be caused. The FCA will look at the cause of the harm, as well as its impact, and use its intervention framework to decide the most proportionate and effective use of tools to tackle it. This could range from direct action with one firm to a marketwide approach.

Transparency and disclosure

The FCA believes it can play a greater role in helping consumers access the right services for their needs by influencing how they make decisions. This can include changing the way firms present choices to consumers. The FCA will consider restrictions on a market where it feels that behavioural “nudges” and other ways of presenting consumers with information are not working, but has said that it will use some measures cautiously, since it does not wish to limit choices for consumers or innovation in the market.

Intervention to stop potential harm

In deciding whether to intervene, the FCA will consider:

- whether solving the problem would help meet its objectives
- whether using the powers would address the problem effectively or whether intervention by another authority would be more effective
- whether the activity in which the FCA is intervening has a broader social benefit, and how that may affect that provision
- what degree of consumer protection and responsibility is appropriate in that market.

It will seek to be more transparent about the interventions it makes and decides not to make.

Market design

Part of the FCA's standard-setting involves influencing the conditions for competition to work well. It uses market studies and can also use its powers under the Competition Act to take action for breaches of competition law.

Supervising firms

The FCA emphasises that, while it sets the standards by which financial services firms operate, it is not a substitute for firm governance. Firms, particularly through the Senior Managers and Certification Regime, are expected to develop a culture of responsibility to identify harm developing from behaviour and take

steps to address this risk. When firms do fail, the FCA intends to ensure that the firms exit the market in an orderly way, and disruption and harm to consumers is minimised.

Enforcement

The FCA continues to approach enforcement focusing on deterrence, but it has also the aim of underlining the value of the rule that may have been breached and building market and public confidence that wrongdoing will be identified and dealt with. In cases where a formal investigation and public sanction does not emerge despite a rule breach, the FCA has indicated that it will work with firms to agree on lessons learned and ways forward. It intends to review its use of private warnings.

Measuring what the FCA does

The FCA will assess its performance by:

- measuring operational efficiency using a value-for-money framework
- measuring the impact of policy interventions
- measuring the outcomes in markets as a whole.

Conclusion

Although this is, no doubt, a well-intentioned document, it is questionable how much real impact it makes for those operating in the market or for consumers, or indeed for the regulator itself. Most of the material set out in the Mission Statement has been said in one way or another in previous FCA publications or FCA guidance. It is curious that the FCA, having operated since 2013, feels it must now articulate its mission.

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