

## FCA Releases Three-Year Strategy and Business Plan

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On 7 April 2022 the Financial Conduct Authority (FCA) released a three-year strategy for 2022-2025<sup>1</sup> (the “Strategy”), setting out how the FCA aims to improve outcomes for UK consumers and markets. This was released alongside the FCA’s 2022/2023 Business Plan<sup>2</sup> (the “Business Plan”), which sets out the work the FCA will undertake over the next 12 months in support of its Strategy.

The Business Plan and Strategy reflect a shift from sector based planning by the FCA; with the regulator instead opting for a more flexible, cross-sector and outcomes based approach (with its “topline outcomes” being “fair value,” “suitability and treatment,” “confidence” and “access”). Therefore, rather than looking at specific sectors, the Business Plan identifies three broad areas it will focus on in order to develop these outcomes. These areas are:

1. Reducing and preventing serious harm to consumers and markets.
2. Setting and testing higher standards for firms.
3. Promoting competition and positive change.

This article looks at some of the more immediate implications of the FCA’s plans to grow in these areas under the Business Plan and Strategy, as well as how they might shape the FCA and its role as a regulator in the long term.

### Data-driven regulation

The geopolitical instability and volatility of the financial markets in recent years has led the FCA to recognise that it must overhaul its approach to and use of data. The markets overseen by the FCA are changing rapidly, and it will naturally be difficult for the FCA to keep pace with these changes if it doesn’t have in place the necessary data gathering and analytics infrastructure.

As is well established, market volatility can pose a substantial risk to financial services firms. Whilst better data alone is unlikely to be enough for the FCA to insulate firms from the risks posed by this volatility, improving the quality of its data and analytics will allow the FCA to respond faster and mitigate the harm to consumers more effectively where firms do fail.

### Contact Information

**If you have any questions concerning this alert, please contact:**

**Helen Marshall**

Partner

[helen.marshall@akingump.com](mailto:helen.marshall@akingump.com)

London

+44 20.7661.5378

**Ezra Zahabi**

Partner

[ezra.zahabi@akingump.com](mailto:ezra.zahabi@akingump.com)

London

+44 20.7661.5367

**Joe Hewton**

Counsel

[joe.hewton@akingump.com](mailto:joe.hewton@akingump.com)

London

+44 20.7012.9624

*The contribution of Jordan de la Prida is gratefully acknowledged.*

Consumers will also benefit from access to improved data. The Strategy identifies that in a world where the Internet is making financial services more accessible than ever, consumers are often exposed to adverts that are unclear, unfair, misleading or illegal when looking to engage in financial activity. A lack of good information can therefore pose a barrier to consumers making good financial decisions.

As a result, the FCA is planning to improve consumer access to data, such as through including information about firms' permissions to approve financial promotions on the FCA register (although this is subject to certain legislative changes taking place). The FCA also aims to ensure that consumers are able to get the necessary information on the green credentials of their investments, through continued development of an environmental, social and governance (ESG) labelling regime and ecosystem for investment products.

As part of this new, more data driven approach, the FCA will be making use of 'Data Dashboards' that allow it to proactively identify and take steps to mitigate issues before they arise. Other initiatives set out under the Business Plan include the Market Surveillance Refresh project and the Markets Data Processor Refresh project (which will allow the FCA to improve its alerts, triage and enquiry analytics in relation to market abuse) and to develop machine-readable primary market data through the FCA's national storage mechanism.

### **Faster detection and enforcement**

The enhanced data and analytics infrastructure being developed under the Business Plan and Strategy are intended to support the FCA in detecting and taking more immediate enforcement action against "problem firms," financial crime and market abuse. There is a particular focus on automating certain FCA processes to improve efficiency.

For example, as part of its drive towards automation, the FCA is taking steps to complete the next phase of the Cancellation of Firm Authorisation Project, which seeks to further automate the process of cancelling a firm's authorisation. It is hoped that improved data and analytics will also make the FCA more efficient at identifying and stopping financial criminals before they receive authorisation through the regulatory gateway, as well as tracking their activity on a larger scale.

In addition, the FCA is seeking to automate its approach to identifying Threshold Conditions breaches, allowing potential harm to markets and consumers to be quickly spotted through identifying firms that are unlikely to operate appropriately without material intervention from the FCA. Cryptoasset firms have been identified as an area where particularly rapid intervention by the FCA may be necessary, due to the unique risks associated with such firms.

There will also be an increased emphasis on monitoring and enforcement in relation to the effective implementation of ESG disclosures by firms and listed companies and their management of the impacts, risks and opportunities arising from ESG issues. Specifically, the FCA is currently developing measures to monitor the quality of sustainability disclosures made by firms and the level of misleading marketing of ESG products. Enforcement action could then be taken against firms where the quality of the ESG information they publish is not of an appropriate standard.

Overall, the Business Plan and Strategy make clear that the FCA intends to utilise better data to work on applying its regulatory tools and enforcement actions more quickly and assertively, including by making better use of consumer protections legislation. While this should in principle be a good thing in that it increases efficiency, there are concerns in the industry that this could see a return to the FCA's "act now, ask questions later" approach.

## Enhanced collaboration

The FCA is far from immune to the global instability that continues to rock financial markets, and, as already discussed, the FCA has identified that it must adapt in order to equip itself to deal with the new issues and challenges posed by this instability. The Business Plan identifies that enhancing collaboration with its partners is one way for the FCA to better prepare itself for these challenges.

The FCA is planning to enhance its collaboration with a wide range of sectors and markets, with a particular focus on increased international collaboration. This is because the FCA has recognised that post-Brexit, enhancing its international relationships and contributing to the development of international standards has become more important than ever.

There will also be an increased focus on collaborating with bodies within the United Kingdom. The Business Plan notes that the FCA is working with the Treasury on various initiatives, including developing regimes that will make it easier for overseas firms to access UK markets. In addition, the FCA is keen to expand collaboration with its regulatory partners through embedding the wider implications framework<sup>3</sup> into its processes. Plans for enhanced collaboration with the National Economic Crime Centre and Bank of England are also mentioned, as well as ongoing projects with the UK government to support the growth of green finance.

## Increased consumer protection

The Strategy identifies that the FCA believes firms need to do more to make financial services accessible for consumers. In particular, the FCA believes that expectations relating to the standard of care and customer service firms give to consumers should be clearer and of a higher standard. As a result, during the course of 2022-2023, the FCA will be introducing a new "Consumer Duty" that will be integrated into all aspects of its regulatory lifecycle.

Under the new Consumer Duty, the FCA will expect firms to maintain higher standards in relation to consumers, and will be adapting its supervisory strategies and priorities to reflect this. The FCA will be seeking to work closely with firms, trade bodies and consumer organisations to implement this change, and is expected to publish a feedback statement on the proposed Consumer Duty by the end of July 2022.

The FCA is also seeking to improve the redress available to consumers from failed firms. Whilst redress is sometimes available from other sources (such as the Financial Services Compensation Scheme (FSCS)), the FCA is seeking to improve the ability of consumers to obtain redress from the firms that owe them redress directly.

## What next?

Notwithstanding the talk of enhanced collaboration with its partners, the uncertain financial landscape has also provided the FCA with an opportunity to enhance its own standing as a regulator. The Strategy notes that post-Brexit, the UK has gained better flexibility in terms of its ability to alter the statutory and regulatory framework for financial services. This greater flexibility has led to the Treasury making a proposal for the FCA to gain enhanced powers to set rules and regulate.

The broader scope of the Business Plan and Strategy compared to previous years suggests the FCA shares the Treasury's ambition to expand the scope of its role as a regulator. This is illustrated through the fact the FCA is currently assisting the Treasury with preparing the legislation needed to expand its regulatory powers. A new regulatory framework is also being developed, with certain firm-facing requirements currently being transferred from legislation into the FCA Handbook.

The FCA's stated commitment to being bolder in making use of rapid supervisory interventions and applying the full range of its regulatory powers more assertively suggests that it is continuing to test the limits of its existing role. This aligns with comments made by FCA chief executive Nikhil Rathi last year, where he stated that the FCA's "instinct will be to test [its] powers to the limit".<sup>4</sup>

However, bolder is not always better. If the FCA increasingly adopts an approach of acting without having conducted appropriate diligence, it will inevitably leave its decisions more open to challenge on public law grounds. An expansion of the FCA's remit at a time when markets are characterised by uncertainty may therefore not have the intended effect, as any ambiguity over its new role could ultimately lead to poorer outcomes for consumers and the markets. The FCA and the Treasury must therefore be careful to clearly delineate the limits of any expansion of its regulatory and supervisory powers, and to make sure firms have access to detailed information on how such an expansion may affect their operations.

## Key takeaways

The Business Plan and Strategy reflect the trend towards a widening of the FCA's powers, which continue to expand to meet the challenges posed by a wide range of issues such as geopolitical instability, climate change and rapidly evolving financial technologies such as cryptocurrency.

To meet these challenges, the FCA will need better data, which is why a key pillar of its Business Plan and Strategy is expanding, and improving, upon the data and analytics the FCA has at its disposal. Becoming more data-driven will improve the FCA's detection and enforcement capabilities, whilst also making it more flexible by enabling consideration of a wider range of factors. On the other hand, this new data may encourage the FCA to undertake novel actions against the firms it monitors, adding further uncertainty to markets that are already unpredictable.

Improving collaboration with its partners both at the local and global level is another important element of the FCA's strategy to meet the challenges it is currently facing. Such collaboration is obviously important from an information sharing perspective, but also in terms of maintaining the reputation of UK financial markets on the global stage.

It will be particularly interesting to monitor the ongoing collaboration between the Treasury and the FCA. This collaboration is taking place with a view to developing a

new regulatory framework that will enhance the powers of the FCA, and has the potential to create further confusion for markets that are already mired in uncertainty.

<sup>1</sup> <https://www.fca.org.uk/publication/corporate/our-strategy-2022-25.pdf>.

<sup>2</sup> <https://www.fca.org.uk/publications/business-plans/2022-23>

<sup>3</sup> <https://www.financial-ombudsman.org.uk/who-we-are/work-other-organisations/wider-implications-framework>.

<sup>4</sup> <https://www.fca.org.uk/news/speeches/transforming-forward-looking-proactive-regulator>.

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