

# Regulatory Focus

Issue 126

In this edition of **Regulatory Focus**, the experts in **Duff & Phelps' UK Compliance and Regulatory Consulting team**, provide a detailed synopsis of the latest news and publications issued by the **Financial Conduct Authority** during June 2019.

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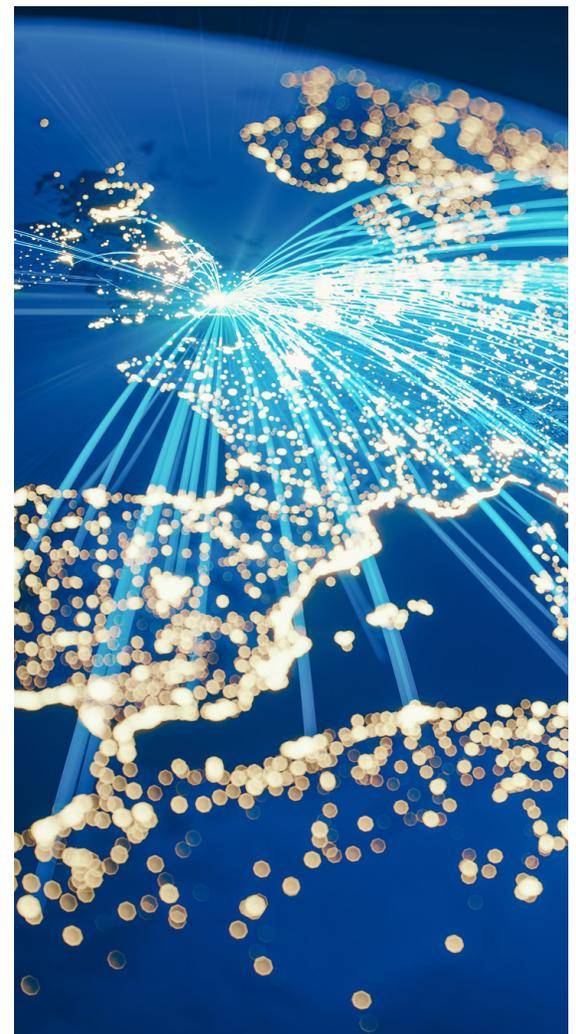
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# Senior Managers and Certification Regime Toolkit

With less than five months to go until SM&CR is implemented on 9th December 2019. Firms should be preparing for SM&CR and considering the impact on their firm and on individuals. SM&CR will affect every FCA solo regulated firm.

Duff & Phelps is working with a number of firms on their SM&CR projects. [Our services](#) include the provision of an SM&CR toolkit that will enable your firm to:

- Manage your **SM&CR implementation** project planning.
- Undertake a mapping exercise from the current Approved Persons Regime to the new SM&CR Regime
- Prepare **Statements of Responsibilities**
- Implement new SM&CR procedures, including **New Joiner and Leaver Procedures** for Senior Managers and Certified Individuals
- Conduct **Fit and Proper Assessments**
- Implement the **Certification process**
- Provide guidance on relevant areas, such as the Duty of Responsibility for Senior Managers

Our [Toolkit](#) covers all the requirements of SM&CR as well as practical guidance on how to apply SM&CR to your business. It is designed for implementation and ongoing business as usual after 9th December.

Please let us know if you would like more information about our SM&CR toolkit or would like to discuss further how we can help. We are also happy to provide a demonstration of the toolkit, so you can see how it would work within your firm.

For further information please email [jane.stokes@duffandphelps.com](mailto:jane.stokes@duffandphelps.com)



## FCA's update on the suspension of a large fund and its response to MP Nicky Morgan asking for an update

The FCA provided an update on 5th June following the announcement that trading in a large fund ("the fund") had been suspended. The statement provides additional information about the purpose of the suspension, the FCA's role and the decision to list some of the Funds' assets in Guernsey. In addition, on 18th June FCA Chief Executive, Andrew Bailey wrote to Rt. Hon Nicky Morgan MP, Chair of the Treasury Committee. This was in response to Mrs. Morgan's letter asking for an update on the suspension of the fund.

To view the letter click [here](#)

## ESMA updates Q&As on MiFID II and MiFIR investor protection and intermediaries

ESMA has updated its Questions and Answers regarding the implementation of investor protection topics under MiFID II/ MiFIR.

The Q&As on MiFID II and MiFIR investor protection and intermediaries' topics provide a new answer on the classification of financial instruments under RTS 27, if ESMA has not published any calibrated market sizes.

ESMA will continue to develop the Q&A document on investor protection topics under MiFID II and MiFIR by:

- adding supplementary Q&A to the topics already covered; and
- introducing new sections for other MiFID II investor protection areas not yet addressed in the Q&A document.

The latest version of the Q&As can be found [here](#).



## FCA publishes its first annual report on the perimeter

19 June

The FCA published its first [annual perimeter report](#). The FCA perimeter determines which firms require authorisation and the level of protection that can be expected by consumers, in relation to the financial services and products they purchase. The report sets out:

- what the FCA does and doesn't regulate;
- the challenges presented by the perimeter and the actions which the FCA is taking to overcome them;
- what the perimeter means for consumers;
- any issues with the perimeter which might require legislative or other changes.

Andrew Bailey, Chief Executive of the FCA, stated that the FCA will publish its report on annual basis, in order to highlight the complications and issues around the perimeter. This will be important as “the boundary between which firms and activities do or do not require regulation” continues to be tested.

To find out more click [here](#).



# FCA publishes Decision Notices concerning a listed company, its CEO and Finance Director

3 June

The FCA published Decision Notices concerning a listed Company (“the Company”), its Chief Executive Officer, and its Finance Director.

The Company’s financial performance deteriorated over the course of 2015 due to various issues in its group. In the FCA’s view, there were serious procedures, systems and controls failings within the Company which meant it did not monitor the full impact of these issues on its expected financial performance for the year ended 31 December 2015, compared to market expectations.

The FCA considered that the Company:

- breached Listing Principle 1, which requires a listed company to take reasonable steps to establish adequate procedures, systems and controls to enable it to comply with its obligations;
- failed to disclose to the market shortly after 6 December 2015 that there was a material change in its actual and expected performance for the year compared to market expectations, breaching Disclosure Rules and Transparency Rules (“DTR”) 2.2.1R. This meant relevant information was not released to the market as soon as it should have been, in breach of Premium Listing Principle 6;

- breached Listing Principle 2 between 29 February 2016 and 16 August 2016. This principle requires a listed company to deal with the FCA in an open and co-operative manner. The FCA considers the information that the Company provided in response to the FCA’s requests (on two separate occasions) for the actual forecasting procedures were materially different to the actual procedures followed at the relevant times in 2015. This was done without any explanation.

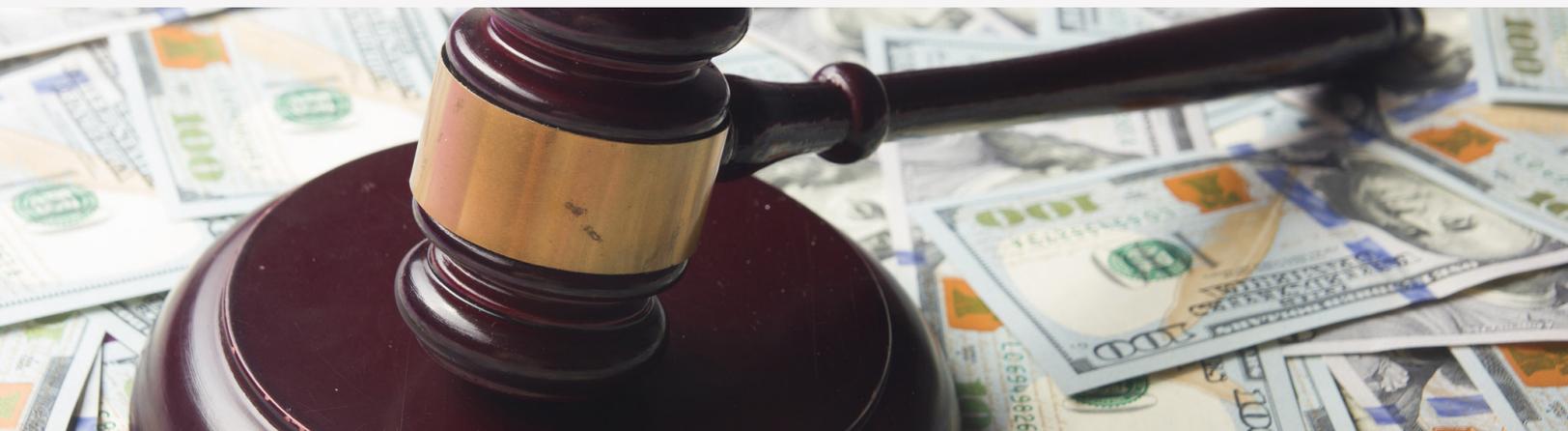
The FCA therefore imposed a fine of £411,000 on the Company for breaching the FCA’s Listing Principles and DTR.

The FCA also considers that the CEO was knowingly concerned in the company’s breaches and acted recklessly in respect of the Company’s breaches of Listing Principle 1, DTR 2.2.1R and Premium Listing Principle 6. As a result, the CEO has been fined £214,300,

In the FCA’s view, the Finance Director was knowingly concerned in the Company’s breach of Listing Principle 2, as he was responsible for drafting the correspondence with the Authority and was aware that the information being provided was not a contemporaneous record of events. The Finance Director was fined £40,200.

The company announced on 31 May 2019 that the Company and the two directors are considering whether to refer the FCA’s decision to the Upper Tribunal.

To read the full article click [here](#).



# FCA publishes final report in relation to a high-profile bank investigation

13 June

The FCA issued its final report in relation to a major bank's ("the Bank") treatment of small and medium-sized enterprises (SMEs) in financial distress, between 2008 and 2013, which were transferred to its specialist team with the intention of restoring their financial health.

In 2014, a review was carried out by independent experts into the policies and practices of the bank which found "serious and widespread problems" in the practices, processes and policies of this specialist team. The FCA published a 'final summary' of this report in late 2017 and in July 2018 provided an update stating that, owing to the concerns identified in the independent review, it would launch its own investigation into whether action could be taken against senior management or the Bank itself.

Following the investigation, the FCA concluded that whilst the Bank's specialist team had fallen short of the high standards expected by its clients, the commercial lending business was predominantly unregulated, which limited the FCA's powers to take punitive measures.

Despite identifying that customers had been treated unfairly in some circumstances, there was no evidence that the Bank had deceptively transferred healthy companies to its specialist team to profit from selling them.

Andrew Bailey, Chief Executive of the FCA, highlighted two "important changes" since these events:

- The Senior Managers & Certification Regime (SM&CR), which came into force in 2016 and holds senior managers accountable for regulated & unregulated activity; and the expansion of the scope of the Financial Ombudsman Service (FOS), to include more SMEs and to increase compensation limits.

To read the FCA's final report in full, please click [here](#).



## FCA fines Bank for failing to report suspicions of fraud

The FCA has fined a bank (“the Bank”) £45.5 million for failures to disclose information about its suspicions that fraud may have occurred at the Bank. Several financiers were jailed in 2017 for their part in the fraud.

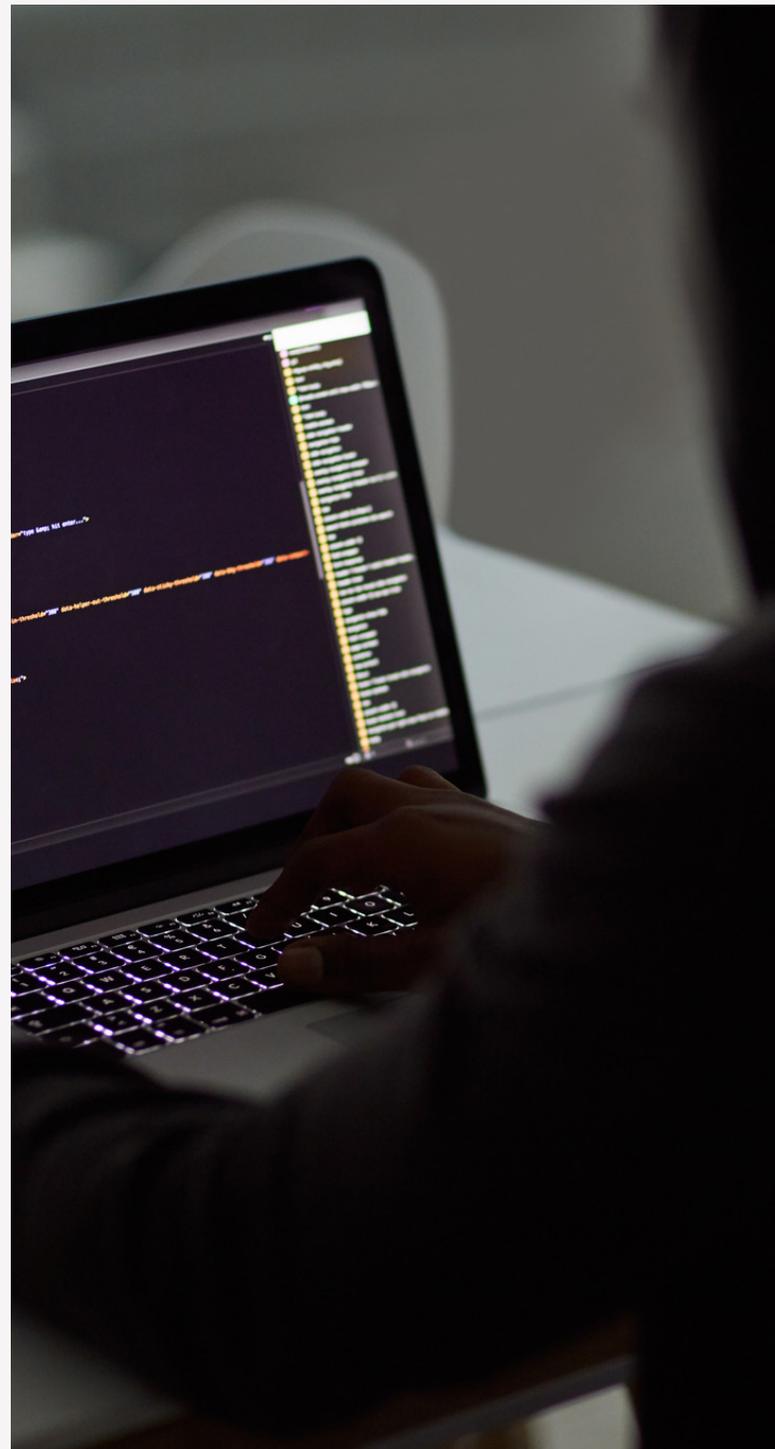
The Bank identified suspicious conduct in its Impaired Assets team in early 2007. The Director of the relevant team had been sanctioning limits and additional lending facilities beyond the scope of his authority which was undetected for at least three years. The Bank knew by May 2007 that the impact of these breaches would result in substantial losses.

Commercial lending is largely unregulated in the UK which meant that the activities of the Impaired Assets team were not subject to specific FSA rules. However, the Bank was required to be open and co-operative with the FSA, as the relevant regulator at the time. The FSA should have been notified of the Bank’s suspicions that a fraud may have been committed in May 2007.

The FCA noted that if the Bank had communicated its suspicions to the FSA in May 2007, as it should have done, the criminal misconduct could have been identified much earlier. The delay also risked prejudice to the criminal investigation conducted by the police.

The FCA also banned four individuals from working in the financial services industry for their role in the fraud at the Bank.

Full details of the FCA’s enforcement action are available [here](#).



## Two individuals found guilty of insider dealing and sentenced to 3 years imprisonment

27 June

A senior compliance officer of an investment bank used their position to identify inside information and pass this to a family friend, an experienced day trader of financial securities.

The former compliance officer's role covered investment banking, resulting in them having access to price-sensitive information about potential mergers and acquisitions the Firm was working on.

This information was passed to the former compliance officer's friend who used it to deal in Contracts for Difference (CFDs) in anticipation of a press article or company announcement that would cause a rise in share price. It is estimated that a profit of approximately £1.4 million was made through these trades.

The individuals attempted to conceal their actions by communicating using several unregistered pay-as-you-go mobile phones, changing and swapping SIM cards regularly. When interviewed after their arrest, the former compliance officer lied to the FCA and denied using unregistered mobile phones.

In sentencing, the judge presiding over the case noted that:

"there is no question that both of your actions were deliberate, dishonest and committed over a period of a year..."

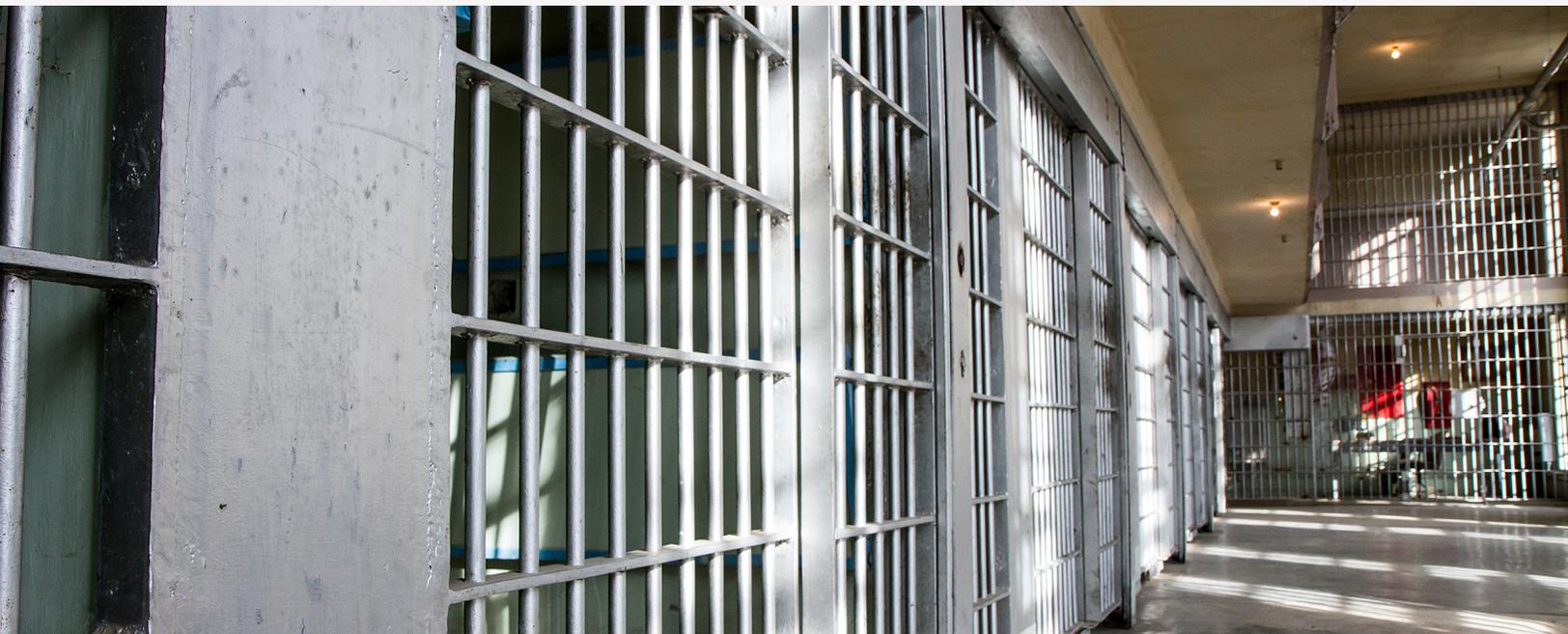
In its press release, Mark Steward, Executive Director of Enforcement and Market Oversight at the FCA, noted:

"Both defendants were well aware they were committing serious criminal offences and engaged in elaborate schemes and lies to disguise what they were doing. Going on to say that this was insider dealing at its most venal."

He also highlighted the help the FCA received from the National Crime Agency (NCA) in this case, publicly thanking the agency for its significant assistance.

Confiscation proceedings will also be pursued against both defendants.

The FCA's press release on the outcome of the trial can be found [here](#).



## The Financial Conduct Authority (FCA) and the Dutch Authority for the Financial Markets (AFM) have agreed to a closer working relationship.

### 5 June

A joint agreement was signed formalising the partnership between the FCA and the AFM. The agreement set out that both regulators have agreed to work together more closely to protect and enhance the integrity and stability of the financial systems in both countries.

In its press release about the agreement, the FCA highlighted the importance of close cooperation and information sharing between the FCA and the AFM. The FCA also said that this relationship will involve sharing best practice approaches and potentially involve secondments between the regulators as well as training opportunities.

Andrew Bailey, Chief Executive of the FCA, noted that close cooperation and information sharing between the two regulators is, *“vital to developing global markets, ensuring effective oversight of firms and capital markets, and allowing both to more effectively fulfil their roles as regulators.”*

Merel van Vroonhoven, Chair of the AFM, outlined that closer cooperation with the FCA will put the AFM in, *“a better position to protect investors and capital markets.”*

The FCA also stated that this joint agreement will apply in both a Deal and a No Deal Scenario and will accompany the [Multilateral Memorandum of Understanding](#) between the FCA and EU regulators announced in February 2019.

To read the full article, click [here](#)



## Diversity: delivering excellence for the future

6 June

Nausicaa Delfas, Executive Director of International delivered a speech at the Women in Finance 2019 event on diversity.

Ms. Delfas believed that progress had been made on gender diversity as there were now more women in senior positions in the financial services industry. This was due to a variety of factors such as the Government's Women in Finance Charter, the focus on the gender pay gap as well as changing attitudes over the past three decades. However, there was further work to be done as women only hold around 17% of approved positions and 25% of Senior Management functions.

Ms. Delfas explained the importance of diversity in developing excellence in the future. As the world of work rapidly evolves, it is important to develop talent through diversity to meet the challenges ahead. She also emphasised the importance of diversity in allowing all types of individuals to succeed regardless of their social background, gender, ethnicity or protected characteristics.

As a regulator, the FCA through its Brexit preparations, is working with the Government to ensure that the UK remains open for business and continues to attract a diverse range of talent so that London remained the pre-eminent global finance centre. The FCA is committed to having a diverse and inclusive culture and was one of the first groups to sign the Government's Women in Finance Charter, and this year, the FCA was named one of The Times Top 50 Employers for Women.

Ms. Delfas concluded that:

- Diversity is about delivering excellence, for business and for the UK as a whole.
- We are making progress, but there is further to go.
- We need to think carefully about how to deliver change in our organisations, taking account of how society and work is changing.

To see the full speech, please click [here](#)



## Regulatory co-operation between the UK and U.S.

12 June

Nausicca Delfas, FCA's Executive Director of International, spoke about UK/US regulatory co-operation and coherence at the British American Business Transatlantic Finance Forum in New York.

London and New York are the two largest financial centres in the world with around \$1.2 trillion of over-the-counter (OTC) interest rate derivatives, four-fifths of the world's total, written in the UK and the U.S. daily. The U.S. receives almost 20% of the UK's financial services exports, making it the UK's largest trading partner. More than a third of the FCA regulated non-EEA branches are from the U.S.

Ms. Delfas noted that the financial crisis highlighted the importance of regulatory co-operation which remains the case during this complex period for global policy making. However, this international consensus is being challenged by a less predictable geo-political environment. The U.S., EU and the UK have each engaged recently in significant exercises of financial regulatory self-evaluation. The U.S. has seen the development of the 'Core Principles reviews', the European Commission has issued a call for evidence on the impact of post crisis regulatory reform and the UK continues to prepare to leave the European Union on 31 October, which raises questions about the future of regulation.

In preparing for Brexit, the FCA has signed Memorandums of Understanding (MoU) with EU counterparts to ensure continuity of access to markets and the continuing delegation model in asset management. The FCA also recently amended its MoUs with the Securities and Exchange Commission and the Commodity Futures Trading Commission and agreed to roll over substituted compliance and equivalence decisions to ensure continuity post Brexit. The FCA has continued to work with the U.S. on plans to transition away from LIBOR to alternative risk-free rates. In May, it announced the launch of the Financial Innovation Partnership between the UK and U.S. to foster regulatory cooperation, to identify innovative trends and to decide on how best to supervise the fintech sector.

Ms. Delfas concluded by noting that the U.S. and UK markets are vibrant, interconnected, innovative and drive prosperity. The FCA will continue to champion high standards, international coherence and open markets and build on its relationships with both U.S. and EU regulators.

The full speech can be found [here](#).



## FCA and CSRC announce their support for the Shanghai-London Stock Connect scheme

17 June

The Financial Conduct Authority (FCA) and the China Securities Regulatory Commission (CSRC) have announced their approval of the Shanghai-London Stock Connect (the Stock Connect scheme), a new segment of the London Stock Exchange. The purpose of the Stock Connect is to enable:

- Companies with a premium listing in the UK to apply for admission to the Main Board of the Shanghai Stock Exchange; and
- Shanghai-listed Chinese companies to apply to be admitted to trading on a newly formed Shanghai Segment of the London Stock Exchange's Main Market.

The FCA and CSRC have published a Memorandum of Understanding (MoU) which sets out the basis for the two regulators to perform cross border supervisory and enforcement co-operation to combat cross-border market abuse and other serious misconduct.

Andrew Bailey, the Chief Executive of the FCA, said "This new scheme will deepen and strengthen connectivity between UK and China capital markets to the advantage of both countries. We both believe in the positive contribution regulators can make in international capital markets, and the new co-operation we're announcing today will be an important contributor to the success of the scheme."

For more information, click [here](#).

## FCA confirms recognition of the FX Global and UK Money Market Codes

26 June

After receiving consultation feedback, the FCA has confirmed that it is recognising the following voluntary market codes of best practice under its code's recognition scheme:

- **FX Global Code** – established to promote the integrity and effective functioning of the wholesale FX market, it is maintained by the Global Foreign Exchange Committee and sets global standards and principles in the foreign exchange market.
- **UK Money Markets Code** – established to set standards and best practice expected from participants in the deposit, repo and securities lending markets in the United Kingdom. The code is updated by the Money Markets Committee.

Last year the FCA established its code recognition scheme for the purpose of recognising industry codes for unregulated financial markets and activities. The FX Global Code and the UK Money Markets Code are the first codes to be recognised under the scheme.

Individuals subject to the Senior Managers and Certification Regime (SM&CR) must meet the requirements for market conduct for both regulated and unregulated financial activities. Conduct that follows the "FX" and "MM" codes will indicate that the individual in question is meeting their obligation to observe "proper standards of market conduct".

The implementation of the codes does not change the FCA's SM&CR rules, nor the way the FCA looks to supervise or enforce its SM&CR rules. Firms and Senior Managers will continue to have the expectation under SM&CR to train, monitor and, where necessary, discipline their staff in relation to the Individual Conduct Rules.

The FCA will not supervise firms or individuals directly under these codes in unregulated markets. However, the FCA does expect that all firms and individuals ensure they meet proper standards of market conduct by following the spirit and letter of code provisions.

For more information on the codes recognition process, please refer to the FCA's [recognised industry codes pages](#).

## OUR RECENT AWARDS

### BEST FINANCIAL SERVICES TAX PRACTICE

Tolley's Tax Awards 2019

### BEST COMPLIANCE CONSULTANCY

CTA intelligence Awards 2018

### ADVISORY AND CONSULTANCY: TAX

Drawdown Private Equity Services Awards 2018

### BEST ADVISORY FIRM – REGULATON AND COMPLIANCE

HFM Week 2018

### BEST GLOBAL CYBERSECURITY SERVICES PROVIDER

Hedgeweek Global Awards 2018

### BEST COMPLIANCE CONSULTING TEAM

Women in Compliance Awards 2017

### BEST GLOBAL REGULATORY ADVISORY FIRM

Hedgeweek Global Awards 2017

### EUROPEAN SERVICES - BEST CONSULTANCY FIRM

CTA Intelligence 2016

### BEST EUROPEAN OVERALL ADVISORY FIRM

HFM Week 2016

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