Gem Briefing Note

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GEM Compliance Consulting

# FSA change in structure

## Introduction

This has arisen primarily as a result of the issues and concerns regarding prudential supervision of the Banking industry during 2008 and 2009.

In June 2010, in a speech at the Mansion House, George Osborne, the Chancellor, clarified the position concerning the future of UK regulation.

In this speech he announced the abolition of the FSA and confirmed that regulation would be split going forward between the Bank of England and a new Consumer Protection Agency.

He confirmed that under the Bank of England, a new Financial Policy Committee ('FPC') will be set up to oversee marco-prudential regulation of financial services. A new regulatory body (part of the Bank of England) will also be set up called the Prudential Regulatory Authority ('PRA') which will be responsible for the implementation of the FPC's macro-prudential regulation and supervision of certain 'prudential risks' firms.

The PRA will work alongside a new independent consumer protection agency which will replace many of the functions of the FSA. This is currently called the Consumer Protection and Markets Authority ('CPMA''), which will be responsible for:

- the authorisation, enforcement and ongoing supervision (including prudential requirements) of all other firms not regulated by the PRA,
- supervision of Conduct of Business requirements for all authorised firms e.g. both those that it regulates itself, but also those regulated by the PRA in respect of prudential requirements.

A single agency will be set to deal with all aspects in relation to Financial Crime and Money Laundering.

## Timetable for change

HM Treasury issued a consultation paper in July 2010 summarising high level proposals to implement these changes and also inviting comments on a number of specific questions identified already. Consultation is due to end on 18 October 2010. The responses to this consultation will form views on draft financial services legislation to be put forward for consultation in early 2011 and to be considered by Parliament in its 2011 legislation schedules.

The Treasury itself remains responsible for determining what is regulated activity. However as part of this review process, it will review the powers, obligations and processes in the Financial Services and Markets Act 2000 ('FSMA') to identify what should be carried forward into new legislation on financial services regulation.

Any legislation changes will also have to take into account existing EU legislation including the Markets and Financial Instruments Directive ('Mifid'). It is also likely to have to consider future intended changes to global prudential requirements and likely proposals on EU supervision structures. It is likely to involve higher capital and liquidity requirements for certain 'prudential' risks firms.

The aim is to implement the change in regulatory structure by January 2013 although there may be certain transition arrangements to be considered. In advance of these changes, internal restructuring at the FSA is already scheduled to take place during the next few months and to be in place by early 2011 to take account of the intended changes.

## Prudential Regulatory Authority

This body will be responsible for the regulation of certain firms which are subject to 'significant prudential regulation' including banks, insurers, building societies and investment banks. This will include authorising new entities, variations in permissions, and approved persons applications (but only relation to 'prudential roles). It will set levies for being regulated by the PRA, but the collection of these levies is likely to fall to the CPMA.

## Consumer Protection and Markets Authority

This is currently a working title for this new agency. The CMPA will be responsible for the supervision of conduct of business requirements of all firms, including those regulated by the PRA. It will also be responsible for the prudential supervision of those firms not regulated by the PRA including IFA's, collective investment scheme operators, and investment managers. This will include authorisations, variations of permissions, enforcement and approved persons. Its role in relation to approved persons will also cover any approved persons of firms regulated by the PRA where the role approved relates to 'conduct of business' i.e. customer functions.

It will also be the body with oversight for the Financial Ombudsman Service, the Financial Services Compensation Scheme and the Consumer Financial Education Body. Specifically the consultation paper raises the issue as to whether there should still be one compensation scheme covering all types of firms or two separate schemes run by each regulator (thereby reducing cross subsidy levies).

There will also be a separate Market Enforcement Division of the CPMA which will be responsible for the supervision of entities within the overall market structure including Exchanges, but excluding settlement systems which will be regulated by the PRA due to the close links with the banking system.

## Other issues

The Treasury has confirmed that it is anticipated that the CPMA will adopt current supervisory practices of the FSA including in relation to the new intrusive supervision approach. It is also likely to adopt current activities in relation to the Retail Distribution Review, Mortgage Markets Review and Treating Customers Fairly.

Given the roles of the FPC, the PRA and also the CPMA, it is already recognised that there will have to be significant communication, co-operation and liaison between the three bodies to ensure that there is no regulatory overlap, duplication or gaps.

As part of the overall review of regulation, the issue regarding the separation of retail and investment banking activities would also be considered. No firm proposals have yet been put forward regarding the regulation of the Lloyds Market.

It is also recognised that in relation to consumer protection the Office of Fair Trading ('OFT') currently plays a role, specifically in relation to the regulation of activities covered by the Consumer Credit Act. However this can overlap with supervision of banking conduct of business which is now covered by FSA rules. Therefore the new CPMA may take over certain activities of the OFT in relation to the Consumer Credit Act.

Similarly, the FSA currently acts as the UK Listing Authority for public companies. The review of regulation will also consider how this responsibility will align in the new regulatory structure.

## Next steps

The intended changes will bring about a great detail of uncertainty in the structure of future regulation in the forthcoming months. As consultations on legislation and rules are issued, firms need to anticipate how the future changes will impact on them including whether they will have one regulator with the CPMA or have dual regulation with the PRA.

Gem Compliance can help you plan and implement accordingly on what is likely to be the biggest regulatory change since 2001 following the introduction of the FSA itself.