

# **FSA Annual International Seminar 2012**

## **Conduct Plenary Sessions**

**Tuesday 27 November**

**FSA International Regulators Seminar  
27-29 November 2012**

**Kerry Watt  
Manager, International  
Relations**

# FSA International Regulators Seminar



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- 1. Introduction**
  - 2. Seminar Overview**
  - 3. Regulatory Reform in the UK**
    - PRA/FCA
  - 4. The international Context**

# International Relations Team

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- **Kerry Watt – Manager/US**
- **Claire Seaman – Western Europe**
- **Nicholas Herbert-Young – EU Institutions, Central and Eastern Europe**
- **Rhys Gordon-Jones – Emerging Markets**
- **Martina Conlon – EU Monitoring**
- **Raul Elias – Information Gateways**
- **Nicola Wilson/Nicola Foy – Team Secretary**
- **Melanie Gan - Events**

# Seminar Overview



## Day One – Conduct Regulation – Journey to the FCA

- FCA Approach
- Authorisation
- Enforcement
- Policy
- Supervision
- International Approaches to Conduct Supervision
- Panel Discussion

## Day Two – Prudential Regulation – Ensuring Safety and Soundness

- PRA Approach
- Policy Priorities
- Macro-prudential Regulation
- Supervision
- The Global Agenda
- Insurance Policy
- Financial Crime and Anti Money Laundering

# The FSA



- **The FSA was established by the Financial Services and Markets Act (FSMA) in 2000 as an independent, unitary regulator.**
  
- **Four statutory objectives:**
  - market confidence
  - financial stability (added 2011)
  - consumer protection
  - the reduction of financial crime
  
- **The FSA:**
  - authorises
  - sets rules
  - supervises
  - enforces

# Reform of Regulatory Structure

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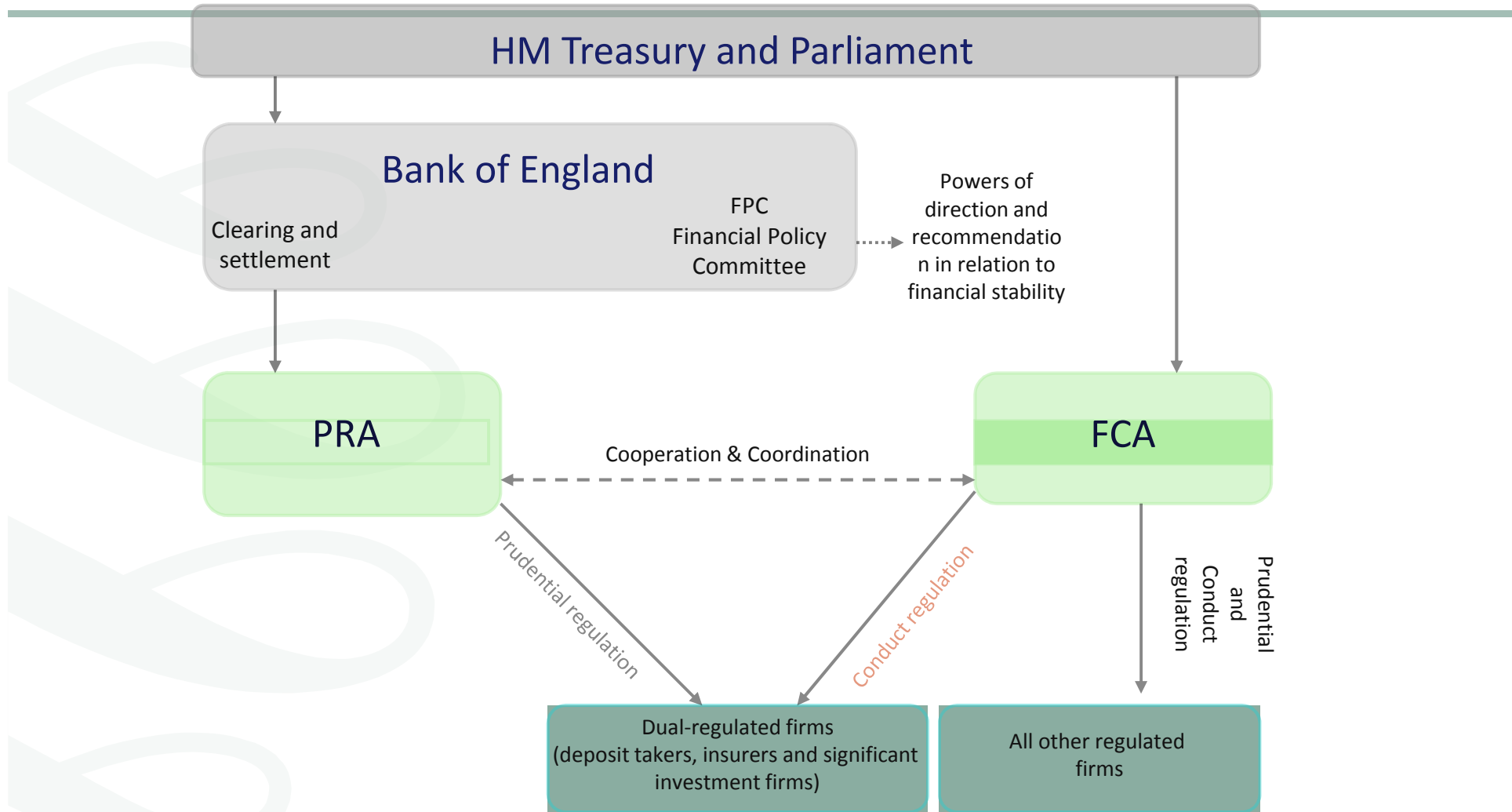
- **Rationale for reform:**

- Gap between macro (system) and micro (firm) prudential supervision
- Prudential and conduct regulation require different skills and cultures

- **Timing**

- Government aims to have the legislation passed by Xmas
- legal cutover in Q2
- FSA restructured into “Internal Twin Peaks”

# New Regulatory Structure





# Other elements



Financial  
**Ombudsman  
Service**



**the Money  
Advice Service<sup>®</sup>**

**OFFICE OF FAIR TRADING**

**The Pensions  
Regulator**

# Prudential Regulation Authority (PRA)



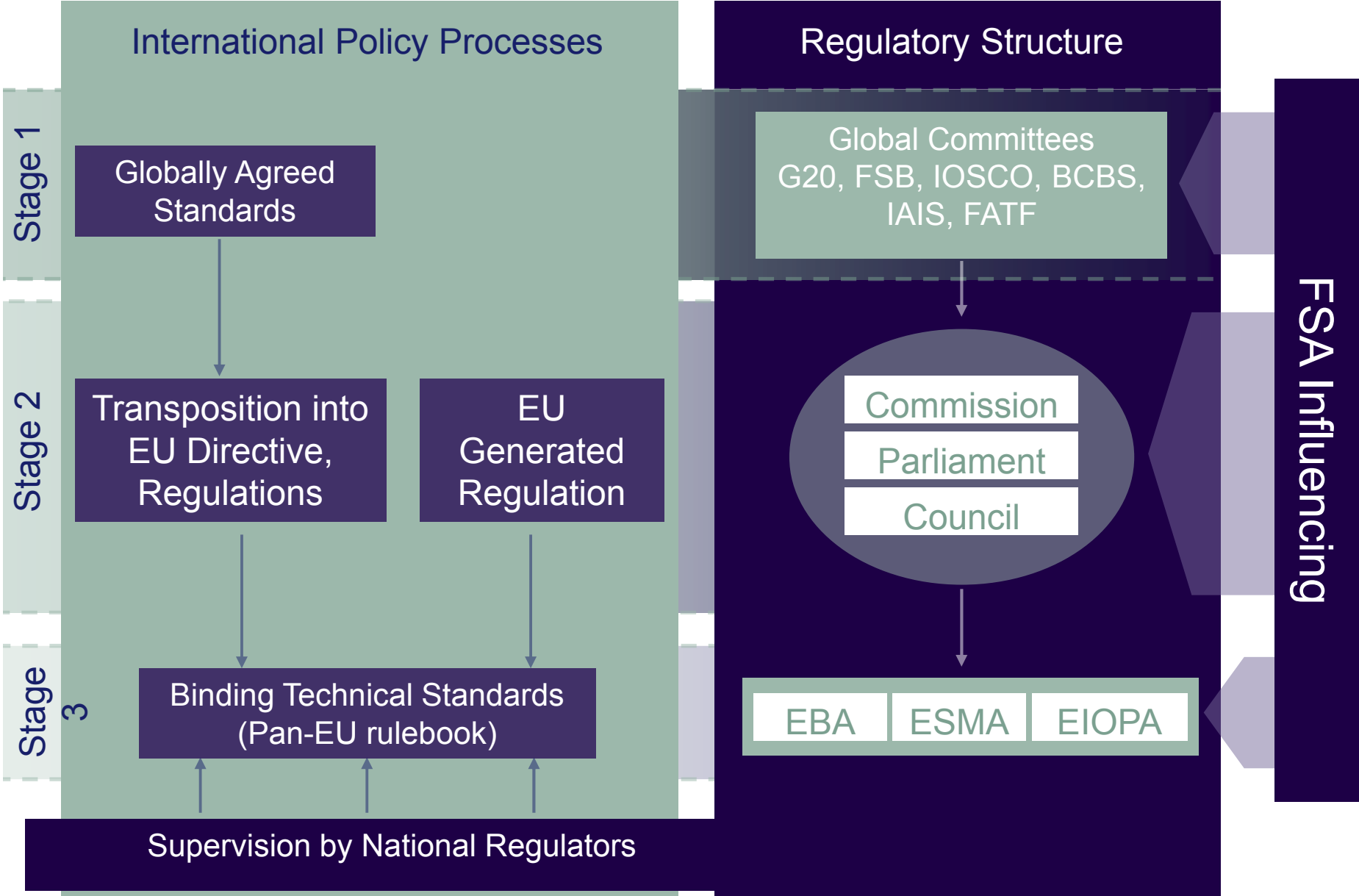
- **Prudential supervision = safety and soundness**
- **2,200 banks, insurers and systemic investment firms.**
  - Will promote the **safety and soundness** of firms by seeking to avoid **adverse effects** on financial stability
  - Insurance objective – securing the appropriate degree of protection for policy holders
- **PRA Approach**
  - **Focused** – risk based approach to firms and issues
  - **Forward Looking** – assessment of firms against current and future risks
  - **Judgement Based** – Supervisors will make judgements about risks and appropriate mitigation

# Financial Conduct Authority (FCA):



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- **Conduct regulation of all firms**
  - **Prudential regulation of firms not supervised by the PRA**
  - **Objective: To ensure relevant markets function well**
    - Promoting competition in the interests for consumers
    - The appropriate degree of protection for consumers
    - Enhancing the integrity of the UK financial System
  - **Old and new Powers/Tools/Responsibilities**
    - Financial Crime and Enforcement
    - **Product Intervention**
    - **Competition**
    - **Consumer Credit**
  - **Approach = Forward looking, judgement based**
  - **Coordination within the new structure critical**

# Global Context



# Implications of Reform



- **International Issues remain key for both PRA and FCA**
  - Basel III, Banking Union
  - G20 Agreements on Derivatives, Benchmarks
- **International Supervisory and Enforcement Cooperation**
- **How will we engage**
  - Separate International Functions
  - Global Committee Representation
- **Importance of coordination**

# **Vision for the Financial Conduct Authority (FCA) and priorities for the year ahead**

**John Griffith-Jones**  
**Chairman Designate, Financial Conduct Authority**

# **Putting consumers at the heart of regulation**

## ***A Communications Perspective***

**Zitah McMillan**

**Director of Communications and International Division**

# Introduction

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- We are **finding a new voice** to show that we are a different regulator
- We are **changing the way we engage** with stakeholders - both firms and consumers
- We will communicate **new priorities** in a different way



# Finding a new voice

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- Creating a new **identity** and **voice**
- A new **logo and brand** which will visually allow us to look different to the FSA
- What **kind of regulator** do we want to be?

# Changing the way we engage

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- **Staff:** our most important stakeholder
- **Firms:** engage in a way that is clearer and targeted
- **Consumers:** a better understanding that improves engagement

# Communicating new priorities

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- Communicating **new priorities** – Consumer Credit
- How we communicate developments in **Europe** and **internationally**
- Making sure there is **continuity** during a time of change

**International Regulators' Seminar  
27 November 2012, FSA**

**Putting Consumers at the Heart of Regulation  
The work of the Independent Panels**

**Adam Phillips  
Chair, FSA Consumer Panel**

**Financial Services Consumer Panel**

AN INDEPENDENT VOICE FOR THE CONSUMERS OF FINANCIAL SERVICES

# The role of the Panels

- Financial Services and Markets Act required the FSA to set up Consumer and Practitioner Panels
- New Financial Services Act will require the conduct regulator (FCA) to set up Consumer, Practitioner, Smaller Businesses Practitioner and Markets Panels
- Prudential regulator (PRA) will have a separate Practitioner Panel
- All provide internal advice from external specialists in an open and confidential environment
- All members bound by a confidentiality agreement with the FSA
- Panels supported by secretariat team within the FSA providing policy, research and administrative support



## Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR THE CONSUMERS OF FINANCIAL SERVICES

# The Consumer Panel

- Represents the specific interests of consumers
- With effect from January 2013 has 16 members
- Selected from an open process of recruitment
- Range of backgrounds – consumer advocates, lawyers, economists, civil servants, journalists, management consultants, communications, research and marketing experts, and people who work with social exclusion
- Meets monthly as a full Panel to discuss overall strategic issues
- Meets monthly in three working groups (one solely on EU) to discuss detailed responses to FSA and other consultations; and
- Ad-hoc sub-groups



**Financial Services Consumer Panel**

AN INDEPENDENT VOICE FOR THE CONSUMERS OF FINANCIAL SERVICES

# Consumer Panel differs from Practitioners'

- Deliberately higher public profile – formal public responses to consultations, published on website, regular bulletins
- Own press and communications officer – liaison with media and industry and consumer bodies
- Pro-active and reactive agenda

Financial Services Consumer Panel  
AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES



Consumer Bulletin  
Issue 1 | October 2012 Aden Phillips, Consumer Panel Chair

I am pleased to introduce the first edition of the Consumer Panel's Consumer Bulletin. This is the Panel's new quarterly newsletter on consumer issues in financial services. Inside you will find details of the latest activity around the Financial Services Bill, EU regulatory developments as well as emerging risks for consumers.

You can find more detail about our work on our website: [www.fscp.org.uk/](http://www.fscp.org.uk/) Since publishing our Annual Report in June the Panel has been working on its new priorities including consumer credit and securing income for retirement.

**Consumer Credit**  
A key priority for the Panel this year is to monitor and influence the development of the new consumer credit regime. Consumer credit regulation is set to move from the Office of Fair Trading (OFT) to the new Financial Conduct Authority (FCA). The Panel feels there are significant benefits of charging the new FCA with responsibility for regulating the consumer credit sector. We have actively participated in a number of different work programmes led by the Treasury, BIS and FSA to develop the new regime.

The Panel feels it is essential that consumer protection standards are not undermined due to the change. We also believe there is a significant opportunity for the FCA to address a number of existing areas of consumer harm. This includes the irresponsible lending practices of some credit providers; the use of unfair, hidden and inappropriate charges; and dubious behaviour of some Pay Day loan and debt management companies.

**Securing income for retirement**  
We are increasingly concerned about the pressures on consumers to find ways of funding their living costs in retirement. Those who have been able to save for later life are often faced with difficult decisions, limited options and little in the way of affordable advice. With regulation in this area being quite complex we are concerned to see consumers' interests safeguarded and we will be devoting a significant part of our time to finding out more about consumers' experience and stimulating the debate about how better outcomes could be achieved.

**Mortgages**  
We shortly expect the FSA to publish final rules for its Mortgage Market Review (MMR). The Panel was supportive of the tenor of the FSA's most recent proposals while we felt there was still room to improve what the FSA had set out in certain other areas.

In particular, we would like to see much better protection for mortgage prisoners so that any new rules do not make their highly vulnerable position materially worse. Also, while the Panel fully supports the FSA's desire to avoid the kind of reckless lending seen during the housing market bubble this aim needs to be balanced against other considerations. We would therefore like to be assured that there is no further intensification of the current mortgage famine or exclusion of otherwise creditworthy borrowers by rules which are cumbersome or too tightly enforced. Similarly, where the FSA ends up on advice is important as we would like to see a system of rules and guidance which is clear and not overly burdensome for firms or consumers.

We hope that the FSA's final rules, once available, will have taken these concerns into account.

You can keep up to date with our work in these areas by following these links to the pages on our website:

- [Consumer credit](#)
- [Securing income in retirement](#)
- [MMR](#)

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End of the line for commission	3
Emerging risks	4
Diary	4

Consumer Bulletin Issue 1 | October 2012

# Panel priorities

The Panel will focus on the following during 2012/13:

- The shape of future regulation
- Effective consumer representation at EU Level
- Consumer credit regulation
- Poor practices in general insurance
- Decumulation; and
- The future effectiveness of the FCA as a conduct regulator

**Financial Services Consumer Panel**

AN INDEPENDENT VOICE FOR THE CONSUMERS OF FINANCIAL SERVICES



# How the Panel organises its workload

Criteria for action:

1. Is this a consumer issue?
2. Is there actual or potential serious widespread consumer detriment?
3. Does the Panel have the capacity/resource to get involved?
4. Are other bodies involved on the same side?
5. Will Panel intervention make a difference?
6. Do the proposals deal with issues that relate directly to the Panel's agreed priority areas?

50% of work is on priority areas, 50% on responsive work, eg consultations, discussions and calls for evidence.

**Financial Services Consumer Panel**

AN INDEPENDENT VOICE FOR THE CONSUMERS OF FINANCIAL SERVICES

# Mystery shopping

- The Panel persuaded the FSA in the mid 2000s that it should conduct mystery shopping as part of its regulatory toolkit.
- The various surveys the FSA conducted in following years highlighted serious deficiencies in
  - the provision of advice,
  - equity release
  - lifetime mortgage products,
  - PPI sales, and
  - critical illness insurance
- The results encouraged the FSA to overcome industry resistance to a more intrusive approach to regulation.



# The advice gap

- Responsibility for saving for later life is passing to the individual from the employer and the state
- Need for regulated advice at lower cost for the less well off
- Retail Distribution Review has emphasised this need
- Panel has campaigned since 2007 for the investigation of more cost-effective ways of delivering advice
- Called for the FSA to examine the need for “simplified advice”
- Commissioned research into lower cost advice models and straightforward-outcome products



# Mortgage Market Review (MMR)

- Inappropriate mortgage lending during the last housing price boom led to serious consumer detriment
- FSA has developed detailed proposals to regulate the sales process
- Particular attention to affordability assessments for all mortgages
- Panel was concerned the FSA's cost benefit and economic analysis was not sufficiently robust
- The Panel's privileged position inside the organisation meant it was able to influence the FSA's analysis
- This has been an important influence helping the FSA to refine their MMR proposals.



# **Strengthening the Gateway for approved persons and firms**

**Val Smith**

**Head of Permissions**

**Authorisations Division**

**Financial Services Authority**

# Agenda



- 
- **Overview of the Authorisations Division**
  - **The importance the FSA places on good governance**
  - **The key elements of an effective approved persons regime**
  - **Threshold Conditions**
  - **Q&A**

# Authorisations Division



- The Authorisations Division is responsible for protecting the 'gateways' through which individuals and entities are regulated.
- We assess and process:
  - Applications for FSA authorisation, registrations, variation of permissions, cancellations and approved persons;
  - Applications in respect of change in control and waivers;
  - Passport notifications and transfers of business; and
  - Registration of mutual societies.
- Within our Division, the Firms Contact Centre provides regulated financial firms with a direct point of contact to help them understand the FSA's regulatory requirements. It handles telephone and written communications from firms, and is the main point of contact for about 25,000 small firms that do not have an individual FSA supervisor.
- In acting as the gateway we ensure that new firms have the right people in the right roles, with the right systems and controls to deliver the right outcomes for consumers.
- Promoting strong corporate governance is key.

# Corporate governance is vital

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- **It forms the fundamental operating framework of a business**
- **It promotes understanding, oversight and control of a business**
- **It facilitates risk taking in a controlled and measured way**



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# APPROVED PERSONS

# A SIF should be held accountable for... FSA<sup>®</sup>

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...ensuring their area of responsibility is:

- **Organised**
- **Controlled**
- **Compliant**

These three elements are key parts of the FSA's Approved Persons regime

# An effective approved persons regime needs to...



Promote the right culture, that embraces corporate and individual responsibility so that the right people are appointed to the right roles to strengthen the governance and conduct of firms

There are six key elements to achieving this:

1. **Messaging** of expected standards and obligations
2. **Deterring** the worst elements, but encouraging positive behaviours in those in the regime
3. **Checking** for past misdemeanours or other adverse information
4. **Assessing** individuals' competence at the gateway and on an ongoing basis
5. **Supervisability** of roles and responsibilities within a firm
6. **Enforcing** when things go wrong

# THRESHOLD CONDITIONS

# Threshold Conditions

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- Legal status
- Location of offices
- Close links
- Adequate resources
- Suitability

# Types of Authorisation Application

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- **Personal Investment Firms**
- **Mortgage and/or General Insurance intermediaries**
- **Investment Management Firms**
- **Securities & Futures Firms**
- **Sale & Rent-back Firms**
- **Payment Services Directive Firms**
- **E-Money issuers**
- **Banks, Insurers & Mortgage Lenders**

**FSMA, as amended by the Bill, provides for the PRA and FCA to be responsible for separate Threshold Conditions. These will be:**

- A. Conditions for which FCA is responsible in relation to authorised persons who are not PRA-authorised persons
- B. Conditions for which FCA is responsible in relation to PRA-authorised persons
- C. Conditions for which the PRA is responsible in relation to insurers
- D. Conditions for which the PRA is responsible in relation to other PRA-authorised persons

# New threshold condition for business models



- One of the key changes to the Threshold Conditions which the FCA will assess concerns business model analysis
- This new condition means that the firm's strategy for doing business must be suitable for its regulated activities, having regard to the FCA's operational objectives
- FCA will consider the suitability of a firm's strategy for providing regulated business, but will also make judgements where we are concerned that the unregulated business could act as contagion to the whole model



# New threshold condition for business models



- As seen during the financial crisis, deficiencies in business models can leave firms vulnerable to systemic volatility and can lead to consumer detriment
- Recently the FSA has increased its scrutiny of firms' business models; this will be continued by the FCA, and the FCA will also consider how firms' business models impact on, or have regard to, the interests of consumers and the integrity of the UK financial system
- Firms should meet, and continue to meet, the new Threshold Conditions from legal cutover
- The new business model Threshold Condition is therefore of key importance, both at the gateway and in ongoing supervision of regulated firms

# Summary



- **Good corporate governance and culture is vital to the success of a firm**
- **Having the right people in the right roles is key to achieving this**
- **An approved persons regime provides the framework for achieving these outcomes**
- **Gateway strengthened through a new business model Threshold Condition**

# **The FCA's approach to enforcement**

**Tom Spender**  
**Head of Department, Retail 1**  
**Enforcement and Financial Crime Division**  
**27 November 2012**

# Topics covered

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- a) The FCA's Approach to Enforcement
- b) Detection
- c) Process and Penalties
- d) Settlement
- e) Insider Dealing - Civil & Criminal process
- f) International Cooperation

## A) The FCA's approach to enforcement



***“Strong and decisive enforcement will be vital to help make sure firms put consumers at the heart of their business and markets are sound, stable and resilient. The agenda of credible deterrence will remain central to our enforcement approach”***

***“As it is often the most public action we take, enforcement will help reinforce and promote our priorities, and we will aim to get better outcomes for consumers from the financial services industry”***

***Journey to the FCA – FCA Approach document, October 2012***

# General Strategic Approach



- 
- Enforcement tool used strategically to achieve credible deterrence
  - Not a zero-failure regime; focus our resource on priority areas
  - We are selective in the cases we investigate:
    - Does the misconduct pose a significant risk to our objectives?
    - Is it serious in nature?
    - Is there actual or potential consumer loss or detriment?
    - Evidence or risk of financial crime or market abuse?
    - FSA priority to raise standards in that sector or on that issue?

# Achieving credible deterrence



- **To achieve credible deterrence wrongdoers must realise they face a real and tangible risk of being held to account and expect to face a significant penalty**
  - Custodial sentence is a significant deterrent; we are committed to bringing criminal prosecutions against those who abuse our markets
  - In March 2011, we published our new penalties policy, which establishes a consistent and more transparent framework for calculating financial penalties.
  - Where standards do not improve and enforcement outcomes do not have desired deterrent effect, we are committed to increasing our financial penalties
  - Actions against individuals have a greater deterrent effect than action against firms; we are committed to holding senior managers to account for competency and integrity failings

## Current Financial Year (1 -April 12 November 2012)



- **29 fines totalling £85.4m**
- **11 criminal convictions**
  - 9 insider dealing convictions (Kronos and Saturn)
  - 2 UBD convictions (Wilson and McInerney)
  - 3 of which were guilty pleas (Swallow, James & Miranda Saunders)
  - Another case just concluded and awaiting verdicts (1 guilty plea, awaiting verdicts on two others)
- **26 prohibitions**
- **£35m under restraint (£33.1m insider dealing cases and £2.3m criminal UBD cases)**

### **Since January 2010 we have:**

- obtained redress in excess of £290m (not including PPI) for customers of regulated firms;
- we have dealt with almost 2,000 requests for assistance from overseas authorities.



# What do we enforce?



- **FSA rules and principles:** apply to “regulated community” only
- FSA can **prosecute** persons guilty of:
  - Carrying on regulated activity without permission (FSMA, section 19)
  - Misleading statements and practices (FSMA, section 397)
  - Insider dealing (Criminal Justice Act 1993, section 52)
- The **market abuse regime:**
  - Applies to everyone trading in qualifying investments on prescribed markets
  - Existed in UK since 2001 – section 118 FSMA
  - Changes made by EU’s Market Abuse Directive (implemented in UK July 2005)

# The Enforcement Toolkit



## FSA ADMIN POWERS

- Discipline
  - public censure
  - fine
  - suspend
- Vary a firm's permission
- Withdraw authorisation or approval
- Prohibit individuals
- Restitution
- Sanctions for Market Abuse
  - public censure
  - fine

## CIVIL JUSTICE

- Injunctions
- Restitution
- Insolvency Proceedings

## CRIMINAL JUSTICE

- Prosecute for:
  - Breach of General Prohibition
  - Misleading statements
  - Misleading practices
  - Insider Dealing
  - Money Laundering Regulations

# Remit of FSA and other judicial bodies during investigation



- **Annex 2 of Enforcement Guide provides guidance on how to decide whether a case should be dealt with by FSA or another body**  
[http://media.fsahandbook.info/Handbook/EG\\_20120727.pdf](http://media.fsahandbook.info/Handbook/EG_20120727.pdf)
- **Allocation carried out on the basis of whether the case satisfies certain criteria. For example, the following criteria may indicate that the case should come under the jurisdiction of the FSA (Annex 2 - 9(a)):**
  - the suspected conduct gives rise to concerns regarding market confidence or protection of consumers;
  - the likely defendants are FSA authorised or approved persons;
  - or it is likely that the investigator will be seeking assistance from overseas regulatory authorities.
- **Alternatively the following criteria (Annex 2 9(b)) may indicate that another agency should take the lead:**
  - where serious or complex fraud is the predominant issue (normally appropriate for the SFO);
  - or where case involves proceedings for disqualification of directors under the Company Directors Disqualification Act 1986 (normally appropriate for BIS action).

## B) Detection



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**Detection methods vary according to business unit.**

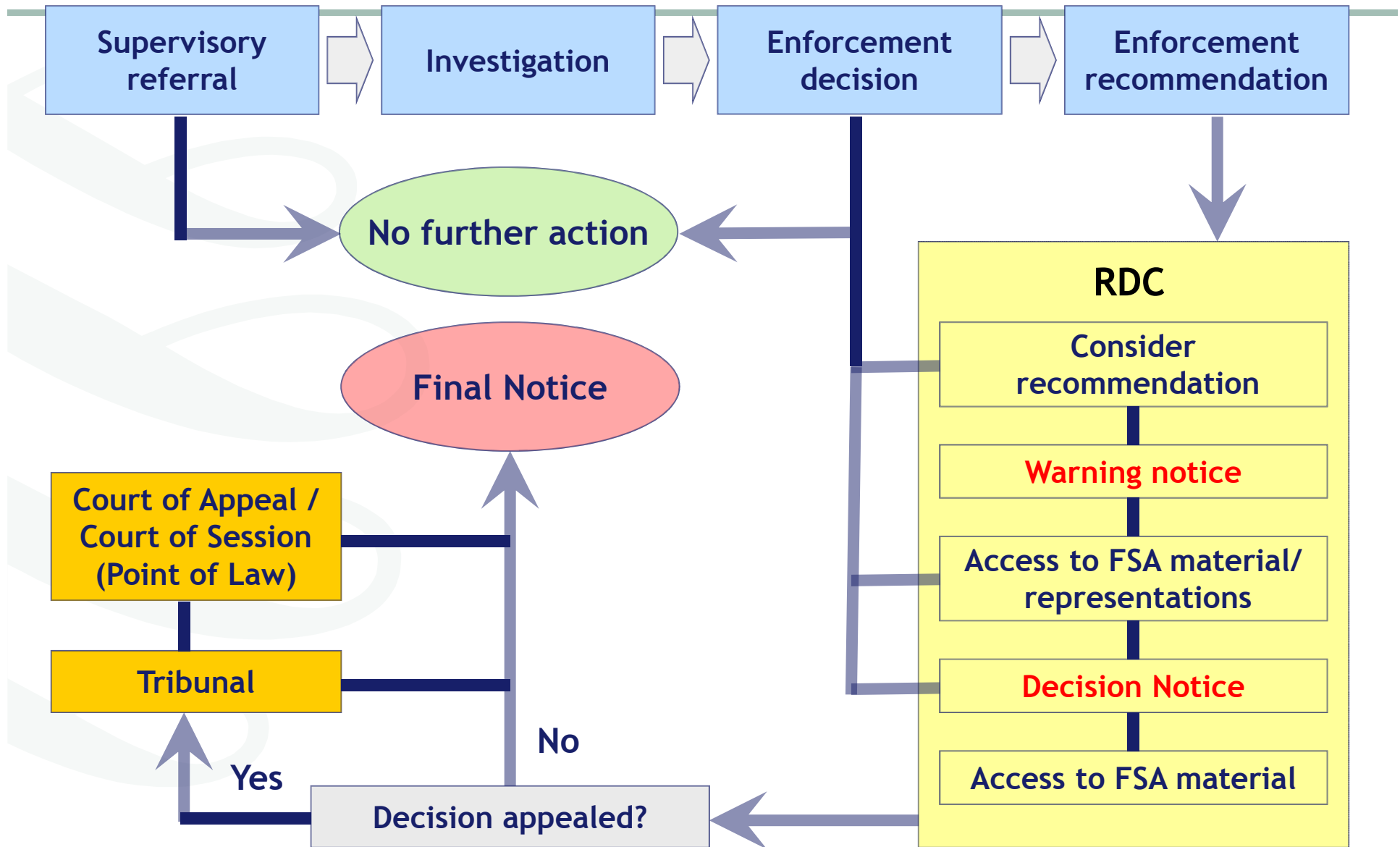
- **Irregularities in regulated firms' dealings with consumers are primarily detected by our Supervision division. Instances of unauthorised business are most often detected through consumer complaints to us and through Supervision.**
- **Wholesale cases are often referred to us via Suspicious Transaction Reports ("STRs") from our Markets division.**
- **Thematic reports by risk specialist teams and sector teams can also detect increases in certain activities which are detrimental to the fair operation of the financial markets or firms' interactions with consumers.**

## C) How does the FSA decide to impose a penalty?



- 
- FSA can impose penalties for breach of its own rules and market abuse
  - Separation between persons who investigate misconduct and persons deciding whether there has been a breach
  - Decisions taken by FSA's Regulatory Decisions Committee (RDC)
    - part of the FSA
    - considers action recommended by Enforcement
    - RDC has its own lawyers
    - Communications between RDC and Enforcement disclosed to person subject to FSA action

# Decision Making Process



## D) Settlement



- 
- Possible at any stage of the enforcement process
  - 2 FSA directors (not the RDC) decide
  - Discount scheme
  - Early redress for consumers and messages to the market
  - Saving of time and cost
  - Only settle for right regulatory outcome
  - Recognise the need to establish clarity and consistency

# Settlement regime: legal grounds



- An FSA settlement is a regulatory decision taken by the FSA executive, the terms of which are accepted by the firm or the individual concerned.
- When agreeing terms of settlement the FSA must take into account its regulatory objectives and the importance of sending clear consistent messages through the enforcement action.
- The FSA will only settle in appropriate cases where the agreed terms of the decision result in an appropriate regulatory outcome.
- Settlements with the FSA are not on a no admissions basis.



# Settlement Regime: implementation



## How is it implemented in practice?

- Possible at any stage of the enforcement process.
- Two FSA directors (not the RDC) decide.
- Discount in settlement fine is available for early settlement ranging from 10 – 30% depending on how early in the investigation the firm settles.

## Proportion of cases concluded by settlement

- This has increased year on year from:
  - 42% of cases closed being concluded by settlement in April 2009 to March 2010;
  - 54% being concluded by settlement in April 2010 to March 2011;
  - and 67% being concluded by settlement from April 2011 to March 2012.  
(FSA's Enforcement Annual Performance Accounts  
[www.fsa.gov.uk/static/pubs/annual/ar11-12/enforcement-report.pdf](http://www.fsa.gov.uk/static/pubs/annual/ar11-12/enforcement-report.pdf)  
[www.fsa.gov.uk/pubs/annual/ar10\\_11/enforcement\\_report.pdf](http://www.fsa.gov.uk/pubs/annual/ar10_11/enforcement_report.pdf)  
[www.fsa.gov.uk/pubs/annual/ar09\\_10/enforcement\\_report.pdf](http://www.fsa.gov.uk/pubs/annual/ar09_10/enforcement_report.pdf)

# Settlement: case study



- **Martin Currie was fined £3.5m (£5m before settlement discount) by the FSA for failing to manage a conflict of interest between two of its client and \$8.3m (£5.1m) by the SEC for similar failings.**
- **Martin Currie caused one of its clients to enter into an ill-advised £15 million unlisted bond transaction which rescued another client from severe liquidity concerns during the credit crunch.**
- **The Martin Currie entities involved in the transactions were regulated by the FSA in the UK and the Securities and Exchange Commission in the USA.**
- **The FSA and SEC conducted separate investigations, but kept in close contact throughout.**
- **The co-operation between the regulators and the use of early settlement by the FSA led to simultaneous publication of public notices against Martin Currie in both the UK and USA, greatly increasing publicity for the case and ensuring both regulators were more effectively able to project their public message.**

# Settlement: challenges to implementation



- **Advantages of early settlement versus need to ensure sufficient understanding of nature and gravity of misconduct.**
- **Not a commercial settlement - ensure consistency with contested cases and with FSA individuals.**
- **Third party rights can lead to delay.**
- **Involvement of other regulators/prosecuting authorities must be taken into account where relevant.**
- **No "without prejudice" in criminal context - potential difficulties in market abuse settlement discussions.**

# E) Insider Trading



## Civil penalty

Under s 123 FSMA 2000, the FSA can impose a penalty of such amount as they consider appropriate on an individual if they are satisfied that they have engaged in insider trading (a category of market abuse), or encouraged another person to do so.

The civil offence is found at s118 FSMA (as amended for the purposes of the Market Abuse Directive (“MAD”)) and applies to all conduct occurring on or after 1 July 2005.

## Criminal penalty

Insider trading is also a criminal activity under s 61 of the Criminal Justice Act (‘CJA’) 1993 punishable by:

- imprisonment of up to six months and/or a fine for a summary conviction; or
- conviction on indictment to a fine and/or imprisonment for up to seven years.

The criminal offence is found at s52 Criminal Justice Act 1993 (“CJA”).

# Insider trading: detection



- **Suspicious Transaction Reports** – information received from regulated firms under the scope of SUP 15.10.
- **Exchange referrals** – information received from Regulated & Prescribed Markets and MTF under agreements reached bi-laterally with Market Monitoring.
- **Private correspondence** – information received from private individuals either from the Consumer Contact Centre or through the market abuse helpline or inbox.
- **Internal FSA notifications** – notification from other areas of the FSA e.g. ENF, SUP, Whistleblowers.
- **External agency notifications** – information from other agencies, particularly law Enforcement agencies such as the police, SOCA and HMRC. POTAM, Foreign Competent Authorities.

# Insider trading: investigative challenges



- **Evidencing the passage of material non-public price sensitive information.**
- **The circumstantial nature of evidence.**
- **Volume of electronic material and onerous disclosure obligations.**
- **Presenting complex financial services cases to a jury.**
- **Cost and length of time required to build a case to satisfy the burden and standard of proof.**
- **Evidencing cross border behaviour i.e. obtaining cooperation from non compliant or uncooperative jurisdictions.**

# Insider trading: recent trends and examples

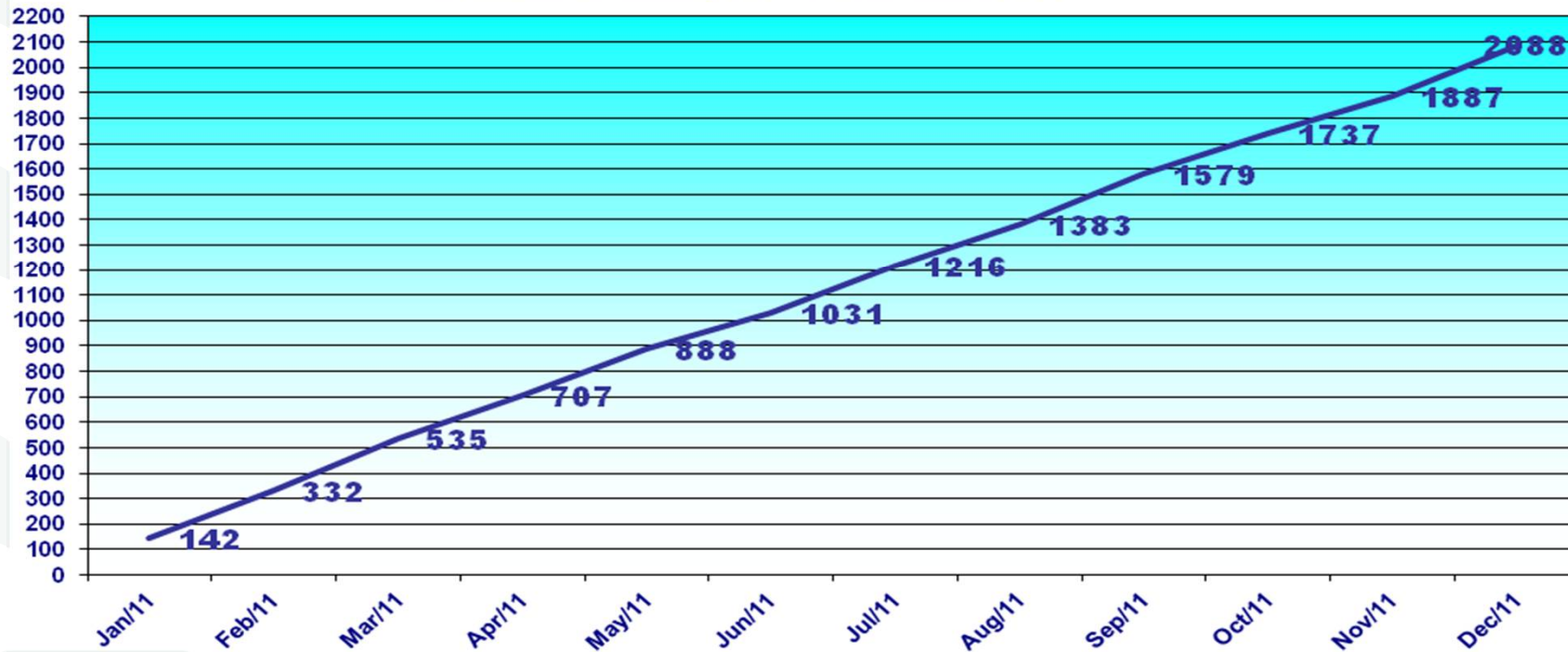


- Complex behaviour spanning multiple jurisdictions e.g. Swift Trade. A Canadian company conducting manipulative trading in the UK and other jurisdictions
- Insider dealing by family groups e.g. The Littlewoods (Op Duke) and Saunders family (Op Kronos).
- Front running by professional intermediaries e.g. Op Playtech.
- The FSA's response:
  - the requirement for increased cooperation between regulators; and
  - more sophisticated inter-agency intelligence sharing.

# International Cooperation



**OVERALL NUMBER OF REQUESTS MADE UNDER IOSCO MMoU  
BETWEEN 01 January 2011 - 31 December 2011**





# The FSA's Investigation Powers



- **When?**

- FSA Investigation
- Overseas Investigation

- **How?**

- At the Request of an “Overseas Regulator”
  - Definition of “Overseas Regulator”
    - Functions corresponding to an FSA function
    - Insider Dealing investigation
- Appointment of Investigators?

# The FSA's Investigation Powers

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- **What?**

- To request information or documents of a specified description
- To attend at interview and answer questions

- **Who?**

- FSA regulated firms and connected persons
- Third parties

# Interpreting the IOSCO MMoU



## ARTICLES 7(a) and 7(b) - THE FULLEST ASSISTANCE PERMISSIBLE

### Article 7(a) – Fullest Assistance

- As set forth in the opening paragraph to the MMoU, signatories enter into the MMoU for several key purposes, including: *“Desiring to provide one another with the fullest mutual assistance possible to facilitate the performance of the functions with which they are entrusted within their respective jurisdictions to enforce or secure compliance with their laws and regulations as those terms are defined herein[.]”*
- Article 7(a) requires signatories to the MMoU to provide to each other, *“the fullest assistance permissible to secure compliance with the respective Laws and Regulations of the Authorities.”* Therefore, the co-operation sought under the MMoU should always be provided if it is:
  - within the legal authority of the Requested Authority to provide; and
  - capable of assisting the Requesting Authority to secure compliance with its Laws and Regulations, as set forth in the Requesting Authority’s request.
- The Requested Authority should provide the broadest assistance available within the scope of its legal authority and the Requesting Authority’s request for assistance.

# Interpreting the IOSCO MMoU



## Article 7(b) – Fullest Assistance

- Requests made under the MMoU will be within the scope if the materials sought fall within the Article 7(b) classifications. Article 7(b) expressly states that the classifications described under that section should not be taken to limit the broad scope of assistance envisaged by Article 7(a):
  - ***(b) The assistance available under this Memorandum of Understanding includes, without limitation:***
    - ***(i) providing information and documents held in the files of the Requested Authority regarding the matters set forth in the request for assistance;***
    - ***(ii) obtaining information and documents regarding the matters set forth in the request for assistance, including:[...]***
  - The underscored language makes clear that the examples listed in Article 7(b) *do not constitute an exhaustive list*. Examples of assistance that Requested Authorities have provided to Requesting Authorities under Article 7(a) and not specifically enumerated in 7(b) include, but are not limited to:
    - (i) documents and information such as: financial transaction records, auditing and accounting records, emails, telephone records, ISP records, corporate records, contract verifications; and
    - (ii) actions such as: location of witnesses, compelling testimony, and obtaining asset freezes.

# Requests – some considerations



- **Scope of request**
  - Relevance?
  - Confidential information e.g. banking information
  - How will the information develop the investigation?
  
- **Particular types of information**
  - Telephone recordings
    - Timescales for production
    - Resource implications
    - What is reasonable?
  - Electronic communications
  - Communications data
  
- **Interviews**
  - Compelled or voluntary
  - Governing law
  - Right to silence / privilege against self incrimination

# Requests – some considerations



- **Disclosure issues**
  - Section 348 restriction
  - Disclosure Regulations
  
- **Notification of request**
  - MoU confidentiality provisions
  - Client interest / fairness
  - Co-ordination with our international colleagues

# Enforcement – International Coordination



The FSA maintains strong working relationships with overseas regulators, sharing skills and information. Our (public) cross-border investigations include:

- **Kronos:**

Insider dealing trial involved 5 defendants charged in the UK with 17 counts of insider dealing. This follows a parallel investigation between the FSA, the SEC, DoJ and FBI.

- **Littlewood case:**

Mr Littlewood, his wife and family friend, Helmy Omar Sa'aid all sentenced for insider dealing last year. Both Sa'aid and Angie Littlewood were Singapore nationals although their criminal activity took place in the UK. Sa'aid absconded to Mayotte, a small island in the Indian Ocean – we therefore worked closely with the French authorities in Mayotte who assisted with his arrest.

He was returned to the UK pursuant to a European Arrest Warrant to face insider dealing charges. He pleaded guilty and was sentenced to 2 years in prison and ordered to pay £640,000 by way of confiscation. He was deported to Singapore in April after serving his sentence in the UK. Christian Littlewood was sentenced to 3 years 4 months and Angie Littlewood a 2 year suspended sentence.

- **OCE:**

We worked with German Prosecutors in November 2010 to execute search warrants in Germany in relation to an insider dealing investigation. We charged an investment banker and two associates with insider dealing in August 2011. Trial is being heard currently.

- **Goenka:**

We levied our highest fine on an individual to date for market abuse on a Dubai based investor – Rameshkumar Goenka was fined \$9.6m [\$6.5m penalty and \$3.1m restitution] for manipulating the closing price of securities on the London Stock exchange.

# **Culture and Governance**

**Sheila Nicoll**

**Director of Policy, Conduct Business Unit**

**27 November 2012**



# Overview

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- Product intervention & product governance
- Remuneration & financial incentives
- The FSA's Retail Distribution Review (RDR)

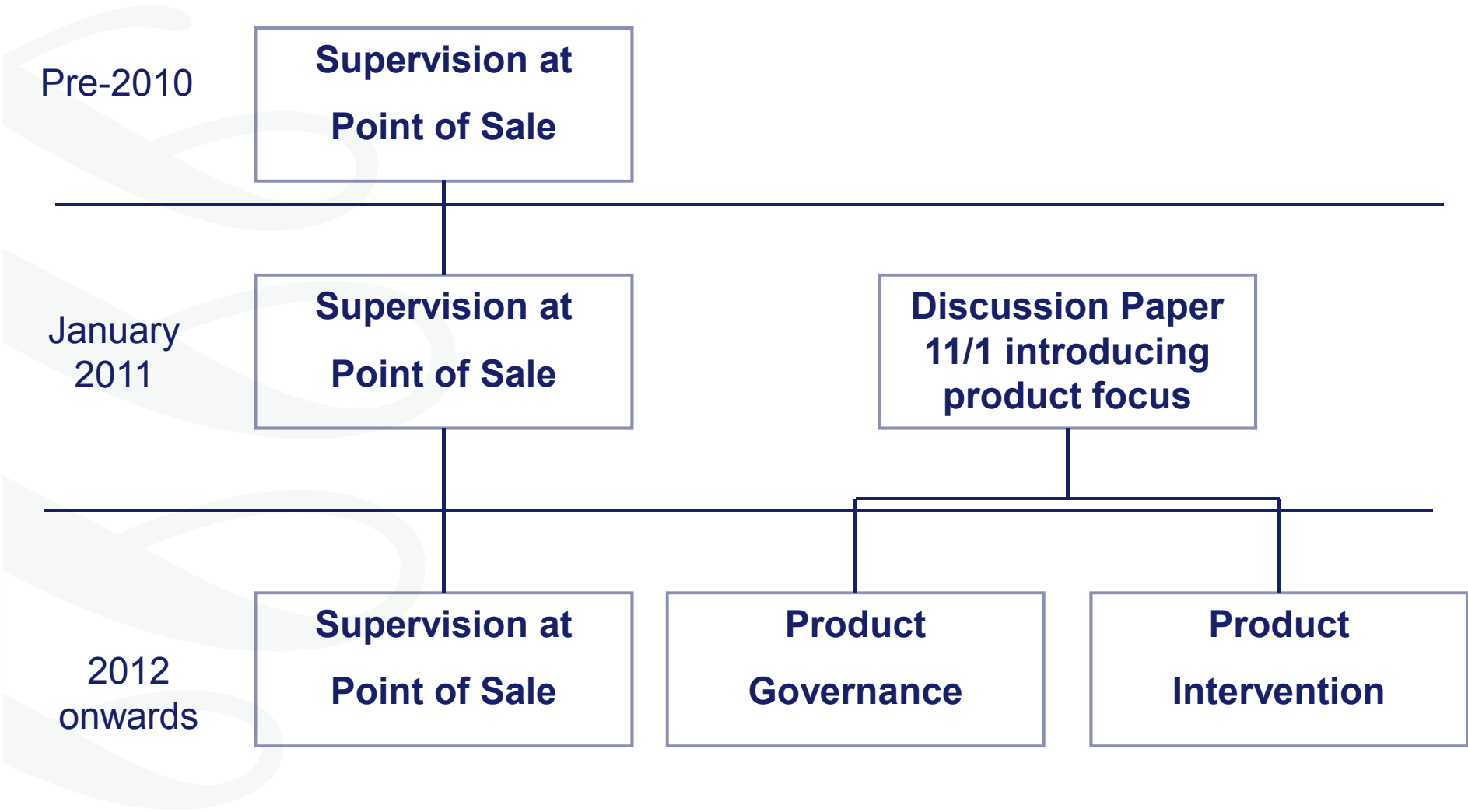
# Overall philosophy

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- **Look at things from the view of the consumer**
- **Disclosure is necessary but not sufficient**
- **Need to look at root causes: what are the incentives?**
- **May require structural changes in the market, new business models**

# Our evolving approach



# Product intervention and product governance

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- **Focus on point of sale is not enough**
- **Get in early before problems arise**
- **Recognise there may not be overwhelming evidence**
- **Not approval of products**
- **Coordinating with EU level activity (MiFID 2, ESMA, Joint Committee)**

## Some examples of problematic products

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- **Single-premium PPI**
- **Structured capital at risk products**
- **Some combinations of mortgage products**

- **Review raised very significant concerns**
- **Bad practices and significant risks of mis-selling**
- **Consultation on Guidance to help firms identify and manage the risks properly**
- **ESMA Guidelines due Q2 2013 in context of MiFID**

# Retail Distribution Review

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## Risks in the investment advice process

- **Information asymmetry**
- **Alignment of adviser's interests with the consumer**
- **What is the adviser's status/offering?**
- **Risk of mis-selling products with serious long-term consequences**

- **Rules come into effect at the end of 2012**
  - Removing commission and introducing adviser charging
  - Improving professionalism
  - Defining advice service as independent or restricted



# RDR – issues

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- **Changes take place within the context of EU proposals on MiFID and PRIIPs**
- **Resistance to increased qualifications**
- **Concern around consumer access to advice**
- **Need for us to communicate with consumers**

# **The UK's new conduct supervision model**

Presentation to the FSA Annual International Seminar

**Clive Adamson**

Director of Supervision  
Conduct Business Unit

27 November 2012

## Context and Overview



- **The Financial Conduct Authority (FCA) will be responsible for the retail and wholesale conduct supervision of c.26,000 firms across all sectors of the financial services industry and the prudential supervision of c.23,000 firms (i.e. those that are not prudentially regulated by the PRA)**
- **The FCA approach will emphasize 5 main elements:**
  - be more forward-looking in assessment of potential problems – looking at how we can tackle issues before they start to go wrong (helped by new intervention powers);
  - intervene earlier when we see problems (looking at these through eyes of consumers) before they cause harm, in order to ensure consumers get a better deal and markets are fair and orderly;
  - we will want to tackle underlying causes of problems that we see, not just the symptoms, as this will be more effective and efficient in the longer term for consumers and firms;
  - secure redress for consumers if failures do occur; and
  - take meaningful action against firms that fail to meet our standards through levels of fines that have a deterrent effect.
- **Embedded in this approach are important philosophical moves:**
  - away from primary reliance on transparency at the point of sale; and
  - in the wholesale markets, going beyond relying on the caveat emptor principle in ensuring integrity of these markets.

## What have we learnt from the past?

### Lessons learnt from the past challenges the current (FSA) Supervision philosophy

- **We had assumed that providing consumers with transparency at the point of sale leads to good consumer outcomes:**
  - Experience tells us however that this has not been sufficient to prevent widespread consumer detriment from poorly designed or mis-sold products
- **We had assumed that a supervisory approach that focused on ensuring effective systems and controls will ensure appropriate products are sold safely:**
  - Experience tells us that conduct risks arise from the business model of the firm and its culture, manifested through its business practices
  - It is in these areas we should focus as well as testing outcomes that consumers actually experience through more product supervision
- **In wholesale markets, we had operated a light touch regulatory approach due to an assumption that the *caveat emptor* principle is appropriate unless there is manifest market abuse:**
  - We now do not wish to make a clear distinction between retail and wholesale markets but rather view them as a continuum where we are interested in dealing with poor behaviour that directly impacts consumers or indirectly through being at the end of a transaction chain
- **Prudential supervision has been based on an approach that aims to reduce the probability of failure of firms on the assumption that this is the most effective way of meeting FSA's objectives:**
  - Given that systemically important firms will be prudentially supervised by the PRA, the rationale underlying prudential supervision within the FCA should be to support the FCA's conduct objectives
  - This will be more effectively delivered by moving primarily to an approach that minimises the impact of failure on consumers and markets, while ensuring the protection of client money at all times

# Summary of our approach



## Our goal

Make financial markets work well

## Our vision

Ensure a fair deal for consumers

## Our approach

Forward looking & judgement based  
Emphasis on early intervention  
Fixing causes not just symptoms  
Seek redress when things do go wrong  
Credible deterrence

## How it will feel

Emphasis on judgement not process  
Consumer centric  
Focused on the big issues  
Interfaces with executive mgt and boards  
Focused on business models and culture  
Orientated to firms doing the right thing  
Externally focused, engaged & listening

Supported by corporate values of *backbone, professional excellence, curiosity, already on the case and strength as a team*

## Ensuring firms continue to meet our standards



**The key components of the supervision model being developed to deliver the greater intensity of conduct supervision in the FCA approach are:**

- a clearer sector-based approach;
- greater use of forward-looking analysis to understand what is happening in particular sectors and help determining risks to our objectives;
- continued, but more focused, programme of firm level assessments;
- making judgements about business models and strategy of firms;
- more focus on intelligence and data;
- greater use of thematic reviews into 'issues and products';
- speedier resolution of 'event-driven' work, robustly seeking redress for consumers where applicable; and
- more responsive and flexible use of our staff resources, with fewer firms having a fixed team and more staff available to react to emerging issues and able to carry out in-depth reviews.

# The 3 Pillars of FCA Supervision

## How we will supervise firms



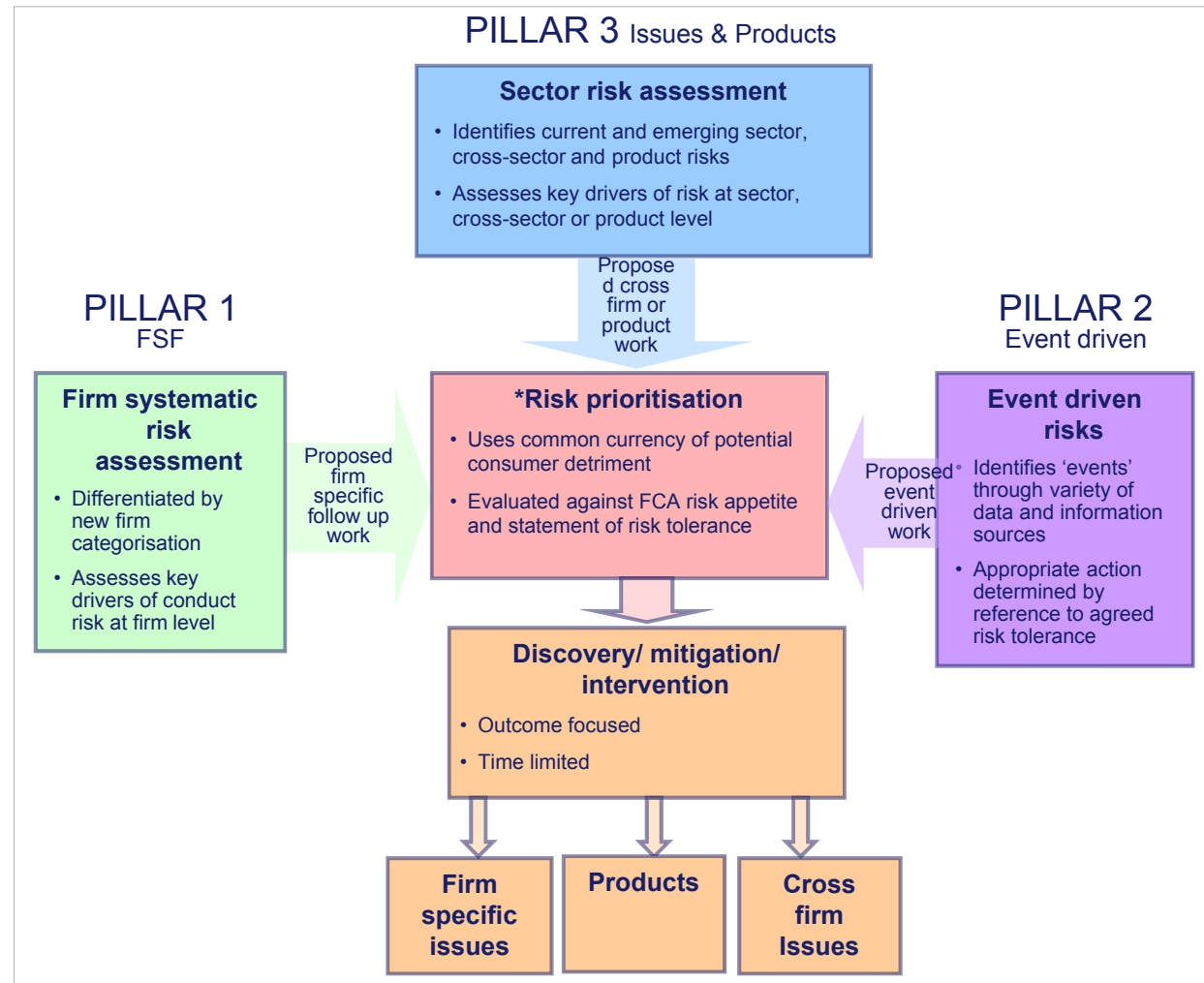
The FCA supervision model for all firms (including passporting firms) will be based on three pillars:

### 1. (Forward looking approach) Firm Systematic Framework (FSF)

Forward looking preventative work through structured conduct assessment of firms.

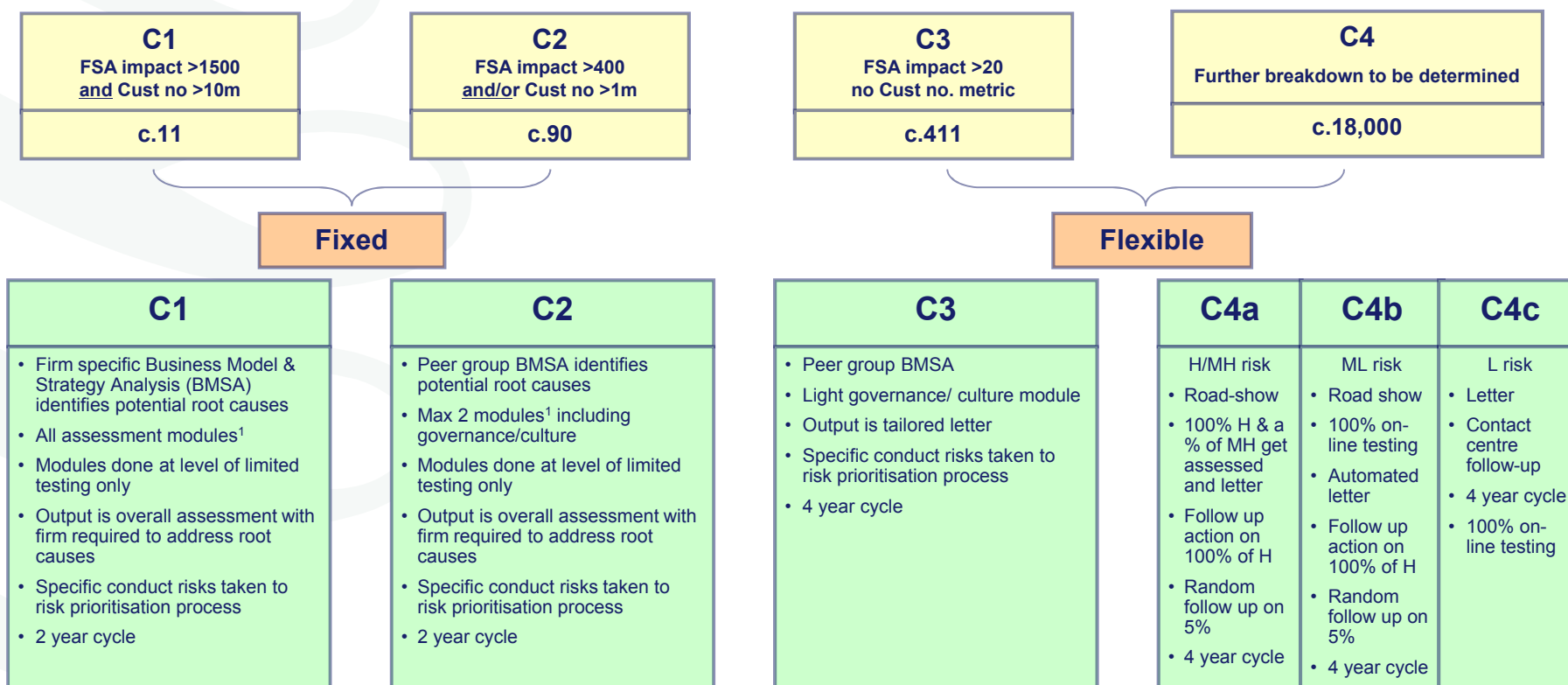
**2. Event-driven work** – dealing faster and more decisively with problems that are emerging or have happened, and securing customer redress or other remedial work where necessary. This will cover issues that occur outside the firm assessment cycle, and will use better data monitoring and intelligence.

**3. Issues and products** – forward looking, fast, intensive campaigns on sectors of the market or products within a sector that are putting or may put consumers at risk.



# New categorisation of firms

- FCA firms will be categorised according to their potential impact on our objectives. The category we place a firm in determines the style of firm systematic risk assessment (FSF) supervision we will carry out.
- Our categorisation will use a combination of current impact measures, retail customer numbers and some measures of market impact. This is still in development.
- We will take a similar approach to categorising firms for prudential supervision, ranging from CP1 to CP3.





## Changes from current approach: ARROW vs. FSF

### ARROW

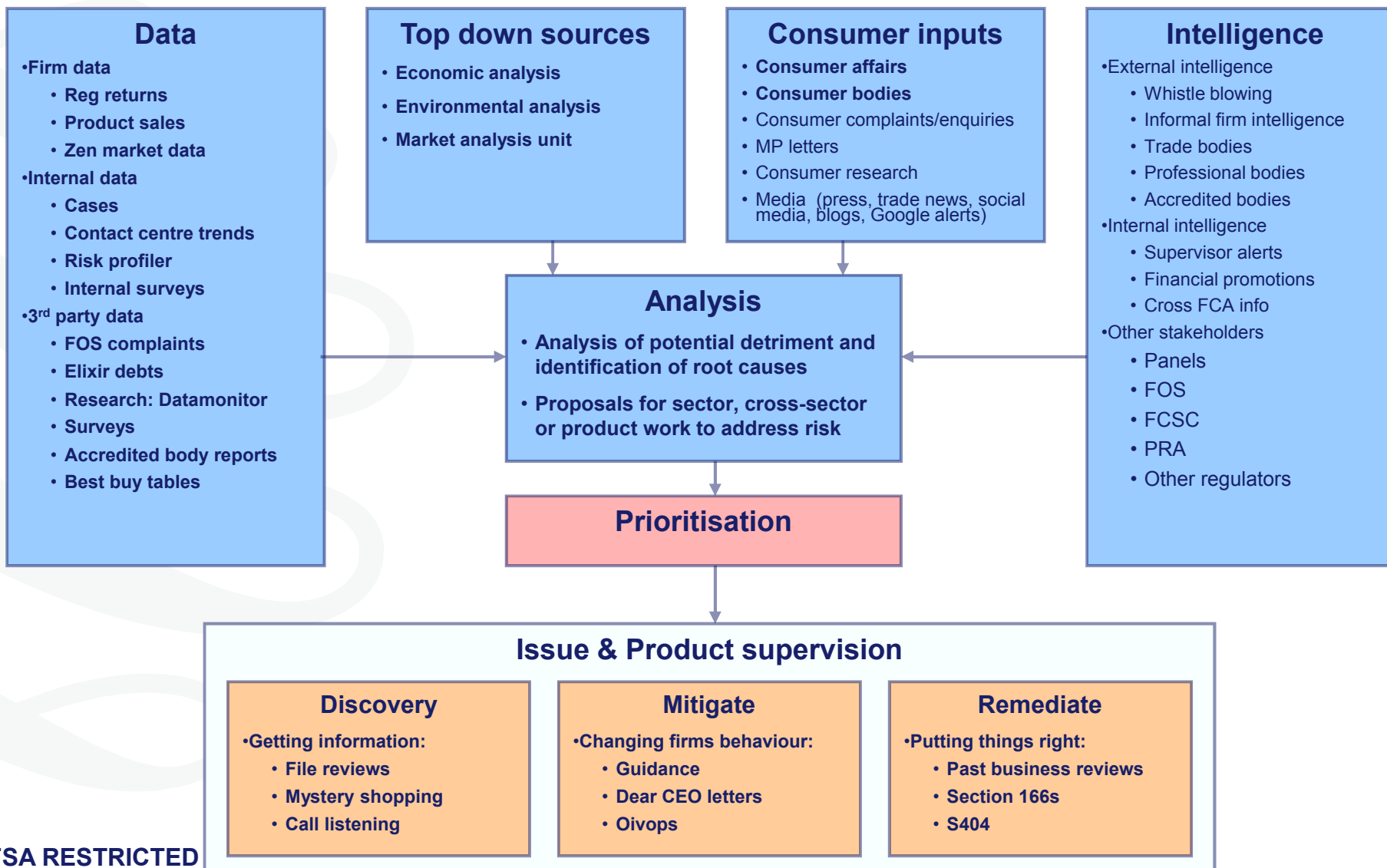
- Not enough focus on business models
- Lack of focus on the drivers of conduct risk
- Focused on a large number of issues
- Focused on systems, controls and governance
- Predominately focused on prudential issues
- Point in time assessment
- Primarily issues based (i.e. discovery work on issues considered to be higher risk)
- Extensive follow up work undertaken by Supervisors

### FSF

- More focus on business models: “following the money”
- Explicit focus on the drivers of conduct risk in firms; it will assess the effectiveness of:
  - product design;
  - sales processes; post-sales handling; and
  - governance
- Where focused on governance, it is to determine whether a firm’s governance arrangements are effectively organised to enable the identification, management and mitigation of conduct risks
- Explicit focus on the underlying causes of problems: focusing on the big issues
- Overall assessment of a firm takes into account all aspects of supervisory engagement in coming to an overall view of the firm (i.e. the outcomes not only just from FSF, but also from issues & product work, financial promotions work, unfair contracts work etc)
- Form of continuous assessment
- Follow-up work done by firm with greater use of s166 - significant supervision follow up is “bid for”

Approach to Supervisory Colleges remains unchanged. The FCA will share information and support cross-border supervision in international supervisory colleges for large multi-national financial institutions, and coordinate with the PRA and others in our engagement with the European Supervisory Authorities and other European and international bodies.

# The Sector Risk Analysis will drive our Pillar 3 work (Issues & Products)



# Wholesale Conduct and Prudential Approaches

## What will be new about our approach to wholesale conduct:

- FCA focus will be to ensure the integrity and resilience of wholesale markets, rather than to seek to introduce concepts of detriment and redress that we use in retail markets to wholesale markets.
- Firms should recognise, however, that activities in retail and wholesale markets are interconnected and that risks caused by poor conduct can be transmitted and undermine both markets.
- The FCA will want to place more emphasis (and take a more assertive and interventionist approach) in particular on three areas:
  - where wholesale products filter down or are distributed to retail consumers;
  - where certain behaviours in wholesale markets can cause damage to market integrity; and
  - where market structures can result in participants being disadvantaged or the market being inefficient.

**Our approach to prudential supervision** will be based on managing failure when it occurs, rather than reducing its probability. The type of Supervision depends on the nature of the firm:

- **Prudentially Critical Firms (CP1)** are firms where a disorderly failure would have a significant impact on the market in which they operate and/or where there are significant client asset and money holdings.
- **Prudentially Significant Firms (CP2)** are firms where a disorderly failure would have a significant impact on the functioning of the market in which they operate, but there is a smaller client asset and money base, or an orderly wind down can be achieved.
- **Prudentially Insignificant Firms (CP3)** are firms where failure, even if disorderly, is unlikely to have significant impact

## Implications for firms

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- **Greater intensity and focus of conduct supervision on their conduct agenda;**
- **More concentration on whether their business models are based on a sound foundation of fair treatment of consumers and firms have a strong culture that supports this foundation;**
- **A greater expectation of a strategic approach to the conduct agenda and senior management and board engagement in it;**
- **Greater appetite for pre-emptive intervention;**
- **More purposeful engagement through systematic assessment and issues and product work delivered by range of sector-skilled supervisors;**
- **More focus on causes of problems that we see;**
- **A greater expectation that firms demonstrate they have resolved issues promptly (not FCA devoting resources to monitoring this); and**
- **More engagement of FCA senior management, especially for larger firms.**

## **Panel Discussion**

# **International approaches to conduct regulation**

# International Regulators Seminar – FSA



London – November 27<sup>th</sup> 2012

**Gert Luiting (gert.luiting@afm.nl)**

**Manager**

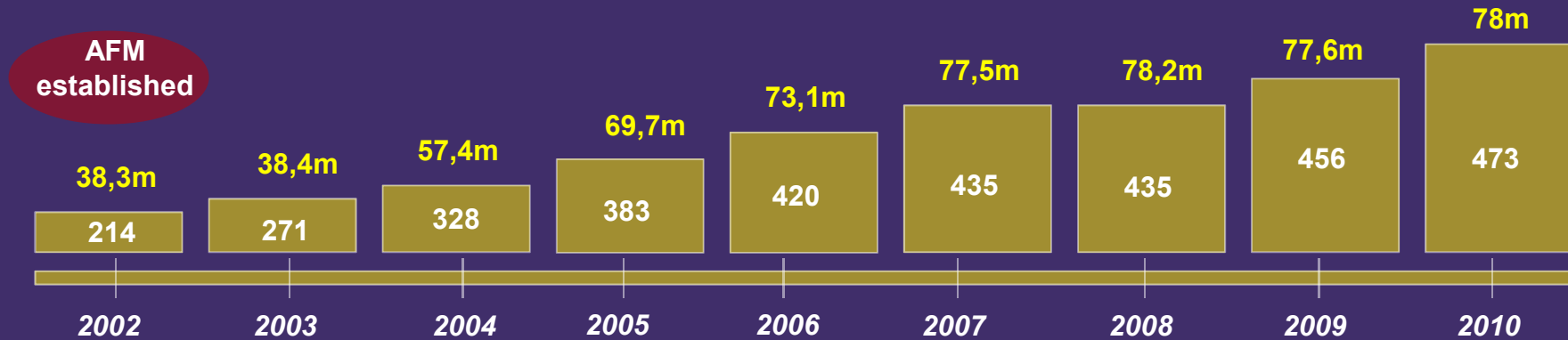
**Netherlands Authority for the Financial Markets (AFM)**

# Conduct of business regime has evolved rapidly over past eight years



## Important milestones

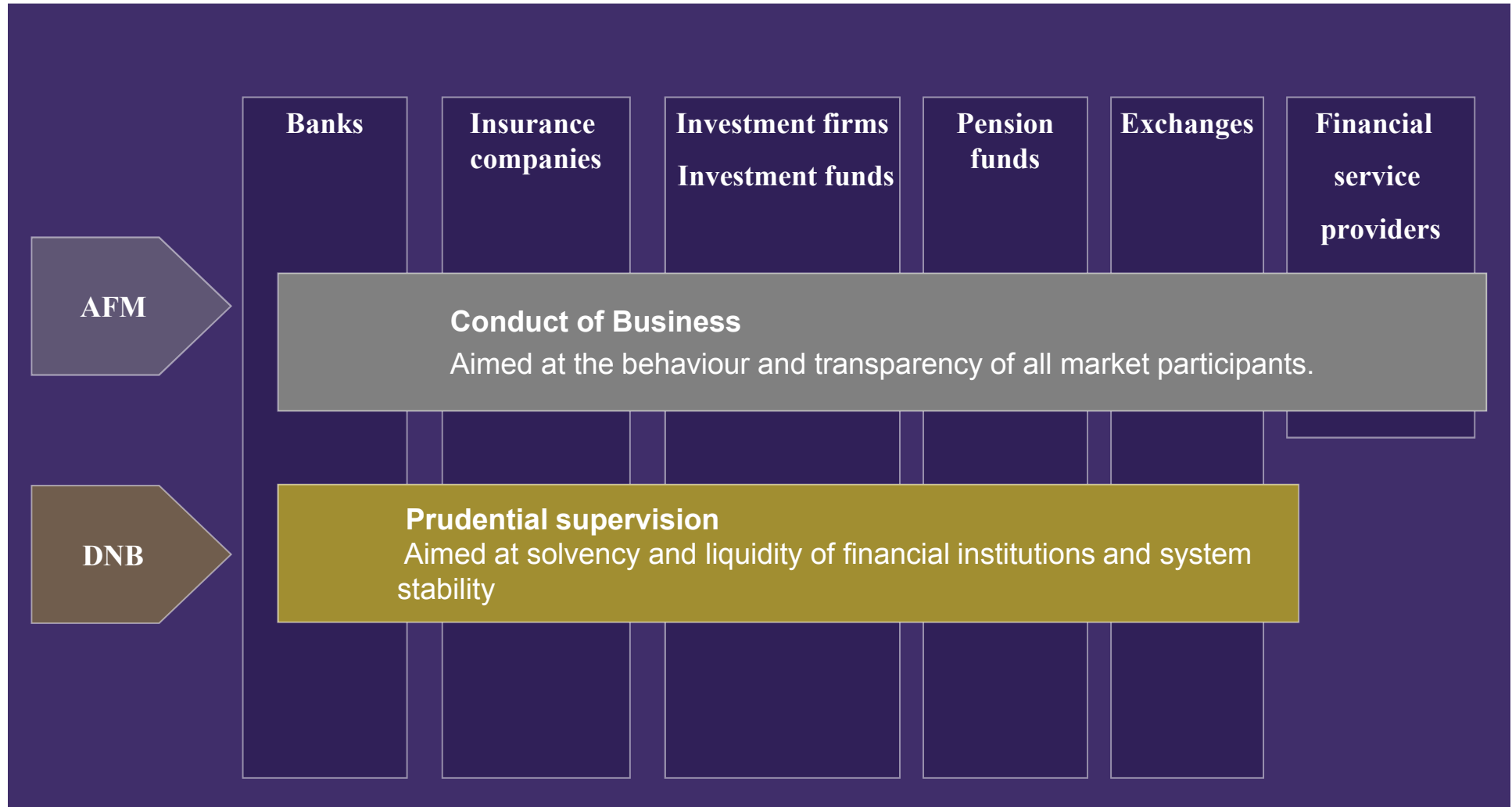
- Transformation Financial Supervision
- Act on the Supervision of Financial reporting
- Act on the Supervision of Audit firms
- Financial Services Act
- Rules on the advice of complex products
- Financial Supervision Act
- MIFID
- Rules on the advice of deferred annuities/ payment protection products
- Inducements
- Inducements for payment protection products



• Worldcom;  
Parmalat;  
Enron;  
Ahold

• Credit Crisis

# Netherlands one of the few economies to adopt twin peaks supervisory model





## Range of tasks is varied



### Financial services

- Transparency
- Duty of care
- Quality of advice
- Conflicts of interests
- Best execution
- Integrity/competency of board members and directors

### Capital markets

- Financial reporting
- Prospectus and take over bids
- Market abuse
- Insider trading
- Notification of major holdings
- Financial infrastructure
- Oversight of accountancy firms

Fraudulent/criminal/illegal financial activities

# Large number of financial institutions under supervision covers a broad spectrum



Type of institution	Number
<b>Banks</b>	<b>210</b>
<b>Insurance companies</b>	<b>570</b>
<b>Investment firms</b>	<b>260</b>
<b>Investment funds</b>	<b>120</b>
<b>Pensionfunds</b>	<b>550</b>
<b>(Insurance) intermediaries</b>	<b>9,000</b>
<b>TOTAL</b>	<b>≈11,000</b>



# Supervisory remit of the AFM is very broad



## Financial services

## Capital markets

*Acting in best interest of consumers*

TE KOOP  
BRUNNER BOET  
020 6.16.16.88

**DE PRIJZEN STIJGEN. STIJGT UW PENSOEN OOK?**

Stijging van de prijzen

Uw pensioen groeit normaal sneller dan de prijzen

Maar als het slechter gaat met de economie groeit uw pensioen even snel als de prijzen

Let opt U ziet in dit plaatje hoe uw pensioen in de komende 15 jaar waarschijnlijk meegroeit met de stijging van de prijzen. Het plaatje zegt niets over hoeveel pensioen u jaarlijks opbouwt of hoe goed uw pensioenregeling verder is.

*Fair and orderly*

Verstandig Lenen

Loop geen onnodig risico. Lees de Financiële Bijsluiter.

zeer groot  
vrij groot  
zeer klein

risicometer

OPEN	LAST
+402.10	+39
11289.19	1128
+4254.87	+42
+6314.17	+625
+748.14	+7
+1401.67	+135
+4277.41	+417
+3779.50	+365

# The essence of our strategy is to detect the most important problems and solve them



**Pick the most important problems**

Our mission is leading: consumer protection and fair and orderly markets

**Carry out an integral problem analysis**

Need to have deep understanding of the size and the shape of the problem

**Generate creative solutions**

Often a mix of tailor-made interventions and tools is required

**Influence behaviour in an effective manner**

Enforcement is means, not an end in itself

# In making decisions an external stakeholder perspective is taken



Why was the AFM not present?

Why didn't the AFM identify the problem?

Why didn't the AFM act!?

## Dutch twin peak implementation challenges



- Cooperation between the supervisor of market conduct and the prudential supervisor is key to making the model work. Challenges on the division of – and overlap in – responsibilities.
- EU regulation is sectoral based. However, the Twin Peaks Model is a cross-sectoral supervisory approach.

## Experience of twin peaks regulation: *Overall FSAP Findings*



- NL have been heavily affected by the global financial crisis
- Twin peaks was severely tested, although the case for the model remains strong
- Worryingly, high and rising debt-income and loan to value (LTV-ratio)
- Supervisory programs are implemented under a clear enforcement strategy
- The AFM is perceived as a credible and effective enforcer

## Priorities and big issues for the AFM in 2013



- Product intervention
- Financial stability / systemic risks (more specific AFM's role and responsibilities)
- Regulatory perimeter (semi professional institutions)



# AFM has formal legal powers for product intervention with effect from 1 January 2013



## Principle based rule states in essence that:

- In developing products financial firms must take into account 'in a balanced way' the best interest of the customer. The product has to be –demonstrably- the result of that notion.
- This notion should be an integral part of the design and execution of the product development process of a financial firm.
- When a financial product causes detriment to the customer segment for whom the product has been developed, the firm must modify the product without delay or withdraw the product from the market.

# Overall product intervention strategy is based on four core principles



- **Promote responsibility where it belongs**
  - For this reason, we do not pre-approve products.
- **Provide guidance and inspiration where necessary**
  - We have developed a framework for reviewing the process and a framework for reviewing products. Challenge is to avoid inadvertently being drawn into pre-approval modus
- **Take risk-based interventions**
  - Our intervention strategy is aimed at both the product development process and products that are the result of this process
- **Act within the spirit of the law**
  - Although we have no powers to legally enforce within the MIFID domain, we will intervene in other ways when we see large scale customer detriment is caused

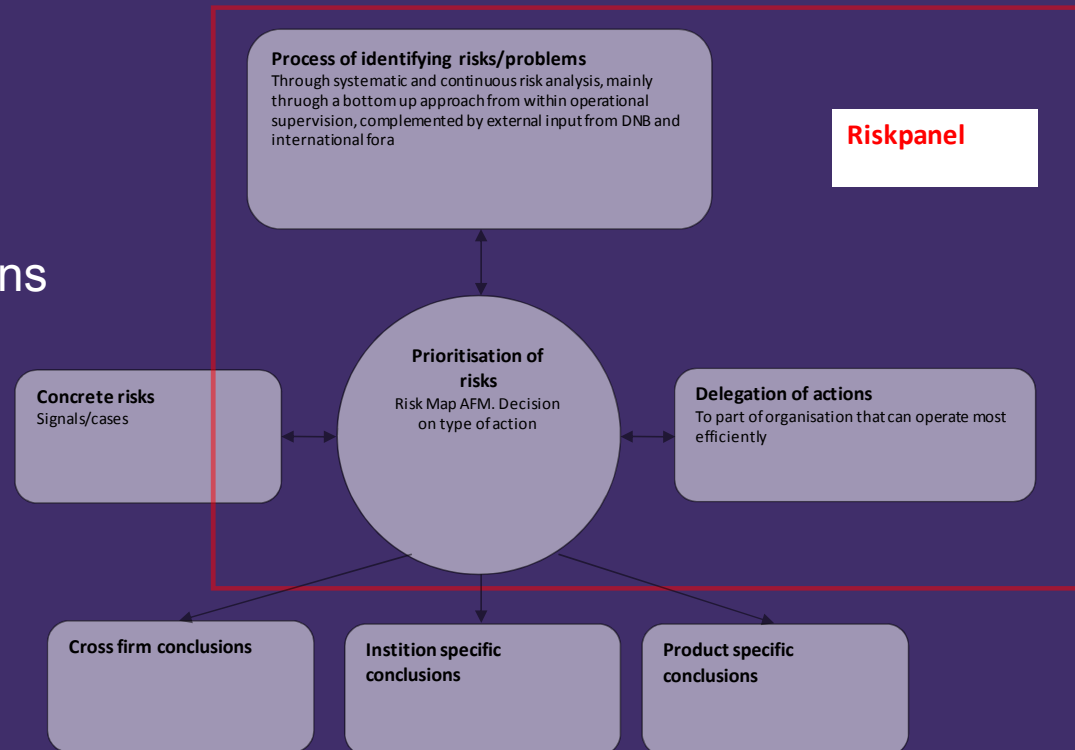
# The AFM Risk Panel



## Schematic drawing of Risk Panel process

### Components of process

1. Identification
2. 'Enrichment' of signals
3. Prioritisation
4. Delegation of follow-up actions



# The AFM Risk Panel



## Specific challenges for the AFM:

- Finding a natural place for financial stability supervision within the organisation, with fully functional ‘prioritisation and activation function’
- Learning to speak the “language of financial stability”
- Currently insufficient resources available to use robust quantitative techniques for monitoring systemic risks
- Defining regulatory perimeter for financial stability supervision

## Further questions?

### Contact details

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[www.afm.nl](http://www.afm.nl)

# FINRA's Approach to Business Conduct Regulation

Jeanne Balcom

FSA Annual International Seminar

November 27, 2012



## Who We Are

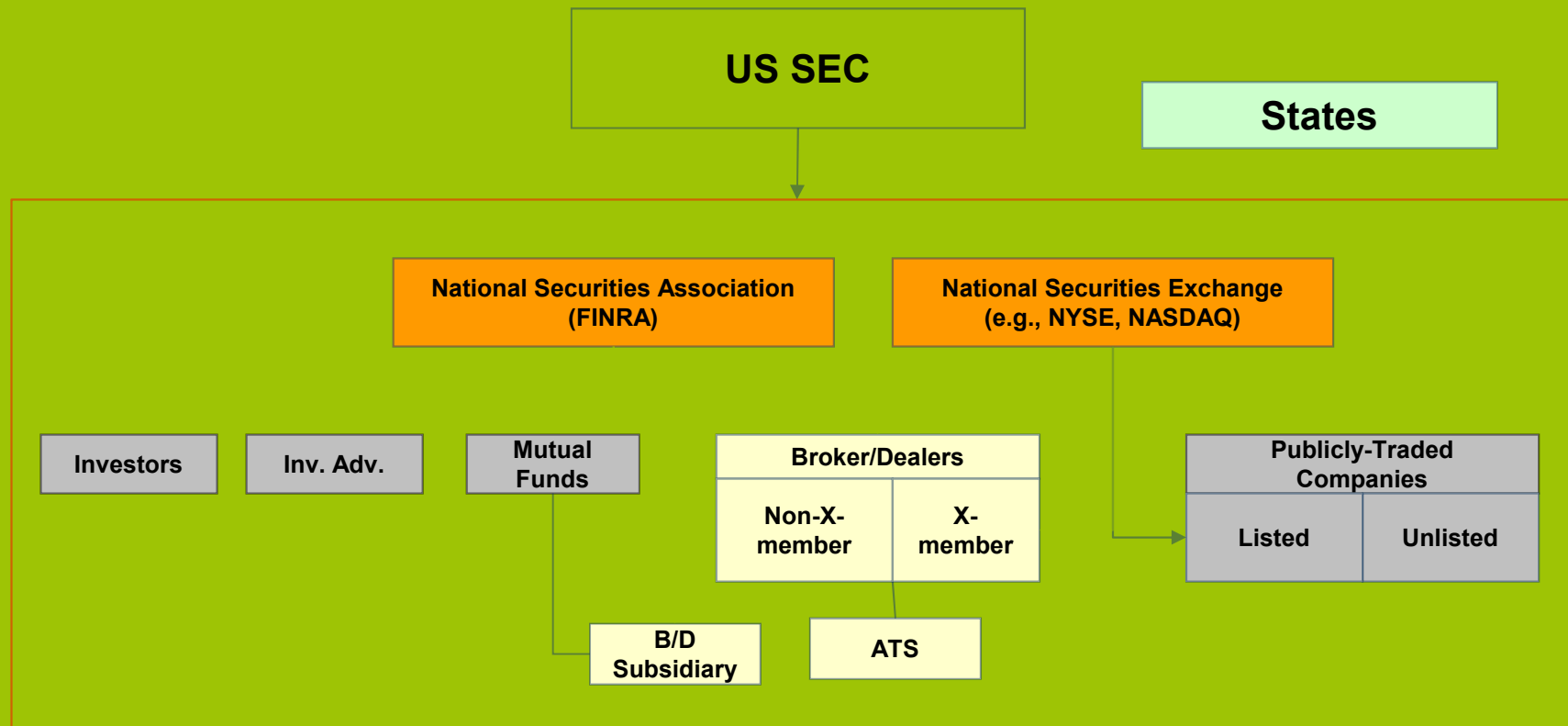
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**Financial Industry Regulatory Authority (FINRA) is an independent, self-regulatory organization established under US securities laws**

- Front-line regulator in the oversight of securities firms and markets
- All U.S. broker-dealers doing securities business are subject to FINRA oversight
- Oversees over 4300 firms with 160,000 branch offices and 630,000 securities representatives
- Approximately 3,000 employees
- Industry-funded, with a majority of Board Members independent of the industry
- Overseen by the Securities and Exchange Commission (SEC)



# Overview of U.S. Regulatory Jurisdiction



## Legend

-  Jurisdiction to oversee activities
-  Jurisdiction to request information and to enforce listing requirements
-  All entities within red box are subject to SEC jurisdiction; the SEC examines SROs, mutual funds, and broker/dealers





## Key Components of our Business Conduct Program

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- Issue principles-based and specific rules that govern firm behavior
- Authorize firms and individual industry participants
- ***Oversee firms based on risk***
- ***Enforce FINRA rules, SEC rules, and US securities laws***
- Detect fraud
- Surveil markets
- Educate investors



# Compliance-based to Risk-based Supervision

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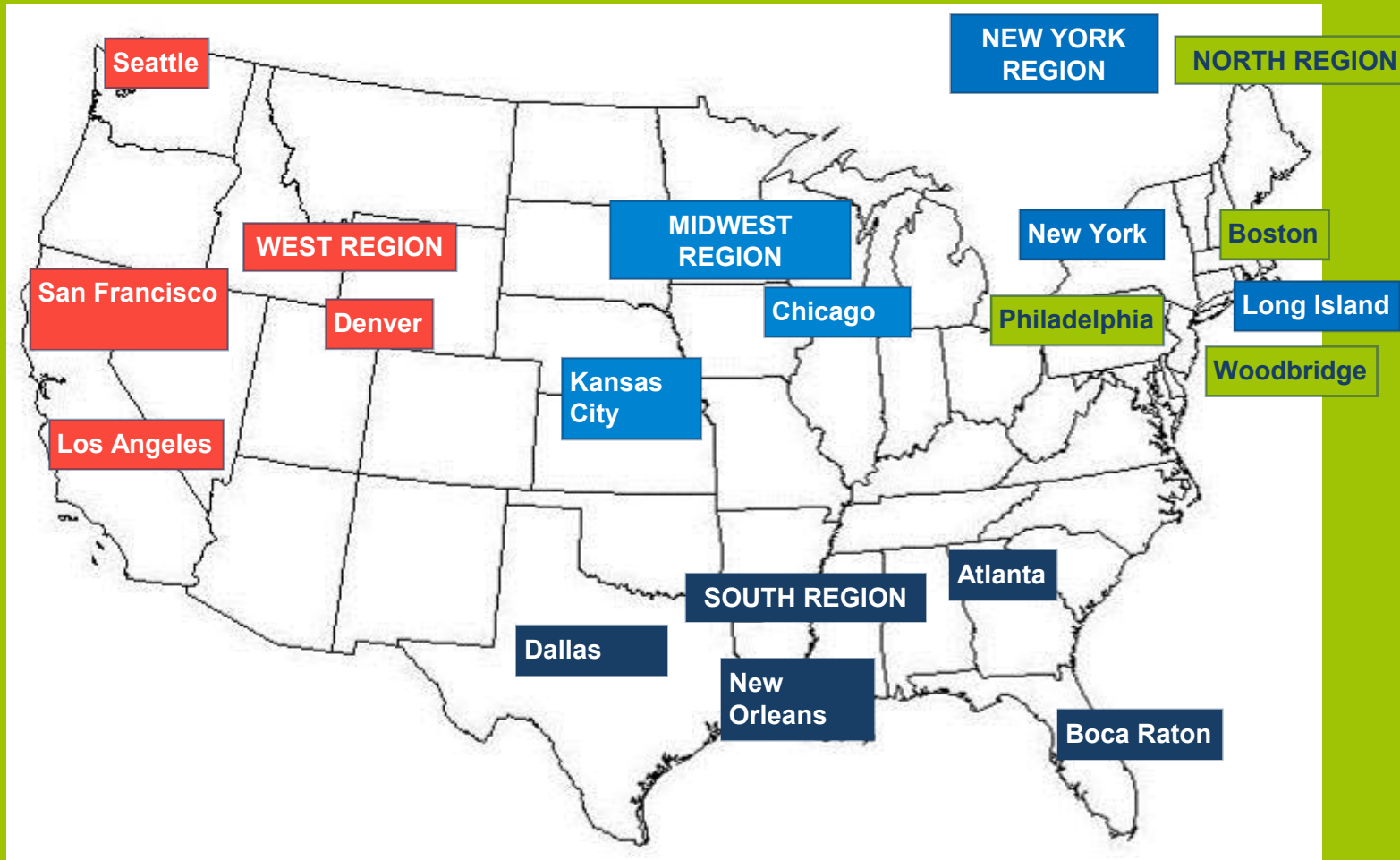
# Key Components of FINRA's Risk-based Supervision Program

- **Better data and intelligence**
  - > Industry outreach
  - > Enhanced third-party and firm data
  - > Outreach to domestic and international regulators
- **Delivering this information to supervisors and senior management**
- **Identifying key market risks**
  - > Emerging regulatory issues group and task force
  - > Board/Senior Management defining priorities and risk appetite
- **Ongoing surveillance/on-site inspections**

# Risk-based Inspection Planning

- Risk drives the frequency of routine inspection frequencies for all firms
- All firms are assigned an impact score
- All firms are assigned a business conduct risk level A-E
- A&B: 1-year, C: 2-year, D: 3-year, or E: 4-year
- Annual inspection planning involves three steps:
  - Quantitative assessment
  - Qualitative assessment
  - Review for national consistency

# District Offices



## Risk Based Inspections

- **Focus the inspection on an assessment of the firm's management of the *primary* risks at the firm**
  - > One-stop access for all information on the firms
  - > Continuous effort and inspection may change throughout the course of the inspection.
  
- **Risk-based modules replace compliance-based modules**
  - > Focused on reviewing firms risk management and internal controls
  - > More flexibility on what areas to review and how deeply
  - > Require assessment and judgment of adequacy of controls

# Inspections

- **Routine inspections that focus on the areas of highest risk at the firm**
  - Over 2,500 routine inspections per year
- **Branch office inspections**
- **Cause inspections**
  - Based on investor complaints, internal or external referrals, regulatory tips, employee terminations or arbitrations
  - Over 10,000 per year
- **Thematic inspections and sweeps**

## Enforcement

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- Formal disciplinary actions taken against firms and individuals for violations of securities laws, SEC rules, and FINRA rules
- Can result in fines, suspensions and expulsions from industry
- FINRA seeks restitution for harmed customers, where possible
- 2011 results:
  - 1,411 disciplinary cases
  - Nearly \$63 million in fines; *investor restitution of \$19 million*
  - Expelled 17 firms, barred 317 individuals, and suspended 432 individuals from industry



## Business Conduct Priorities

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- Management of conflicts of interest
- Hidden, mislabeled or excess fees
- Implementation of the new suitability rule
- Mis-selling (e.g. sale of complex products to retail customers)
- Use of social media and automated tools in the provision of advice
- Fraud detection (microcap fraud, ponzi schemes, advance fee schemes)
- Protection of customer funds and securities (including cyber security)