FSR INSIGHTS - 2019 OUTLOOK

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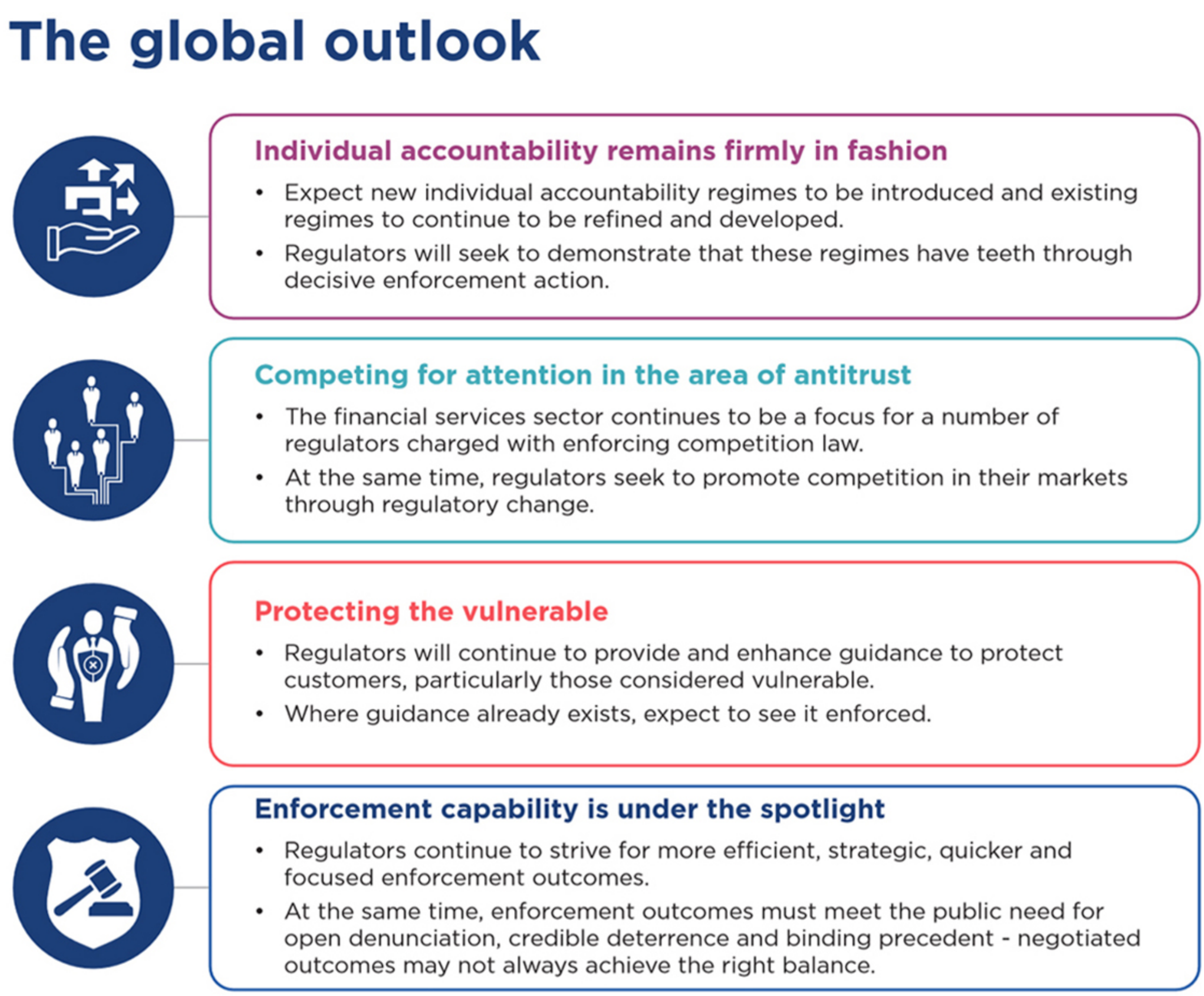
Legal Briefings

Herbert Smith Freehills' Financial Services Regulatory (**FSR**) team surveys the regulatory landscape in 2019 and identifies some themes we expect to be at the core of regulatory priorities globally in the next 12 months.



DEVELOPMENTS IN RELATION TO INDIVIDUAL ACCOUNTABILITY

Regulatory focus on individual accountability shows no sign of abating. The Financial Stability Board's Toolkit for financial services firms and supervisors on "Strengthening Governance Frameworks to Mitigate Misconduct Risk", published in April 2018, includes, amongst other things, some guidance for those who have yet to follow the apparent fashion for introducing an individual accountability regime.

This fashion of course started in the **United Kingdom**, where individual accountability very much remains a priority for the regulators, forming a key plank of the Financial Conduct Authority's (**FCA**'s) culture and governance cross-sectoral priority, as well as being a continued area of focus for the Prudential Regulation Authority (**PRA**).

2019 is set to be the year in which the extension of the UK's Senior Managers and Certification Regime (**SMCR**) to all regulated firms will be completed.

December 2018 saw insurers brought within scope of SMCR, a 12 month implementation period for initial certifications and for conduct rules to be applied across the wider population of employees. We also have near final rules for the extension of SMCR to solo-regulated firms, with an implementation date of 9 December 2019. This is the final step in the roll out of the regime and will be the sternest test yet of its flexibility, as it will see a wide range of different types and size of firms coming within scope, from large asset managers and brokers down to the smallest consumer credit firms and Independent Financial Advisers. Whilst the largest compliance burden is likely to fall on the bigger and more complex firms in absolute terms, smaller firms will no doubt encounter challenges in implementing such a wide-ranging regulatory framework with more limited resources.

With banks and PRA investment firms now having had almost three years for SMCR to bed in (although some important details are yet to be finalised – a recent consultation proposes that the Head of Legal need not be a senior manager), focus in this area has now inevitably shifted to how the regulators will approach enforcement. Attention was piqued in May 2018, when the PRA and FCA billed an enforcement investigation into actions taken by James Staley, the CEO of Barclays Bank, in relation to identification of an anonymous whistle-blower as "the first case brought by the FCA and PRA under the Senior Managers Regime". However, while Mr Staley was fined £642,430 for his conduct, this was based on a breach of a conduct rule (acting with due, skill care and diligence) that existed in a virtually identical form prior to the implementation of SMCR. The case therefore gave observers very little insight on how the regulators would make use of their new powers under the regime. The regime is still relatively young and whilst many of the enforcement cases currently under investigation may still relate to behaviour pre-dating SMCR, we would expect the regulators to have every interest in sending clear messages over the coming year to leave the industry in no doubt that individuals will be held to account.

In **Asia**, we expect the continued focus on individual accountability to take on two forms.

First, we anticipate an increase in the number of jurisdictions implementing senior management accountability regimes, as well as an increase in the scope of these regimes. In particular, we expect to see the implementation of such regimes by both the Monetary Authority of Singapore (**MAS**) in Q1/Q2 2019 and by Bank Negara in Malaysia, following consultation processes during 2018.

Importantly, the proposed Singapore and Malaysian regimes include within their scope two roles which have to date not been subject to equivalent regimes in other Asian jurisdictions: Human Resources (under the Singapore regime) and Legal (under the Malaysian regime). On this basis, we anticipate that if these roles are included in the regimes eventually introduced, there may also be an expansion in the scope of the Hong Kong Securities and Futures Commission (**SFC**) and Hong Kong Monetary Authority (**HKMA**)'s own regimes, with HR particularly likely to be included. The inclusion of HR would be consistent with what we anticipate will be an increasing focus by Asian regulators on the role of HR in individual accountability and misconduct risk. As part of this focus, we expect to see the release by the SFC in Q1 2019 of changes to its licensing regime which will require licenced corporations to notify the SFC where employees have departed the firm while under investigation.

Second, similarly to the UK, we anticipate that Hong Kong regulators will be increasingly focused on taking enforcement action against individuals. While the SFC had initially stated that it did not see the Manager in Charge (**MIC**) regime as an enforcement tool, it clearly moved away from this position during the course of 2018. We understand that the SFC is actively using the MIC regime as a '*roadmap*' to identify senior individuals responsible for misconduct, and is already investigating at least two senior managers in relation to misconduct occurring on their watch. In addition to enforcement against MICs, we anticipate seeing a continued focus by the SFC on IPO sponsor principals, as well as enforcement against directors of listed companies engaging in fraud or malfeasance.

With the dust barely settled on the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (the **Financial Services Royal Commission**)* in **Australia**, the focus on individual accountability shows no signs of abating in 2019. The newly introduced Banking Executive Accountability Regime (or **BEAR** as it is commonly known) has already been earmarked for expansion. In the Final Report of the Financial Services Royal Commission, the Commission recommended that the regime be applied to all Australian Prudential Regulation Authority (**APRA**) regulated financial services institutions. In addition, the Commission has identified the need to ensure that under the BEAR a specific 'product responsibility' would be allocated which would identify a person or persons accountable for the design, delivery and maintenance of all products offered by the relevant institution and any necessary remediation in respect of any of those products.

The new and expanded BEAR will be jointly administered by the conduct regulator, the Australian Securities and Investments Commission (**ASIC**) and the prudential regulator, APRA, both of whom have recently made it clear that enforcement is at the top of the agenda for the coming year.

Actions like that commenced by APRA against certain directors and executives of a large financial services company just prior to the end of 2018 may become more common in 2019. We also expect to see ASIC's renewed focus upon enforcement to result in a sharp increase in actions against entities and individuals in 2019.

*Please access this link for an overview of the Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, and what it might mean for your business.

In the **Middle East**, regulators are adopting a 'wait and see' approach vis-à-vis their peer overseas regulators and the potential adoption of their own specific senior management accountability regimes. At this time, most regulators appear satisfied that, given the size of their markets and number of licensees, their existing regulations allow them to supervise firms effectively and to make individuals accountable for their actions. That said, individual accountability remains top of the agenda from an enforcement perspective, with regulators in the UAE and Kuwait taking acting against individuals which have included imposing fines and restricting activities. January 2019 has already seen the Dubai Financial Services Authority (**DFSA**) successfully enforce a fine against an individual in the UK, demonstrating its commitment to enforcing its regulatory actions.

We anticipate that, as part of their supervisory approach, UAE regulators in particular will look closely at their licensees and will expect firms to clarify roles and responsibilities of senior managers and other key individuals, to ensure such information is documented, to set out the firms requirements or expectations with respect to accountability and to ensure that this is communicated through all levels of the organisation by the Board.

COMPETITION LAW IN THE FINANCIAL SERVICES ARENA

Global regulators with responsibility for upholding competition law appear to continue to have their sights on financial services.

In **Asia** in 2019, we anticipate an uptick in activities by antitrust regulators in relation to the financial services sector. The sector has attracted attention in a number of APAC jurisdictions, and antitrust issues playing out on the international stage may well come to the fore in one or more jurisdictions in Asia, particularly as the regulators in the region continue to develop and tackle sophisticated cases.

The Competition and Consumer Commission of Singapore (**CCCS**) imposed several fines for cartel conduct in other sectors in 2018. While the recent focus of the CCCS has been on the tech sector, the CCCS may well turn its attention to the financial services sector in line with EU and Australian developments (the CCCS reportedly cooperates closely with the Australian competition regulator in particular). In the rest of Southeast Asia, cooperation among competition regulators may well increase with the CCCS having taken up Chairmanship of the ASEAN Experts Group on Competition in March 2018.

In China, the State Administration of Market Regulation (**SAMR**) has reportedly stated that financial services and fintech are potential target sectors, although there are no reports of enforcement actions at present. More generally however, the SAMR has signalled a renewed focus on competition law enforcement in 2019.

The Korea Fair Trade Commission (**KFTC**) fined four global banks a combined 693 million Won (approximately US$620,000) in January 2019 for illegally sharing information and colluding in price bids to win foreign exchange derivative contracts. The KFTC is also investigating several major banks for allegedly abusing their superior position when purchasing ATM machines.

The Hong Kong Competition Commission (**HKCC**) published a decision in October 2018 finding that the Hong Kong Code of Banking Practice is not excluded from the application of the First Conduct Rule (which prohibits anticompetitive practices). As the HKCC's first two (relatively straightforward) prosecution cases reach their conclusions and with a new leniency framework expected to be introduced, the HKCC may target more complex investigations and sectors. Given the background of key staff members within the HKCC, which includes ex-HKMA, ex-European Commission, and ex-DOJ officials, the financial services sector may find itself under the spotlight.

In the **Middle East**, the first quarter of 2018 saw the UAE Competition Committee finally became operational, with the Committee meeting to discuss guidelines and standards for the implementation of competition rules and in particular a merger control regime. In 2019, we anticipate that the Ministry of Economy's Competition Department (supported by the Committee) will turn its attention to the review of mergers and enforcement of the Competition Law.

In **Australia** in 2019, we will see the Australian Competition and Consumer Commission (**ACCC**) continue its aggressive enforcement program focused on the financial services sector.

The ACCC is currently sharpening its capabilities with respect to financial services through internal restructuring, senior hires, and revised strategic priorities. The financial services unit (**FSU**), a permanent specialist enforcement team dedicated to conducting regular inquiries and advocacy into financial services competition issues established in 2017, now has 12 full-time staff and a budget for a rolling program of inquiries and market studies over four years. To date the FSU has launched inquiries into residential mortgage pricing and foreign currency conversion services. These thematic reviews can often lead to follow-on enforcement action.

In 2018, there were two major public inquiries which examined competition in the financial services sector. The Financial Services Royal Commission found that "competition within the banking industry is weak", and a Productivity Commission inquiry identified a problem that "no Australian financial system regulator has responsibility for putting competition first". The Productivity Commission recommended that a regulator be appointed as "designated competition champion", and suggested the ACCC was a "natural fit" for this role. The ACCC's work program for 2019 is likely to reflect this mandate, and we expect to see unprecedented focus by the ACCC on financial services industry participants in 2019. The new "concerted practices" prohibition will be tested.

Following the commencement in 2018 of a landmark criminal cartel prosecution against three banks and six of their senior executives over a capital raising, ACCC Chair Rod Sims has flagged that at least three further criminal cartel investigations will commence in 2019. He has also warned businesses that the ACCC will be seeking higher penalties.

In 2019, we will also see the commencement of open banking in Australia. Open banking is intended to promote competition and innovation in retail financial services. The current staggered timetable envisages major bank customers receiving complete data on 1 July 2019, with mortgage accounts to follow on 1 February 2020. Non-major banks in Australia have an additional 12 month implementation period.

Competition in financial services remains a priority for the **United Kingdom**'s FCA and the Competition and Markets Authority (**CMA**).

One of the FCA's cross-sector priorities is innovation, big data, technology and competition, focussing on how developments can increase competition in various markets. This includes the monitoring of fintech and how changes to retail banking models affect competition. Support for technology and innovation in providing improved competition for consumers was highlighted by both Mary Starks (then Director of Competition) and Christopher Woolard (Executive Director of Strategy and Competition) in speeches made throughout the course of 2018.

The FCA has also stated that the treatment of existing customers is a priority. In particular, it will focus on competition and value for customers in relation to current accounts and cash savings. The implementation of the Payment Services Directive (**PSD2**) is also a priority for the FCA as it moves to increase competition in payments as banks open their payment infrastructure and customer data to third parties. PSD2 is part of a shift towards open banking in the UK and the EU: from 14 September 2019 all bank and online payment account providers will have to have established at least one "access interface" which third party providers can use to access customer payment accounts, with customer consent.

Conducting market studies has been a key plank of the FCA's competition work. There are a number of FCA market studies ongoing including studies into mortgages (due to report Spring 2019), investment platforms (due to report Q1 2019), wholesale insurance broking (interim report due Q1 2019) and general insurance pricing practices (final report due December 2019). Following the asset management market study which closed in 2017, the FCA referred investment consulting and fiduciary management to the CMA for a full market investigation. The CMA's Final Report is due in March 2019.

In 2017 the FCA issued the first, and to date only, "statement of objections" under its Competition Act powers to four asset management firms alleging breaches of competition law. The final decision is hotly awaited. Meantime, in early 2019, related events were the subject of an FCA fine against a former employee of one of the firms for misconduct in relation to an IPO and a placing.

The CMA opened an investigation into a suspected bonds cartel in November 2018, following a series of dawn raids.

The **European Commission** has instructed a third party consultancy to undertake a study on syndicated lending in several EU Member States. Publication is expected in early 2019. While the study will look at how the market works generally, any failings in the market which are identified might be the precursor to enforcement action. This is a market that has previously been of interest to the FCA and national competition authorities in other Member States.

As regards enforcement action, the Commission has a number of open cases in the financial services sector concerning, for example, European government bonds (with a statement of objection issued in January 2019), foreign exchange, supra-sovereign, sovereign and agency (SSA) bonds and aviation insurance broking (where the Commission asserted jurisdiction over a pre-existing UK FCA investigation).

In **France**, the consumer's protection in the banking and financial fields has been one of the top priorities of the Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes (**DGCCRF**) over the last 12 months. In fact, the DGCCRF has led several large scale investigations targeting, in some instances, more than 300 banking institutions and intermediaries. These consider whether the consumer code has been complied with in relation to the renegotiation and repurchase of mortgage loans, pre-contractual information provided to borrowers before a consumer credit agreement is entered into, and compliance by advertisers with the ban on the electronic broadcast of advertisements for certain risky financial contracts (foreign exchange contracts, binary options, etc.).

IMPROVING OUTCOMES FOR CUSTOMERS

Consumer protection is of course a fundamental precept of financial services regulation. We foresee increased focus on customer treatment in a number of areas, particular in relation to those customers deemed vulnerable.

In **Australia**, we expect responsible lending will continue to be a key focus for ASIC in 2019. In addition to a likely increase in the number of enforcement actions it takes on to address unfair sales and unconscionable conduct, ASIC is expected to issue an update to its Regulatory Guide 209 – Credit Licensing: Responsible lending conduct (**RG 209**). The new RG 209 will set out ASIC's current expectations about what financial service license holders should do to enable them to comply with the responsible lending laws. As part of its broad focus on these issues ASIC has also flagged an intention to pilot a new data collection project for home loans.

In addition, ASIC is paying close attention to the burgeoning 'buy now, pay later' industry, having recently revealed that it is reviewing the industry structure, dynamics, composition and potential issues. ASIC is expected to release the results of its review shortly.

In 2019 ASIC is also expected to publish reports following the conclusion of its reviews of responsible lending within the car finance market and loan fraud in the consumer credit market. The insights of the regulator, may ultimately give rise to modifications of lender practices in this significant area.

In the **United Kingdom**, following amendments in November 2018, which clarified (and, to some extent, enhanced) the FCA's requirements regarding the assessment of affordability, the FCA may turn its attention to addressing any detriment caused by apparent failures in how firms previously assessed affordability. This may give rise to increased enforcement and consumer redress in this area.

The FCA also intends to assess the role of credit reference agencies in the assessment of creditworthiness and affordability in a Credit Information Market Study in June 2019. This will look into whether credit reference agencies share consumers' credit information effectively with firms or if the information is of good quality.

The FCA will also continue its review of consumer credit products where it perceives the greatest risks for vulnerable customers, with enhancements to existing rules likely. New rules are already due to come into force for home-collected credit and catalogue credit and store cards, whilst it is consulting on new rules for firms who offer 'buy now, pay later'. The review of the car finance market is also due to be published in early 2019 which will, among other things, assess whether firms are properly assessing whether consumers can afford the car they are purchasing.

Importantly, the FCA plans to consult this year on guidance for firms on the identification and treatment of vulnerable consumers. The FCA aims to provide greater clarity on its expectations of firms in this area. The FCA may also consult on a proposal for an introduction of a new duty of care on firms when dealing with customers, following a Discussion Paper on the issue published last year. We expect other regulators globally to be watching these developments carefully.

In **France**, implementation of MiFID II, with focus on both consumer and investor protection, is a key priority for the 'Autorité des marchés financiers' (**AMF**). One of the AMF's first supervisory operational and thematic practices (**SPOT**) inspection reports published in 2018 dealt with clients' knowledge and experience. In 2019, the AMF will review firms' compliance with product governance requirements regarding identification of the target market and distribution strategy through further mystery shopper visits. The AMF also plans to monitor compliance with best execution requirements, including particularly "payment for order flows".

In relation to discretionary investment management, the AMF plans a campaign of SPOT inspections as part of its ongoing assessment of compliance with new MiFID II requirements (with a focus on notification to clients when the value of their portfolio depreciates by 10%, changes in the management report, and compliance with inducement rules). The AMF will continue its close monitoring of short selling, including in particular measures to manage the risk of settlement default and comply with transparency requirements, in order to ensure a high level of investor protection.

At the end of 2018, a report dealing with self-placement by banks of securities marketed to retail clients, and marketing of financial products to vulnerable elderly people, was published by a Joint Unit of the AMF and the 'Autorité de contrôle prudentiel et de résolution' (**ACPR**) (the prudential regulator for banking and insurance). The Joint Unit will build on this work in 2019.

In 2018 in **Asia**, we saw various regulatory developments to enhance investor protection in Hong Kong and Singapore. This included further reforms to the Hong Kong professional investor (**PI**) regime, and the heightened regulation surrounding selling practices and product suitability assessments of licensed individuals and entities. One of the SFC's key enforcement priorities in 2019 will continue to be intermediary misconduct that poses systemic risks. While the number of SFC enforcement investigations has dropped slightly, the SFC has instead focused its resources on investigating serious and systemic breaches, including internal control failings, classification of PIs and selling practices of banks and other financial intermediaries and sought heavier penalties. This is illustrated by the SFC's strict approach in recent serious mis-selling cases, which resulted in a record fine of HK$400 million (using the number of customer complaints as the multiplier in determining the appropriate fine) and license suspension being issued against a large international bank. In addition, the HKMA also launched a mystery shopper program last year to review and assess the selling practices of banks in respect of investment and insurance products.

In the event of volatility in the markets and the impact of any economic downtown on retail and vulnerable customers, the Hong Kong regulators may conduct further thematic inspections and investigations into selling practices of licensed corporations and individuals and around the new PI regime, in particular in relation to vulnerable customers. The new client suitability requirements, which provide an extra avenue for legal challenges, enter their third year of operation in 2019. In the event of an economic downturn, this could result in an increased number of mis-selling claims in 2019.

In Singapore, new legislation that came into force in October 2018 has tightened the eligibility criteria for who may be treated as an 'accredited investor' (**AI**). Further regulatory safeguards have also been introduced that require financial institutions to obtain express consent ('opting-in') to being treated as an AI from AI-eligible customers on-boarded from 8 April 2019.

Existing customers may continue to be treated as AIs from 8 April 2019 if they meet the revised AI eligibility criteria, and have been given the option to opt-out of being treated as an AI before that date. From 8 July 2020, however, firms will need the consent (opt-in) of existing AI-eligible customers who are individuals and have not opted-out of being treated as an AI to continue to treat them as an AI. The effect going forward will be to enable investors in Singapore to elect to benefit from the stronger regulatory protections for retail investors, even where they meet the revised AI eligibility criteria. However, as retail investors, they would no longer have access to non-retail financial products.

Firms whose licence conditions restrict them from dealing with retail customers may therefore find themselves unable to deal with some existing customers, either because the customers opt-out of being treated as an AI, or because they do not meet the revised eligibility criteria. The MAS will likely keep a close eye on compliance with the revised AI regime and has reminded financial institutions to start preparations early when policy positions are announced.

ENFORCEMENT IN THE SPOTLIGHT

Regulators across the globe are increasingly under pressure to deliver more enforcement outcomes, more swiftly, with higher fines, and (as noted above) to hold senior individuals accountable. In certain jurisdictions, prudential regulators who have traditionally shied away from being seen as enforcement-led are now actively giving greater weight to enforcement as an industry-wide deterrent.

In **Australia,** a clear message from this year's Financial Services Royal Commission is that regulators have not been aggressive enough: ASIC was criticised for rarely going to court to seek public denunciation of, and punishment for, misconduct, and APRA for never doing so. ASIC has confirmed that it has "very clearly heard" that the community expects it to use court processes as much as possible. ASIC Chair James Shipton expects there will be less reliance by ASIC on enforceable undertakings in the future, and we are already seeing evidence of a more combative attitude in current proceedings.

Going forward, ASIC will have even greater capacity to pursue breaches, with a proposed upgrade to its enforcement powers and penalties, and additional funding from the Government. A new Deputy Chair, criminal silk Daniel Crennan QC, will have a key focus on enforcement action. ASIC's aim is to be strategic and agile, and to "accelerate and increase the intensity of ASIC's enforcement activities and enhance its capacity to pursue actions for serious misconduct against well-funded litigants". ASIC may also have a new forum in which to pursue its enforcement activities: in response to the Final Report of the Financial Services Royal Commission, the Australian Government announced that it intends to establish a specialised 'white collar crime' division of the Federal Court, aimed at accelerating the prosecution of economic and financial crimes. We expect to see ASIC adopting a more thematic approach to prioritising its enforcement work, focusing on the highest priority harms. Firms will also have a part to play in this initiative: as ASIC believes its ability to take enforcement action for non-compliance was hindered by breach reporting failures, which is the first area of focus for onsite supervisory visits as part of ASIC's new close and continuous monitoring approach.

APRA, too, has said that enforcement is front of mind. In one of its submissions to the Financial Services Royal Commission, APRA indicated that it has refreshed its corporate strategy and is currently undertaking a formal review of its approach to enforcement. APRA has acknowledged that it needs to consider a stronger appetite for formal enforcement action, including greater weight to its strategic use as an industry-wide deterrent, whilst remaining a supervision-led regulator. APRA is also reviewing evidence of potential misconduct referred to during the Royal Commission.

Banks should expect to be increasingly confronted by regulators who, emboldened by public support, more funding and more options in the regulatory toolkit, are much more willing to go to court, and less willing to resolve matters in other ways. Whether or not this will be a permanent shift in attitude for Australian regulators, it is to be hoped that Australian regulators will continue to be prepared to engage with industry and financial institutions to consider the benefits available in non-court outcomes in appropriate cases.

In **Hong Kong**, it is expected that the SFC will continue to target systemic issues in 2019 through its "traditional" and "non-traditional" approach to enforcement. The former will see specialist enforcement teams continue to focus on priority areas such as corporate governance of listed companies, insider dealing, market manipulation, unlicensed dealing, intermediary misconduct and issues arising from cross border activities. The "non-traditional approach", which is mainly centred around "ICE" (an operational group comprising of the SFC's senior leaders from its Intermediaries, Corporate Finance and Enforcement divisions, and chaired by the SFC's CEO), will see ongoing collaboration between the different SFC divisions, collaboration with external partners such as the China Securities Regulatory Commission and the use of front loaded regulatory tools (eg objecting to listing applicants that do not meet the requisite standards and suspension of shares from trading).

In 2018 we saw the SFC focus on "high impact", large and challenging cases, closing those that posed less risk of damage to Hong Kong's reputation as an international financial centre. Similar to 2017, this strategy unsurprisingly resulted in a drop in the number of enforcement cases in the last year, although fines were again at a high. As in Australia, there is a focus on building civil and criminal cases, including seeking compensation orders. In this regard, the SFC has said that it is targeting legal proceedings against approximately 60 companies and individuals by the first half of 2019.

Firms should expect money laundering and IPO sponsor conduct to remain a key focus of enforcement, particularly in light of the Financial Actions Task Force's mutual evaluation of Hong Kong in 2018 and given the SFC remains concerned that IPO sponsor work continues to be performed below expectations. While the SFC is taking a more front-loaded regulatory approach in many respects, with targeted intervention at an earlier stage, enforcement is still playing an essential role as a regulatory tool for deterring bad behaviour.

In **Singapore**, enforcement has played an increasingly public role in MAS' wider objective of financial industry oversight since the establishment of its dedicated Enforcement Department in 2015, and this trend looks set to continue. In 2018, we saw MAS publish an Enforcement Monograph to provide greater clarity and transparency into how it deters, detects, investigates and takes action against breaches of the rules and regulations it administers. The monograph outlines the three aims of MAS' enforcement approach; early detection of misconduct and breaches, effective deterrence and shaping business and market misconduct. It also outlines how MAS works closely with other law enforcement agencies in Singapore and how it is able to obtain information and assistance from foreign regulators under several Memoranda of Understanding (both bilateral and multilateral) to which it is a signatory with various foreign counterparts.

Regulatory changes in 2018 saw MAS' enforcement capability strengthened. In particular, MAS officers were given increasing powers of investigation and priority was given to MAS' civil penalty claims and disgorgement orders to prevent a contravening person's assets being depleted by his/her private debts. Standardisation of the civil penalty ceiling for market misconduct also means that all contravening persons are now subject to the same maximum penalty regardless of whether any profit was earned or loss avoided. This ensures that appropriate penalties can be administered commensurate with the culpability and penalty of the offender and gravity of the offence. Market misconduct continues to be a key focus for MAS, with several successful prosecutions in 2018.

The fight against money laundering and terrorism financing remains another key focus for MAS. Investigations related to 1MDB-related offences remain ongoing and both Singapore and Malaysia have agreed to continue to co-operate through the exchange of information on 1MDB-related fund flows. Strong action has already been taken against a number of financial institutions and individuals, including criminal charges and convictions, as well as large financial penalties. In 2019, we expect MAS to adopt a sharper, more risk-targeted approach to AML/CFT, including greater leverage of technology (particularly data analytics) to identify higher risk areas.

In **Europe**, under the Single Supervisory Mechanism (**SSM**), the European Central Bank (**ECB**) has powers to take enforcement measures and, within the scope of its supervisory tasks, to impose fines on Banking Union supervised institutions for breach of directly applicable EU law, including the ECB's own decisions. Whilst initially the ECB's sanctions had been focused on prudential issues such as capital requirements and large exposures and liquidity, its recently published supervisory guide to on-site inspections and internal model investigations shows the ECB also taking action in respect of reporting and governance issues. Active use of the ECB's breach reporting mechanism has uncovered a significant number of previously undetected breaches involving governance issues. We increasingly see the ECB tackling its thematic investigations and inspection work streams in a more coordinated fashion with its international counterparts, and developments outside the EU may lead to an on-site inspection in the EU, or in non-EU countries, with the consent of the relevant authorities in the jurisdiction in question.

In **France**, the number of enforcement decisions and the levels of fines imposed by the AMF have also increased whilst the number of enforcement investigations has, broadly speaking, remained static. It seems likely that 2019 will see a rise in the number of settlement agreements entered into with the AMF now that the AMF has power to settle market abuse enforcement cases.

However since mid-2018, the AMF has also been carrying out a programme involving 7 SPOT inspections per year, which has so far led to publication of three thematic reports highlighting both good and bad practices. SPOT inspections review the financial market participants' behaviour in accordance with specific themes, and have a primarily educational purpose, although these have also sometimes resulted in the issuance of "*lettres de suite*" requiring remediation of certain issues identified. The UK experience of similar thematic work suggests that if a serious issue were to be uncovered in the course of these inspections, enforcement action (a *notification de grief*) might also follow.

The ACPR recently imposed a record fine of €50 million on the Banque Postale for breach of anti-money laundering and counter-terrorist financing provisions.

In the **United Kingdom**, the FCA has, like the SFC, been seeking to improve its ability to detect and manage suspected misconduct as early as possible, using investigations as a diagnostic tool where it suspects serious misconduct may have occurred. Supervision and enforcement have been operating together to achieve this. The result has been a year-on-year increase in the number of investigations being opened. The FCA said that, where no evidence of misconduct is found, investigations would be promptly discontinued with no further action – there have been some examples of this. The FCA aims to become more efficient, strategic and focused in conducting investigations more quickly and expediently, and has suggested it may impose tighter timetables for responses to information requirements, and use the court to enforce these. Perhaps unsurprisingly, given regulatory resourcing constraints, firms and individuals have nonetheless begun to experience some delays in the progression of their cases. The Treasury Select Committee regularly presses the FCA for updates on progress. The FCA is also reviewing its Penalties policy, and will be undertaking a full review of its Enforcement Guide in 2019.

Meanwhile, although we see regular enforcement outcomes from the PRA, there has been little uptick in the number of cases; and enforcement does not feature in the PRA's 2018/2019 Business Plan. The Bank of England has, however, appointed its new functionally independent Enforcement Decision Making Committee, and updated its related statements of policy and procedure. We can expect a steady diet of enforcement outcomes, often as part of joint FCA/PRA investigations.

Finally, in the **United Arab Emirates**, we saw the Central Bank introduce a new law aimed at enhancing the performance of monetary policy, ensure the stability of the currency, contributing to the establishment of better regulatory frameworks for monitoring the status of credit in UAE and taking further significant steps towards developing the UAE financial sector in line with international best practices and standards. The law is also significant from an enforcement perspective as it seeks to strengthen the Central Bank's independence, regulatory and enforcement powers while requiring financial institutions to introduce and demonstrate good governance and risk management and control frameworks while also encouraging fair competition and consumer protection.

Our teams will of course be happy to discuss any of the matters raised in this briefing at your convenience.

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