

GLOBAL REGULATORS TO ADOPT MORE AGGRESSIVE ENFORCEMENT METHODS FOR THE YEAR AHEAD, SAYS NEW HERBERT SMITH FREEHILLS REPORT

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Legal Briefings

According to a new report from Herbert Smith Freehills' Global Financial Services Regulatory (FSR) team, regulators in most countries are leaning towards a more aggressive enforcement approach as they hone in on issues emerging in the post-pandemic environment.

"Where there has been a level of post pandemic regulatory forbearance, we expect these challenges will cause the pendulum to swing back towards more aggressive methods of enforcement," says [Jenny Stainsby](#), Global Head of FSR at Herbert Smith Freehills.

The report has found that the tide of pandemic economic support is at different points across the globe, with some regulators looking to test their powers to the limit, including through visits to the homes of remote workers, and others dialling back their contentious enforcement approach. The report shows regulators are *'treading the fine line'* between both supporting and regulating economic activity. Although many markets are doing that in different ways, the report notes that there is global unity of focus on issues such as vulnerable consumers and market misconduct.

Drawing on its global expertise from across its network, the firm has set out some of the most pressing areas of focus for the FSR industry in 2022. The annual report, which is out today, covers nine topic areas including: diversity and inclusion in financial services; consumer protection; the future of payments; the regulation of crypto assets, crypto finance and exchanges; regulating AI; the changing approaches to enforcement globally; the increased regulatory focus on debt capital markets; and pricing regulation in the insurance sector.

Key issues highlighted in the report include:

- **Diversity** - In the UK, regulators and the regulated are embarking on a journey to accelerate the pace of meaningful change on diversity and inclusion in the financial sector. The evidence suggests that financial services regulators in other jurisdictions may well join them, with the surge in global focus on ESG issues acting as a catalyst. Even if regulators do not, there is a good chance that customers and other stakeholders will press firms to chart a better D&I course.
- **Insurance** - There are early signs of an emerging global trend towards pricing regulation in the insurance sector. In the UK, the regulator has prohibited certain pricing models in the insurance sector. Recent discussions and steps taken by regulators in the EU and Australia reflect similar concerns. Financial firms in jurisdictions not yet affected by such interventions should prepare for that in the coming year.
- **Big data and AI** - These are transforming how financial services and products are delivered, monitored and regulated - and even how evidence is identified and presented in regulatory enforcement cases. But concerns remain about the quality, fairness and transparency of automated decision making, and how the outputs of learning systems can be effectively monitored and challenged.
- **Ransomware** - A very real threat, with criminals successfully targeting banks and other financial services firms. Ransomware attacks are big business and ransom demands have grown. Firms should anticipate ransomware scenarios and whether a ransom could lawfully be paid.
- **Cryptocurrency** - Following 2021's continued cryptocurrency bull run, the growth of decentralised finance (DeFi), and the rise of cryptocurrency derivatives and stablecoins, lawmakers and regulators around the globe are scrutinising systemic and consumer risks in cryptocurrency markets and grappling with a wide range of issues including scope, market conduct and AML/CTF concerns. In 2022 the firm expects to see lawmakers and regulators proposing separate and bespoke regimes to regulate cryptocurrency markets with a possible risk of regulatory arbitrage.
- **Consumer Protection** - A perception that the financial sector continues to serve consumers poorly, and insights derived from behavioural economics, are increasingly

driving global regulators to focus on consumer outcomes. Whilst not abolishing the principle of consumer responsibility, the balance has clearly shifted. Businesses will increasingly be required to assume more responsibility and consider consumer outcomes over the full product lifecycle, from the design, price and fair value of products, to sales processes, ongoing communications, through to complaints and redress. Companies will be expected to monitor those outcomes, and alter their practices where good consumer outcomes are not being achieved.

- **Debt Capital Markets** - As debt markets become less opaque, with the availability of more data and advanced analytics, regulatory scrutiny of how they operate is growing. Across a range of jurisdictions, regulators are probing how firms manage potential conflicts of interest in the debt capital raising process, and whether confidential or inside information is properly controlled. With this background in mind, we anticipate that scrutiny of the debt markets will be a key focus for regulators next year.

Commenting on the report, Herbert Smith Freehills Global Head of FSR, Jenny Stainsby said: *"It has been a busy 12 months for firms and individuals in the financial services sector, dominated by Covid-19 and political uncertainty. Our Global Outlook for 2022 draws together the collective thinking of our leading global financial services regulatory practice on themes that we see as at the top of the global regulatory agenda in the next 12 months. We expect the pace of regulatory change to continue to accelerate, as a result of socio-economic and technological drivers, with regulators and firms alike needing to sprint to keep up."*

To read the full report, please click [here](#).

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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