ASSOCIATION OF PROFESSIONAL COMPLIANCE CONSULTANTS.

FCA Authorisations Division and APCC Liaison Meeting Minutes, Wednesday 5th June 2019, 1pm – 2.3-pm at the offices of the FCA, 12 Endeavour Square, London, E20 1NJ

Attendees:

FCA:

Nick Mears	FCA
Gavin Davies	FCA
Karen Avis	FCA
Kate Pitt	FCA
Richard Baker	FCA
Mike Baker	FCA
Kathryn Baildon-Smith	FCA
James O'Connell	FCA
Paul Williams	FCA
Sam Holden	FCA

APCC:

James Borley	APCC Chair and Authorisations Working Group Leader
Ben Mason	APCC Member and Authorisations Working Group Member
Jude Bahnan	APCC Member and Authorisations Working Group Member
Bev Robertson	APCC COO and Minute Taker

Agenda:

Introductions
Brexit update and news
Crypto
Phoenixing
CMCs
SM&CR
AR Networks
Departmental updates
AOB

1. Brexit

1.1 The FCA is focusing on a no deal Brexit on 31/10. The PRA have now closed their application window to incoming Banks and Insurers. There is also a subtle difference between payment firms and FSMA firms, as FSMA firms don't have any legislation around start date whereas payment firms must notify within 3 months of the exit date, which will be the end of July.

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1.2 Current applications that have been submitted will need to be resubmitted. Firms who have submitted a notification will be advised when their Temporary Permission is needed and if it will be granted.

2. Phoenixing

2.1 The FCA has just completed this phase of an 18-month project focusing on phoenixing with the FOS, the Insolvency service and the FSCS. This looked at improving the data that is provided from FOS etc and how they operate internally and interactions between these bodies - to ensure there are no gaps between FCA departments - and change the approach to how they assess new applications from advisory firms and hopefully intercept firms where phoenixing may be attempted. Focus has been on the IFA sector as this is where the FCA was receiving the most feedback that potential harm was occurring to consumers. The outcome is a change in how they approach and assess applications and scrutiny has increased.

2.2 The FCA has seen an increase in 'life-boating' where an existing firm submits an application for a brand new firm with similar people running the newco, with a view to move their assets across to the newco and leave their liabilities in the old firm, which firm they will later put into liquidation. They have issued external communication on this and have uploaded information on the website for consumers to see – in some cases the FCA has taken the newco to refusal where they believe phoenixing is the motivation behind the newco application. The project phase has now formally ended but the outcomes have been shared with other sectors and departments within the FCA to enable learning to be shared. The FCA provided some examples of where they had spotted evidence of regulatory misconduct and where they were taken to refusal. The FCA did comment that their intelligence is much stronger now and cuts across and is shared with other departments, so individuals and firms were more easily identifiable if they had previously caused a concern for the FCA.

2.3 The APCC mentioned that we'd like to make contact and have a separate phoenixing meeting, they advised they have tried to contact us and will ensure this is not dropped

3. Firm Contact Centre (FCC)

3.1 The FCC is to be renamed 'Supervision Hub' and this has already occurred internally. This reflects more of the work that the FCC does as a front-line supervisor. This will be done on a phased roll-out. The external website will be updated and the FCA will ensure it's still clear to consumers as to who they are, and what they do. For consumers, it may be named 'The Consumer Hub' and 'Supervision Hub' for firms.

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3.2 Brexit caused a spike in enquiries to the FCC, although this has now reduced, they are geared up to react to the next spike in Brexit issues later in the year.

4. Crypto

4.1 The APCC advised that we now have a Crypto working group and the FCA is welcome to provide input to this. We raised that the UK isn't leading the way in this, as it often cuts across many jurisdictions and other countries have issued detailed guidance ahead of the UK. The FCA will be issuing consultation papers on this later in the year, and some applicant firms might find they don't have sustainable business models following any future/additional/adjusted requirements.

4.2 The FCA is working with external financial crime stakeholders to understand where the UK jurisdiction ends, and this forms part of the preparations for 5MLD.

4.3 The APCC raised that applications appear to be more difficult to get through and can lead to frustration in the industry. We asked if there could be any guidance to enable applications to be more 'predictable' as the UK seems to be behind other jurisdictions in issuing guidance.

4.4 The FCA advised this would be following the report issued by the HMT Taskforce and more consultation papers will be issued, recognising that some applications are being submitted before full policy has been developed internally. However, the FCA's key responsibility is to ensure that any potential 'harm' from an application is mitigated, e.g. financial crime element is harder for the FCA to address as there is no official end to the UK jurisdiction and where this becomes another regulator's jurisdiction. 5MLD will assist with enabling the FCA to provide further guidance.

4.5 Some countries are going beyond 5MLD, is there any chance that the HMT/FCA will do this? The FCA has asked HMT for more powers but the outcome is not yet decided. It was raised that APCC members needed an outcome that they could help clients work towards. The FCA did advise that, in some cases the FCA may refuse crypto applications on 'lower evidential' basis than they would for other more standard applications as this is such a new and grey area for them to seek to assess. There is unlikely to be specific guidance issued at this stage for applicants.

4.6 The FCA advised it was difficult as the industry tended to have 'digital entrepreneurs' who operated across the landscape, i.e. involved in several firms at once, so it has proved difficult to assess the management controls within a firm. Firms are often coming to the Gateway without the correct levels of solvency and capital in place, so that in itself could lead to a refusal from the FCA. It was agreed this could be a lack of understanding by the firm rather than an absolute lack of funds. Many crypto firms are not acclimatised to being in the regulated space, so this was a challenge for the regulator.

4.7 The APCC advised some 'bad/good guidance' would enable advisors to ensure that applications were more complete and not waste so much of the authorisations team's time at application stage. The FCA has published case studies on applications that have been authorised, so that is a worthwhile place for consultants to review. The FCA's message would be that these applications need to be of a higher standard and crypto-related applications can be escalated internally to other committees. Firms should be reminded that the FCA will look for all the potential risks, and applications should be detoxified but that might still not be enough, and they will stress test all models.

4.8 The APCC asked if applications would be triaged, to identify key issues at an earlier stage, and the FCA confirmed it has recently implemented a triage process to pull out an application that has any element of crypto in it – mainly due to the committee referrals that are likely to be needed, so the referral can be made earlier in the application rather than at a later stage.

4.9 The FCA needed to ensure that financial promotions were clear and didn't suggest that unregulated parts of their business were 'FCA authorised' where this is not the case. The key message was to be as 'upfront' and transparent as possible with disclosing any link to crypto when submitting the application.

5. Wholesale

5.1 The FCA asked if the APCC have been seeing any business models similar to the London Capital and Finance model, where unlisted retail bonds ('mini-bonds') are being sold. The APCC felt this may be the case with firms who are unused to being regulated and didn't understand the difference between a regulated and unregulated product.

5.2 The AR models were again highlighted as being an area where this type of model can slip 'under the radar' as it wouldn't be part of a firm's original application.

5.6 The APCC raised a question around client money and asked for clarity on signed trust account letters prior to full authorisation being granted and highlighted the difficulty in referencing 'being authorised' when they clearly aren't through the process yet. The FCA advised that they would only need 'an expression of commitment' and wouldn't demand a signed trust letter. The FCA agreed to take this specific case offline to seek to resolve.

6. Claims Management Companies

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6.1 The FCA provided an update and advised that the CMC teams have learned from the consumer credit and other similar onboarding projects and have set up a department that is comprised of both authorisations and supervision, to enable applications to be reviewed more readily and holistically. As some firm applications are Variations of Permission rather than new applications, this enabled Supervision to assist and provide input.

6.2 The department has 50 staff now and have some staff from the previous regulator as well as FCA internal people, so experience in the team is high and gives good sector knowledge. They also have some people from FOS, so they have a good blend of knowledge.

6.3 953 firms have temporary permissions, which is higher than the FCA originally expected. The first landing slot closed at the end of May. Firms had to answer four questions to identify application periods and this has led to some firms missing the right application period; so whereas some firms have been authorised, some firms have had to stop trading. They get 30 days to run off existing clients and cannot take any new clients. The FCA have worked very hard to contact these firms, where applications are in draft etc and this extensive contact has resulted in more successful applications.

6.4 They have undertaken targeted contact, advising if they are in a landing slot but haven't submitted, to ensure firms are aware action is needed.

6.5 350 applications have been received in landing slot 1 and 85 firms didn't apply before the deadline. They also have a triage function in the CMC team, is to look at applications early as well as to pull out any with obvious errors e.g. not provided a business plan, and have gone back to firms before the application is considered 'started'

6.6 Supervision plan to visit firms and have also issued a Dear CEO letter, focused on financial promotions, and how they act on behalf of their clients e.g. completing forms for clients that don't exist to issue a request for information from firms.

6.7 This could be due to pressurised selling techniques in call centres and is causing a problem. The FCA will be using their full suite of tools to address these issues.

6.8 One decision has been made on a Variation of Permission so far, so the process has started and is moving forward. The APCC advised they could assist in issuing any communications that the FCA are trying to get out.

7. SMCR

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7.1 The FCA advised it is going to email all SMCR Core Firms (solo regulated) in the next 6-8 weeks advising what type of firms they have been categorised as and enabling them to advise if this banding is incorrect, this is based on the information the FCA holds which may be out of date or incorrect if firms information is wrong. This will be staggered so firms need not panic if they haven't received anything when other firms have.

There are 3 new forms; -

- Form O – opt up a category from Core to Enhanced, this is only likely to be for firms with a larger Group Structure, where consistency of approach is being sought by the group.

- Form K – This is the form that allows Enhanced firms to convert their Approved Persons to SMF functions, and for core firms to convert their CF2 Chair function to an SMF function, if they want it to continue (this is non exec Directors). This goes live on 9th September, which is 3 months before the implementation date. The FCA is asking firms to submit as early as they can. This form needs to be submitted by 24th November (two weeks prior to the implementation date)

- Also, the new Form A will go live on the same date; this is to register a new Approved Person after the implementation date. If you want a new Approved Person before 9th December, firms should still apply using the existing (APR) forms and these functions will be auto converted after implementation. Any in-flight applications will be handled in the same manner.

7.2 The FCA did a webinar on SMCR seen by 1800 firms, and this will be available on demand and is on the website already. They had 260 questions submitted during the webinar so the FCA will upload an FAQ document for the website to cover some areas that were 'in common' from the questions that were asked. This will be uploaded by the end of June.

7.3 The APCC asked what the process would be if a person is doing a controlled function now, or has an in-flight application, but won't under SMCR in future. The FCA advised its BAU for those kinds of applications and that firms should continue to submit them. The website will be updated soon to reflect common themes that the FCC have seen.

7.4 FCC are being trained to pre-empt questions that will be received once any communications are issued. Emails will continue to be issued, with calls to action to avoid a spike in applications.

7.5 Core firms will receive information on getting prepared for the regime and ensuring this is continued after the implementation date.

7.6 The FCA advised it has a 'Guide for solo regulated firms' as well as the Policy Statement that shows all the draft rules, which firms should be steered towards.

7.7 The FCA expects a spike in applications as it will have 47,000 firms to deal with, but the hope is that firms are ready for SMCR and will apply in a staggered process. Most of these firms are 'small' so shouldn't see too much of a change in their application volumes. The FCA will have resources to deploy if needed.

7.8 The Directory will go live in March 2020 and will be live for dual regulated firms from September 2019. Core firms will have until December 2020 to submit their certified persons. The Directory won't show these until December 2020. The APCC queried that certified persons won't be on the FCA register but also won't be showing on the Directory. The FCA did advise this was under review to address any issues Consumers might have in viewing people with a certified function.

7.9 The FCA asked if firms are engaged with SMCR now and the APCC confirmed that firms now were becoming fully engaged and ready for the December implementation date. The FCA asked for ongoing feedback on this so it could address any issues accordingly. The Directory is the biggest area of confusion and needs to be addressed to not look as though some people have 'dropped off' the register.

7.10 The FCA asked for firms to engage and be aware of the responsibility of certified people, and firms should take fitness and propriety very seriously, and the FCA will be undertaking supervision of SMCR from the first day of implementation. Firms will need to be able to answer how they go about certifying their people.

8. Retail

8.1 They have had high level of receipts in Change in Control, with no specific underlying trend, and triage has also been implemented here to deal with this.

8.2 Payments is the bigger focus as the FCA is not meeting its public commitments; it is looking at reducing some of the checks undertaken or looking to do them differently, by revisiting its risk tolerance. For example, if an application involves crypto, they've tended to focus on this and not ask any questions in the early stages around other areas of the business and this is taking longer, so the teams are now trying to fully assess an application in the early stages rather than break it down.

8.3 The APCC highlighted that the KPIs are helpful, but it was felt some inexperience internally may be causing issues. The FCA agree more people are needed but they are waiting for internal sign off for this.

8.4 With AIS/PIS applications it was felt that the diversity of the business models is the biggest challenge.

8.5 The APCC enquired as to the number of applications awaiting a case officer. They have 180 unallocated cases, and this was their focus currently to reduce this volume.

8.6 The APCC have provided some feedback questions on this and the FCA will review and provide a fuller response offline. The FCA did ask if consultants would not ask multiple people the same question as this slows down the process.

9. Lending and Intermediaries

9.1 There are 3 areas of focus;

- Withdrawals – looking at how to streamline this process focus, and if firms can't address the 'harms' seen in the business model, they will be asked to consider withdrawing.
- Litigation Funding – they were focussing on financial promotions, where some firms are suggesting customers will never have to pay for their funding, as this is inaccurate and need to be addressed. This was considered a risk to consumers.
- Validation Orders – This is in the consumer credit space where regulated activities are being undertaken where they don't have the correct permissions at point of sale and retrospectively ask for a validation order, to validate such agreements.

This is where there is an unenforceable agreement, and they ask the FCA for a validation order on the permission to enable it to be a forceable agreement (usually credit broking.) The FCA are trying to elicit experiences from that firm's customers, and understand if harm is being caused, before deciding if they will provide them with a validation order. It might be that they issue an order with conditions attached, if that is felt appropriate.

They have a test to see if the firm were aware, they should have been authorised and how long they acted outside of the perimeter, this could lead to a refusal of the order being granted. The FCA have a webpage on this and an outreach programme with other stakeholders such as the APCC, and further information will follow.

10. APPM

10.1 There is a high amount of work in progress in both SMR and on the Significant Functions Team, as some of these are complicated cases, and some are going up through the governance process for further consideration, this is expected to improve by the end of July to address the work in progress backlog.

11. Any Other Business

11.1 Next meeting

- It was agreed to meet again in September, APCC/FCA will liaise to get this date set.
- One agenda item is an update on the 'one year on' calls, as this will cut across many of the APCC members.
- Also, an update on DEA – which is now Delivering Excellent Authorisations. Several DEA initiatives are at an advanced stage and the FCA would like to involve the APCC in this work. This includes; -
  - Good applications – what they look like
  - Track my applications
  - Firm commitments
  - Work on refusals and withdrawals
  - Completeness of applications (draft guidance does exist but needs to be issued). This would assist APCC members in ensuring their applications are complete.

  We will consider a separate meeting due to the time that may be needed.

- It was agreed the next authorisations meeting should be for 2 hours, as the current time allocated is becoming a challenge to ensure everything is addressed.