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**FINANCIAL MARKETS LAW COMMITTEE**

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**A NEW APPROACH TO FINANCIAL REGULATION**

*Financial  
Markets  
Law  
Committee*

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# FINANCIAL MARKETS LAW COMMITTEE

## ISSUE 157

### A NEW APPROACH TO FINANCIAL REGULATION

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<sup>1</sup> Note that Working Group Members and Observers act in a purely personal capacity. The names of the institutions that they ordinarily represent are given for information purposes only.

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## 1. INTRODUCTION

- 1.1. The role of the Financial Markets Law Committee (the “FMLC” or “the Committee”) is to identify issues of legal uncertainty or misunderstanding, present and future, in the framework of the wholesale financial markets which might give rise to material risks, and to consider how such issues should be addressed.
- 1.2. HM Government has been developing proposals for the reform of the framework of financial regulation in the UK. High-level proposals were set out in a consultation paper, “A New Approach to Financial Regulation: Judgment, Focus and Stability”, dated 26 July 2010 (the “Consultation”). The Consultation proposes, amongst other things, a vertical division of the existing responsibilities of the Financial Services Authority (“FSA”) between two new agencies:
  - (i) the Prudential Regulation Authority (“PRA”), a new subsidiary of the Bank of England, which will be responsible for prudential regulation of all deposit-taking institutions, insurers and firms dealing in investments as principal; and
  - (ii) the Consumer Protection and Markets Authority (“CPMA”), a separate legal entity with a primary statutory responsibility to promote confidence in financial services and markets, which will combine responsibility for the conduct of business regulation and supervision of all firms with regulation of wholesale financial markets.
- 1.3. HM Government published a summary of the responses to the Consultation on 24 November 2010 (“the summary of responses”), which, amongst other things, presents HM Government’s emerging thinking in respect of five themes arising from the responses. The summary of responses also states that a further consultation document, setting out detailed policy and legislative proposals, will be published in early 2011.
- 1.4. It is not the role of the FMLC to question the policy underlying the proposals

for reform. It is, however, the view of the FMLC that the implementation of that policy has the potential to raise some serious issues, both conceptual and practical, for the UK markets and that it will be critically important that these issues are recognised and addressed in the legislation which is proposed. The aim of this paper is to draw attention to those issues rather than, in most cases, to advocate any particular policy response.

## **2. DIVISION OF THE FSA'S POWERS, FUNCTIONS AND RULES**

- 2.1. HM Government has averred that prudential and conduct of business regulation “require different approaches and cultures, and combining them in the same organisation is difficult” (paragraph 1.20 of the Consultation). The summary of responses elaborates that, “the Government also considers that it will be important for each authority to establish its own distinct identity and supervisory culture” (paragraph 2.28).
- 2.2. The fact that prudential rules will, under the new structure, be written by these two separate organisations gives rise to a risk of inconsistencies and, potentially, to reintroduce some of the opportunities for regulatory arbitrage which existed in the pre-FSA environment. In addition, notwithstanding the theoretical clarity of the vertical prudential/conduct of business division adopted by the Consultation, there are, in the FMLC's view, many aspects of the current functions, powers and rules of the FSA which do not fall neatly and exclusively into either category.
- 2.3. The FSA's Treating Customers Fairly (“TCF”) initiative is a helpful illustration of this. While TCF may be seen as essentially a question of conduct of business, it actually has implications in relation to senior management and systems and controls which would normally be regarded as prudential in character: which of the new authorities will be responsible for taking the TCF initiative forward? Indeed, there are a number of other areas in which systems and controls may have both prudential and business conduct implications (for example, wholesale firms' trading-related systems and controls could be subject to regulation and supervision by both the PRA and the CPMA).

- 2.4. Even assuming that, at the inception of the new structure, it proves possible

simply to divide the existing FSA rules between the two new authorities, it seems likely that the different perspectives of the two authorities will lead to an increased administrative burden on financial institutions. An area of particular concern is the style and content of the two rule books. Given the close relationship between prudential and conduct issues at a business level, it seems to the FMLC that it will be essential to ensure that, as the separate rule books develop, they remain coordinated and consistent in approach and content. It cannot be in the interests of financial institutions, their customers or the regulators themselves that financial institutions are compelled to devote resources to reconcile rule book inconsistencies which would not have arisen had the rules continued to be the responsibility of a single authority.

### **3. THE NEED FOR COOPERATION**

- 3.1. A similar risk of legal uncertainty arises given the formidable degree of cooperation and coordination that will be required between the PRA and CPMA at a practical level. Box 3.B of the Consultation sets out some quite cumbersome and complex mechanics for ensuring that the two agencies operate efficiently together.
- 3.2. The complexity of these arrangements, even as described in a summary way in the Consultation, is a potent illustration of the practical difficulties which may arise from the new structure. It is in the FMLC's view essential, if regulated firms are to be able to operate efficiently within the new regulatory environment, that there should be complete clarity as to which of the two authorities they should be looking to in particular circumstances, and which authority's rules are applicable.
- 3.3. In addition, and by way of example, the requirement in Box 3.B of the Consultation for the CPMA to consult the PRA in advance of taking any decision that could cause a firm-specific financial stability risk is predicated on the CPMA's ability to identify which of its own decisions are likely to give rise to micro-prudential issues. It is not clear how this system would operate in the context of the highly specialised culture and distinct identity envisaged for the CPMA, with its focused attention on risks. Although the summary of

responses indicates that the PRA's veto will only be used where necessary to ensure financial stability (paragraph 2.28), if this consultation and veto mechanism is to work, it will be important for the CPMA to have the systems and expertise to identify correctly those decisions which could cause a firm-specific stability risk if it is to coordinate efficiently with the PRA and raise the correct issues in a timely fashion.

- 3.4. The Committee notes that HM Government has recognised the importance of ensuring that there is effective cooperation between the PRA and the CPMA in the summary of responses (paragraph 2.25) and has indicated that it anticipates this will be given effect through both legislative and non-statutory protocols and arrangements (paragraph 2.26). However, the Committee does not consider that, "the usual obligation...to behave reasonably and in the public interest" in itself will "provide industry and other stakeholders with comfort that the new authorities will consider the impact of their actions on those they regulate". The Committee considers that a clearly articulated delineation of each bodies' respective functions would better promote certainty in the financial markets.

#### **4. THE AUTHORISATION PROCESS**

- 4.1. The Consultation question 5 helpfully raises the issue of the relationship between the two new authorities in the context of the authorisation process.
- 4.2. In the FMLC's view there are clear benefits, in this context, of an integrated model. The Committee would be deeply concerned that a structure which contemplated two separate processes for different activities could give rise to a situation where an institution, while on the face of it duly authorised, was – de facto or de jure - unauthorised for certain of its activities. The clarity of the current structure (whereby there is a single concept of authorisation, with a Part IV permission being granted in respect of specific regulated activities) would be lost and it is very important to address in the legislation the practical consequences. At present, an authorised firm which acts beyond the scope of its permissions is clearly liable to regulatory censure but does not commit the criminal offence of breaching the general prohibition in section 19 of the

Financial Services and Markets Act 2000 or run the risk of finding its contracts to be unenforceable. If it is decided that the two authorities are to be responsible separately for granting, amending or withdrawing Part IV permissions within their respective areas of responsibility, the issues of criminal liability and enforceability of contracts will become more complex.

4.3. On the other hand, an integrated model would also raise some practical difficulties. Either:

- (i) the PRA would be tasked with sole responsibility in this area, in which case it would be responsible for granting Part IV permissions to some firms which it would not supervise and whose activities may give rise to few, if any, systemic prudential concerns; or
- (ii) the CPMA would be responsible, in which case similar issues would arise for firms subject to prudential regulation by the PRA - it may be doubted whether a body established as a conduct regulator is best placed to determine whether a new bank or insurance company should be authorised.

Neither of these alternatives seem to the FMLC to be ideal. Alternatively, a shared services function could be established to provide common administration and co-ordination of regulatory processes (including applications for authorisation) across both the PRA and the CPMA.

## **5. ENFORCEMENT**

5.1. Although the precise remit of the PRA and the CPMA has not yet been determined, the Consultation and summary of responses indicate the following broad responsibilities:

- PRA: authorisation via the granting of Part IV permissions, regulation; day-to-day prudential supervision of banks and other deposit-takers, insurers and firms dealing in investments as principal; approval of individuals to perform prudential-related controlled functions; and enforcement of prudential-related policies and rules.



- CPMA: authorisations via the granting of Part IV permissions for all regulated activities not within the scope of the PRA; regulation, supervision and enforcement of conduct of business rules for both wholesale and retail firms; supervision and enforcement of prudential activity that sits within its remit; approval of individuals to perform conduct-related controlled functions in firms prudentially regulated by the PRA, and all controlled functions in firms regulated solely by the CPMA; criminal enforcement powers in relation to market conduct and regulation of wholesale financial markets and market conduct generally.

5.2. Firms regulated only by the CPMA are referred to below as “CPMA firms”, and firms regulated by both the PRA and CPMA as “PRA firms”.

*Enforcement overlaps between the PRA and CPMA*

5.3. The following potential overlaps of enforcement responsibility are inherent in this division of functions between the PRA and the CPMA. This creates both a risk of confusion and inefficiency, and the potential for “double jeopardy” for firms if different regulatory bodies are pursuing different objectives and standards in their enforcement action:

- (1) A single set of circumstances at a PRA firm involves possible breaches of PRA and CPMA rules. Broadly, there seem to be three separate scenarios under this heading:
  - (a) breaches of separate and distinct rules of the PRA and the CPMA, in which case, presumably the relevant authority would take enforcement action;
  - (b) breaches that are on the borderline between conduct/prudential, and could therefore be classified as breach of either PRA or CPMA rules or both (e.g. systems and controls issues);
  - (c) breaches of a kind/magnitude to raise questions about the fitness of the firm to remain authorised (or of its senior management to remain in office - e.g. questions of integrity), again possibly giving rise to

enforcement issues in relation to both authorities.

- (2) Possible prudential breaches within a group containing both PRA firms and CPMA firms. In this case, there is the potential for prudential rule breaches where it is not clear where responsibility lies within the group – whether with PRA firms or CPMA firms or both, hence drawing in one or other of the two regulators, or both.
- (3) A breach of conduct rules that has prudential implications. There seem to be several possible scenarios here:
  - (a) a breach by a PRA firm that is so severe that making it public, and/or the level of fine or other punishment the CPMA would want to impose, could cause a loss of confidence in the firm or severely damage its financial position, giving rise to prudential (and possibly systemic) concerns;
  - (b) a breach by a CPMA firm that is so severe that making it public, and/or the level of fine or other punishment the CPMA would want to impose, could cause a loss of confidence in the firm's PRA-regulated parent or severely damage its financial position, causing prudential (and possibly systemic) concerns.

*Examples of overlaps between prudential, conduct and “economic crime” issues*

- 5.4. The Appendix to the Consultation contains a broad assessment of enforcement actions against companies and individuals undertaken by the FSA primarily over the last two years. The aim of the table is to identify amongst these cases the breaches that occurred, and, based on the breach(es) in question: (i) the issues involved in the breach, and (ii) which new body would seem most likely to take action over such a breach. Note that the Appendix does not identify any specific analysis in the FSA Final Notices themselves as to whether the breaches in question are ‘prudential’, ‘market conduct’ (save for breaches of Principle 5) or ‘consumer protection’.

*How overlaps are to be dealt with*

- 5.5. The substantial scope for overlapping jurisdictions under the new regime gives rise to two particular high-level policy issues: (a) the precise scope of the jurisdiction of each regulator, and, (b) as indicated, the potential for double jeopardy.
- 5.6. If Parliament is to give regulators wide-ranging and, increasingly, “intrusive” powers over firms and individuals, it is important on general “rule of law” principles that the scope of their jurisdictions are clearly prescribed by Parliament. This is particularly important where it is foreseeable that, from time to time, there may be perceived public or political pressure for regulatory action.
- 5.7. It is also important that a firm or individual should not be punished twice over for the same offence. Where two regulators have jurisdiction over a particular matter and both are minded to investigate and take enforcement action, they should be required to do so through a single process and to agree a single penalty so as to ensure that the aggregate penalty is appropriate to the offence. Achieving this outcome in individual cases also implies the need for a broader coordination of investigation and enforcement standards and activity beyond the circumstances of any particular case, suggesting that the new regime needs to include a formal framework for this.

## **6. ADMINISTRATIVE DISCRETION AND BANK REGULATION**

- 6.1. The Consultation indicates that it is intended that the PRA should adopt a “judgement-driven culture” and that the PRA will have operational independence from the Bank of England for the day-to-day regulation and supervision of firms.
- 6.2. As noted above, HM Government has indicated that it will consult on draft legislation that will set out the powers of the PRA in early 2011. However, at this stage, the Consultation does not provide a clear explanation of what is intended by the concept of a “judgement-driven culture”. If the intended effect is that regulated persons and other actors within the UK financial markets will

be required to take on faith that the PRA's decisions are rational and fair, without reference to publicly available standards set down in advance, the Committee considers that there is a risk that a "judgement-driven culture" could give rise to legal uncertainty. Assuming, which the Committee does, that the PRA and Bank of England will exercise this discretion in a way that is fair, reasonable, and just, the inherent risk of a "judgement-based culture" is that there will be nothing that will provide regulated persons with bright lines for individual self direction for their operations on a day-to-day basis.

- 6.3. For this reason, if it is intended for the PRA to have operational independence for its day-to-day regulatory and supervisory decisions, the Committee considers that it will be important for the legislation prescribing the PRA's powers to include sufficient detail on the manner and circumstances in which those power must be exercised to enable regulated persons to predict with sufficient certainty what the PRA may require of them.
- 6.4. This can be seen as part of the need for the PRA to act in accordance with rule of law principles as they apply to public authorities. HM Treasury and the Bank of England will be well aware of these requirements and so this paper simply summarises the relevant rule of law principles as they are relevant for present purposes. First, there is an overarching requirement that those governed by the laws have the opportunity to regulate their conduct on the basis of publicly ascertainable rules laid down in advance. This will require the PRA's governing legislation and any rules promulgated by the PRA to be drafted in clear, specific terms that allow regulated persons to understand what the PRA is likely to expect of them before regulatory action is taken.
- 6.5. Secondly, the PRA, like any public body, must implement its legislation and rules in a way that is procedurally and substantively fair. This obligation is likely to require a prudential regulator to, for example, take into account all relevant facts (including representations by persons directly affected) before acting, give adequate reasons for a decision by reference to the facts and, where appropriate, treat like cases alike and act in accordance with previously determined policies that suggest a particular course of action in certain circumstances.

- 6.6. Clearly it will be necessary for the regulator to have a certain degree of self-directed discretion in order to be able to exercise its regulatory and supervisory functions over individual institutions in a changing environment. The Committee recognises that it is not always practical for regulators to operate under predictable “bright line” rules that prescribe what must be done in every circumstance. However, the Committee’s view is that it will be important for the nature and scope of the PRA’s discretion to be precisely defined so that regulated persons are able to operate their businesses effectively in practice. Sufficient legal certainty as to the nature of the regulator’s role and the way in which the role will be carried out will be of benefit to the UK financial markets.
- 6.7. As indicated in the summary of responses, the principles of good regulation will be relevant in this regard. The Committee therefore awaits the HM Government’s announcement of its preferred approach to the secondary objectives of the PRA and CPMA and to the requirements to which the PRA and CPMA must have regard in the draft legislation, which is to be published with the next consultation paper.

## **7. OTHER PRACTICAL DIFFICULTIES THAT MAY GIVE RISE TO LEGAL UNCERTAINTY IN THE FUTURE**

- 7.1. Given the high-level nature of the proposals at this stage of the consultation process and in the absence of specific proposals for how this structural reform will be implemented in practice, it is difficult for the FMLC to comment on particular legal uncertainties. The Committee has therefore sought to highlight certain practical difficulties that may be associated with: achieving the objectives set out in both the Consultation and new EU legal and supervisory structure; resolving the supervisory and regulatory overlap in such a way that institutions are not subject to conflicting directions; and with accommodating the special character of Lloyd’s of London. The practical difficulties described under the headings below appear to the FMLC to be those that could well give rise to legal uncertainty in future. This paper seeks to draw these issues to HM Treasury’s attention at this stage so that they can be recognised and addressed in the draft legislation.

### *Consolidated supervision*

- 7.2. It is unclear from the Consultation and summary of responses how the parallel roles of the PRA and the CPMA will apply in practice to the operation of consolidated supervision required under various EU Directives.

### *Change in control of authorised persons*

- 7.3. Similar considerations apply as in relation to the authorisation process<sup>2</sup>. Will a potential acquirer of an authorised firm be required to seek consent from both authorities, or will a single authority perform this function? If the former, will the CPMA be equipped to address the essentially prudential issues which, pursuant to the Acquisitions Directive, are required to be considered by a regulator in this context? Again, is it thought appropriate that there should be criminal consequences for a failure to obtain consent in circumstances where it may be less clear to a third party acquirer than is the case under the existing regime as to which authority's permission is required? How will the consistent application of the Directive-based statutory requirements be achieved?

### *Approval*

- 7.4. Similar considerations apply as in relation to the authorisation process<sup>3</sup>. Will an application for approval of an individual to perform a significant influence function that, for example, involves the supervision of trading desks dealing in equities as agent and as principal, fall within the remit of both the PRA and the CPMA?

### *Passporting*

- 7.5. It is to be assumed that outward passports will be administered according to the vertical division of responsibilities, with the PRA issuing notifications in respect of banks and other deposit takers, insurers and firms dealing in investments as principal, and the CPMA doing the same for other financial firms (and receiving all incoming notifications from EEA firms). It would be

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<sup>2</sup> C.f. comments on a possible shared services function in para 4.3 above.

<sup>3</sup> C.f. comments on a possible shared services function in para 4.3 above.

an unfortunate consequence if firms subject to regulation by both authorities were required to apply for two separate passports.

*Payment services providers and electronic money issuers*

- 7.6. The Consultation does not address the position of these institutions. While they are not on the face of it within the scope of the PRA as described in the Consultation, their roles are such that it may well be thought that they are more appropriately regulated by the PRA than by the CPMA.

*Alignment with the new European supervisory structure*

- 7.7. Where there is a European cross-border element the powers of the UK regulators will be subject to, and will interact with, the home/host division of functions established under the relevant European legislation. Although this is of course already the case under the current regime, the position will be complicated in a number of respects by the potential involvement of two or more UK regulators.
- 7.8. It might help to avoid exacerbating these complexities if the basis for division of functions between UK regulators were to mirror, so far as possible, the basis on which European legislation divides responsibilities between home and host state competent authorities (although that in itself is not always entirely clear in practice). For example, under the Markets in Financial Instruments Directive (“MiFID”), home/host responsibility for supervision of an entity with European cross-border activities is divided broadly by reference to the same prudential/conduct split that is proposed in the UK. It would be very unhelpful for firms (and regulators) if something categorised as prudential for MiFID purposes were categorised as conduct for UK purposes.
- 7.9. The FMLC considers that it is essential that, in the course of the reforms, further uncertainty is not created (in particular, in future European legislation) due to a mismatch between the new regulatory regime in the UK and the new European supervisory structure.

*Lloyd's of London*

- 7.10. The FMLC recognises that the regulation of Lloyd's under the new regime will be the subject of further consideration (see paragraph 5.25). However, the FMLC highlights that the coordination difficulties between the PRA and CPMA highlighted above are likely to be particularly acute in the context of Lloyd's, where the unique structure of the market needs to be taken into account in both the design and operation of the architecture.

## **8. CONCLUSION**

The FMLC considers that there is potential for legal uncertainty to arise in connection with the proposed reforms, in particular with the split of responsibilities between the PRA and CPMA. The FMLC looks forward to the publication of more detailed proposals for the new regulatory architecture next year, and in particular to more detailed proposals setting out how responsibilities will be divided between the PRA and CPMA, and cooperation arrangements between those authorities.



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## APPENDIX

Examples of overlaps between prudential, conduct and “economic crime” issues

Case	Specific breach(es)	What issues does the <i>breach</i> encompass?					Description of business / activity	Under the remit of which authority?		Comment
		PRA	CPMA			PRA		CPMA		
			CP	MC	EC					
Market Abuse										
1.	<i>Henry Cameron</i> Market abuse relating to false announcements to the market <i>July 2010</i>	Section 118 FSMA		✓	✓	Oil trading		✓	The CPMA will deal with market conduct cases whether civil or criminal.	
2.	<i>Winterflood Plc (and two employees)</i> Market abuse relating to ‘ramping’ of shares <i>April 2010</i>	Section 118 FSMA		✓	✓	Market Maker on AIM		✓	The CPMA will deal with market conduct cases whether civil or criminal.	
3.	<i>Andrew Charles Kerr</i> Market abuse in coffee futures market <i>June 2010</i>	Section 118 FSMA		✓	✓	Commodities broking		✓	The CPMA will deal with market conduct cases whether civil or criminal.	

Case	Specific breach(es)	What issues does the <i>breach</i> encompass?				Description of business / activity	Under the remit of which authority?		Comment
		PRA	CPMA				PRA	CPMA	
			CP	MC	EC				
Insider Dealing									
4.	<i>Arijam Saeed Ahmad</i> Insider dealing <i>June 2010</i>	Section 1 Criminal Law Act 1977 ( <i>CLA</i> ); Section 52 Criminal Justice Act 1993 ( <i>CJA</i> )		✓	✓	Hedge fund operations		✓	The CPMA will deal with market conduct cases whether civil or criminal.
5.	<i>Christian and Angie Littlewood</i> Insider dealing <i>March 2010</i>	Section 1 <i>CLA</i> ; Section 52 <i>CJA</i>		✓	✓	N/A		✓	The CPMA will deal with market conduct cases whether civil or criminal.
6.	<i>Malcolm Calvert</i> Insider dealing <i>July 2008</i>	Section 52 <i>CJA</i>		✓	✓	Equities Market Maker		✓	The CPMA will deal with market conduct cases whether civil or criminal.
7.	<i>Matthew and Neel Uheroi</i> Insider dealing <i>November 2009</i>	{Criminal Justice Act 1993}		✓	✓	Corporate broking		✓	The CPMA will deal with market conduct cases whether civil or criminal.

Case	Specific breach(es)	What issues does the <i>breach</i> encompass?				Description of business / activity	Under the remit of which authority?		Comment
		PRA	CP	MC	CPMA		PRA	CPMA	
Other Market Misconduct									
8.	<i>Citigroup Global Markets Ltd</i> Failures in relation to bond trading with respect to systems and controls and acting with due care, skill and diligence <i>June 2010</i>	Principle 2 and Principle 3	✓	✓		Investment banking	✓	✓	Query whether this would fall within the jurisdiction of the PRA or CPMA. The CPMA will deal with market conduct, but the PRA will regulate banks with respect to prudential matters. Would such a case be categorised as a 'market conduct' case falling exclusively within the jurisdiction of the CPMA?
9.	<i>Morgan Stanley International &amp; Co Plc</i> Systems and controls failings related to mis-marking of trader positions <i>May 2009</i>	Principle 2 and Principle 3	✓	✓		Investment banking	✓	✓	Query whether this could fall within the jurisdiction of the PRA or CPMA. The CPMA will deal with market conduct, but the PRA will regulate banks with respect to prudential matters. Would such a case be categorised as a 'market conduct' case falling exclusively within the jurisdiction of the CPMA?

Case	Specific breach(es)	What issues does the <i>breach</i> encompass?				Description of business / activity	Under the remit of which authority?		Comment
		PRA	CPMA				PRA	CPMA	
			CP	MC	EC				
10. <i>Deutsche Bank AG, London branch</i> Failures in market conduct and in conducting business with care skill and diligence <i>April 2006</i>	Principle 2 and Principle 5 <sup>1</sup>	✓		✓		Investment banking		✓	The CPMA will deal with market conduct matters. Query under which remit such a case would fall if it also involved a failure in systems and controls.
11. <i>UBS AG</i> Failure to conduct international wealth management business with due care and skill, and take reasonable care to organise and control its affairs responsibly and effectively relating to unauthorised transactions carried out with client money <i>November 2009</i>	Breach of Principle 2 <sup>2</sup> and Principle 3	✓	✓			Full service investment bank	✓	✓	Query whether this could fall within the jurisdiction of the PRA or CPMA? The CPMA will deal with market conduct, but the PRA will regulate banks with respect to prudential matters; could such a case be categorised as a 'market conduct' case falling exclusively within the jurisdiction of the CPMA? Could such a case fall within the 'consumer protection' limb of the CPMA?

<sup>1</sup> Market conduct - A firm must observe proper standards of market conduct.

<sup>2</sup> Skill, care and diligence - A firm must conduct its business with due skill, care and diligence.

Case	Specific breach(es)	What issues does the <i>breach</i> encompass?				Description of business / activity	Under the remit of which authority?		Comment
		PRA	CPMA				PRA	CPMA	
			CP	MC	EC				
<b>Financial Advice to customers</b>									
12.	AWD Chase De Vere Wealth Management Ltd Failure to ensure suitability of advice to customers and failed to take reasonable care in organising and controlling its affairs <i>November 2008</i>	Principle 3 <sup>3</sup> and Principle 9 <sup>4</sup>	✓			Financial advice / planning		✓	The CPMA will be responsible for firms not regulated prudentially by the PRA, in respect of both prudential and non-prudential matters.

<sup>3</sup> Management and Control – A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

<sup>4</sup> Customers: relationships of trust - A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.

Case	Specific breach(es)	What issues does the <i>breach</i> encompass?				Description of business / activity	Under the remit of which authority?		Comment
		PRA	CPMA				PRA	CPMA	
		CP	MC	EC					
13. <i>RSM Tenon Financial Services Ltd</i> Failure to take reasonable care to (i) organise and control its affairs responsibly and effectively and (ii) ensure the suitability of its advice to customers <i>February 2010</i>	Principle 3, Principle 9 and Conduct of Business Rules		✓			High net worth financial advice firm carrying out various regulated activities (mainly advising / arranging on client's behalf)		✓	The CPMA will be responsible for firms not regulated prudentially by the PRA in respect of both prudential matters and non-prudential matters.
Client Assets									
14. <i>JP Morgan Securities Ltd</i> Client assets were improperly segregated <i>June 2010</i>	Principle 10 <sup>5</sup> , Conduct of Business Rules, CASS	✓	✓			Full service investment bank	✓		The breaches would <i>prima facie</i> fall under the remit of the PRA as they relate to prudential (risk management) issues. Query, whether there could be a consumer protection angle as the breach relates to the protection of client money.

<sup>5</sup> Clients' assets - A firm must arrange adequate protection for clients' assets when it is responsible for them.



Case	Specific breach(es)	What issues does the <i>breach</i> encompass?					Description of business / activity	Under the remit of which authority?		Comment
		PRA	CPMA			PRA		CPMA		
			CP	MC	EC					
Loss of Customer Data										
15.	<i>HSBC Group (three subsidiaries)</i> Failure to ensure adequate systems and controls in place resulting in loss of customers' data <i>July 2009</i>	Principle 3	✓				Insurance (two subsidiaries); financial advice (only one subsidiary)	✓	✓	Given that the subsidiaries would likely be regulated by different regulators, (the insurance subsidiary by both the PRA and the CPMA and the financial advice subsidiary by the CPMA) and the breach is predominantly prudential (systems and controls), it would seem that the individual regulators would pursue enforcement action. However, the breaches were all linked: therefore one regulator (e.g. the PRA) might assume lead responsibility for enforcement action, despite different regulators being involved initially.
16.	<i>Zurich Insurance Plc</i> Failure to have appropriate systems and controls in place resulting in loss of customers' confidential data <i>August 2010</i>	Principle 3, breaches of SYSC	✓				Insurance	✓	✓	The PRA will prudentially regulate insurers. Likely involvement of the CPMA given the loss of customer data.

Case	Specific breach(es)	What issues does the <i>breach</i> encompass?				Description of business / activity	Under the remit of which authority?		Comment
		PRA	CPMA				PRA	CPMA	
		CP	MC	EC					
False/Misleading Statements									
17.	<i>Former directors of iSOFT Group plc</i> Conspiracy to make false or misleading statements <i>January 2010</i>	Section 397 FSMA			✓	✓	[Unknown]	✓	The CPMA will deal with market conduct cases whether civil or criminal.
Financial Promotion									
18.	<i>Atlantic Law LLP</i> Wrongful approval of advertisements – no belief that would treat customers honestly and did not ensure that advertisements were clear and not misleading <i>May 2010</i>	Breach of Principle 1 <sup>6</sup> and COBS	✓				Law firm	✓	The CPMA will deal with all consumer protection matters.

<sup>6</sup> Integrity - A firm must conduct its business with integrity.

Case	Specific breach(es)	What issues does the <i>breach</i> encompass?				Under the remit of which authority?		Comment
		PRA	CPMA			PRA	CPMA	
			CP	MC	EC			
19.	<i>Standard Life Assurance Ltd</i> Failure to ensure that proper systems and controls in place for the Sterling Pension Fund and that marketing material for the Fund was not misleading <i>January 2010</i>	✓	✓				✓	The PRA will prudentially regulate insurers, but the CPMA deals with consumer protection issues for all firms.
	<b>Fraud</b>							
20.	<i>Boiler room investigation</i> Arrest of seven individuals in connection with share fraud and boiler room activity <i>May 2009</i>	N/A			✓		✓	

<sup>7</sup> Communications with clients - A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

Case	Specific breach(es)	What issues does the <i>breach</i> encompass?				Description of business / activity	Under the remit of which authority?		Comment
		PRA	CPMA				PRA	CPMA	
		CP	MC	EC					
Breach of Listing Rules									
21.	<i>Photo-Me International Plc</i> Failure to disclose inside information to the market on time <i>June 2010</i>	DTRs and Listing Principles		✓		Retailing		✓	The CPMA will deal with market conduct matters.
Breach of Money Laundering regulations (non-criminal)									
22.	<i>The Royal Bank of Scotland Group</i> Breach of money laundering regulations <i>August 2010</i>	Several breaches of Reg 20(1) of the Money Laundering Regulations 2007 regarding verification of customer identities for the purposes of determining whether customers were on the UK sanctions list	✓			Banking	✓	✓	Although the fine was for systems and control failings, this case arguably involves customer issues but does not have a consumer protection focus.

Case	Specific breach(es)	What issues does the <i>breach</i> encompass?					Description of business / activity	Under the remit of which authority?		Comment
		PRA	CPMA			PRA		CPMA		
			CP	MC	EC					
Mortgages										
23.	<i>GE Money Home Lending Limited</i> Failures in relation to customers with a regulated mortgage contract subject to a retention clause <i>September 2008</i>	Principle 2 and Principle 3	✓	✓			Mortgage lending		✓	The CPMA will regulate those entities not subject to significant prudential regulation in both prudential and non-prudential matters.
24.	<i>Redstone Mortgages Ltd</i> Failure to reasonable care to organise its affairs responsibly and effectively and failure to pay due regard to customers' interests and treat them fairly relating to poor treatment of customers in mortgage arrears <i>July 2010</i>	Principle 3 and Principle 6 <sup>8</sup>	✓	✓			Administering and entering into regulated mortgage contracts		✓	The CPMA will be responsible for firms not regulated prudentially by the PRA in respect of prudential and non-prudential matters.

<sup>8</sup> Customers' interests - A firm must pay due regard to the interests of its customers and treat them fairly.

Case	Specific breach(es)	What issues does the <i>breach</i> encompass?				Description of business / activity	Under the remit of which authority?		Comment
		PRA	CPMA				PRA	CPMA	
			CP	MC	EC				
PPI Sales									
25.	<i>Alliance &amp; Leicester Plc</i> Failures in PPI telephone sales <i>October 2008</i>	Principle 3; Principle 6; Principle 7; and Principle 9	✓	✓		Consumer banking		✓	The CPMA will deal with consumer protection issues, but the PRA regulates banks with respect to prudential matters.
26.	<i>Egg Banking Plc</i> Failure to take reasonable care to control its affairs responsibly and to pay due regard to interests of its customers relating the sale of PPI <i>December 2008</i>	Principle 3 and Principle 6 (and a related rule concerning sale of PPI by telephone)	✓	✓		Consumer banking		✓	The CPMA will deal with consumer protection issues, but the PRA regulates banks with respect to prudential matters.