

**THE FCA PRACTITIONER PANEL:**

**RESPONSE TO HMT AND BIS CONSULTATION PAPER  
'A NEW APPROACH TO FINANCIAL REGULATION: TRANSFERRING  
CONSUMER CREDIT REGULATION TO THE FINANCIAL CONDUCT  
AUTHORITY'**

**MAY 2013**

## **Introduction**

The FCA Practitioner Panel welcomes the joint HMT and BIS consultation entitled ‘A new approach to financial regulation: transferring consumer credit regulation to the Financial Conduct Authority’. We support the Government’s view that a well-functioning consumer credit market is essential. The Panel considers that a critical element of this is a regulatory regime that fulfils two criteria:

- 1) It operates in a proportionate, efficient and cost-effective manner (as illustrated by positive outcomes for consumers, lenders and the wider economy); and
- 2) Has minimal downside for lenders and consumers

We have provided our comments on the initial high-level framework as outlined in the consultation paper below.

## **Executive Summary:**

- Overall, we are positive about the approach outlined by the Government, to devise a proportionate regime that differentiates between firms based on their risk profile
- The transfer provides HMT with an opportunity to re-consider certain existing pieces of legislation. We would support a re-consideration of the unenforceability provisions, and of section 75 in relation to overseas transactions
- The Panel remains concerned regarding the planned short timeline of transition from the OFT to the FCA, as well as the short transition period for firms to get up to speed with FCA rules

## **Detailed response:**

### **Proportionality**

The Panel welcomes the intention to make the regime proportionate, and in this respect supports the introduction of a two-tier authorisations process and adjusted capital requirements for relevant firms. It is important that the regulatory regime is tailored as proposed, especially given that most of those involved are only lenders rather than deposit takers (and so have a different risk profile).

Whilst supportive of a tailored approach, the Government should be sensitive to the overall impact of a more burdensome regulatory regime for smaller firms. Should the future regime become too costly, existing retail lenders may withdraw from the market. This could have a severe impact on the smaller retail firms who use financing schemes to increase sales of their products. (Such as furniture retailers offering longer term financing of a sofa). We would therefore urge HMT to be aware of the possible unintended consequences to smaller retailers and general economic activity of a more intrusive regulatory regime.

### **Transferring CCA to FCA rules**

#### *OFT guidance to FCA rules*

Transferring legal responsibility of consumer credit regulation from the OFT to the FCA will require transposition or re-writing of the Consumer Credit Act. We support the overall intention by the Government to keep the scope of consumer credit regulation broadly the same under the new FSMA regime. Given the planned timing of the transfer, we would encourage HMT to adopt a ‘lift and drop’ approach from the old CCA, with a like-for-like transition.

The Panel also welcomes the 2019 ‘soft’ deadline on review of the Consumer Credit Act. We believe it is more important to ensure that the process and transfer has been done in an appropriate manner than to meet this particular deadline.

#### *Review of existing provisions*

The transfer of the consumer credit regulation powers to the FCA means that certain of the existing provisions in the CCA will become superfluous or unnecessary. Two aspects of the existing regime that we would suggest should be re-assessed as fit for purpose would be the unenforceability provisions of the CCA, as well as section 75 in relation to overseas transactions.

We believe the unenforceability provisions currently in the Act will be superfluous under the FCA regime. Under the current arrangement, any mistake (even very minor ones) by the lender can lead to the credit agreement becoming unenforceable in court. As the OFT has had limited powers to sanction in the past, it has relied on this provision to ensure greater compliance across the market. However, the FCA has much greater enforcement powers

available and the power to grant redress. As such, we believe there is a case for removing this provision when responsibility is transferred to the FCA.

Another provision that could be re-considered as part of the setting up of the new regime is section 75 of the current Act, providing credit card providers with joint liability with the retailer for services not rendered. Our concern in relation to this section relates to its use in overseas transactions. Whereas in the UK, firms can enforce the statutory indemnity against the retailer, this option is not always available overseas. For instance, the contract law in jurisdictions such as the United States can make pursuance of the merchant for compensation very challenging. We would encourage the Government to consider limiting the use of this power to the UK or at least within the European Union.

### **Logistics of transfer**

#### *Relative speed of transfer*

The Panel notes with some concern the short timeline for transition into the FCA of this significant area of regulation. Although we are sympathetic to the Government's desire to enhance consumer protection quickly, we would urge the Treasury to be sensitive to FCA resource requirements and the logistical challenges involved in taking over such a large new area of responsibility. This also has significant implications for firms around adapting and changing their systems, given that the FCA is looking to finalise their rules a month before they come into effect.

Further, while we welcome the establishment of a 'grace period', where firms who do not face formal action as long as they can demonstrate that they have acted in compliance with the relevant CCA requirement or OFT guidance, we think six months is too short. Given that there will be significant regulatory changes for firms to contend with as the FCA adopts a new regulatory approach to consumer credit, we would encourage HMT to work with the regulator to allow a longer grace period of eighteen months.

**Specific comments:**

- The Panel supports the government's intention to maintain the exemptions for High Net Worth individuals and business lending where credit exceeds 25k
- The Panel supports the Government's aim of ensuring that consumers who are lending and borrowing via peer-to-peer platforms enjoy the same regulatory protections as customers of more traditional lenders. We seek clarity for what the proposals for peer-to-peer lenders are in the interim permission period
- Regarding designated professional bodies, we would welcome greater clarity regarding what credit activity is deemed to be 'incidental' and therefore exempt from the regime
- We would welcome greater detail around the regulation of liquidators and receivers/insolvency practitioners, noting that the approach as proposed seems very complex
- We would welcome greater clarity on the scope of the simple definition of credit brokerage which includes credit intermediation

We look forward to working with the FCA over the next year as it develops the detailed rules.