



A radical new approach to financial regulation? Understanding and assessing the impact of the new regulatory regime from a financial crime perspective

Nathan Willmott, 3 October 2011



Reasons for regulatory reform

- Financial crisis 2007/08
- Failure of systemically important firms
- Failure of supervision
- Over-reliance on tick box compliance?
- Political narrative

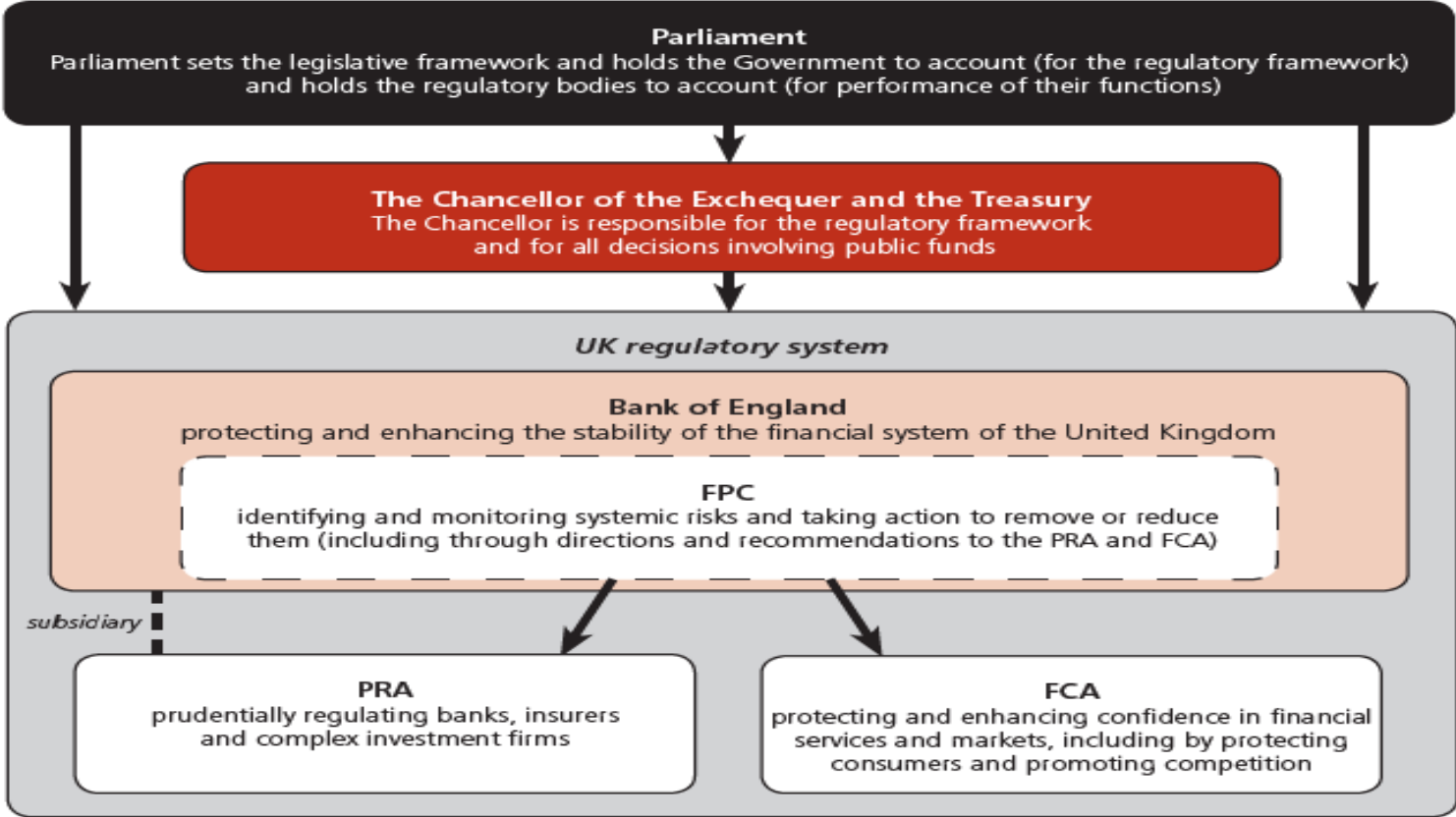
Background to reform

“The regulatory system needs radical reform to make the sector more stable and stronger”

Mark Hoban MP, 17 June 2010

Structure

Figure 1.A: Roles and accountabilities in the new system



Source: HM Treasury

Timetable for change

- Pre-legislative scrutiny
- Bill to be introduced to Parliament, late 2011
- Parliamentary stages
- Royal assent
- Secondary legislation and Handbook materials
- Approach documents
- In force – January 2013

Prudential Regulation Authority (PRA)

- Subsidiary of Bank of England
- Conducts prudential regulation of firms that manage significant balance sheet risk as core part of their business
 - deposit-takers
 - insurers
 - systemically important investment firms
- Board made up of BoE personnel, Chief Executive of the FCA and non executives

PRA objectives

- General objective to promote the safety and soundness of PRA authorised persons
- Insurance objective to contribute to securing an appropriate degree of protection for those who are or may become policy holders
- Focus on judgement-based approach

Where should financial crime responsibility sit?

- Are measures to prevent and detect financial crime issues of prudential regulation (sound and prudent management) or conduct of business regulation?
 - appears to straddle both areas
- However, FCA will be responsible for financial crime issues:

"Financial crime as a regulatory issue most often arises as a conduct (rather than prudential) issue. The Government has therefore decided that responsibility for taking regulatory action to counter financial crime will transfer to the FCA"

Financial Conduct Authority (FCA)

- Strategic objective: Protecting and enhancing confidence in the UK financial system
- Three operational objectives:
 - securing an appropriate degree of protection for consumers
 - protecting and enhancing the integrity of the UK Financial systems
 - promoting efficiency and choice in the market for certain types of services
- Stand-alone financial crime objective

FCA financial crime objective

- Proposed new Section 1B(5)(b):

“In discharging its general functions the FCA must have regard to...the importance of taking action intended to minimise the extent to which it is possible for a business carried on –

(i) by an authorised person or a recognised investment exchange, or

(ii) in contravention of the general prohibition,

to be used for a purpose connected with financial crime”

FCA financial crime objective (2)

- “Financial crime” in this context is expressed to include any offence involving
 - fraud or dishonesty
 - misconduct in, or misuse of information relating to, a financial market, or
 - handling the proceeds of crime

Roles of FCA re financial crime

- The FCA's role is expected to include:
 - Supervision and enforcement of systems and controls of all authorised firms re financial crime risks
 - Enforcing the perimeter and gate-keeping re: individuals
 - Competent authority for money laundering regulations
 - Civil market abuse
 - Criminal prosecutions for insider dealing and market manipulation
 - Maintaining key links with criminal authorities in the UK and internationally

How will the FCA carry out these roles?

- *The Financial Conduct Authority: Approach To Regulation*, June 2011
- FCA emphasis on “pre-emptive problem solving”:
 - focus on identifying current and emerging financial crime threats
 - ensuring that an awareness of their implications and how to mitigate them is embedded across its operations

How will the FCA carry out these roles? (2)

- Aim is to build on the FSA's intensive and intrusive supervisory approach and emphasis on 'credible deterrence'
- Greater use of thematic reviews, with detailed testing
- Strengthen the feedback between risk identification, analysis and dissemination of findings from any one sector to drive up standards across the whole regulated community
- Expect financial crime to continue to be a key priority for the regulator

Greater transparency re: Enforcement actions

- Regulatory principles emphasise need to act transparently and to publish information wherever appropriate
- Proposal for details of FCA Warning Notices to be published
 - early stage of action
 - discretion on part of regulator
 - need to consult target of regulatory action?
 - applies to disciplinary but not supervisory actions

A radically different approach?

- Financial *Services* Authority is renamed the Financial *Conduct* Authority
 - same legal entity
 - same building with mostly the same staff
 - powers and duties under FSMA – as amended/supplemented
 - continuing themes (TCF, credible deterrence, financial crime)
 - power to take action for civil market abuse and prosecute criminal insider dealing and market manipulation
 - much the same regulatory approach as the post-crisis FSA
- Prudential regulation of a small number of firms hived off
- Limited impact on firms of Financial Policy Committee





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This document provides a general summary only and is not intended to be comprehensive. Specific legal advice should always be sought in relation to the particular facts of a given situation.

