4th Floor
Minster House
42 Mincing Lane
London
EC3R 7AE

Mr Kenneth McArthur
Enforcement Review
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

4th July 2014

Dear Mr McArthur,

Review of enforcement decision-making at the financial services regulators: call for evidence

"the strategy for reform is not to create an ideal set of rules and then see how well they can be enforced, but rather to enact the rules that can be enforced within the existing structure."

(LaPorta et al)[1]

The Chartered Financial Analyst Society of the United Kingdom (CFA UK) welcomes the opportunity to respond to the Treasury's review of enforcement decision-making at financial services regulators. CFA UK serves society's best interests through the provision of education and training, the promotion of high professional and ethical standards and by informing policy-makers and the public about the investment profession.

This response has been prepared by CFA UK's Professional Standards and Market Practices Committee (PSMPC). The PSMPC identifies and monitors key regulatory and best practice developments likely to affect CFA UK members.

[1] La Porta, Rafael, Lopez de Silanes, Florencio, Shleifer, Andrei and Vishny, Robert W., "Investor Protection and Corporate Governance" (June 1999). Available at SSRN: http://ssrn.com/abstract=183908 or DOI: 10.2139/ssrn.183908

All members of CFA UK agree to abide by and adhere to CFA Institute's Code of Ethics and Standards of Professional Conduct (see Appendix 1 for a summary). The Code and Standards describe best practices relating to:

- professionalism,
- the integrity of capital markets,
- duties to clients,
- duties to employers,
- investment analysis, recommendations & actions and
- conflicts of interest.

The Code and Standards provide guidance to members allowing them to identify and resolve ethical conflicts so that the integrity of the profession is maintained. CFA Institute and CFA UK enforce the Code and Standards through self-disclosure, public complaints and publicly available information. Given our perspective, this response will be related to the Financial Conduct Authority (FCA) rather than the Prudential Regulatory Authority (PRA). This response draws on material from a forthcoming CFA UK paper with a working title "Responsibility and the Crisis of Accountability" scheduled to be published towards the end of the 2014.

Enforcement needs to be a credible deterrent

"these laws and the quality of their enforcement by regulators and courts are essential elements of corporate governance and finance… in contrast, when the legal system does not protect outside investors, corporate governance and external finance do not work well."

(LaPorta et al)[2]

CFA UK welcomes the enforcement decision-making review and is keen to share its insights and provide evidence to inform this consultation. In its previous responses[3] to the Treasury, the regulator, the Treasury Select Committee and the Parliamentary Commission on Banking Standards (PCBS), CFA UK has regularly advocated the need for a more effective regulatory regime. By effective we mean more emphasis on supervision and enforcement of the laws and regulations.

In our position paper "Effective Regulation"[4] CFA UK states that trust and confidence in our economic system depends on three interdependent sets of governance mechanisms –

1) **Corporate governance** – the internal governance mechanisms within business organisations.

2) **Financial market agents** – The governance provided by financial market agents which consist of buy-side and sell-side institutions, other providers of capital, auditors, ratings agencies and to some extent the media. By allocating capital efficiently and pricing risk appropriately, financial firms impose market discipline and contribute to market integrity. Financial firms also need to have effective internal governance mechanisms to enable them to play their dual roles as regards market discipline – both as a provider and as a bearer of

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[2] La Porta, Rafael, Lopez de Silanes, Florencio, Shleifer, Andrei and Vishny, Robert W., "Investor Protection and Corporate Governance" (June 1999). Available at SSRN: http://ssrn.com/abstract=183908 or DOI: 10.2139/ssrn.183908

[3]CFA UK responses can be found at https://secure.cfauk.org/about/advocacy.html

[4]"Effective Regulation" https://secure.cfauk.org/assets/3769/CFA1192_Effective_Regs_Position_paper.pdf

market conduct requirements. Events from financial and corporate history demonstrate that financial firms cannot always be relied upon to either impose market discipline or act fully in compliance with the spirit and letter of these requirements. Hence the need for effective regulation will always exist.

3) **Financial regulators** – responsible for ensuring that the financial system operates in a manner to meet the objective of imposing market discipline. Intervention should be prompted when there are threats to market integrity, the prospect of market failure or where trust and confidence is likely to be materially undermined. Intervention should be decisive and a deterrent to others considering inappropriate activity. By ensuring that financial firms are held to account, the regulator can maintain trust and confidence and raise the quality of market integrity. The regulator is the last line of defence. Sadly, regulatory failure can be just as common as market failure and thereby exacerbate systemic governance failure.

One benefit of an effective regulatory environment is a lower cost of capital. The interaction of effective regulation, supervision and enforcement can reduce the cost of equity capital. Hail & Leuz (2006)[5] attempt to understand and analyse the complexity of the influences of legal institutions, securities regulation and the level of integration of a nation's capital markets.

Emphasising the inherent caveats, they find some empirical support for the claim that firms from countries with more extensive disclosure requirements, stronger securities regulation and stricter enforcement mechanisms (as enabled by a high quality legal infrastructure) have significantly lower cost of equity capital than those that do not rate as highly on these parameters.

Table 1 lists the ten nations with the lowest cost of equity capital derived from the sample cited by Hail & Leuz and how they score with respect to the quality of legal infrastructure (LAW), disclosure (DISREQ) and securities regulation (SECREG). The UK is ranked ninth. While the differences in the cost of equity capital for those ranked third to tenth appear to be modest; these differences can be significant when investors seek out companies that can cover their cost of capital.

[5] Hail, Luzi and Leuz, Christian, International Differences in the Cost of Equity Capital: Do Legal Institutions and Securities Regulation Matter? (December 2005). ECGI - Law Working Paper No. 15/2003; Rodney L. White Center for Financial Research Working Paper No. 17-04; AFA 2005 Philadelphia Meetings. Available at SSRN: http://ssrn.com/abstract=641981 or http://dx.doi.org/10.2139/ssrn.641981

Table 1 Effective regulation and the cost of equity capital

Country*	Average cost of equity capital (1992 – 2004)	DISREQ**	SECREG**	LAW**
Japan	6.16%	0.75	0.47	0.9
Taiwan	9.87%	0.75	0.64	0.85
Singapore	10.01%	1	0.84	0.86
Germany	10.05%	0.42	0.21	0.92
United States	10.24%	1	0.97	1
France	10.37%	0.75	0.58	0.9
Canada	10.53%	0.92	0.91	1
Italy	10.61%	0.67	0.46	0.83
United Kingdom	10.64%	0.83	0.73	0.86
Malaysia	10.65%	0.92	0.78	0.68

For enforcement to be a credible deterrent requires it to be

- consistent;
- send strong enough signals to firms and consumers;
- raise trust and confidence;
- raise the quality of suppliers;
- hold firms and individuals to account; and
- deter serial offenders from offending again.

While we accept the review will not comment on individual cases, the consultation should not ignore the implications and perceptions of actual enforcement actions. Hence, in our response we cite numerous UK (and non-UK) enforcement actions to support the concerns we have about the manner by which enforcement decisions are made.

Crisis of Accountability and Responsibility

"The focus on senior management is something that we have talked about a lot in the FSA but we have found it very difficult to bring home the responsibility, particularly in larger firms, to those who are further up because of confused lines of accountability and because of confused responsibility."

(Tracy McDermott, Executive FCA Board member and Director of Enforcement and Financial Crime, testimony to the Parliamentary Commission on Banking Standards)[6]

"many of the decisions that RBS made appear poor only with the benefit of hindsight. But a pattern of decisions that may reasonably be considered poor, at the time or with hindsight, suggests the probability of underlying deficiencies in: a bank's management capabilities and style; governance arrangements; checks and balances; mechanisms for oversight and challenge; and in its culture, particularly its attitude to the balance between risk and growth."

(The FSA's report into the failure of RBS)[7]

Enforcement is a key part of the regulator's remit in protecting consumers, enhancing market integrity and ensuring the quality of firms and their conduct remains high. While the fines after the crisis have been higher than those levied pre-crisis; enforcement actions appear to be more about creating headlines than aimed at raising trust and confidence. By taking appropriate enforcement actions, the regulator demonstrates that it is willing to hold firms to account; consumers can be reassured that the regulator will act decisively when their interests are placed second, and so contribute to market integrity.

It will also be valuable for the regulator to distinguish between inadvertent breaches and breaches that were deliberate. All too often, the regulator imposes headline grabbing fines, focuses on systems and processes and ignores the need to identify the key people responsible

[6] http://www.parliament.uk/documents/banking-commission/Banking-final-report-vol-ii.pdf

[7] http://www.publications.parliament.uk/pa/cm201213/cmselect/cmtreasy/640/64004.htm#a1

for allowing transgressions to take place. Only on rare occasions does the regulator take action against senior individuals in firms[8].

When there is consumer detriment or where market integrity is compromised, large firms pay fines while smaller firms are treated more harshly for the same breaches of the rules. Similarly, how often does the regulator look beyond the narrow confines of the enforcement action? Is the regulator aware of the outcomes of lawsuits involving UK regulated firms and does it take these into account? In one case the firm in question preferred to settle out of court rather than allow its senior executives to give evidence[9].

Enforcement decision-making needs to

- Address root causes rather than citing systems and controls failures.
- Be symmetrical when sanctioning firms.
- Take a stronger approach to serial offenders.
- Make greater use of the other enforcement powers rather than rely on financial penalties, e.g make more use of public censures, review/suspend the firm's permissions.
- Focus on personal accountability and if these individuals can continue to be fit and proper.

Unless the enforcement process has the above features it will not address the crisis of accountability we have identified. Effective enforcement has the benefit of improving trust and confidence because it is an essential part of our systemic governance framework. Effective enforcement can enhance the UK's standing as a leading global financial centre.

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[8] FCA Final Notice against John Christopher Hughes – relates to the Adoboli trade fraud at UBS
http://www.fca.org.uk/your-fca/documents/final-notices/2014/john-christopher-hughes
FCA fines and bans Mark Stevenson for manipulating Gilt price.
http://www.fca.org.uk/news/press-releases/fca-bans-and-fines-trader-660k-for-manipulating-gilt-price-during-qe

[9] Barclays settles key Libor linked mis-selling case, BBC News Busines7 April 2014
http://www.bbc.co.uk/news/business-26930999
Courtroom clashes: the biggest financial battles of the year so far, Citywire, by Jun Merrett on Jun 18, 2014
http://citywire.co.uk/new-model-adviser/court-clashes-the-biggest-financial-battles-of-the-year-so-far/a757660

CFA Society United Kingdom

Identify structural causes of failures before deciding which sanctions to apply

"Judging by the comments of some former Board members, membership of the Board of HBOS (Halifax Bank of Scotland) appears to have been a positive experience for many participants. We are shocked and surprised that, even after the ship has run aground, so many of those who were on the bridge still seem so keen to congratulate themselves on their collective navigational skills."

('An accident waiting to happen': The failure of HBOS - Parliamentary Commission on Banking Standards)

'We had no controls, absolutely. Libor has been going since the mid 1980s, and we had no controls in place".

(Sir Philip Hampton, Chairman of Royal Bank of Scotland).

Since the financial crisis, fresh revelations of inappropriate conduct in our industry have further lowered trust and confidence across the entire sector. In the wholesale, corporate and retail markets, a variety of firms of different sizes have placed their interests ahead of their clients and in some cases prepared to compromise market integrity.

The shocking revelations about benchmark manipulation that has taken place globally, also demonstrate the reluctance of the regulator to address the root cause of the problem. Given the scale and seriousness of these transgressions one would have hoped that the regulator would have gone further than just fines. One would have hoped that the regulator would have engaged in a full review of these firms' regulatory permissions and the fit and proper status of the senior personnel responsible for overseeing these activities.

To support our point we cite the case of Royal Bank of Scotland (RBS)[10], which was found to have breached Principles for Businesses 3 and 9, the latter breach considered the 'most serious'. RBS was fined £87.5Mln (after the discount) by the UK regulator and £300 Mln by the U.S regulator (why the disparity?). The table summarises the areas of inappropriate conduct uncovered by the UK regulator. The table also demonstrates the nature and severity of the breaches involved.

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[10] FSA Final Notice
http://www.fsa.gov.uk/static/pubs/final/rbs.pdf

Table: Summary of the breaches found at Royal Bank of Scotland over libor

Principle 3 - Management and control *A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.*	**Principle 5 – Market conduct** *A firm must observe proper standards of market conduct*
The breaches of Principle 3 were as follows: • *Failure to identify and manage risks of inappropriate submissions.* • *Absence of any submissions-related systems and controls until March 2011.* • *Inadequate transaction monitoring systems and controls.* • *Failures of management oversight.*	The breaches of Principle 5 were as follows: • *Manipulation of RBS's own submissions* • *Collusion with Panel Banks and Broker Firms.* • *Management awareness of manipulation* • *Motive – RBS sought to manipulate LIBOR in order to improve the profitability of its derivatives trading books.*

Despite the seriousness of these breaches, the onus seems more on the firm as an entity and the role of systems and controls rather than the individuals responsible for these structures. People are responsible for running firms and for making sure systems and controls are appropriate. If 'fit and proper' individuals allow their organisations to participate in unacceptable conduct then they should also bear the consequences, the permissions of the firm should be subject to question. Ignorance is not a defence. As they say, a bad workman blames their tools, while good tools will never make a bad workman better- hence it is better to focus on the people responsible for firms and their systems and controls therein rather than the systems and controls in isolation.

To further emphasise the point we cite the example of Halifax Bank of Scotland. Its failure was due to the actions of its senior staff. While we accept that commercial decisions can go wrong, the Parliamentary report into the failure of HBoS highlights the professional ineptitude of the key decision-makers. Apart from Peter Cummings, how many of these senior Board members are still deemed 'fit and proper' by the regulator and allowed to be active in the financial services sector? How many senior individuals at other firms that have placed client interests second remain on the FCA register?

Financial Penalties are not "fine"

"Firms cannot be permitted to regard enforcement fines as a 'business cost'."

(Changing banking for good: Report of the Parliamentary Commission on Banking Standards; Volume I: Summary, and Conclusions and recommendations para 231)

"We see the size of the fine as affordable given the high ROE (return on equity) of Credit Suisse's businesses".

(Bank analyst, after Credit Suisse pleads guilty to a criminal charge for helping U.S. clients evade taxes and pays a $2.4 Bln fine[11])

The UK regulator has numerous powers available to –

- withdraw a firm's authorisation;
- prohibit an individual from operating in financial services;
- prevent an individual from undertaking specific regulated activities;
- suspend a firm for up to 12 months from undertaking specific regulated activities;
- suspend an individual for up to two years from undertaking specific regulated activities;
- censure firms and individuals through public statements;
- impose financial penalties;
- seek injunctions;
- apply to court to freeze assets;
- seek restitution orders; and
- prosecute firms and individuals who undertake regulated activities without authorisation

[11] Credit Suisse guilty plea has little immediate impact as shares rise, Reuters, Katharina Bart, Karen Freifeld and Aruna Viswanatha, Tue May 20, 2014
http://www.reuters.com/article/2014/05/20/us-creditsuisse-investigation-idUSBREA4I0E620140520

It has not escaped our notice that recent enforcement actions against large firms in the UK and non-UK jurisdictions have focussed more on headline grabbing financial penalties. Such penalties are negligible when compared to these firms' revenues, profits and balance sheets. Given the serious nature of some of these breaches of the regulations and laws; the absence of non-financial penalties is noticeable especially when the law has been broken over a long period of time. We hope that the FCA's process has not made it fall into the behavioural trap of its predecessor in relying on the form of the punishment rather than focusing on the substance. We accept that the regulator does not always rely on financial penalties and can withdraw permissions but this appears to be in cases where the firms are small and often are no longer eligible to be regulated.

The following examples from the FCA enforcement records (alongside those cited in Appendix 2) underline why we have concerns. To the layperson it would appear that inappropriate conduct pays and to add to the insult the fine is invariably discounted; conversely firms with good conduct records do not have their regulatory fees discounted. There can be few other walks of life where the penalties are outweighed by the proceeds from inappropriate behaviour. For example BP continued to make amends long after the Gulf of Mexico disaster.

<u>UK examples of where fines appear to be a 'cost of business'</u>

PPI – several banks were exposed for miss-selling payment protection insurance to retail customers. Banks have paid out many billions in compensation.

Libor – several major banks were fined for colluding to manipulate a key benchmark interest rate in the UK and around the world. According to some reports this had been going on since 2005. However, aside from some traders being arrested, little follow up work has been reported about why such transgressions were allowed to take place. It is unclear how much the institutions involved earned in revenues from these actions. In the US, the banks involved with benchmark manipulation continue to face lawsuits. For example, the Federal Deposit Insurance Corporation[12] has instigating legal action against 16 banks and the British Bankers' Association (BBA) claiming that libor manipulation caused substantial losses to 38 banks.

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[12]Libor: FDIC sues Barclays, RBS, HSBC, Lloyds and BBA, By agencies, 14 Mar 2014,The Telegraph. http://www.telegraph.co.uk/finance/libor-scandal/10699359/Libor-FDIC-sues-Barclays-RBS-HSBC-Lloyds-and-BBA.html

Lloyds Bank/Bank of Scotland – the FCA fined these banks £28Mln (after the discount) for inappropriate systems and controls for their sales processes. The breaches took place over a three year period- from 1 January 2010 to 31 March 2012. The combined relevant revenue for this period was £212Mln from these breaches – an optically uncomfortable disparity between the proceeds and the discounted fine. As far as we are aware no further action has been taken by the regulator to look at the senior persons responsible for allowing these breaches to take place over such a long period of time. One would have hoped that personal accountability would also be part of the enforcement process given the FCA has other non-financial sanctions in its armoury.

Credit Suisse/Yorkshire Building Society – fined (after the discount) £2.4Mln and £1.4 Mln respectively for failings related to the promotion of structured products. These products attracted almost £800m worth of investor money sold on a non-advised basis to unsophisticated retail customers. The probability of achieving the minimum return was 40-50% and the probability of achieving the maximum return was close to 0%. Each firm earned about £19Mln each from these transgressions, as far as we know, no individuals were held to account by the regulator. Why did the senior employees at Credit Suisse allow a product that had little chance of providing the returns advertised to be sold to unsophisticated investors? Why did the senior management at Yorkshire Building Society allow this product to be distributed to its customers?

Santander - fined £12.4 Mln (after 30% discount) for failures that gave rise to a significant risk of customers being recommended, making and remaining in investments that were not suitable for them. As a result of these failures between 1 January 2010 to 31 December 2012, Santander made £108Mln in revenue.

Invesco Perpetual - FCA fined Invesco Perpetual £18.6m for fund management failings and exposing investors in its giant income funds previously run by Neil Woodford to greater levels of risk than they expected. For nearly five years (May 2008 and November 2012), Invesco Perpetual did not comply with investment limits which are designed to protect consumers by limiting their exposure to risk. The extent of these losses was £5m and prompt compensation has been paid to the funds. The funds in question were the Income, High income and Managed Income funds, with over £35bn invested and representing 70 per cent of the group's assets. Neil Woodford, the manager of the Income and High Income funds has since left Invesco Perpetual and started his own asset management company Woodford Funds LLP. The questions that need to be answered are why the regulator did not seem to consider the actions of the senior individuals involved in allowing these failings to continue for such a long period of time.

Some notable non-UK examples of financial penalties[13]

U.S.

Biggest bank settlements with U.S Authorities[14]

	Bank	Settlement, $bn	Date	Cause
1	JPMorgan Chase	13.0	Oct 2013	MBS*
2	Bank of America	11.8	Feb 2012	Foreclosures†
3	Bank of America	11.6	Jan 2013	Mortgage repurchases
4	Bank of America	9.3	Mar 2014	MBS*
5	BNP Paribas	8.9	Jun 2014	Violating sanctions
6	Wells Fargo	5.3	Feb 2012	Foreclosures†
7	JPMorgan Chase	5.3	Feb 2012	Foreclosures†
8	JPMorgan Chase	5.1	Oct 2013	MBS*/mortgage repurchases
9	Bank of America	2.9	Jan 2013	Foreclosures‡
10	Credit Suisse	2.6	May 2014	Aiding tax evasion

Sources: Company reports; national sources; *Financial Times*

*Mortgage-backed securities †Part of $25bn National Mortgage Settlement ‡Part of $8.5bn settlement

Source: The Economist

$9Bln for breaking sanctions

France's BNP[15] Paribas pleads guilty to breaking US sanctions, fined $8.9 billion. BNP is suspended from processing U.S dollar payments for 1 year. BNP concealed a total of **$190 billion-worth of dollar-based transactions** between **2002 and 2012**, according to New York's Department of Financial Services (DFS).

Regulators: U.S Justice Department .

[13] http://www.ritholtz.com/blog/2013/09/top-10-bank-fines-post-2008-09-crisis/

[14] Capital punishment, France's largest bank gets fined for evading American sanctions, Jul 5th 2014,The Economist http://www.economist.com/news/finance-and-economics/21606321-frances-largest-bank-gets-fined-evading-american-sanctions-capital-punishment

[15] France's BNP Paribas pleads guilty to breaking US sanctions, fined $8.9 billion, http://www.dw.de/frances-bnp-paribas-pleads-guilty-to-breaking-us-sanctions-fined-89-billion/a-17747983

$2.4Bln for helping US clients evade taxes[16]

Credit Suisse pleads guilty to a criminal charge helping US citizens evade taxes usng practices that date back 100 years. The admission of guilt is unlikely to affect its UK or Switzwerland banking licenses.

U.S. Justice Department

$1.9 Billion for Money-laundering

HSBC Holdings

Regulators: U.S. Department of Justice, Treasury and others (2012)

$550 Million for materially misleading and incomplete information in sale of mortgage-related securities

Goldman Sachs

Regulators: U.S. Securities and Exchange Commission (2010)

$410 Million for Electricity market manipulation

J.P. Morgan Chase

Regulators: U.S. Federal Energy Regulatory Commission (2013)

$335 Million for Discrimination against black and Hispanic borrowers.

Bank of America

Regulators: U.S. Department of Justice (2011)

[16] http://www.bbc.co.uk/news/business-27478532

Serial offending

"Although there are differences between the LIBOR and EURIBOR processes and the Gold Fixing process, the Authority considers Barclays' failures to be particularly serious because Barclays' investigation into LIBOR and EURIBOR should have caused Barclays to have reviewed its systems and controls with respect to other price-setting mechanisms, including the Gold Fixing, prior to 28 June 2012."

(FCA Final Notice 23 May 2014)

"Exclusive: £22bn threat to banks in latest mis-selling 'scandal' that could rival PPI payouts."

(James Cusick, Political Correspondent, The Independent Monday 23 June 2014)

In the wake of PPI and libor, the next scandal that has been revealed involves Interest Rate Hedging Products (IRHP) [17]. Banks mis-sold IRHPs to companies many of which were unsophisticated clients. While the banks involved have agreed to provide redress to customers the absence of any enforcement action so far is a major concern. Here we have the major UK banks involved in another major mis-selling scandal and despite being serial offenders enforcement action appears to be absent. The fallout has yet to be determined although we wait to see what enforcement actions the regulator will take against what are serial offenders. The FCA has found that 90% of IRHP that have been sold did not comply with financial regulations.

The regularity with which the same firms are found to have placed their customers' interests second appears to be missed by the regulator. Firms can expect enforcement action on rare occasions and face the consequences. It appears that firms that regularly face enforcement

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[17] Exclusive: £22bn threat to banks in latest mis-selling 'scandal' that could rival PPI payouts, James Cusick, Political Correspondent, The Independent Monday 23 June 2014
http://www.independent.co.uk/news/uk/politics/exclusive-new-bank-interest-rate-protection-scandal-as-big-as-ppi-9558029.html

Banks using Wonga-style debt collection tactics Money Marketing 4 July 2014, Paul Thomas.
http://www.moneymarketing.co.uk/2011978.article?cmpid=amalert_388732

actions are treated as if it is their first offence. For large multi-service firms that face enforcement actions across their regulated activities, this should sound an alarm to the regulator that the firm in question may have structural deficiencies and warrant further regulatory scrutiny. Firms regardless of their size or sector, that face regular enforcement actions should have a higher tariff when they reoffend and greater use should be made of non-financial penalties. Similarly, the regulator should also keep a close eye on the proportion of complaints upheld against regulated firms to see if enforcement actions are required or where complaints continue to be upheld in the same areas where the firm has faced enforcement action.

Another reason why serial offending should be taken into account is the fact that firms, especially large ones herd. For a more notable example of herding of inappropriate practices one should remember the Payment Protection Insurance (PPI) debacle – a scandal that is compounded by the way the firms involved in the wrongdoing appear to be falling short of their responsibilities when it comes to compensating customers. The most recent is banks sending letters to their customers from non-existant law firms.

Product herding is another example. For example if one firm creates a product that does well, its competitors replicate these products in the hope of gaining market share. While this may be welcome in one instance, it may not be if the products created are purely for the purpose of meeting the firm's needs rather than their customer's (as appeared to be case with Credit Suisse/ Yorkshire Building Society). Hence, when firms herd in this way, consumer detriment is compounded and the quality of the market is compromised. The regulator needs to take into account the potential compounded detriment of herding behaviour. Effective enforcement action would ensure firms realise that the financial and non-financial costs from inappropriate conduct will not be outweighed by any financial benefits from these actions.

CFA UK also proposes that firms that have faced enforcement actions (especially frequent ones) should have this reflected in the fees they pay to be regulated. CFA UK proposes that there is an asymmetry between the rewards for good conduct and the fines for poor conduct. As we stated above, fines and penalties are often discounted to achieve a quick resolution while fees paid to the regulator are not discounted to reflect good conduct. This in our view is a perverse incentive because it deprives the consumer of a valuable signal while also demonstrating that good conduct is not acknowledged.

While we accept the Treasury's view that all firms should pay fees to be regulated, we would suggest that firms that are serial offenders should pay higher fees than their competitors which have better conduct records. CFA UK has developed an alternative approach to raising fees from the industry, which to our disappointment was not taken further by the FCA[18].

Asymmetry of treatment

"Queen's banker launches review of every investment since 1957"[19]

(Citywire Mone, James Phillipps, Danielle Levy, Elsa Buchanan on Jun 06, 2014)

"FCA investigates network over pension transfers."[20]

(New Model Adviser by Michelle Abrego on Jun 13, 2014)

The headlines provide a good example of asymmetry of treatment. In the former headline a large private bank is reviewing its investment advice since 1957 and does not appear to have warranted any regulatory attention. However, this same bank has faced enforcement action previously for unsuitable advice. The same bank was also fined for weak anti-money laundering controls.

While the private bank is willing to compensate its clients the bigger questions for the regulator to answer are what breaches have been taking place at this firm and why are the people responsible not being held to account given the length of time that potential breaches may have occurred?

In contrast, a small IFA network is investigated by the regulator for the suitability of its 'historical pension transfer business' which occurred over a relatively shorter time period than the private bank. Whatever the size of the firm, the rules and laws should be applied impartially and fairly otherwise the regulator runs the risk undermining its own competition

[18] CFA UK proposal to raise fees from the industry
https://secure.cfauk.org/assets/3372/CFA_UK_fees_and_levies_proposal_for_2015SENT.pdf

[19] http://citywire.co.uk/money/queens-banker-launches-review-of-every-investment-since-1957/a754877

[20] http://www.citywire.co.uk/new-model-adviser/fca-investigates-network-over-pension-transfers/a756737?re=29251&ea=327053&utm_source=BulkEmail_NMA_Daily_PM&utm_medium=BulkEmail_NMA_Daily_PM&utm_campaign=BulkEmail_NMA_Daily_PM

objectives. To raise trust and confidence requires raising the quality of providers rather than focussing on the size and quantity of suppliers.

We ask the Treasury why large financial institutions[21] appear to receive favourable treatment when they do breach the rules and laws ? For example had an individual committed acts such as tax evasion, market abuse or money laundering[22] the penalties would not stop at financial ones. The optical discerepancy does imply that large financial institutions are held to a different standard than individuals when it comes to adhering to same rules and laws.

Another aspect of asymmetry of treatment is the absence of enforcement action. This can often be where there is some form of regulatory failure. When regulator's fall short of the standards regulated individuals and firms are required to uphold, the regulator often is not judged by the same benchmark. One senior regulator[23] has been involved in two material incidents which if carried out by a regulated individual or firm may have been treated less leniently.

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[21] FCA slams banks with £13m money laundering fine Mortgage Solutions 25 Jul 2013 , Julia Rampen
http://www.mortgagesolutions.co.uk/mortgage-solutions/news/2284814/fca-slams-banks-with-gbp13m-money-laundering-fine
FCA fines Standard Bank £7.6m over anti-money laundering processes, MoneyMarketing, 30 January 2014 By Michael Glenister
http://www.moneymarketing.co.uk/news-and-analysis/regulation/fca-fines-standard-bank-76m-over-anti-money-laundering-processes/2005745.article

[22] Anti-money laundering guidance for money service businesses, HMRC, sets out the penalties.
http://www.hmrc.gov.uk/mlr/mlr_msb.pdf

[23] Osborne 'profoundly concerned' over FCA closed-book confusion, New Model Adviser, Michelle Abrego, Apr 01, 2014
http://citywire.co.uk/new-model-adviser/osborne-profoundly-concerned-over-fca-closed-book-confusion/a744152
FCA admits approval of ex-Co-op Bank chairman was mistake, Matt Scuffham and Huw Jones, Reuters, Jan 7, 2014
http://uk.reuters.com/article/2014/01/07/uk-britain-coop-idUKBREA060CB20140107

Responses to questions

Question 1

Do current enforcement processes and supporting institutional arrangements provide credible deterrence across the spectrum of firms and individuals potentially subject to the exercise of enforcement powers by the regulators? If not, what is the impediment to credible deterrence and where does it arise?

Based on our observations and the evidence; the enforcement arrangements in place are not a credible deterrent. This can be attributed to the following reasons-

1) Too much emphasis on headline making fines; discounting fines is not a deterrent especially when they are well below the relevant income derived (where it can be calculated) from inappropriate behaviour.
2) Reluctance to review regulatory permissions or use of other enforcement tools.
3) Absence of holding individuals to account.
4) Asymmetry of treatment – smaller firms can lose their permissions, larger firms just pay fines.
5) Reluctance to look at the root causes of why some firms are serial offenders.
6) Myopia and amnesia– Enforcement actions are myopic in their nature and so fail to have consequences once the firm has been penalised. Serial offenders are treated as if they are offending for the first time. Poor conduct is not taken into account when assessing the offending firm's fees and levies; the firm's competitors bear the cost of these transgressions. Poor drivers lose their no-claims discount and after serial offences lose their license to drive. If we applied the regulator's approach to driving offences – the driver would always pay a fine because they could blame the car or the manufacturer; thereby be absolved of being held responsible or accountable for their actions.

For the UK enforcement decision-making to result in an credible deterrent it needs to -

- Address root causes rather than citing systems and controls failures.
- Be symmetrical when sanctioning firms.
- Take a stronger approach to serial offenders.

- Make greater use of the other enforcement powers rather than rely on financial penalties, e.g make more use of public censures, review/suspend the firm's regulatory permissions.
- Focus on personal accountability and if these individuals can continue to be fit and proper.

Question 2

Are the criteria for referring a case from the FCA supervisory function to the enforcement function clear and used appropriately? Are all key criteria identified? If not, what improvements could be made? Should the FCA give certain factors more weight than others?

Based on the evidence we have cited relating to cases of major detriment to the consumer and market integrity, the criteria used to referring firms to the enforcement function requires further review. All too often the focus is on inanimate factors like systems and controls, when in fact the focus should be on the people responsible for key functions within firms. The fact that large firms involved in the most serious transgressions that have taken place over lengthy periods of time; should demonstrate that enforcement action is of modest concern to these firms.

The failures cited in this response should demonstrate that without business, professional and personal accountability; enforcement will never be a strong enough deterrent especially when it involves the largest firms in the sector. Until there is a move towards reviewing/suspending or removing regulatory permissions for senior personnel or for a firm's relevant regulated activities, the manner by which cases are referred to the enforcement function will fall short of the outcome desired and ensure that the FCA's objectives remain under threat. The recent U.S actions against BNP Paribas highlights that fines are not enough.

Question 3

Should the PRA say more publically about its enforcement processes? In particular, should the PRA publish enforcement referral criteria?

Whether it is conduct or prudential concerns the root cause will always be the people responsible for these processes. Capital ratios and the desire to game them are not the result of inappropriate processes and models but the people responsible for them. As we propose in this response regardless of the suspected offence or breach – a root cause analysis has to be undertaken to identify whether the breach is inadvertent or deliberate. In the latter case the consequences have to be wider than just a financial one.

Question 4

Are the enforcement sections of the FCA/PRA MoU being applied in practice? If not, please give specific examples of implementation deficiencies.

No comment

Question 5

Is the MoU the most effective way to deliver effective co-ordination? If not, what alternative mechanism should be developed for enforcement cases?

No comment

Question 6

Do any suggestions for improvement or reform relate to the referral stage, the investigation stage, the decision making stage or all three stages?

As we have stated in this response all three stages need to take a root cause approach rather than focus on the incident in isolation. When firms have to deal with complaints they have to undertake a root cause analysis – why does the regulator not abide by the same standard when it comes to enforcement?

Question 7

Is the scope of investigations made sufficiently clear to those subject to them?

No comments

Question 8

Should the regulators offer the opportunity for regular progress meetings during the investigation?

No comment

Question 9

Are there sufficient opportunities for individuals and firms to make representations?

Yes

Question 10

Does the time allotted for making representations strike the right balance between fairness and speed?

The regulator should be aiming for a credible deterrent. If the regulator is resource constrained compared to the firms that it is investigating then perhaps this should be addressed. The irony about using resource constraints as a reason not to take stronger action is best summed up in the following quotation –

"Our government found a way to give Citigroup billions of dollars as it careened toward a financial abyss, taking our entire economy with it. But it couldn't come up with the resources needed to properly prosecute Citigroup and its executives for fraud."

(Al Lewis,The Wall Street Journal June 8, 2014)[24]

The UK has found the resources to keep the financial system afloat but lacks the will to provide the resources to ensure firms are held to account.

Question 11

Should the regulators publish factors they will take into account when considering whether to grant extra time?

Only to the firms/individuals that have been referred to enforcement.

Question 12

Settlements are faster and more efficient than exhausting the decision making process. They often deliver fairness to consumers by providing earlier opportunity

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[24] For Citigroup and the SEC, Truth is Inadmissible, Al Lewis,The Wall Street Journal June 8, 2014. http://online.wsj.com/articles/for-citigroup-and-the-sec-pragmatism-trumps-truth-1402186838

for redress. Is it appropriate to give a discount for early settlement? Should there be any types of case where such discounts are not available? Could the settlement process be changed to offer clearer incentives to settle after the time limit for receiving a 30% discount has expired? Do you agree with the incentives given?

While we can understand the merits of providing a discount, the discounted fine is often well below the revenue generated by the firm from the inappropriate conduct. Discounts should be used sparingly for example for inadvertent breaches. Where the breaches have occurred over long periods of time more serious action should be considered in addition to non-discounted fees.

If firms do not receive discounts on their regulatory fees for good conduct, why do firms that have engaged in inappropriate conduct benefit from discounts? Often the fine without the discount is still materially smaller than the relevant income achieved from the inappropriate conduct. For serious breaches, financial penalties should be accompanied by suspensions of permissions. In the U.S some banks pleaded guilty to criminal charges rather than lose their licenses. Perhaps the UK regulator needs to take note.

Question 13

Do the current approaches to settlement also deliver fairness to firms and individuals subject to enforcement action, bearing in mind that settlement is a voluntary process? If not, what improvements could be made better to balance the interests of all parties?

This question should be rephrased to consider the impact of the settlements on consumers, market integrity and the quality of competition. When firms have been found to have acted against the interests of the consumer the balance has to be restored in favour of the client. In addition, the firm that caused the detriment should be treated in a manner that sends a strong signal that the regulator will not tolerate similar actions by this and other firms. Sadly, the evidence shows that settlement and the discounts associated with them are just considered a cost of doing business; something that is more unwelcome when it involves serial offenders or when inappropriate conduct has been taking place for a considerable length of time. Hence, the imbalance remains in the favour of the perpetrators.

Question 14

Since the changes made by the FSA in 2005, FCA executives make early settlement decisions and the RDC takes the decisions on the issue of statutory notices in

contested cases. How does this compare with the PRA's executive-based approach? Could further changes be applied to either regulator's processes to improve the balance between fairness, transparency, speed and efficiency?

No comment

Question 15

Should the composition of the RDC/DMC be changed? If so, why and how?

Perhaps it may be preferable to change the manner by which these committees assess enforcement cases. If a change in approach requires new committee members then this should be considered.

Question 16

Almost 40% of cases considered by the RDC are subsequently referred to the Upper Tribunal. Does the RDC process duplicate too much the Tribunal process for firms and individuals who are likely to refer a Decision Notice to the Tribunal? What changes could be made to make the process more proportionate and/or efficient, consistent with the delivery of the regulatory objectives?

No comment.

Question 17

What more could the UK learn from international practice?

The UK can learn from its mistakes and shortcomings and see how these can be addressed by incorporating best practice from other jurisdictions. The more serious the breaches the more that needs to be done to address the consumer detriment and impact on trust and confidence. One example that the UK could take on board is suspending some or all of a firm's regulatory permissions. Japan used to do this. In the US, the non-financial authorities have taken it upon themselves to pursue firms in the courts. Large banks have been willing to plead guilty rather than lose their licenses to operate. This marks a sea change when banks often used to settle but not admit or deny responsibility. However, the 'too big to jail' perception remains.

<u>Question 18</u>

Are there specific features of other jurisdictions' enforcement processes which might be introduced in the UK?

The FCA criteria for referring cases to enforcement (listed below) appear to cover the appropriate factors. However, based on the evidence we have presented not all the criteria are taken into account when deciding on what actions to take. Deterrents need to be strong and unless enforcement actions go beyond just financial penalties; serial offenders will continue to factor in fines as a cost of business.

FCA enforcement referral criteria

1. Has there been actual or potential consumer loss/detriment?
2. Is there evidence of financial crime or risk of financial crime?
3. Are there actions or potential breaches that could undermine public confidence in the orderliness of financial markets?
4. Are there issues that indicate a widespread problem or weakness at the firm/issuer?
5. Is there evidence that the firm/issuer/individual has profited from the action or potential breaches?
6. Has the firm/issuer/individual failed to bring the actions or potential breaches to the attention of the FCA?
7. Is the issue to be referred relevant to an FCA strategic priority?
8. If the issue does not fall within an FCA strategic priority, does the conduct in question make the conduct particularly egregious and presenting a serious risk to one of the FCA's Objectives?
9. What was the reaction of the firm/issuer/individual to the breach?
10. Overall, is the use of the enforcement tool likely to further the FCA's aims and Objectives?

Does the suspected misconduct involve an overseas jurisdiction? If so, would enforcement action materially further investor protection or market confidence in that jurisdiction? Not all the criteria will be relevant to every case and additional considerations may apply in other cases, e.g. suspected market misconduct.

We trust that these comments are useful and would be pleased to discuss them in person.

Yours,

Natalie WinterFrost, CFA FIA
Chair Professional Standards &
Market Practices
Committee, CFA UK

Will Goodhart
Chief executive
CFA Society of the UK

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Policy Adviser
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Appendix 1 –Summary of Code and Standards

CODE OF ETHICS AND STANDARDS OF PROFESSIONAL CONDUCT

PREAMBLE

The CFA Institute Code of Ethics and Standards of Professional Conduct are fundamental to the values of CFA Institute and essential to achieving its mission to lead the investment profession globally by setting high standards of education, integrity, and professional excellence. High ethical standards are critical to maintaining the public's trust in financial markets and in the investment profession. Since their creation in the 1960s, the Code and Standards have promoted the integrity of CFA Institute members and served as a model for measuring the ethics of investment professionals globally, regardless of job function, cultural differences, or local laws and regulations. All CFA Institute members (including holders of the Chartered Financial Analyst® [CFA®] designation) and CFA candidates must abide by the Code and Standards and are encouraged to notify their employer of this responsibility. Violations may result in disciplinary sanctions by CFA Institute. Sanctions can include revocation of membership, revocation of candidacy in the CFA Program, and revocation of the right to use the CFA designation.

THE CODE OF ETHICS

Members of CFA Institute (including CFA charterholders) and candidates for the CFA designation ("Members and Candidates") must:

- Act with integrity, competence, diligence, respect, and in an ethical manner with the public, clients, prospective clients, employers, employees, colleagues in the investment profession, and other participants in the global capital markets.
- Place the integrity of the investment profession and the interests of clients above their own personal interests.
- Use reasonable care and exercise independent professional judgment when conducting investment analysis, making investment recommendations, taking investment actions, and engaging in other professional activities.
- Practice and encourage others to practice in a professional and ethical manner that will reflect credit on themselves and the profession.
- Promote the integrity of and uphold the rules governing capital markets.
- Maintain and improve their professional competence and strive to maintain and improve the competence of other investment professionals.

STANDARDS OF PROFESSIONAL CONDUCT

I. PROFESSIONALISM

A. Knowledge of the Law. Members and Candidates must understand and comply with all applicable laws, rules, and regulations (including the CFA Institute Code of Ethics and Standards of Professional Conduct) of any government, regulatory organization, licensing agency, or professional association governing their professional activities. In the event of conflict, Members and Candidates must comply with the more strict law, rule, or regulation. Members and Candidates must not knowingly participate or assist in and must dissociate from any violation of such laws, rules, or regulations.

B. Independence and Objectivity. Members and Candidates must use reasonable care and judgment to achieve and maintain independence and objectivity in their professional activities. Members and Candidates must not offer, solicit, or accept any gift, benefit, compensation, or consideration that reasonably could be expected to compromise their own or another's independence and objectivity.

C. Misrepresentation. Members and Candidates must not knowingly make any misrepresentations relating to investment analysis, recommendations, actions, or other professional activities.

D. Misconduct. Members and Candidates must not engage in any professional conduct involving dishonesty, fraud, or deceit or commit any act that reflects adversely on their professional reputation, integrity, or competence.

II. INTEGRITY OF CAPITAL MARKETS

A. Material Nonpublic Information. Members and Candidates who possess material nonpublic information that could affect the value of an investment must not act or cause others to act on the information.

B. Market Manipulation. Members and Candidates must not engage in practices that distort prices or artificially inflate trading volume with the intent to mislead market participants.

III. DUTIES TO CLIENTS

A. Loyalty, Prudence, and Care. Members and Candidates have a duty of loyalty to their clients and must act with reasonable care and exercise prudent judgment. Members and Candidates must act for the benefit of their clients and place their clients' interests before their employer's or their own interests.

B. Fair Dealing. Members and Candidates must deal fairly and objectively with all clients when providing investment analysis, making investment recommendations, taking investment action, or engaging in other professional activities.

C. Suitability.

1. When Members and Candidates are in an advisory relationship with a client, they must:
   a. Make a reasonable inquiry into a client's or prospective client's investment experience, risk and return objectives, and financial constraints prior to making any investment recommendation or taking investment action and must reassess and update this information regularly.
   b. Determine that an investment is suitable to the client's financial situation and consistent with the client's written objectives, mandates, and constraints before making an investment recommendation or taking investment action.
   c. Judge the suitability of investments in the context of the client's total portfolio.
2. When Members and Candidates are responsible for managing a portfolio to a specific mandate, strategy, or style, they must make only investment recommendations or take only investment actions that are consistent with the stated objectives and constraints of the portfolio.

D. Performance Presentation. When communicating investment performance information, Members and Candidates must make reasonable efforts to ensure that it is fair, accurate, and complete.

E. Preservation of Confidentiality. Members and Candidates must keep information about current, former, and prospective clients confidential unless:

1. The information concerns illegal activities on the part of the client or prospective client,
2. Disclosure is required by law, or
3. The client or prospective client permits disclosure of the information.

IV. DUTIES TO EMPLOYERS

A. Loyalty. In matters related to their employment, Members and Candidates must act for the benefit of their employer and not deprive their employer of the advantage of their skills and abilities, divulge confidential information, or otherwise cause harm to their employer.

B. Additional Compensation Arrangements. Members and Candidates must not accept gifts, benefits, compensation, or consideration that competes with or might reasonably be expected to create a conflict of interest with their employer's interest unless they obtain written consent from all parties involved.

C. Responsibilities of Supervisors. Members and Candidates must make reasonable efforts to detect and prevent violations of applicable laws, rules, regulations, and the Code and Standards by anyone subject to their supervision or authority.

V. INVESTMENT ANALYSIS, RECOMMENDATIONS, AND ACTIONS

A. Diligence and Reasonable Basis. Members and Candidates must:

1. Exercise diligence, independence, and thoroughness in analyzing investments, making investment recommendations, and taking investment actions.
2. Have a reasonable and adequate basis, supported by appropriate research and investigation, for any investment analysis, recommendation, or action.

B. Communication with Clients and Prospective Clients. Members and Candidates must:

1. Disclose to clients and prospective clients the basic format and general principles of the investment processes they use to analyze investments, select securities, and construct portfolios and must promptly disclose any changes that might materially affect those processes.
2. Use reasonable judgment in identifying which factors are important to their investment analyses, recommendations, or actions and include those factors in communications with clients and prospective clients.
3. Distinguish between fact and opinion in the presentation of investment analysis and recommendations.

C. Record Retention. Members and Candidates must develop and maintain appropriate records to support their investment analyses, recommendations, actions, and other investment-related communications with clients and prospective clients.

VI. CONFLICTS OF INTEREST

A. Disclosure of Conflicts. Members and Candidates must make full and fair disclosure of all matters that could reasonably be expected to impair their independence and objectivity or interfere with respective duties to their clients, prospective clients, and employer. Members and Candidates must ensure that such disclosures are prominent, are delivered in plain language, and communicate the relevant information effectively.

B. Priority of Transactions. Investment transactions for clients and employers must have priority over investment transactions in which a Member or Candidate is the beneficial owner.

C. Referral Fees. Members and Candidates must disclose to their employer, clients, and prospective clients, as appropriate, any compensation, consideration, or benefit received from or paid to others for the recommendation of products or services.

VII. RESPONSIBILITIES AS A CFA INSTITUTE MEMBER OR CFA CANDIDATE

A. Conduct as Members and Candidates in the CFA Program. Members and Candidates must not engage in any conduct that compromises the reputation or integrity of CFA Institute or the CFA designation or the integrity, validity, or security of the CFA examinations.

B. Reference to CFA Institute, the CFA Designation, and the CFA Program. When referring to CFA Institute, CFA Institute membership, the CFA designation, or candidacy in the CFA Program, Members and Candidates must not misrepresent or exaggerate the meaning or implications of membership in CFA Institute, holding the CFA designation, or candidacy in the CFA program.

Some examples of enforcement actions from across the industry

Asset managers[25]

Organisation	Fine (Mln)	Reason for fine
State Street	**£22.9**	The regulator says the firm's transitions management business developed and executed a deliberate strategy to charge clients substantial mark-ups on certain transitions, in addition to the agreed management fee or commission. These mark-ups had not been agreed by the clients and were concealed from them.
Martin Currie	**£8.6**	The Financial Services Authority (FSA) fined Martin Currie Investment Management Limited and Martin Currie Inc £3.5m. Martin Currie was also fined $8.3m (£5.1m) by the Securities and Exchanges Commission (SEC) in the US. It is the largest fine ever imposed by the FSA in a conflict of interest case. The conflict of interest arose when the Edinburgh-based firm caused one client (Fund B) to enter into an ill-advised transaction which rescued another client (Fund A) from serious liquidity concerns. Both Fund A and Fund B focused on making investments in the China market, and were managed by Martin Currie from its Shanghai office.
Aberdeen Asset Management	**£7.2**	The regulator found that Aberdeen failed to ensure that funds placed in money market deposits with third party banks between September 2008 and August 2011 was subject to client money rules. Clients can hold funds in money market deposits where they have large cash balances in their investment portfolios, in order to generate a return over a fixed period. The FCA says Aberdeen's failures meant clients were at risk of delays in having their money returned if Aberdeen became insolvent. The average daily balance affected by this failure was £685m.

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[25] Fine failures: The biggest recent asset management fines, fundweb, 24 April 2014, Sam MacDonald.
http://www.fundweb.co.uk/news-and-analysis/regulation/fine-failures-the-biggest-recent-asset-management-fines/2009629.article

Martin Currie fined £8.6m by US and UK regulators, BBC News, 10th May 2012
http://www.bbc.co.uk/news/uk-scotland-scotland-business-18025387

Banks

Firm	Size of fine	Reason
Several UK regulated banks	**Multi-million**	Miss-selling of PPI, IRHP. Benchmark manipulation
JP Morgan	**£137.6Mln**	For serious failings relating to its Chief Investment Office's "London Whale" trades.
Barclays Bank Plc	**£26Mln**	For failing to adequately manage conflicts of interest between itself and its customers as well as systems and controls failings, in relation to the Gold Fixing.
Santander Plc	**£12.4 Mln**	For failing to ensure it gave suitable advice to its customers and ensure that it financial promotions and communications with customers were clear fair and not misleading.

Retail

Firm	Size of fine	Reason
Sesame Ltd	**£6Mln**	For failing to ensure advice given to customers was suitable and for poor systems and controls.
J.P. Morgan International Bank Limited	**£3Mln**	For systems and controls failings relating to its provision of retail investment advice and portfolio investment services.
Axa Wealth Services Ltd	**£1.8Mln**	For failing to ensure it gave suitable investment advice to its customers.
Unregulated Collective Investment Schemes (UCIS) [26]	**Various**	A variety of actions taken to address the mis-selling by firms of UCIS products. Many small firms were unable to pay.

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[26] Herbert Smith Freehills, 2 September 2013
http://hsfnotes.com/fsrandcorpcrime/2013/09/02/fca-bans-and-fines-two-in-relation-to-unregulated-collective-investment-schemes-sales-failures/
FCA bans and fines two in relation to Unregulated Collective Investment Schemes sales failures
http://www.portfolio-adviser.com/news/regulation/ucis-fsa-fscs-default

Non-UK Enforcement actions

U.S

$25 Billion for Foreclosure processing abuses.

Five Banks: Wells Fargo & Co., J.P. Morgan Chase & Co., Citigroup Inc., Bank of America Corp., Ally Financial Inc.

Regulators: U.S. Department of Housing and Urban Development, U.S. Department of Justice and 49 state attorneys general (2012)

$9.3 Billion for Foreclosure abuses.

Thirteen Banks: Bank of America Corp., Wells Fargo & Co., J.P. Morgan Chase & Co. and 10 others

Regulators: Office of the Comptroller of the Currency and Federal Reserve (2013)

$1.5 Billion for Manipulating Libor rates.

UBS

Regulators: Commodity Futures Trading Commission, former U.K. Financial Services Authority, Swiss Financial Market Supervisory Authority, U.S. Department of Justice (2012)

$920 Million for Lack of oversight of giant bets by 'London whale.' (poor internal controls).

J.P. Morgan Chase & Co.

Regulators: Securities and Exchange Commission, Office of the Comptroller of the Currency, Federal Reserve and U.K.'s Financial Conduct Authority (2013)

EU

Euro interest rate derivative cartel fines

Participant	Duration of participation	Fine (euros)	Reduction under leniency notice*
Barclays	32 months	0	100%
Deutsche Bank	32 months	465,861,000	30%
Societe Generale	26 months	445,884,000	5%
RBS	8 months	131,004,000	50%

**Barclays received full immunity for revealing the existence of the cartel*

Yen interest rate derivative cartel fines

Participant	Duration of participation	Fine (euros)	Reduction under leniency notice*
UBS (five infringements)	various duration	0	100% for all infringements
RBS (three infringements)	various	260,056,000	25% for one infringement
Deutsche Bank (two infringements)	various	259,499,000	35%, 30%
JP Morgan (one infringement)	one month	79,897,000	
Citigroup (three infringements)	various	70,020,000	35%, 100%, 40%
RP Martin (one infringement)	one month	247,000	25%

**UBS received full immunity for revealing the existence of the cartels. Citigroup received full immunity for one infringement and avoided a 55m-euro fine*

Source: Europa

CFA Society United Kingdom

About CFA UK and CFA Institute

CFA UK serves society's best interests through the provision of education and training, the promotion of high professional and ethical standards and by informing policy-makers and the public about the investment profession.

Founded in 1955, CFA UK represents the interests of approximately 11,000 investment professionals. CFA UK is part of the worldwide network of member societies of CFA Institute and is the largest society outside North America.

CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behaviour in investment markets and a respected source of knowledge in the global financial community. The end goal: to create an environment where investors' interests come first, markets function at their best, and economies grow. CFA Institute has more than 110,000 members in 139 countries and territories, including 100,000 Chartered Financial Analyst® charterholders, and 136 member societies.

The aim of CFA UK's advocacy initiative is to work with policy-makers, regulators and standard-setters to promote fair and efficient-functioning markets, high standards in financial reporting and ethical standards across the investment profession. The society is committed to providing members with information regarding proposed regulatory and accounting standards changes and bases its responses on feedback direct from members or relevant committees.

Members of CFA UK abide by the CFA Institute Code of Ethics and Standards of Professional Conduct. Since their creation in the 1960s, the Code and Standards have served as a model for measuring the ethics of investment professionals globally, regardless of job function, cultural differences, or local laws and regulations. The Code and Standards are fundamental to the values of CFA Institute and its societies.