CFA Society United Kingdom

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

30th January 2015

Dear sir/madam,

'How fair and effective are the fixed income, foreign exchange and commodities markets?'

The CFA Society of the United Kingdom (CFA UK) welcomes the Fair and Effective Markets Review of the Fixed Income, Currency and Commodities (FICC) markets. This response has been prepared by CFA UK's Professional Standards and Market Practices Committee (PSMPC).

In her October 2014 speech, the Bank of England's Deputy Governor for Markets & Banking, Nemat Shafik, commented that fair and effective markets should allow their ultimate end users to invest, fund themselves, and transfer risk in a resilient and predictable way, on the basis of competitive prices. They should offer appropriately open access and transparency and should operate according to clear standards of market practice and integrity. We agree.

She commented that the stream of scandals that have emerged from the FICC markets indicated that this is not just a case of a few bad apples, but that there might be something wrong with the barrels themselves. We agree, but note that while a market might present the opportunity and may deliver an incentive to behave unethically, individuals' conduct and firms' conduct within a system remains a personal choice (or a set of personal choices).

She asked what can be done to embed acceptable behaviours, whether codes of conduct can be given real 'teeth' and whether delivering fair and effective FICC markets can be achieved by the industry or requires regulation. We answer these excellent questions in our response.

Our perspective

CFA Institute's mission is to lead the investment profession globally by promoting the highest standards of ethics, education, and professional excellence for the ultimate benefit of society.

We believe that:

- Investment professionals contribute to the ultimate benefit of society through the sustainable value generated by efficient financial markets and by effective investment institutions.
- Good stewardship and high ethical standards are necessary for trust and confidence to be secured and for society to be served.
- Financial markets should afford every investor the opportunity to earn a fair return.
- Financial markets are more effective when participants are knowledgeable.
- High ethical principles and professional standards are essential to positive outcomes; rules and regulations, while necessary, are not sufficient by themselves.

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 125,000 members in 150 countries and territories, including close to 120,000 Chartered Financial Analyst® charterholders, and 136 member societies. In addition, more than 164,000 CFA Program candidates took the CFA exams in FY2014 in one of our 250+ test centres around the globe.

CFA UK is the local member society for CFA Institute and shares CFA Institute's mission and beliefs. Founded in 1955, CFA UK represents the interests of approximately 11,000 investment professionals.

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.

All members of CFA Institute and CFA UK abide by the CFA Institute Code of Ethics and Standards of Professional Conduct. The Code and Standards serve 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 and are protected by CFA Institute through its Professional Conduct Program.

CFA Institute and its member societies are at the forefront of much of the work that is required to improve the quality of markets in the ultimate interests of society. We educate financial professionals so that they are technically and ethically competent and we require financial professionals to commit annually to high ethical and professional standards. In doing so, we teach individuals how to address practical professional challenges and encourage thoughtfulness about the ethical issues associated with different situations. Encouraging individuals to think about the consequences of their actions has been demonstrated to improve ethical outcomes.

As Awrey and Kershaw[1] report in their article '*Towards a More Ethical Culture in Finance*', 'contemplation or reflection can enhance ethical decision making'. They add, 'Contemplation allows individuals to consciously weigh ethical considerations against self-interest. As a result, slowing decision-making processes down and reflecting on their ethical dimensions may yield socially desirable behavioural effects'.

A summary of the Code and Standards is attached in Appendix 1.

Overview

The reputation of the City of London as a global financial centre has been damaged by the scandals related to FICC markets. CFA UK welcomes the various responses and initiatives from UK regulators and policy-makers to restore the City's reputation.

There is much to commend in the FEMR, notably:

- The focus on FICC markets.
- The use of practitioners' expertise.
- The clear definition of the review's scope.
- The provision of definitions for 'fair' and 'effective'.
- The systemic approach to the issue and the involvement of the Bank of England, HM Treasury and the Financial Conduct Authority.

[1] Ch 13 in 'Capital Failure' edited by Nicolas Morris and David Vines (OUP, 2014). Awrey and Kershaw reference (Gunia et al. 2012 and Murnighan et al. 2001)

The review invites respondents to comment on the proposed definitions of 'fair' and 'effective', seeks respondents' views on areas where the markets might be deficient, asks respondents to identify the critical areas in which the deficiencies exist, asks for comments on the likely impact on the changes that have already take place since the financial crisis and looks for feedback on ways in which the fairness and effectiveness of FICC markets might be improved.

As previously indicated, we support the review's definitions of 'fair' and 'effective'.

While many of our members might be equipped to comment on the structural deficiencies impeding the FICC markets' effectiveness, our response concentrates on conduct and the fairness of the FICC markets. Here, the review correctly identifies standards of practice, accountability, controls and incentives, ethics, governance, regulation and supervision as key aspects.

We have some concerns about the review's proposed framework for identifying critical areas of deficiency. It is our view that issues relating to market microstructure and competition should not be considered *alongside* issues relating to conduct. Rather, those issues should be considered subsequently to those relating to conduct. Markets might have appropriate structures and degrees of competition, but if business in those markets is not conducted fairly – in accordance with accepted standards and regulations – the market cannot be effective because it will not be trusted. Appropriate structures and opportunities for competition are necessary for a market to be effective, but they are not sufficient alone. In the absence of fairness – delivered through the right professional and ethical behaviour – a market cannot be truly effective.

The society has previously commented on many of the regulatory changes that have taken place since the financial crisis. We have welcomed the increased emphasis on Board governance within banks and other financial institutions. Similarly, in commenting on proposed regulatory changes, we have emphasised the need for improved supervision and enforcement to accompany new and existing regulation. We have also responded positively to the renewed focus on conduct and ethics and indicated our support for the new Banking Standards Review Council.

The society has not previously commented on the Senior Manager and Certification regimes, but we welcome its introduction in place of the Approved Persons regime on account of the requirement for clearer responsibility and accountability. The new regimes will support and encourage the greater emphasis on culture and behaviour that is already evident within banks.

So, how can the review help to improve conduct? The review proposes three potential steps: the development of a global code of conduct; additional regulation; and closer focus on standards and conduct in relation to individuals' career development and compensation.

CFA Institute promotes and supports codes and standards. Aside from the Code of Ethics and Standards of Professional Conduct, CFA Institute has also developed the Global Investment Performance Standards, the Asset Manager Code of Conduct and the Pension Trustee Code of Conduct. Codes of conduct provide guidance on ethical and professional behaviour and represent useful frameworks for decision-making.

However, codes alone can be ineffective. The scandals in the FICC market are evidence of that. Those scandals arose in an environment where there was ample provision of codes and standards – not least the Bank's own Non-Investment Products code for those working in wholesale markets.

Codes and standards are only effective where they are relevant and salient. Relevance and salience might be attained because an individual cares about their own professional behaviour and/or is concerned to protect their professional status. Those characteristics might also be attained because an employer indicates that an individual's ability to progress, to do interesting work and/or to receive compensation for their work depends on their adherence to codes and standards.

It is unclear that a new global code would contribute to an improvement in conduct. The challenge is not in the development of codes and standards, it is in their application. While the promotion of a global code (which might, by necessity, list high-level principles rather than specific market guidance) would help to focus the attention of wholesale market participants on the value of codes, it would be time-consuming to develop. It might be simpler and more effective to invite firms operating in wholesale markets to indicate to their supervisors the codes and standards to which they expect their employees to adhere.

An additional danger posed by the development of a global code is that stated adherence to this might be taken as providing a 'safe harbour' for market participants. There should be no 'safe harbour' in relation to ethical and professional behaviour. Just as prolonged periods of financial stability appear to breed instability, the provision of a perceived 'safe harbour' in relation to conduct is likely to damage conduct, rather than improve it.

Ethical cultures require not compliance but consideration. Codes and standards work by disengaging firms and individuals from the 'System 1' thinking described by Daniel Kahneman and activating the slower, effortful and deliberative 'System 2' thinking. Boards, senior managers and certified persons all need to be aware of the need to maintain a moral compass in their work and conscious of the need for their ethical processes and policies to be relevant and salient across the firm.

The application of codes and standards can improve conduct. A supervisory approach that takes account of firms' adoption and use of codes and standards – as well as their use of appropriate qualifications and continued professional development – would support the development of ethical and professional cultures across firms (in which behaviour impacts career development and total compensation). As a consequence, participants in FICC markets would be properly aware of the duties that are owed to clients and to the market and would be more likely to act accordingly.

While the greater voluntary adoption and application of codes (and qualifications) would be a valuable and positive development, it needs to be supported and encouraged through regulation and supervision. In addition, CFA UK proposes that regulatory focus and effort should be placed on:

- Making sure that those that work in FICC and other markets are in no doubt of their regulatory responsibilities and are aware of the consequences of acting inappropriately.
- Regulated firms should ensure that their senior management and systems and controls are robust enough to reduce the scale and risk of similar actions in the future; ignorance and lack of oversight is no longer a defence.
- More intensive supervision of firms and a willingness to take strong enforcement action, backed up by a stringent and credible sanctions regime.

What does 'Fair and Effective' mean for FICC markets?

Q1: The Review would welcome respondents' views on the definition of 'fair and effective' FICC markets proposed in Section 3. Does it strike the right balance between safeguarding the interests of end-users without unnecessarily impeding the effectiveness of FICC markets?

Are the concepts of transparency, openness and equality of opportunity appropriately specified? And how does the definition compare with those used in other markets, jurisdictions, organisations or legislation?

CFA UK welcomes the definitions of 'fair' and 'effective'. Fairness and effectiveness are promises – to provide a perceived reasonable equality of opportunity and to deliver the expected outcomes reasonably consistently. The ability for a market to deliver on those promises – to have integrity - depends on transparency, clear standards of practice and competition based on accessibility. While we do not necessarily agree with the allocation of the characteristics that the review identifies – and also dispute that it is possible to have effective markets that are 'unfair' – we agree that the characteristics that the review identifies are correct. In our opinion, the emphasis on the need for the FICC markets to offer fairness and effectiveness – and thus to display integrity – is appropriate. We also observe that market integrity ought to be in the interests of both end-users and intermediaries. It is not a case of balancing the competing interests of intermediaries and end-users. As intermediaries are now learning, if a market loses its integrity, end-users (and those that protect their interests) will act to restore it or abandon it and develop alternatives.

A framework for evaluating fairness and effectiveness

Q2: Of the six themes identified in Table A on page 5 (market microstructure; competition and market discipline; benchmarks; standards of market practice; responsibilities and incentives; and surveillance and penalties), which do you consider to be the most important factors contributing to the recent series of FICC market abuses?

In which other areas do you believe the fairness and effectiveness of FICC markets globally may be deficient? Do these answers vary across jurisdictions, or specific markets within FICC? Are there any other important areas of vulnerability that are not identified in the table?

CFA UK considers market discipline and surveillance and penalties to be the most important factors contributing to the recent series of FICC market abuses.

1) Market discipline – we have to accept that markets are not frictionless and complete. Markets can be hindered by economic and non-economic barriers (e.g the inflation of the recent credit bubble). We need to understand what prevented other market participants (including regulators) from exposing the behaviour of those firms involved in the scandals. This becomes more important when one considers that the same firms keep coming to the attention of global regulators. More needs to be done to

identify why market discipline is not strong enough to identify the scale of conduct associated with recent scandals.

2) Surveillance and penalties– in our positon paper 'Effective Regulation'[2] we have advocated that more needs to be done with regard to supervision and enforcement. Relying purely on regulations and laws is not sufficient, unless they can be supervised and enforced effectively – these laws and regulations have little power in encouraging the appropriate outcomes. As we observed in our response to the Enforcement Review[3], the non-financial penalties available to regulators in the UK and abroad have rarely been used despite the serial offending of some firms.

In our view the FICC market abuses are the result of a combination of factors that can be summarised as a systemic governance failure. It is this systemic governance failure that is the greatest area of vulnerability to the fairness and effectiveness of markets. These are echoed by the Parliamentary Commission on Banking Standards (PCBS) final report -

Banking history is littered with examples of manipulative conduct driven by misaligned incentives, of bank failures born of reckless, hubristic expansion and of unsustainable asset price bubbles cheered on by a consensus of self-interest or self-delusion. An important lesson of history is that bankers, regulators and politicians alike repeatedly fail to learn the lessons of history: this time, they say, it is different. Had the warnings of past failures been heeded, this Commission may not have been necessary.

(PCBS 2013, Volume 1: Summary, Conclusions and recommendations).

The failures that have come to light in the wake of the crisis demonstrate how weak the governance has been within the firms involved in the scandals, the inability of the market to impose discipline on these firms and finally the inability of the regulator to act quickly enough to limit the duration and impact of inappropriate conduct.

Markets are not perfect or complete and so regardless of the attempts to make market structures more robust it is unlikely to impede those firms/individuals willing to exploit markets for their benefit and at the expense of others. Hence the focus should be on conduct first and then address the extent to which market structure can be improved.

The way forward requires a solution that can address the crisis of accountability. An important element of such as solution would be adherence to the highest professional standards by

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[2]'Effective Regulation' and other CFA UK position papers can be found at https://secure.cfauk.org/about/professionalism.html

[3] Review of enforcement decision-making at the financial services regulators: call for evidence https://secure.cfauk.org/assets/2286/CFA_UK_Response_HMT_Enforcement_Review_2014_SENT.pdf

individuals and senior management within firms. This would require individuals to abide by a professional code that was effectively policed within the firm as well as ensure these individuals abide by the spirit of the relevant regulations and laws. Market practices that break the law or breach regulations should not be tolerated even if they are disguised as 'accepted market practice'.

The consultation sets out several codes of conduct although little is said about the efficacy of these codes. The effectives of CFA Institute's Code and Standards, which sets out the key ways our members contribute to market integrity and place client interests first, rests on the how well they are policed. The CFA Institute Code of Ethics and Standards of Professional Conduct are enforced via a Professional Conduct Program that administers the disciplinary process for CFA Institute. This disciplinary process includes monitoring compliance, investigating allegations, conducting disciplinary proceedings, and imposing sanctions (including revocation of the CFA charter) if necessary. [4]

Standards of market practice

Q27: Are existing sources of information regarding standards of market practice across FICC markets globally:

(a) already sufficiently clear (or will be once current regulatory reform has concluded);
(b) sufficient, but in need of clearer communication or education efforts; or
(c) not sufficiently clear, requiring more specific guidance or rules to provide more detail or close genuine gaps?

The recent crisis and scandals highlight clearly the type of activity that is not acceptable. We should learn from this and focus on what is acceptable and within the regulations. Often, it is the intent of an action that determines whether it is acceptable or not. For example, FICC transactions can be legitimate based on actual demand and supply, whereas trading activity resulting from collusion or intended to manipulate markets is clearly not acceptable.

Sadly we also have to accept that there may always be a small minority of individuals that will undertake inappropriate behaviour, and worse still, the costs of these actions will be carried by the majority of market participants that conduct themselves in an appropriate manner. It is unlikely that more specific guidance or rules will close gaps; rather, it is stronger efforts to educate market participants on standards of market conduct and their effective enforcement that may do the most to discourage inappropriate behaviour.

Q28: Box 7 on pages 36–37 discusses a number of uncertainties over FICC market practices reported by market participants, including: the need for greater clarity over when a firm is acting in a

[4] Further information on the Professional Conduct Program is available at http://www.cfainstitute.org/ethics/conduct/Pages/index.aspx

principal or an agency capacity; reported difficulties distinguishing between legitimate trading activity and inappropriate front-running or market manipulation; and standards for internal and external communication of market activity. To the extent that there are uncertainties among participants in the different FICC markets over how they should apply existing market standards in less clear-cut situations, what are they?

Firms know when they are acting as an agent or principal. Similarly, we doubt that there is significant ambiguity between legitimate activity and activity that breaches both the letter and spirit of the regulations. Collusion is clearly inappropriate regardless of where it is taking place. There may be some grey areas of market conduct, such as the stabilisation of new issues and when central banks intervene in markets[5] either through direct action or as part of broader monetary policy. However, ignorance about whether a market practice is legitimate or not is not a defence. Firms involved in scandals have access to extensive legal and compliance resources which can be accessed to discuss ambiguities around market practices.

Q29: How could any perceived need to reduce uncertainties best be addressed:

(a) better education about existing standards;
(b) new or more detailed market codes on practices or appropriate controls; or
(c) new or more detailed regulatory requirements?

It is unlikely that more detailed markets codes, practices or controls will reduce uncertainties about appropriate market behaviour. Stronger efforts to educate market participants on existing standards and to encourage firms to incorporate adherence to their selected standards into their processes relating to remuneration and career development would have a positive impact. So too, would enhanced supervision and enforcement.

Q30: How can the industry, firms and regulators improve the understanding of existing codes and regulations by FICC market participants and their managers?

In the first instance regulated firms in the UK have to ensure that they abide by their regulatory obligations. CFA UK believes that the regulatory requirements are quite clear in terms of what is expected of regulated firms. Sadly, it appears that individuals in some firms felt that they could act outside of these requirements and therefore compromised their firms' regulatory obligations. If individuals were unclear on their understanding of regulations, they should have approached the relevant experts within their organisations to see if their actions were compliant. In the case of firms cited in the FICC scandals, these firms should be working closely with the regulators and internally to demonstrate that this type of behaviour is not acceptable in any part of their business and the financial system.

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[5] Swiss franc soars as Switzerland abandons euro cap, BBC news, 15th January 2015
http://www.bbc.co.uk/news/business-30829917

The CFA Institute's Code and Standards is clear on what is expected. Standard 1 (D) states that

'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.'

Rather than focus on improving the understanding of codes and regulations the focus should be on conveying what the consequences would be if these are breached. The first round will no doubt be regulatory action for the firm and if the action is caused by an individual in that firm, the firm can take further action. While not every regulated employee is a member of a professional body, those that are should be aware of why taking their responsibilities is important and what the consequences are.

Q31: Should there be professional qualifications for individuals operating in FICC markets? Are there lessons to learn from other jurisdictions — for example, the Financial Industry Regulatory Authority's General Securities Representative (or 'Series 7') exam?

Can the industry help to establish better standards of market practice?

Any initiative that can enable individuals enhance their professionalism is to be welcomed. While professional qualifications matter they may only provide part of the solution. There are examples from all professions that there will always be individuals willing to engage in inappropriate conduct regardless of standards of market practice.

While some instruments in FICC markets may fall outside the remit of the FCA's Training Handbook, it should still be incumbent upon firms to ensure that their employees act in a manner that is consistent with their regulatory obligations. Just as every employee of a regulated firm and every regulated individual needs to know about their responsibilities with regard to money laundering etc., the same should be the case for all regulatory obligations.

Q32: What role can market codes of practice play in establishing, or reinforcing existing, standards of acceptable market conduct across international FICC markets?

Market codes of practice can play an important role in reinforcing standards of acceptable conduct. As noted earlier, one way to do this is to convey what the consequences are if the standards are breached. CFA Institute employs a Professional Conduct Program to administer the disciplinary process in relation to our Code and Standards (see response to question 2 for more information).

Additionally, the CFA Institute Standards of Practice Council (SPC), a group consisting of CFA charterholder volunteers from many different countries, is charged with maintaining and interpreting the Code and Standards and ensuring that they are effective. The SPC continually evaluates the Code and Standards, as well as the guidance in the Standards of Practice Handbook, to ensure that they are-

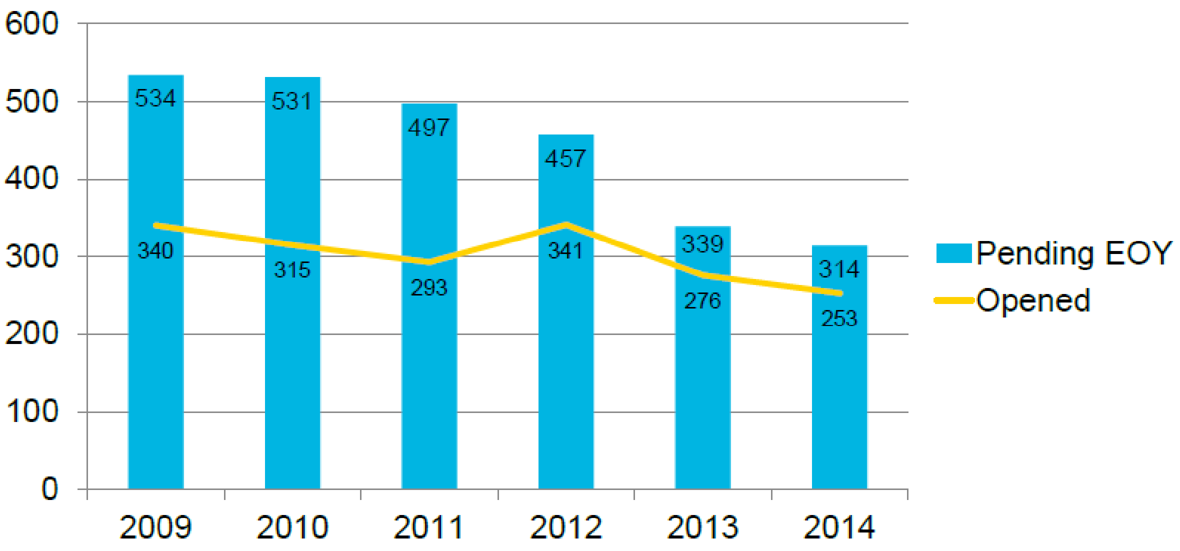
- representative of high standards of professional conduct,
- relevant to the changing nature of the investment profession,
- globally applicable,
- sufficiently comprehensive, practical, and specific,
- enforceable, and
- testable for the CFA Program.

CFA Institute is willing to hold its members to account and has taken action against CFA Institute members. Table 1 shows the number of cases opened and closed between 2009 and 2014.

Table 1 - CFA Institute tables as of 5th January 2015

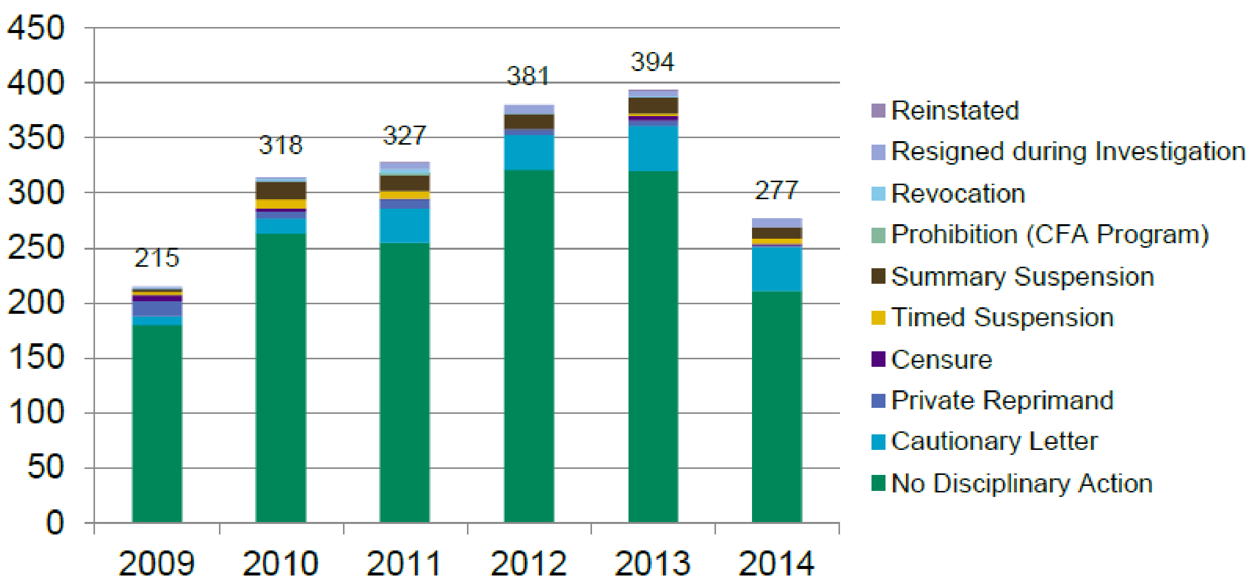
INDUSTRY CASES

Cases Opened Per Year and Pending EOY



INDUSTRY CASES

Closed by Calendar Year



Q33: How would any code tackle the design issues discussed in Section 5.4.3, ie: how to ensure it can be made sustainable given industry innovation over time? How to differentiate it from existing codes? How to give it teeth (in particular through endorsement by regulatory authorities or an international standard setting body)? How to communicate it to trading teams? Whether, and how, to customise it for individual asset classes?

Like regulations, codes need to be supervised and enforced effectively. A useful example is how the General Medical Council holds its members to account. Doctors cannot practice in the UK without GMC authorisation and so the GMC endeavours to ensure that those it regulates meet the appropriate standards expected of a medical professional. CFA Institute devotes significant resources to protecting the integrity of the CFA designation through investigating members' professional conduct and imposing sanctions as appropriate. See our response to Q32 for details.

Should the scope of regulation be extended?

It may be that there are areas in which additional regulation could be helpful. However, we believe that market integrity would be better protected and enhanced by more intensive and effective supervision and enforcement.

Q34: In the context of implementing MiFID 2, which of the FCA Principles for Businesses should apply in relation to MiFID business with Eligible Counterparties?

The CFA Institute Code and Standards require that our members exercise the same high level duty of care regardless of how the client is classified. It is vital that the concept of buyer beware is balanced with seller beware.

Responsibilities, governance and incentives

Q36: How much of a role did inadequate governance, accountability and incentive arrangements play in the recent FICC market abuses, and to what extent do these remain potential vulnerabilities in FICC markets globally? In addition to on-going regulatory changes, what further steps can firms take to embed good conduct standards in their internal processes and governance frameworks? And how can the authorities, either internationally or domestically, help to reinforce that process, whether through articulating or incentivising good practice, or through further regulatory steps?

Incentives matter. If incentives are not aligned with behaviour that supports market integrity – through appropriate governance, accountability, standards and supervision – then we should not be surprised if market integrity is challenged. Persistent misconduct in the FICC markets indicates that there were opportunities for the incentives to behave appropriately to be outweighed by the incentives to behave inappropriately. Relatively recent regulatory changes should contribute to improved governance and accountability. Boards can accelerate the pace of improvement by embedding adherence to ethical and professional behaviour in their compensation and career development processes. Regulators should encourage Boards' efforts improvements by taking into supervisory consideration the degree to which firms' variable compensation and career development depend on adherence to ethical and professional codes and standards.

Firm-wide initiatives to improve incentives and governance

Q37: Do respondents' agree that the thematic areas highlighted in Section 5.5 are key priorities for FICC firms (fine-tuning performance measures; adjustments to remuneration; attitudes towards hiring, promotion and advancement; closer board involvement in governance of FICC activities; and clearer front line responsibilities)?

What specific solutions to these challenges have worked well, or could work well? And how best can the authorities help to support these initiatives?

UK regulated firms already have to abide by the Principles for Businesses. Inherent in the adherence to these principles is the requirement to ensure that their employees act in a manner that is consistent with these principles. Firms should have in place mechanisms that can identify actions that potentially breach these Principles. Boards should be more active in ensuring that regulated organisations require appropriate behaviour across all of their regulated business.

One possible area of improvement is for the regulator to take a more robust approach to its assessment of not only senior executives and Board members under 'fit and proper' regimes. In the wake of the crisis it has been shown that many of the large firms active in FICC markets may have lacked the appropriate culture and governance processes to ask challenging questions. Furthermore given what we now know about the FICC scandals regulators could place more emphasis on ensuring that senior employees and Board members have the required skills and expertise to implement stronger governance policies and procedures.

Q38: To what extent could the Banking Standards Review Council help FICC market participants to raise standards collectively — in particular, are there other steps that could be taken to help complement or extend this initiative in FICC markets for non-banks and internationally?

CFA UK responded to the Banking Standards Review[6]. We welcomed this initiative and made several suggestions to help bring about better outcomes. The BSRC should act as an independent champion for better banking standards and should encourage bank boards to strive for improved cultural behaviour in stakeholders' interests. It should work with banks, building societies and stakeholders to develop standards of behaviour and competence and should develop comparative metrics to be used as benchmarks based on clear reporting requirements in relation to culture; competence and customer outcomes.

Surveillance and penalties

Q40: What role can more effective surveillance and penalties for wrongdoing play in improving the fairness and effectiveness of FICC markets globally? How can firms and the industry as a whole step up their efforts in this area?

Firms and the industry as a whole have an important role to play in making FICC markets more fair and effective by being proactive in their efforts to improve governance, accountability and by promoting a culture of compliance with existing regulations. Increased surveillance at the firm level and clear and unambiguous internal penalties for breaches of policies and procedures are important.

And are there areas where regulatory supervision, surveillance or enforcement in FICC markets could be further strengthened?

CFA UK has long advocated that the structure of the UK's regulatory framework is less significant with respect to market integrity, than the historic deficiencies in the supervision and enforcement of the existing regulations. There is significant scope for regulators to improve the supervision of firms and to make the threat of enforcement a more powerful deterrent, perhaps by moving beyond financial penalties to the removal of licenses to operate[7].

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[6] CFA UK response to the Lambert Review
https://secure.cfauk.org/assets/3787/Lambert_consultation_response_6_March_2014__2_.pdf

[7] FCA bans and fines trader £662,700 for manipulating gilt price during QE
http://www.fca.org.uk/news/press-releases/fca-bans-and-fines-trader-660k-for-manipulating-gilt-price-during-qe

Two former senior executives of Martin Brokers fined and banned for compliance failings related to LIBOR

http://www.fca.org.uk/news/two-former-senior-executives-of-martin-brokers-fined-and-banned

S&P faces rating suspension in SEC deal, FT.com, Gina Chon, January 21, 2015

Q43: Could firms active in FICC markets do more to punish malpractice by other firms, for example by shifting business and reporting such behaviour to the authorities?

Yes. In addition, we believe that shifting business and other forms of market discipline may be more effective in discouraging malpractice ex ante. If malpractice has to be reported there has already been a failure in governance and accountability. These sorts of failures will never be eliminated. However, the market participants – firms, infrastructure, the regulators and end-users – should strive to lessen the frequency of misconduct by improving market discipline through their buying behaviour. If public pension funds were prevented from working with firms that had been formally sanctioned for misconduct, or if listed companies were required to break their relationships with those firms (or to explain to shareholders why they had chosen not to do so), market discipline would improve because reputation (the integrity of an organisation) would matter.

Q47: Should consideration be given to greater use of early intervention, for example, temporary suspension of permission for a particular trading activity for firms or individuals or increased capital charges?

The regulator should use the full toolkit at its disposal. Early intervention can be effective not only in limiting any damage from malpractice, but also in sending a strong message about the supervisors' intentions.[8]

Q48: Is there a need to widen and or strengthen criminal sanctions for misconduct in FICC markets?

CFA UK does not believe that strengthening criminal sanctions for misconduct is the most effective means of discouraging malpractice. Criminal sanctions are necessary as a last line of defence, but improved use of the supervisory toolkit and stronger internal governance and accountability procedures and practices are likely to do more to prevent misconduct.

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[8] FCA investigates Deutsche Bank over systems and controls, Money Marketing, 30 January 2015,by Devraj Ray
http://www.moneymarketing.co.uk/2018188.article?cmpid=amalert_872575

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

Yours,

N. Wnt

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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.

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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.

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CFA Society United Kingdom

Appendix 1

CFA Institute

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 promoting the highest standards of ethics, education, and professional excellence for the ultimate benefit of society. 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 and viability of the global capital markets for the ultimate benefit of society.
- 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.

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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 ensure that anyone subject to their supervision or authority complies with applicable laws, rules, regulations, and the Code and Standards.

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. Disclose to clients and prospective clients significant limitations and risks associated with the investment process.
3. 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.
4. 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 Participants in CFA Institute Programs. 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 Institute programs.

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.