Conduct Risk Barometer: current and emerging European regulatory focus areas

2016
Contents

Introduction 2
Key findings 3
Spotlight: Culture of good conduct 4
Spotlight: Product design and governance 6
Spotlight: Market conduct 8

Appendix

Country by country view 11
Contacts 18
Effectively managing conduct risk will remain a key priority in 2016.

European regulators continue to evaluate the systemic risks posed by misconduct to the financial system, firms continue to set aside rising and substantial sums to cover potential penalties and associated redress costs. This demonstrates to all stakeholders that the culture within the industry is changing. This is paramount to rebuilding and sustaining trust across customers and markets.

The global regulatory focus observed in 2015 by the G20, the Financial Stability Board among others, on understanding systemic impact of conduct risk on financial stability has made conduct risk a strategic priority for boards globally. We have seen this reflected in the different programs of work being undertaken by our clients to address customer and market conduct risk and strengthen their cultures.

Effectively mitigating conduct risk requires firms to align behavioral standards with their conduct risk appetite and embed this throughout all levels of the firm to ensure that every decision and action taken considers the customer and market outcome.

Conduct-related fines for 16 major international banks between 2010 and 2014 totalled more than £200 billion.* There is an opportunity for firms to succeed in effectively mitigating conduct risk and avoid paying out.

*The Cost of Conduct Project Research Foundation 2015.
Introduction

Conduct Risk Barometer
To support our clients in their approach to identification, measurement and mitigation of conduct risk, EY undertook an exercise to understand conduct risk maturity levels across Europe as well as identifying key current and emerging conduct risk focus areas.

The aims of this study were to:
► Gain insight into levels of conduct risk maturity across Europe.
► Identify the key current and emerging conduct risks facing our banking and capital markets clients.
► Gain a more detailed understanding of how conduct risk frameworks are being embedded by our clients globally.

Through this exercise, EY has observed an intensified emphasis on effective consumer and market protection and the extension of conduct risk into strategic/boardroom agendas across Europe.

Typically, conduct risk places greater onus on financial institutions so that every decision is made in the appropriate interests of the customers and markets in which they operate.

Methodology and coverage
► EY carried out a survey across 12 countries to establish the level of maturity of conduct risk and key current and emerging conduct risk focus areas across Europe.
► In scope countries across Europe for this analysis were: UK, Ireland, France, Germany, Portugal, Switzerland, Belgium, Netherlands, Denmark, Sweden, Norway and Turkey.
► Insight was gained from the local EY offices on the level of regulatory focus in their country. Respondents completed a template covering seven key conduct topics: conduct culture, product and sales process, competition agenda, remediation, customer engagement, markets and governance and management information (MI).
► Within each topic, respondents commented on the level of regulatory focus and provided additional detail around several sub-areas.
► We have analyzed the Barometer findings to gain insight into the key current and emerging conduct focus areas across Europe.
Key regulatory focus areas identified through Barometer findings

EY findings of the Conduct Risk Barometer have highlighted three common conduct areas for firms in 2016 irrespective of location and relevant to both retail and wholesale sectors. These are:

- Culture of good conduct
- Products (design and governance)
- Market conduct

We now shine the spotlight on these three topics, exploring what the findings indicate and considerations for firms when addressing these conduct risks before examining the individual country perspectives on conduct risk.
Spotlight
Culture of good conduct

Conduct Risk Barometer findings
► The growing range of global conduct-related scandals has increased the regulatory focus on conduct culture and behavior.
► Across Europe, the Barometer study identified a number of key culture drivers as areas of regulatory focus, including conduct risk in retail, incentives, training and whistleblowing.
► In terms of regulatory attention on recruitment and incentives, the Barometer findings identified this as an “emerging” theme for 42% of respondents and a “current” theme for 33% of respondents.
► Performance management and whistleblowing was identified as an area of regulatory focus for 58% of countries, with three countries stating this was an “emerging” theme and four countries “current.”
► Training was also highlighted as an important area for regulators, this was identified as either an “emerging” or “current” theme for 83% of respondents.
► These findings demonstrate that shifting and influencing behaviors across organizations is a high priority for regulators across Europe that firms need to prioritize. Firms should seek to take strategic cultural changes to promote good conduct.

What we are hearing
“Risk culture remains a key focus for European regulators”
► Netherlands – The Dutch Central Bank and the Netherlands Authority for the Financial Markets (AFM) have been considering risk culture as a central theme to supervising the financial services sector. There has been a particular focus on integrity and the way culture has been established.

“Regulators are focusing on individual accountability and the right culture from the top”
► France – The Autorité de contrôle prudentiel et de résolution (ACPR) is focusing on the fitness and propriety of Board members and whether they have received appropriate training.
► UK – The Financial Conduct Authority (FCA) continues to focus on culture and individual accountability looking for firms to be proactive in measuring culture and consumer outcomes. A new governance regime to strengthen accountability within banking – The Senior Managers Regime (SMR) comes into force in March 2016. The regime requires culture and accountability to be treated as more than a “tick-in-the-box” exercise.

“Incentivization of sales staff continues to attract regulatory attention”
► France – Major banks have been changing remuneration schemes to focus on quality of advice rather than quantity of products sold.
► Netherlands – A new law was approved in January 2015 that limits the amount of remuneration per year.
► UK – The FCA has heavily focused on incentives for senior management and sales staff. Malus and clawback adjustments relating to conduct risk are considered annually and bonus pools can be adjusted following conduct risk consideration.
► Belgium – Financial Services and Markets Authority (FSMA) is focusing on incentivization.

“The upcoming implementation of MiFID II is causing regulators to concentrate on performance management and incentives”
► Belgium – Incentivization is one of the FSMA focus areas relating to MiFID’s conflict of interest component.
► Sweden – Recruitment and Incentives: will become a more focused area as part of MiFID II. It is not seen as an important stand-alone issue, but becomes more relevant in the context of MiFID II.
Where we have supported

EY has extensive experience of supporting firms to drive cultural change. This includes:

► Conduct structured risk culture assessments and gap analysis to identify the drivers of cultural issues.
► Designing risk culture frameworks for firms, allowing firms to incorporate the assessment of behaviors into their existing programme.
► Developing risk culture frameworks for firm’s when entering into new areas of business such as new countries and new products.
► Defining behavioral control standards in line with regulatory requirements.
► Developing leadership plans and communication programmes to help embed behavioral change.
► Supporting firms approach to interpreting new regulatory rules on board accountability and governance.

Direction of travel

Firms should take a comprehensive approach to enhancing a culture of good conduct that includes remuneration, performance, promotion, on-boarding, training and development. In addition to this, understanding current culture, changing and managing behaviors is becoming a key area of focus for many organizations and on which firms across Europe need to take action. We are seeing a number of challenges emerge which include:

► Senior accountability and governance for culture – there is growing focus being placed on Boards to ensure they take responsibility for the oversight of embedding values, and culture in their organizations.
► Understanding what “good” looks like – organizations are struggling with the global diversity and geographical reach of their organizations when looking to develop and articulate agreed organization-wide behaviors which align corporate purpose, strategy, risk appetite, regulatory requirements, market environments and corporate values.
► Articulating and evidencing current behaviors – many assessment approaches have focused on mechanisms in isolation, such as policies and procedures, governance structures and reward; without consideration of actual behaviors. Robust understanding of current behaviors is needed to drive decisions on future investments to strengthen cultures.
► Survey fatigue – many organizations have placed overreliance on survey information as a sole means to assess behaviors, with participants often questioning the anonymity of them and lacking trust in action being taken.
► Aligning existing change activities that influence behaviors – most organizations have existing change programmes that may influence behaviors; however, these programmes may not have been scoped in light of behavioral impact or incorporate behavior science techniques to embed behavioral changes. Many existing change activities are often undertaken on a siloed based which can counter behavioral impact.
► Changing culture is a long journey – behavioral change is a long-term journey with results often not evident for several years requiring ongoing investment and commitment. The seeds to shift mindsets need to be sown now and followed through with a consistent story. Boards and senior leadership should take responsibility and consistently communicate to the firm about the importance of culture.
Product design and governance

Conduct Risk Barometer findings

► Product design and product governance were the most prevalent emerging Regulatory topics identified in the Conduct Risk Barometer study.

► Fifty percent of countries identified product governance as an “emerging” area of regulatory focus with a further 33% stating that this was already a “current” theme for their regulator.

► In terms of product design, 42% of countries identifying this as an “emerging” focus area and 42% as a “current” area.

► MiFID II was also an emerging regulatory focus area for 50% of countries in the study. For firms that will come under the scope of MiFID II, product governance will be increasingly significant given the introduction of additional requirements for product governance and approval processes for financial instruments.

► These findings demonstrate that the design, implementation and ongoing governance of products throughout the life cycle should be a priority for firms across Europe. Regulators are seeking to anticipate where customer detriment may arise from products themselves and pre-empt conduct risk before it crystallizes.

What we are hearing

“Product governance remains an area of regulatory intervention”

► France – The Autorité de contrôle prudentiel et de résolution (ACPR) carries out on-site investigations regularly to check if a “Product Governance Committee” exists and is operating effectively.

► UK – The FCA holds power to intervene in firms’ product governance and strategy. Interventions that have already taken place include instructions to amend products ahead of launch, requests for copies of product governance processes and requests for explanations and clarification of product features.

“Product design is becoming an area of increasing regulatory focus”

► France – The ACPR is increasingly interested in product design, particularly with a focus on ensuring a product is suitable for the target market.

► Belgium – Financial Services and Markets Authority Authority (FSMA) is increasingly focussing on product design and governance and this area will become of growing importance by 2017 due to MiFID II.

“The role of Risk and Compliance functions is key in product governance and product design processes”

► Germany – Rules state that when a new product is created the risk control function, compliance function and internal audit function should be involved in product governance (BaFin circular 2012).

► Netherlands – Under Dutch Banking Code all banks must have a product approval and review process whereby all products must be approved by a large number of departments including (risk, compliance and operations).

► Switzerland – Under Swiss regulations rules are in force, whereby the responsibilities allocated to the risk control function specifically include the design and implementation of an adequate system of risk supervision and its constant adjustment to new business lines and products.

“The forthcoming implementation of European wide regulation such as MiFID II and PRIIPS is causing the spotlight to remain firmly on products”

► Belgium – FSMA is inspecting if products offered to clients are in line with client needs, this subject area is expected to become an increased area of focus by 2017.

► Norway – Product design and governance is only partly regulated today, but in the new regulation (Finansforetaksloven) there will be more focus on product design. The Norwegian Ministry of Finance has in May 2015 established a Law Committee to start preparatory work on making the amendments necessary to the domestic legislation to comply with MiFID II.

► Germany – By the end of December 2016 firms will have to distribute standard key information documents for packaged retail and insurance based investment products due to the PRIIPS regulations (European regulation).
Direction of travel

Product intervention

We are seeing an increasingly interventionist approach to product design, governance and oversight by regulators. This approach aims to anticipate consumer detriment where possible and prevent it before it occurs. The robustness of firm's approaches to product design, approval, delivery and review are all areas that can fall under regulatory scrutiny. Across Europe regulators have new powers to directly intervene based on their judgement of the risk posed to consumers. With ongoing regulatory fines and redress costs for firms that get this wrong, product design and governance should be prioritized.

Rationale for intervention

Traditionally, focus has been on the information provided to consumers at the point of sale, on the premise that if the sales processes are fair and product disclosures are transparent, the result would be effective consumer protection. However, a range of products such as Payment Protection Insurance (PPI) and interest rate hedging products show that reactive regulation has not been sufficiently effective and a more interventionist approach is required. Disclosure is not sufficient given consumer behaviors. Regulators and firms are moving from a reactive to a proactive approach.

Common points of failure

In our experience, there are a number of common points of failure across both development and management activities that firms should consider in their control environment, this includes;

► Not identifying the target market: firms frequently market products without a clear understanding of who should be purchasing the product and why it is suitable for that group.

► Failure in risk profiling: firms fail to risk-rate products appropriately, which can lead to products being sold to the wrong customers.

► Failure to understand the distribution chain and responsibility by those in the distribution chain: confusion between manufacturers and distributors of products may lead to required disclosure of product features and risks not being relayed effectively between them.

► Fee charging structure: firms need to clearly disclose the end-to-end fee charging structure of products to customers; to ensure that prices are clear and transparent.

► Failure to disclose: firms must ensure that all disclosures regarding performance of the product due to prevailing market conditions are communicated clearly.

► Pricing structure: firms should review the pricing structure of previous, existing and new products to ensure hidden mark-ups are not embedded.

► Excessive reliance on add-on products: the terms for the tied product can be, or become, uncompetitive and may not be required by the customer.

► Failure to monitor who purchased the product: where the target market has been identified firms fail to ensure that it is being sold to that market.

► Failing to act where it is identified that a product is mis-sold: firms can be slow to remove or amend products where failings are identified.

► Reward and incentivization: strategies do not take account of the need to balance quality of sales performance against performance may lead to inappropriate sales of products being made.

► Ineffective complaint identification: failing to take account of expressions of dissatisfaction in identifying product failings.

► Failing to include the option to withdraw from products or markets even where MI indicates that this should be considered: this should be actively considered where existing strategies are causing customer detriment.

► Not tracking regulatory change: firms will need to track different regulation being implemented by their local regulators, EU and national regulators where their products will be sold.

Where we have supported

EY has extensive experience in supporting firms with product design and governance and have the capability to assist across borders. The support we have provided to firms includes:

► Undertaking independent reviews of firms products, providing peer benchmarking and tailored recommendations.

► Providing a view on “what good looks like” in terms of sales process and product governance.

► Delivering MiFID programmes looking at product design and product governance.

► Assessment and design of firms product governance and sales process governance policies.

► Designing value for money assessment methodology.

► Designing and reviewing root cause analysis methodology.

► Design and embedding of outcome testing frameworks.
Spotlight

Market conduct

Conduct Risk Barometer findings

- The Conduct Risk Barometer findings tell us that Europe countries identify market transparency and MiFID II as a market and regulator focus area. Market transparency was an “emerging” theme for 50% of respondent countries and a “current” theme for 25% of countries. “Best execution” was an emerging theme for 42% of countries.
- MiFID II was an “emerging” regulatory focus area for 50% of countries asked and a “current” area of focus for a further 25%.
- This is not surprising as investors are increasingly requesting better visibility of the trade execution process triggered by post-crisis high-profile instances of market abuse.
- Respondents commented on market transparency as a theme for national regulator reviews as well as supervision of the implementation of MiFID II.

What we are hearing

“National Regulators are increasingly providing guidelines and monitoring market transparency”

- France – The Autorité des Marchés Financiers (AMF), published a guide on best execution expectations.
- Germany – BaFin is targeting the distortion of market transparency through the German Securities Trading Act’s focus in conflicts of interest and investigating 162 cases with initial indications of market abuse.
- Norway – Market Transparency is a key focus when Financial Supervisory Authority (FSA) is visiting and reviewing companies.

“Specific areas lacking transparency”

- UK – FCA launched thematic reviews focused on competition, specifically price transparency, within corporate and investment banks.
- Belgium – Cross-selling and bundling of services and principal agent issues.
- UK – The FCA issued a thematic review into best execution and payment order flow in 2014. In light of recent misconduct and allegations, the UK Government announced the Fair and Effective Market Review (FEMR); a wholesale review of how markets operate.

“MiFID II Readiness”

- Belgium – Market transparency, cross-selling and bundling of services and principal agent issues are a current area of regulatory focus under MiFID.

Where we have supported

EY has extensive experience of supporting firms to develop measures to improve transparency and prepare for MiFID II. This includes the capability to provide cross-border support and knowledge. The support we have provided to firms includes:

- MiFID II impact assessments, gap analysis and execution support
- Best execution reviews
- Best execution applicability analysis and design
- Conflicts of interest management i.e., FX controls
- Development of conduct risk management frameworks – where “price transparency” is identified as a priority risk
- Development of trade surveillance models
Direction of travel

The introduction of increased single/multiple-dealer platforms since the financial crisis has improved transparency, but the industry recognize there is more to be done.

### Price transparency
- Price availability, HFT distortions
- Managing pricing conflicts of interest
- Bundled pricing
- Lack of price comparison for less liquid and bespoke derivatives and assets
- Client tiering
- Development of matrix approach to pricing
- Trading capacity/order type considerations

### Order handling transparency
- Meeting best execution requirements
- Timing of execution
- Broker/dealer conflicts of interest
- Managing dark pool conflicts of interest
- Aggregation/allocation requirements

### Disclosure transparency
- Focus on markets where there’s less transparency e.g., over the counter (OTC) and fixed income
- Accurate and timely transaction and trade reporting
- Client tiering
- Development of matrix approach to pricing

- MiFID II/MiFIR will extend pre- and post-trade transparency provisions, increase standardization and extend the scope of asset class coverage which will give customers the right to disclosure of all product and service costs.
- The Fair and Effectiveness Market Review into Fixed Income, Currency and Commodity (FICC) business practices recommended clearer international standards on “last look” practices.
- Implementation of Market Abuse Regulation ‘MAR’ in 2016 to strengthen the existing framework, extending the definition of market manipulation including incomplete transactions, extending suspicious transaction reporting (STR) requirements and taking into account new trading platforms, OTC trading and technology, such as HFT.
- In the UK, the Certification Regime will be extended further into wholesale banking to increase accountability for those who take risk positions for the bank and therefore contribute to market transparency.
Appendix

Country by country view of conduct risk landscape and key regulatory focus areas
Belgium

- The Belgian regulator is the Financial Services and Markets Authority (FSMA).
- Conduct risk is well developed in Belgium, with the FSMA working on the implementation of MiFID and the *Service Public Fédéral Economie* focusing on general market practices and consumer protection.

**Key areas of regulatory focus include:**

- **Governance and MI:** there are “fit and proper” obligations relating to the training and competence of senior management.
- **Training:** is a key focus for the FSMA who view training programs in place and requires some certified training programs to be undertaken based on individual roles.
- **Incentivization:** is one of FSMA’s focus areas, related to MiFID’s conflict of interest component.
- **Product governance and product design:** FSMA inspects products offered to clients to ensure that they are in line with client needs. With MiFID II this subject area is expected to become an increased focus by 2017.
- **Sales process:** mortgages are an emerging regulatory focus as the European framework has not yet been transposed into local rules.
- **Competition:** is a regulatory focus area under MiFID.
- **Best Execution:** is a new focus subject area for the regulator as a result of MiFID II implementation.
- **Outsourcing/third-party arrangements:** data privacy law changes are causing regulatory focus on outsourcing arrangements.

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Denmark

- In the Danish Financial Supervisory Authority (FSA) 2015 strategy, consumer protection was defined as a key new initiative.

**Key areas of regulatory focus include:**

- **Conduct culture:** the FSA has appointed a commission to define training requirements for new Board members in financial institutions (as per the latest amendment of the Financial Business Act). There are new rules on remuneration practices which have also been implemented. Financial institutions are expected to establish a whistleblowing function. From January 2015 all existing non-regulated financial advisors have been expected to apply for a license to provide financial advice.
- **Governance and MI:** a new executive order on governance of financial entities (no. 1289 of 9 December 2014). This focuses on strengthened governance in the financial sector and clear responsibilities of the board and management.
- **Products:** the FSA applies a traffic light framework for consumer financial products, where risky and complex products are marked “red,” while non-risky or more simple products are marked “green” or “yellow.” Product governance was highlighted as a key regulatory theme in 2014 when the FSA conducted a review of UCITS funds and their strategies. This review was conducted to find out if the high costs claimed by the UCITS for actively managed funds were justified.
- **Sales process:** mortgage lending fees have recently been an area of press coverage and it is expected that politically, this will be a higher focus going forward.

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France

- The Autorité de contrôle prudentiel et de résolution (ACPR) has become increasingly focused on conduct risk in retail since the creation of “Business Conduct Directorate” (Direction des Pratiques Commerciales) in 2010.
- The increased scrutiny of firm’s conduct risk in recent years has targeted very specific financial products such as unclaimed life insurance contracts and consumer finance products.
- There are no significant differences in the way that the ACPR treats the banking and insurance sectors. The ACPR focuses on specific products and specific stages of the sales process in both sectors.

**Key areas of regulatory focus include:**

- **Boards and committees:** remains a key focus for the regulators and there is increasing focus on the fitness and propriety of board members.
- **Recruitment and incentives:** the ACPR stated during its annual conference in 2014 that this is an “emerging” topic that will be likely to gain in importance.
- **Complaint handling:** is a key focus of regulatory reviews, where the existence of a solid complaint handling process is verified.
- **FX review:** the Autorité des Marchés Financiers (AMF), launched a study of investment performance of individuals trading in CFDs and Forex, and analyzed data from authorized firms making up a significant part of the CFD and Forex market in France.
- **Conflicts of interest:** are subject to increased regulatory focus with the implementation of IMD II.
- **Business continuity requirements:** the appreciation of business continuity requirements through the lens of conduct/consumer protection is a recent focus area. The implementation of the European Directive Solvency II has brought this forward.

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Germany

- The Federal Financial Supervisory Authority (BaFin) is the financial regulatory authority for Germany. The term “conduct risk” is not widely used. However, there are a wide range of laws and regulatory requirements that comprise “conduct risk” such as consumer protection, market abuse, anti-financial crime, corporate compliance and regulations relating to Boards and committees that are well established.

**Key regulatory focus areas include:**

- **Conduct culture:** MaRisk sector AT 4.2 states that a firm’s board must have a defined business strategy and consistent risk strategy. The risk strategy should be divided into sub-strategies for major risk types. An update of MaRisk to include BCBS 294 (update to risk culture) expected for 2016.
- **Governance:** a circular by BaFin specifying qualification requirements for board members is expected for 2015/2016.
- **Product and sales:** a suitability test according to MiFID is established in Germany. Additionally investment advice minutes (Beratungsprotokoll) have to be handed out to clients.
- **Competition:** best execution is currently covered in section 33a of the German Securities Trading Act. An amendment to this is expected as a part of MiFID II.
- **Market transparency:** BaFin monitors market transparency and integrity and with MiFID II the conduct of business obligations are being revised to include extended cost transparency provisions.
- **Business continuity/disaster recovery planning:** is addressed through current regulations that focus on IT and further regulations with a broader scope are expected.

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### Ireland

- Consumer protection and prudential regulation are the two main objectives of the Irish regulator, Central Bank of Ireland (CBI).
- There are five C’s at the centre of the CBI’s framework with culture being one of them which is continually reinforced. The Director of Consumer Protection stated “the culture within any firm plays a very important part in how customers of that firm are treated. Boards of directors and senior management set the tone from the top in terms of acceptable behaviors and priorities.” (May 2015)

**Key regulatory themes include:**

- **Products:** there is an increased expectation that products are robustly designed, and goes through challenging approval processes including scenario testing.
- **Markets:** Transaction reporting, market abuse and insider dealing rules are long established in Ireland. The CBI took over as the responsible authority from Irish Stock Exchange circa five years ago.
- **MiFID II:** the CBI policy and supervision teams are preparing for MiFID II implementation. MiFID has been transposed into national law since 2007.

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### Netherlands

- The Dutch Central Bank and the Netherlands Authority for the Financial Markets (AFM) has been focusing on risk culture for some time as part of their supervision of financial services. The regulators are focusing on integrity and the way that culture has been established and policy embedding.

**Key areas of regulatory focus include:**

- **Product and sales:** product design is reviewed every three years to ensure products are still in line with client needs. There is also focus on product approval processes and governance in relation to customer feedback (complaints).
- **Customer engagement:** financial businesses need to be members of one of the Dutch Arbitration Boards, and customers can raise complaints to the Arbitration Boards. There is currently no legal guidance on how to deal with complaints or internal reporting of complaints.
- **Training:** all board members of firms are obliged to follow a permanent education program each year. Supervisory focus has now been increased and is currently focusing on training requirements for additional members of the organization.
- **Markets:** know your customer/CDD/AML and remediation (interest rate swaps for banks, investment policies for insurance companies) are all key areas of focus. Whilst focus on fair and efficient markets is evident internationally, Dutch regulators are yet to start putting this area on their agenda.
- **FX review:** the Dutch regulators (DNB and AFM) issued a report which concluded that Dutch financial institutions still insufficiently control benchmark related risks such as FX.
- **Transaction reporting:** has been a regulatory focus recently (sanctions regulations). Various institutions and service providers have been instructed to improve their transaction monitoring and reporting mechanisms.
Norway

- Customer Protection is one of four strategic priorities of the FSA in Norway (Finanstilsynet). Via a new law regulating financial institutions (Finansforetaksloven) there are provisions related to Treating Customers Fairly (TCF). Investor protection is also a key area in the FSA strategic plan.
- Implementation of EU law into Norwegian law remains a focus of the regulator.

**Key areas of regulatory focus include:**

- **Sales process:** there is requirement (created in 2009) that all employees involved in the provision of advice should be authorized. To become authorized, employees must have a minimum of one year’s experience and pass a practical and knowledge test.
- **Customer engagement:** new regulation was introduced in 2015 that gives guidelines for complaints handling.
- **Consumer protection:** regulations are receiving a lot of attention. MIFID I and II, AIFMD, Ny Finansforetaksloval, IMD 1 and PRIIPs all have elements regarding consumer protection.
- **Product design:** new regulation has put focus on product design and the need to have consumer protection at the heart of all products.
- **Markets:** best execution is currently covered in the Securities Trading Act with an adjustment expected as a part of MiFID II. MiFID II will ensure transparency in the fee structures of all products along with suitability for investors; and increased focus on independence of advisors.
- **MiFID II:** preparatory work on making the necessary amendments for domestic legislation to comply with MiFID II are in process; with firms having until late 2016/January 2017 to adapt.

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Portugal

- It is believed that regulatory focus on conduct risk will start by end of 2016/2017. Currently, this is not a key focus for the Portuguese regulator.
- The Bank of Portugal plans to audit the conduct banks to prevent the need for future Central Bank intervention for banks in financial difficulties.
- In its latest financial stability report, the Central Bank states “the Conduct of Financial Institutions must contribute to strengthening confidence in the system”.
- For this reason, the Bank of Portugal believes it is “necessary to create a range of incentives and to define organizational and intervention frameworks, inside and outside the financial institutions, favouring the alignment of individual and collective interests.”

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Sweden

- In the Swedish market conduct risk has historically been less of a priority partly because of the maximum fine the Financial Supervisory Authority (FSA) could previously give was 50 MSEK (c.£4m). This has now changed to a percentage of annual turnover.
- Consumer protection is now a very clear theme in the market, both for regulators and the wider financial services community.

**Key areas of regulatory focus include:**

- **Recruitment and Incentives:** will also become a more focused area as part of the implementation of MiFID II.
- **Sales process:** advice and distribution of financial products in the retail markets is a key area of focus due to MiFID II implementation.
- **Products:** products are to an extent governed by the MiFID rules. MiFID II will add further requirements around products that will impact the financial services industry in Sweden.
- **Markets:** Fair and effective markets are becoming more important as part of the MAD II and MiFID II regulations, as well as new European regulations focusing on benchmarking requirements.
- **Market transparency:** is emerging theme due MiFID II and the local gold plating of MiFID II.
- **Conflicts:** are becoming more relevant with the requirements of MiFID II and MAD II.

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The Swiss Financial Market Supervisory Authority (FINMA) was established in 2009 to protect creditors, investors, insured persons and to ensure the functioning of financial markets in accordance with financial market legislation.

In response to the financial crisis the Swiss “too big to fail” regime is currently being implemented by parliament to prevent the need for future state intervention.

FINMA is an independent supervisory authority and was established by merging three existing supervisory authorities – the Federal Office of Private Insurance (FOPI), the Swiss Federal Banking Commission (SFBC) and the Anti-Money Laundering Control Authority.

Key areas of regulatory focus include:

- **Conduct culture**: FINMA has rules in place to ensure that firms carry out reviews of employee transactions. Training, whistleblowing and performance management are all addressed by FINMA.
- **Boards and committees**: the role of the board is an established area of Swiss regulation. The roles and responsibilities of boards and committees are clearly defined under existing regulation.
- **Incentives**: rules are in force to ensure that employees are not incentivized where there is a risk of conflicts of interest. The Board of Directors must be responsible for ensuring the firm’s remuneration scheme does not offer any incentive to disregard the control mechanism.
- **Financial promotions**: new rules regarding financial promotions were due to be implemented by firms by 1 January 2015 relating to funds.
- **Sales process**: FINMA has imposed suitability requirements for asset managers with particular emphasis on the suitability requirements for IM portfolios. There are mandatory conduct rules for banks exercising portfolio management activities.

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The Banking Regulation and Supervision Agency (BRSA) is the main regulatory body and has developed consumer protection laws and various related regulations about consumer rights in the financial sector.

The Capital Markets Board (CMB) regulates capital markets and has related articles about conduct risk, consumer and market protection. There is no specific regulation regarding conduct risk.

Key regulatory focus areas include:

- **Boards and committees**: the BRSA and CMB have related articles on the establishment and responsibilities of boards and committees.
- **Product and sales process**: under the Ministry of Customs and Trade there is a consumer protection and Market Surveillance General Directorate (GD) which governs consumer protection. There is also related regulations published by the GD around products specifically.
- **Competition**: the CMB and Competition Authority have related articles about fair and effective markets, market transparency, consumer and market protection.
- **Service provision**: there are established regulations introduced by the BSRA on service provision, business continuity and disaster recovery.

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Since the Financial Conduct Authority (FCA) took over from the FSA in April 2013 there has been considerable focus on the conduct risk agenda in the UK.

- UK conduct regulation is largely principles based and has a broad scope across all banking, wealth and insurance activities.
- Conduct risk has been defined by the UK regulator in their 2011 Retail Conduct Risk Outlook, as “the risk that firms behavior will result in poor outcomes for consumers”.
- The FCA in their outlook for 2014/15 informed their approach to “continue to monitor and prioritize risks and actions by undertaking further research, supervisory thematic work, or market studies to better understand the responses of firms and consumers to market developments and dynamics”.

Key regulatory focus areas include:

- **Strategy and frameworks**: firms have been responding to the increased focus on conduct risk through the development and roll out of integrated conduct risk frameworks. There is varying maturity across sectors, with retail banks being two years into this process, while the commercial and investment banking sector is around one year in and wealth and asset management firms starting to design and implement frameworks now.
- **Governance**: The Senior Managers Regime (SMR) comes into force in March 2016. SMR will require firms to allocate responsibilities to certain individuals and to assess their fitness and propriety on a regulator basis.
- **Performance management and incentivization**: there has been much focus from the FCA on incentives for senior management and sales staff.
- **Product governance**: product governance regulation has been in place for a number of years (ahead of the rest of Europe). The FCA holds powers to intervene in firms product governance and strategy. Interventions that have already taken place include instructions to amend products ahead of launch, requests for copies of product governance processes and requests for explanations and clarification of product features.
- **Complaint handling**: a recent FCA thematic review of complaint handling (November 2014) identified the need for firms to do more to deliver fair complaint handling.
- **Digital**: the FCA has focused on new risks that can arise from the increased use of technology in providing financial services.
- **Conflicts of interest**: the FCA has recently concluded a thematic review into controls around information flows and a review into risk management around dark pools.
- **Financial benchmarks**: increased governance and robust controls are required by firms, in line with MAR B with the FCA supervising 7+ benchmarks.
- **Financial crime**: financial crime continues to be one of the FCA’s top priorities and is now one of the seven forward-looking areas of focus.

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