FCA Business Plan 2021-22: A new era for regulation

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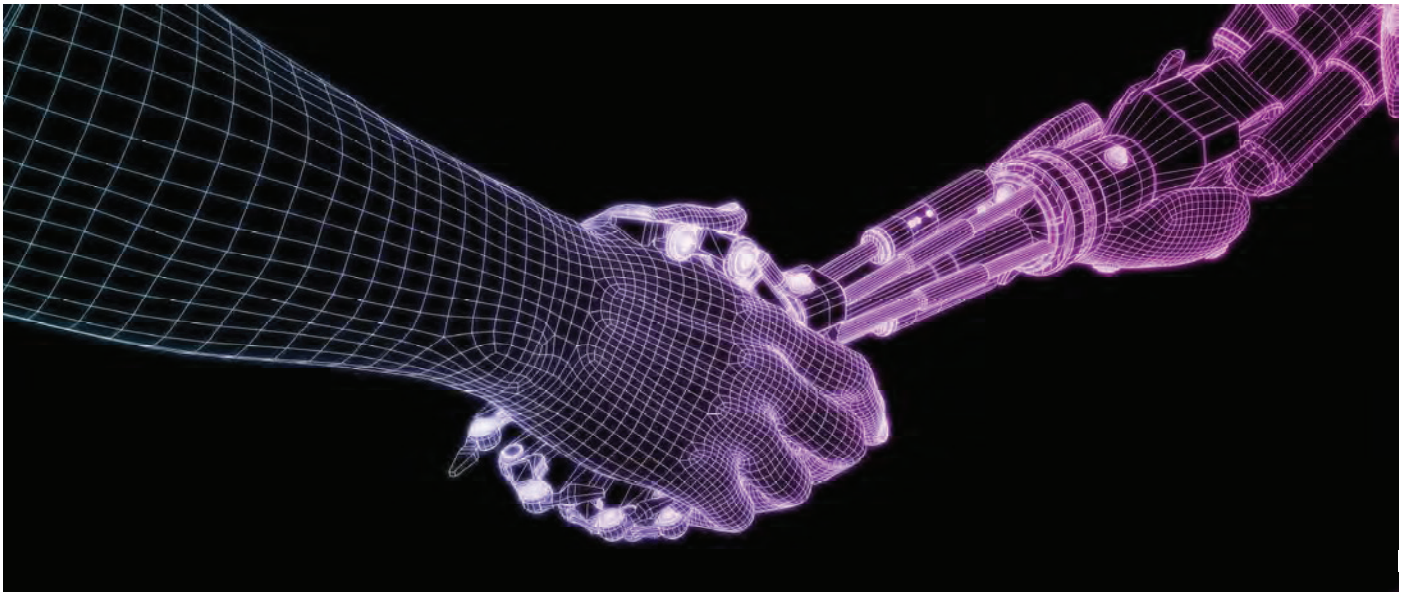

In my article published in T-C News earlier this year, I talked about the early signs coming out of the FCA about a change of approach. To do this, I cited the increasing number of Skilled Persons Reviews (S166s) being issued by the FCA, the rise in the number of withdrawn applications for Approved Persons authorisations and the new leadership team, led by Nikhil Rathi, at the helm of the regulator. Well, in July the FCA published its Business Plan for the forthcoming year, and whilst there are similarities and continuities with previous years, it is the differences in both tone and content that are most striking. In short, it sets out a new vision for the future and is a radical blueprint for change.

The 2021-22 Business Plan heralds a new era for regulation in UK financial services. Gone is the 'light touch', reactive and, arguably, slow pace of previous regimes. In its place is a completely new management team, led by Nikhil Rathi, that promises an FCA that is both 'purposeful and fit for purpose' by becoming more 'innovative, assertive and adaptive'.

To achieve this, the FCA has committed itself to radical change, focusing on its priorities, operating methods and culture:

Priorities
This is perhaps the area of least change in that the FCA are continuing the focus on the 4 key objectives from last year's Business Plan, i.e.

- Ensure electronic payment and receipt systems work quickly and reliably
- Consumers can make effective investment decisions about their savings, and are not exposed to risky or poor value investment products
- Credit markets work well for consumers
- Consumers are offered fair value products in a digital age

However, this year's Business Plan also includes the impending Consumer Duty of Care, currently in consultation. Unless, significantly diluted before becoming final rules, the new Duty of Care lays out in detail the FCA's expectation of firms. It's no understatement to say that the FCA are setting the bar very high!

Operating Methods
Recognising the scale and speed of change in the marketplace, the FCA has set itself six challenges that it needs to address to keep pace with and get ahead of these changes:

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- Setting the bar high to support market integrity and sustainable innovation
- Ensuring firms start with high standards and maintain them
- Using new approaches to find issues and harm faster
- Tackling misconduct to maintain trust and integrity
- Enabling consumers to make informed financial decisions
- Proactive at the boundaries of the perimeter

We are already seeing the FCA acting quickly where it sees firms falling below the standards it expects, e.g. the Supreme Court action against insurance firms over their failure to honour their business disruption policies during the pandemic and, more recently, banning of firms marketing types of crypto-asset based products to retail customers in the UK.

Perhaps the most radical changes, however, will be in the area of supervision. Facing up to the challenges of regulating over 60,000 firms and an exponential increase in the data used to oversee the markets, the FCA is committing itself to becoming data led. What this means in practice is a £120m investment over the next 3 years to enable the FCA to transform how it collects, triages, stores and analyses the data from firms to strengthen its holistic assessment of each firms' behaviour. Using 'big data', machine learning and behavioural science, the FCA plans to identify the early warning signs of firms falling below its high standards and quickly intervening to prevent market abuse or consumer harm. A significant part of this is that firms' returns will potentially be automated to assist in the data collection and analysis process. As such, the Business Plan predicts that within 5 years, the FCA will be a data regulator as much as it is a financial regulator. Radical indeed.

Although published by the PRA, their recent paper on using big data to provide insights into firms' operations is clear evidence of how the regulators intend to use big data to provide these early warning signs.

Culture

The final area, and perhaps most challenging, area of change for the FCA is to reinvent its culture. Nikhil Rathi has promised that the FCA will become more 'confident, forward looking, agile and adaptive', one that is a 'learning organisation', i.e. one that embraces risk, is willing to make difficult judgements and is prepared to make mistakes. Of course, central to this is the same commitment to promoting diversity and inclusion that it expects of the firms it regulates. However, the aspiration is for the FCA to become both accountable and transparent. Although the Business Plan does not delve into the detail, there will need to be a major transformation programme put in place for this change to materialise because culture change is notoriously tough to deliver, particularly one with this level of ambition. However, culture change in the FCA is a must if it is to become the regulator it aspires to be in the Business Plan.

Implications

What does this mean for firms? There is no doubt that change is afoot at the FCA. Nikhil Rathi has set out a radical agenda, certainly the most ambitious I have seen in my career. Importantly, for him to 'go public' on such an agenda means he must have the support at the highest levels in the Bank of England and Westminster – so this new agenda is here to stay.

Let me suggest three areas where firms can expect to see evidence of this new agenda:

1. Consumer Duty of Care: the FCA promises the current consultation paper will become rules by July 2022. I believe it will lay out the new standard for firms to follow and, importantly, this standard will be both explicit and higher than that expected today

2. Intervention: the FCA's interventions against the insurers (business disruption insurance) and firms promoting cryptocurrencies are just the beginning. The recent guidance to insurers on penalising loyal customers when renewing their premiums is further evidence of the FCAs willingness to intervene quickly when they see firms not meeting their high standards. Although these actions have been against sectors of the market, it infers a willingness to tackle individual firms where necessary

3. Supervision: the FCA's investment in big data and analytics to understand how firms in each market sector are behaving, and identify 'the outliers' (Rathi's word), is equally significant. It may well be that the FCA's investment overtakes that of firms and risks the FCA knowing more about a firm's behaviour than those responsible within that firm themselves!

This may sound fanciful but in our experience investment in RegTech is still modest and piecemeal across the industry. Of course, some sectors are more advanced than others, however my experience is that an understanding of the benefits of investing in RegTech is some way off. For example, at a recent Worksmart seminar, more than 70% of attendees said that their firms either did not have a defined "Tech" budget and/or that it was not a strategic priority for their firm. Now, I appreciate these results are from one survey to a limited number of respondents, however, it supports polling from previous events that typically tends to show that on average more than 70% of firms still manually manage all elements of SM&CR. If the polling results shown here really are representative of the industry, there needs to be a major rethink about RegTech in firms and investment needs to happen fast or there will be some very embarrassing discussions between firms and the FCA!

In summary, the new Business Plan is a radical agenda for change. There is much in the Business Plan I haven't had the chance to discuss here, e.g. the cross-sector priorities, however the tone is the same. Nikhil Rathi has set the FCA's 'stall out'. The big question is, how quickly can firms change? I wonder….

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Lisa Nowell, Chief Risk Officer, Masthaven Bank

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"The basic principle of the Senior Managers Regime is that of responsibility and accountability. A senior manager has to take responsibility for the activities under their control. Likewise, they should be accountable for that responsibility"

Andrew Bailey, CEO – FCA, 2018