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Market cleanliness statistics 2021/22: FCA data and secondary markets

The FCA has published its market cleanliness statistics for takeover announcements in UK equity markets for the past financial year. The metric is used to indicate the proportion of corporate takeover events which have had significant abnormal share price movement before the announcement of the takeover.

The FCA have noted that the volatility in the market during and following the pandemic has limited the effectiveness of this metric to identify potential instances of possible insider dealing. It appears that the same issue is observed when using its sister measurement, the abnormal trading volume metric, which monitors increased in trading volumes before price sensitive announcements. Using this metric, there were abnormal increases in trading volumes in 238 out of 3364 announcements.

A further measure used to indicate market cleanliness is the potentially anomalous trading ratio, which identifies trading that occurs around announcements that would not commonly occur. This metric was down from 6.9% of trading within a sensitive time period in FY 2021 to 6.1% in FY 2022. In FY 2022, this measured around 0.055% of overall UK trading activity.

The retail intermediary market 2021: FCA data

The FCA has published its Retail Mediation Activities Return (RMAR) for the 2021 financial year. The RMAR reflects information provided by firms that arrange or advise on mortgages, insurance policies or retail investment products for consumers.

The key findings of the RMAR saw a marked increase in retail investment intermediation of 22% from 2020, with a particular rise in mortgage broking of 16%. Revenue from non-investment insurance distribution also rose by 3.9% to £19.35 billion. However, the share of retail investment revenue accounted for by commission fell from 14% in 2020 to 13% in 2021.

Moreover, for non-investment insurance distribution and mortgage broking, commission remains the primary source of revenue and has held firm on last year's figures, accounting for 84% (same as in 2020) and 80% (78% in 2020), respectively.

FCA operating service metrics 2021/22: FCA data and FCA enforcement

For the first time, the FCA has included enforcement data within its operating service metrics. The commendably detailed reporting provides some valuable insight into the functioning of the FCA's enforcement division and trends to look out for.

In particular this brings to light the lack of enforcement outcomes that end in financial penalties, with 11 in total. This year the average penalty size against firms (which is commonly much larger than those imposed on individuals) is inflated by the £147m fine against Credit Suisse for its inadequate systems and controls on the Mozambique financings. When this is removed, the average fine is approximate to that in 2020/21. Moreover, the lack of individuals being sanctioned in this way, only three in 2021/22 indicates that the move to the SMF regime has not markedly changed the approach to enforcement of potential misconduct. We recognise that these results may be impacted by some enforcement action resulting in customer redress schemes and debt relief, totalling £23.5m and US$200m respectively in 2021/22.

From a review of the data it does appear that there is an increase in the number of unauthorised business cases that have been opened. These cases account for around half of the cases opened in the past year with over two thirds of these cases pursuing some criminal element in their investigation. This increase in unauthorised business cases is likely as a result of the FCA's recent outreach to protect consumers from online harms and unregulated investment schemes.

A snapshot of some other key data are listed below:

- There has been a spike in OIVOPs and OIREQs used by the FCA, rising from 18 in 2019/20 and 2020/21, to 35 in 2021/22;
- During 2021/22, the FCA closed 739 cases under their 'use it or lose it' initiative for firms that do not use their permissions;
- 194 enforcement cases were opened in 2021/22, while 160 were closed.
- By the end of 2021/22 there remained 230 open investigations, which related to 603 open cases against firms and individuals; and
- There was a reduction in closed cases in 2021/22 to 160, down from 187 in 2020/21, with retail investigations making up the bulk of that reduction.

Update on outcomes from the: Independent investigation into London capital and finance; and independent review of the Connaught Income Fund Series 1

FCA transformation

FCA has stated that their implementation work, following the independent LCF and Connaught reviews, has concluded and is now subject to an assurance review to ensure it is properly embedded. The implementation of these reports were overseen by the FCA Board and their Audit and Risk committees. We are informed that the FCA will provide updates of any related progress made during their continuing transformation programme.

The Bank of England, PRA and FCA set out potential measures to oversee critical third parties in a move to increase resilience of the financial sector

Overseas firms and FCA compliance

In response to HM Treasury outlining their policy on Critical Third Parties (CTPs) in mid-June 2022, the BoE, PRA and FCA have issued a joint discussion paper (DP22/3) outlining their proposals for overseeing and strengthening resilience around the services provided by CTPs. In essence, CTPs are companies that provide services that are fundamental to the financial sector's operation, such as cloud-based computing services providers.

The Bank's Financial Policy Committee recognised in a 2021 that the UK's financial stability was vulnerable to disruption from a small number of third party service providers located outside of the UK.

DP22/3 sets out measures for how these authorities could use proposed powers to identify potential CTPs which will assist with HM Treasury making their formal designation of CTPs in due course. DP22/3 also discusses establishing a minimum resilience standard for services provided by CTPs as well as a framework of resilience testing to ensure compliance with these standards. Responses to the discussion paper are open until 23 December 2022.

The FCA welcomes the Secondary Capital Raising Review report: Primary and secondary markets

The SCRR Report was commissioned in light of Lord Hill's UK Listing Review as well as a number other reports and reviews from the FCA (Future Regulatory Framework Review and the Primary Markets Effectiveness Review) and HM Treasury (Prospectus Regime Review) about the UK Listing Regime. The SCRR Report recognises ongoing modernisation of the Listing Regime by these institutions is part of a "desire to seize this once-in-a-generation opportunity for meaningful reform".

The FCA has welcomed the SCRR Report, claiming that it aligns with their approach to identify ways to streamline further capital raising by publicly traded companies and promote access for investors. The Report identified efficient capital raising as being essential to allowing publicly listed UK companies to grow and help keep the UK capital markets competitive on the global stage. The FCA has particularly welcomed the SCRR Report's recommendations around the existing prospectus rules which the FCA will consider when proposing future changes.

Trade transparency and market liquidity data 2021/22: FCA data

The FCA have released data summarising trade transparency and market liquidity over 2021/22. With regards to trade transparency, the FCA has shared data which shows that there is a buoyancy in the trading figures despite the uncertainty faced in 2021/22. This is particularly the case during the December-January of 2021 which experienced the largest reduction in trading, potentially affected by the threat of the Covid-19 Omicron variant. These figures express that lit venues, as opposed to the trading on auctions and dark trading, extended their market share. The FCA believe that this reflects the participants' stronger preference for execution certainty in this volatile period.

The FCA does monitor levels of liquidity but only limits its interventions to address factors that unnecessarily reduce liquidity. It appears that one indicator of liquidity, trade volume, remained stable between 2021/22. Any reductions seen have been explained away as being normal seasonal fluctuations.

PRA speech on challenges and risks for investment banks: Prudential and investment firms

Executive Director at the BoE, Nathanaël Benjamin, has given a speech warning investment banks of the coming years, after the "easy economic conditions" experienced in the last decade. Mr Benjamin compared the stimulus supported landscape of the past decade with a swimming pool, as opposed to the turbulent open waters of today's market volatility as geopolitical and macroeconomic uncertainty grows.

The speech noted that the market was in a much healthier position than it used to be when faced with such volatility in the past. Despite this, investment banks are being reminded that financial and operation risks that they are exposed to. Many of these risks are not new, such as client/counterparty risk and the effect of digitisation, but they are seen as critical as the market enters this new phase.

In addition to these short term risks, Mr Benjamin outlined the longer term issue of climate change and how this can impact on investment banks. The speech outlines its envisagement of a “new world” where disruptions become more common and more severe as a result of climate change, resulting in “bumpy rides” for specific markets. As such, Benjamin predicts that “climate risks will become a persistent drag on firms’ profitability, perhaps in the region of 10-15% annually, particularly if they don’t manage them effectively.”

PRA launches Prudential and Resolution Policy Index

The PRA has launched a new tool, the Prudential and Resolutions Policy Index which will assist with the identification of relevant prudential and resolution policies, dependent on the sectors of interest to users. The Index can be used as a signpost for users to narrow down the policies that might apply to their business. This is particularly useful for insurance users and will likely save time in trying to locate up to date policies.

Pensions Dashboards Programme consults on draft standards and guidance

The Pensions Dashboard Programme (PDP) has published a number of standards and guidance notes for consultation. Standards are used to provide a foundation for the Pensions Dashboards, setting out the detail underpinning the legislation and outlining the requirements that pension providers will need to follow in order to connect to the system. The purpose of the standards is to ensure the security, stability and effective operation of the dashboard. So far, the PDP has published consultation drafts on data, technical, reporting and governance standards, as well as some guidance on the how pension providers become and remain connected to the pension Dashboard systems.

The consultation period runs until 30 August 2022.

EBA benchmarking remuneration trends at EU level and high earners

Banking – remuneration – high earners – EU harmonisation

On 21 July 2022, the EBA published their report on benchmarking remuneration practices in EU banks for the financial years 2019 and 2020, and high earners data for 2020.

The EBA analysed data provided for the financial year 2020 and compared it with the data for previous years.

Key findings

Total aggregated figures in the EU for 2019 compared to 2020 show a significant decrease in high earners from 4,963 to 1,383 persons who earn EUR 1 million or more per financial year. The reason. The 2020 figures do not include data for UK high earners, who in 2019, accounted for 71% of high earners.

The regulatory framework for remuneration practices remains insufficiently harmonised. The application of deferral and pay-out in instruments was found to differ materially among EU states and institutions.

The EBA will continue to benchmark remuneration trends every two years and publish data on high earners annually.

Comment

The EBA report provides useful insights into the remuneration landscape at EU level and data on high earners including where payment practices remain inconsistent.

Half a million consumers paying less credit card interest following FCA intervention: Consumer credit

Within its Annual Report, the FCA claims that nearly 600,000 people now pay less in interest and charges on their credit card debt because of changes that the FCA have brought about. This is, in part, due to changes in the insurance rules that stopped firms from, in the FCA’s words, “overcharging loyal customers”.

FATF report on data protection, technology and private sector information sharing: AML

The FATF has released a new report, which aims to help jurisdictions responsibly enhance, design and implement information collaboration initiatives among private sector entities to combat financial crime. Entitled “Partnering in the fight against financial crime; Data protection, technology and private sector information sharing” the report provides guidance to financial institutions on how to share information, in accordance with data protection and privacy rules, to better understand, assess, and mitigate money laundering and terrorist financing risks.

Individual sentenced to four months imprisonment for contempt of court: Financial crime/enforcement

Following two contempt of court applications brought by the FCA, an unnamed individual has been sentenced to four months imprisonment. The applications were brought in response to ten breaches of a restraint order obtained by the FCA under the Proceeds of Crime Act 2002. Each breach related to a failure to disclose financial interests as required by the order. Although limited detail is available, is apparent from the FCA’s press release that the restraint order relates to an ongoing investigation, in respect of which criminal proceedings remain ongoing. In those circumstances, the imposition of a custodial sentence is an unusually draconian response. It will be interesting to hear further detail about this matter as the case progresses. For now, however, the report serves as a harsh warning to those who receive restraint orders, whatever the stage that the proceedings against them have reached, of the importance of complying with their terms.

Insolvency and Companies Court considers how available funds should be shared between separate asset pools required under PSRs 2017 and EMRs 2011 respectively

Electronic money issuers

The Joint Liquidators of Electronic Money Issuer, Allied Walled Limited, applied to the High Court for directions in relation to matters arising in the liquidation. Following the decision in Re ipagoo LLP [2022] EWCA Civ 302, the High Court provided directions on the distribution of safeguarded and non-safeguarded funds; and, the conversion of foreign currency claims.

PSR responds to PSR Panel's digital payments initiative report: Account to account payments

This paper sets out the Payment Systems Regulator’s response to the PSR Panel’s Digital Payments Initiative report. The report highlighted barriers to people using account-to-account based retail transactions, and made a range of recommendations to address these barriers.

The PSR has set out four priority issues that it considers need to be addressed: the system’s functional capability, dispute processes, access and reliability, and a sustainable funding model.

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