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Regulation of Crowdfunding

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Crowdfunding allows non-traditional investors to obtain access to investment opportunities perhaps for the first time and allows start-ups and SMEs to obtain funding for investment and operations through the internet. The term though covers a variety of business models. This Briefing Paper focuses on the UK FCA regulated areas, the potential changes on the horizon and how best to approach embracing the regulated environment.

In considering potential appropriate regulation, the UK FCA identified five main types of crowdfunding:

- **donations based**: this may involve people giving money to enterprises or organisations whose activities or purchases they want to support;
- **prepayment or rewards based**: people giving to receive a reward, service or product (such as tickets for an event, an innovative product, a download of a book or a new computer game);
- **exempt activities**: people may invest or lend money using organisations or investments that satisfy the requirements in statutory exemptions to be considered exempt from the need for FCA authorisation and regulation. For example, if certain requirements are met, the FCA does not regulate enterprise schemes or industrial and provident societies marketing their own withdrawal or share issues and, if they are using an exemption though, must be careful to ensure it does not also engage in business for which it needs authorisation;

These firms usually do not need FCA authorisation

- **loan based**: people lending money to individuals or businesses in the hope of a financial return in the form of interest payments and a repayment of capital over time (excluding some business to business loans);
- **investment based**: people investing directly or indirectly in new or established businesses by buying shares or debt securities, or units in an unregulated collective investment scheme.

These firms generally do require FCA authorisation

It is on these last two activities on which attention is focused and which come within the scope of the FCA's regulated activities. The FCA regulates crowdfunding under these two main headings.

The FCA's approach is influenced by their premise that, with some crowdfunding models, a 100% capital loss is more likely than not (although other models may appear more benign). They take the view however that making any investment via crowdfunding platforms does tend to involve higher risks than those that apply to more traditional investments and deposits, and their approach to the regulation of crowdfunding reflects this – with an aim to provide appropriate and proportionate consumer protection and standards that can be applied fairly to differing types of crowdfunding firm.

With an understanding of the long established scope of regulated activities, one can take a constructive approach as to how to navigate the applicable regulatory requirements to new business models such as crowdfunding propositions as they evolve. Regulation will of course continue to evolve as the new business models themselves evolve, and we mention some of the prospective developments in regulation in the latter parts of this Briefing Paper. But the most important fundamentals do not change.

It is vital to take a constructive and principled approach to applying the provisions – looking at the spirit of the provisions rather than perhaps the letter and engaging with the FCA in discussing any novel features. This should ease the regulatory path for innovative business propositions.

Regulation of Crowdfunding: taking a constructive approach

Loan-based crowdfunding

Loan based crowdfunding or what is often called "peer to peer lending" covers circumstances where consumers lend money in return for interest payments and repayment of capital over time.

The gap in regulation in this area was plugged by the FCA with the final rules being in its Policy Statement PS14/4 in March 2014. From 1 April 2014, regulation of the consumer credit market transferred from the Office of Fair Trading (OFT) to the FCA, including responsibility for regulating loan based crowdfunding or peer to peer lending platforms. The main relevant regulated activity set out in Article 36H of the Regulated Activities Order now covers "*operating an electronic system in relation to lending*" in order that it could ensure adequate protection for lenders alongside this the FCA developed regulations designed to ensure that there are appropriate measures to protect borrowers. Peer to peer lending platforms are required under the Consumer Credit Sourcebook in the FCA Rules to provide adequate explanations of key features of the lending arrangements before the arrangements are set up and should later provide notices to borrowers of any sums in arrears and default consequences.

Hopefully a system has been developed which is proportionate and appropriate for the market and the risks it carries at present. In certain areas there is a weaker approach than for other areas of business – for example it is not thought proportionate to include such platforms within the remit of the FSCS.

It is thought that minimum capital standards and requirements for firms to have arrangements in place to administer loans in the event that the platform fails should provide adequate protection for now.

FCA core provisions are however applied, including conduct of business rules around disclosure and promotions in particular, minimum capital, client money protection, dispute resolution, and a requirement for firms to take reasonable steps to ensure that existing loans continue to be administered if the firm goes out of business. To flesh these out:

- **minimum capital**

  Firms are still working through the transitional arrangements regarding the prudential capital requirements. There is a fixed minimum prudential requirement of £20,000 for the transitional period which runs until 31 March 2017. As from 1 April 2017, the fixed minimum is £50,000. In each case, a variable volume based measure also applies by reference to a percentage of the loaned funds.

  Previously OFT regulated loan based crowdfunding firms did not become subject to the FCA's prudential standards until they became fully authorised. Firms that did not have a consumer credit licence before 1 April 2014 are not part of the interim permission regime and need to be fully authorised and are immediately subject to the FCA's prudential standards.

- **client money**

  A key concern of the FCA has always been to ensure that any monies held for a client are subject to certain protections. This covers money actually received from clients so it does not apply to money which is just pledged – it only applies to cash held.

- **cancellation**

  Cancellation rights arise because of EU regulation under the Distance Marketing Directive. The FCA take the view that, where required to be offered, the practical approach is for the right to cancel to attach to the initial agreement rather than for each loan contract. The FCA is not mandating how firms provide the rights. Note however that the FCA questions whether some arguments used to reach the conclusion that cancellation rights do not apply are in fact appropriate so it would be sensible to be cautious in this area.

- **disclosure**

  Disclosure rules are not overly prescriptive but are designed to give a high level indication under COBS 14.3.7A.

  The Regulated Activities Order and the Financial Promotion Order have been amended to include Article 36H agreements within the scope of the FCA's rules, so websites and details of loans will be considered to be financial promotions subject to the FCA's rules.

  In addition, due to concerns about performance information, use of the words "guaranteed", "protected" or "secure" and comparative information, which are frequently debated topics in relation to traditional investment routes, are applied also to loan based crowdfunding under specific rules and need careful attention.

  There is no ban on these or other specific terms but firms can only use terms such as "protected" or "secure" or make comparisons of returns to saving accounts where that is fair, clear and not misleading. This is using the (oldest) approach possible, which is ensuring that disclosure text provided to investors is fair, clear and not misleading. It is hardly new but arguably just slightly more difficult to apply to some new business models.

- **reporting**

  Under the consumer credit regime, there were already a number of reporting requirements. The FCA, in order to monitor the market, introduced further reporting requirements: financial position reports, client money reports, quarterly reports on investor experience looking at aggregate loans arranged over the quarter and information of the loans in any categories offered and, if there is a contingency fund, to cover bad debts information on the total held on that fund and the details of what proportion of outstanding loans this covers. Data also needs to be submitted on complaints. As finalised, the data is gathered using a combination of new and existing forms regarding the prudential and financial position, notification of change in total value of loans outstanding of 25% or more by email, client money position for CASS, investor complaints experience and quarterly information on loans arranged over the previous quarter.

- **ongoing administration in the event of failure**

  Firms will need to take reasonable steps to have arrangements in place to ensure loan agreements facilitated on a platform will continue to be managed and administered in accordance with the contract terms if the firm ceases to carry on the regulated activity in relation to lending. In an effort to be proportionate in their approach, the requirements are not prescriptive but firms need to devise suitable systems and controls appropriate to their circumstances.

The FCA has therefore taken the view that investment via a loan based crowdfunding platform is generally of lower risk than that made via investment-based platforms – they will keep this approach under review and consult further if necessary.

The FCA's summary of rules affecting loan-based crowdfunders can be found at https://innovate.fca.org.uk/innovation-hub/summary-rules-loan-based-crowdfunding-platforms.

Investment-based crowdfunding

Investment based crowdfunding has always fallen within the scope of FCA regulation if it involves a person carrying on long established regulated activities in the UK such as arranging deals in investments – which is usually the case where a platform enables a business to raise money by arranging the sale of unlisted equity or debt securities or units in an unregulated collective investment scheme – and the UK financial promotion regime under the Financial Services and Markets Act 2000 (FSMA) applies.

For investment based crowdfunding therefore it has therefore been a case of revising the regulatory approach for firms operating investment based crowdfunding platforms (and firms with similar non internet based businesses selling unlisted equities or debt securities in the UK).

Whether a firm uses the direct authorisation route or becomes an appointed representative of an authorised firm and so is exempt from the need for authorisation for investment based crowdfunding activities, the same concerns apply. The appointed representative route is not an exemption from regulation. It is simply a way by which the firm does not need direct authorisation and it is the principal of the appointed representative which accepts responsibility, and the principal firm which is responsible for ensuring that its appointed representatives comply with the relevant FCA provisions and systems and controls comply with the FCA Handbook.

By way of explanation:

- **identification of relevant regulated activities**

  At the outset, it is important to check the relevant regulated activities which might be carried on without an exemption applying. The most likely ones to be relevant include:

  – arranging (bringing about) deals in specified investments under Article 25(1), and

  – agreeing to carry on a regulated activity under Article 64,

  – plus, if there are pooled models offered, establishing, operating and winding up an unregulated collective investment scheme, Article 51(1)(a) or now more likely managing an alternative investment fund (or AIF) under Article 51ZC.

  In addition though there might be additional ones. It is possible for there to be placing activities and these might involve:

  – making arrangements with a view to transactions in investments under Article 25(2) and

  – dealing in investments as agent (Article 21).

  It is conceivable that models may involve:

  – advising investments under Article 53 and/or

  – managing investments under Article 37.

- **restricting direct offer financial promotions**

  Essentially, the FCA take the view that there might be a high probability that a company will fail and so 100% capital losses will result. Ideally, investors should therefore be advised, or properly informed and be able to carry out appropriate due diligence on the investment opportunities offered, to ensure they understand and can assess what is involved.

  The FCA's worry is that "the wrong type of investor" invests in unlisted shares or debt securities, although they indicate that they have no evidence of this. They wanted though to minimise the risk of historic instances of non-compliant promotion of unlisted shares using mailings or telephone based business models and, of course, they are associating this with the wider issue of the problems they perceive with the promotion of unregulated collective investment schemes where they do have examples of investor issues and which, at the same time of reviewing the crowdfunding arrangements, they were also revising.

  Having taken the view that the risk applying to units in unregulated collective investment schemes, warrants and derivatives were not dissimilar to those that applied to unlisted shares or debt securities, the FCA then introduced some rather complicated provisions under Policy Statement 14/4. In order to provide proportionate consumer protection and fairness for competing firms and products, the FCA's

Policy Statement in March 2014 covered not only the regulatory approach to crowdfunding over the internet but also the promotion of non-readily realisable securities generally by other media.

To describe better the illiquid shares and debentures which the FCA intended to cover, it introduced "non-readily realisable security" as a term which applies to securities that are not:

- readily realisable securities (broadly listed securities and government securities),

- packaged products (broadly regulated collective investment schemes, life policies, investment trust saving schemes and stakeholder and personal pension schemes) or

- "non-mainstream pooled investments" (which term includes units in unregulated collective investment schemes, units in qualified investor schemes, securities issued by a special purpose vehicle other than an excluded security, a traded life policy investment and rights or interests to such investments).

The rationale was that an established regime already applied to packaged products and legislative and regulatory marketing restrictions already applied to promotions of non-mainstream pooled investments (NMPIs) including unregulated collective schemes. Consequently, there was no need for the definition of non-readily realisable securities to include such products. COBS 4.12 already covered such.

In relation to non-readily realisable securities, a new COBS rule 4.7.7 was introduced. This applies to direct offer financial promotions (note, not all promotions). To be a direct offer, the promotion has to contain an offer or invitation and specify the manner of response or include a form by which the response is made, i.e. it is the last stage of the process.

The FCA apply this rule to all unlisted equity and unlisted debt securities and resisted lobbying that they should be treated differently or that debt securities and Article 36H loan agreements might be treated alike. The FCA consider that longer term illiquid unlisted debt securities offered by companies carry more risk of capital loss for investors than the (generally) short term P2P agreements. They still saw sufficient similarities between the equity and debt securities issued by companies and sufficient distinctions between debt securities and Article 36H loan agreements to justify the different approaches to regulation. Essentially they have taken the position that it is appropriate to assume that non-readily realisable equity and debt securities issued by companies will in many cases involve risk of capital losses. In contrast, P2P loan agreements often involve lending to individuals rather than companies, are usually repaid over three to five years and were thought currently to have low default rates.

As implemented, COBS 4.7.7 provides that, a firm may communicate or approve a direct offer financial promotion relating to a non-readily realisable security only:

- in circumstances where the firm is itself complying with the COBS 9 suitability rules for the promoted investment or the retail client has confirmed that it is a retail client of another firm that will do so. This effectively covers those who receive regulated investment advice or investment management services from an authorised person.

- If there is a retail client which is a corporate finance contact or venture capital contact

- If neither of the previous instances applies, if the following conditions are both satisfied:

  - *the first condition is that the retail client recipient is one of the following:*

    - *a high net worth investor in accordance with COBS 4.7.9;*

    - *a sophisticated investor in accordance with COBS 4.7.9;*

    - *a self-certified sophisticated investor in accordance with COBS 4.7.9*

    For any of the certified high net worth investors, certified sophisticated investor or self-certified sophisticated investor under COBS 4.7.9, the individual must have signed, within a period of 12 months ending on the day on which the communication is made, a statement as appropriate for the relevant category of investor as set out in COBS 4.12.6, 7 and 8 respectively substituting unlisted shares and unlisted debt securities for non-mainstream pooled investments.

    - *a* "restricted investor" in accordance with COBS 4.7.10, which covers a retail client who certifies that he will not invest more than 10% of his net investable financial assets in such assets – and so will effectively only invest money that does not affect his primary residence, pensions and life cover. The specific terms provide the phrase covers an individual who has signed within a period of 12 months ending with the day on which the communication is made a restricted investor statement that, in the 12 months preceding the date of the statement, he has not invested more than 10% of net assets in unlisted shares or unlisted debt securities and undertakes in the 12 months following the date that he will not do so. The statement includes a specific indication of acceptance that the investments to which the promotions relate may expose the individual to a significant risk of losing all of the money or property invested and he is aware that it is open to him to seek advice from an authorised person who specialises in advising on unlisted shares and unlisted debt securities.

The restricted investor statement must be valid at the time of communicating the promotion but the FCA has confirmed that there is no need to ensure that individuals who subsequently invest continue to qualify as restricted investors on an ongoing basis. Firms can integrate the client certification and the appropriateness test requirements mentioned below if they wish. However, it does need to be a pre-promotion process.

– the second condition is that the firm itself, or the person who will arrange or deal in relation to the unlisted share or unlisted debt security will comply with the rules on appropriateness under COBS 10 or equivalent requirements for any application or order that the person is aware, or ought reasonably to be aware, is in response to the promotion.

Remember that COBS 4.7.7 restricts direct offer financial promotions to retail clients – they can be communicated to any professional client without restriction.

- **media neutral approach**

The FCA's aim is to have fair, proportionate, media neutral regulation that applies in the same way to all competing firms, whether directly authorised or an appointed representative of an authorised firm, and whether internet based or otherwise. The overall aim here for the FCA has been to limit the ability of firms to promote platforms and a requirement that, where no advice has been provided, firms check that customers understand the risks involved.

Although there was lobbying that the promotion of unlisted debt securities (mini bonds) using offline media need not be included within the proposals, the FCA maintained its position that it applies to any firm using any media communicating direct offer financial promotions for unlisted equity or debt securities to retail clients who do not receive regulated advice. The same protection should apply to investors whether they engage with firms online or offline as a result of direct marketing or through telephone selling of investments.

- **risk warnings**

The FCA expects fair, clear and prominent risk warnings. This has always been the case but, in respect of this particular area, it is also thought necessary to restrict the availability of direct offer financial promotions. The FCA took the view that risk warnings on their own do not provide adequate consumer protection for retail clients who are offered risky and complex non-readily realisable investments.

The FCA emphasised that different warnings would be needed in differing circumstances for different investors and audiences and so it is necessary for crowdfunding sites to pay particular attention to drafting appropriate risk warnings for each promotion.

- **disclosure and due diligence requirements re investee companies**

The FCA expects firms to give sufficient emphasis to the extent to which an investment places a client's capital at risk. They refer to "accurate, sufficient information" being required, including information about lack of a secondary market and, where compensation scheme arrangements are mentioned, information about the lack of recourse to the FSCS (although there is the possible right to complain first to the firm and then, if relevant, to the Financial Ombudsman Service).

To satisfy (long standing) financial promotion rules, sufficient detail needs to be included about the benefits and risks involved, including the due diligence carried out in respect of the investee company, the extent of that due diligence and the outcome of any analysis.

Obviously, in respect EIS and SEIS investments, there also needs to be a clear explanation of the tax treatment – and that it depends on an individual's circumstances and might change over time.

Also there is a need for management of expectations. There is always the issue of potential of a mismatch between the expectations of investors as to how far the investments appearing on a crowdfunding site have been vetted and the realities of what is commercially feasible within the budget constraints which must apply when only relatively small amounts of money are being raised. This area needs some careful thought – simply drafting disclaimers in the terms and conditions for a crowdfunding business will not provide a watertight solution or be capable of protecting from reputational risk.

- **application of the appropriateness test**

The FCA take the view that firms communicating financial promotions to investors are required to be considered clients of the firm's and, in order to comply with MiFID I provisions, before arranging deals in certain complex financial instruments for retail clients who do not receive advice, firms are required to assess whether the client has the necessary experience and knowledge to understand the risks involved – the "appropriateness" test. The FCA allow this rule to be carried out either by the firm which promotes the investment or by the firm arranging the sale and either before promotion or before sale. The FCA therefore expects firms to apply these assessments as part of the online registration process with the crowdfunding site, and the FCA has indicated that it does not expect repeat appropriateness assessments will be required if it is reasonable to consider that an earlier assessment is still current – although of course this means that crowdfunding sites need to review whether or not such earlier assessments are still current.

Regulation of Crowdfunding: taking a constructive approach

For those of us with long experience of the FCA's approach on investor protection, none of these conclusions is particularly surprising but certainly there is a need for detailed compliance procedures to be prepared and followed by crowdfunding sites so as to ensure compliance.

Investee company challenges

The FCA regulation outlined above is in addition to legal issues which arise from the nature of the crowdfunding sites proposition generally. UK securities laws have generally worked on the assumption that companies would fall into one of two models: private, unlisted companies which would typically be expected to have only a small number of shareholders and public limited companies (PLCs) where the shares would be held more widely and which would often be publicly listed. The crowdfunding model cuts across this assumed dichotomy in that it looks to raise money from potentially a larger number of investors by making an extremely public offer, but often the companies are small and not ready to fulfil the expectations of the public limited company.

This issue most notably surfaces in relation to two long-standing legal requirements:

- UK company law restricts a company from undertaking a public offering of its shares or loan securities unless the company is a public limited company, which requires a greater degree of formality in how a company is operated and also brings dealings in the company's shares within the ambit of the Takeover Code.
- A company offering its transferable securities to the public is required to publish and register a Prospectus under the Public Offers of Securities Regulations unless an exemption applies.

Various legal structures and business models have been developed to avoid the consequences of these rules, some of which look better founded than others.

Further issues inevitably arise as to the nature of the protections that investors will receive. Usually the founders of a business will continue to have few constraints on the future direction of the business or indeed its future capital structure (for example through further rounds of potentially dilutory share issues. Sometimes even investors will invest into a class of share that has no votes at all, but even where they do, they will usually not have the voting strengths to prevent developments that the founder shareholders may consider necessary. However, whether all investors always understand the realities of the risks involved may sometimes be open to question.

The terms for crowdfunding firms' subscription documentation with Investee Companies needs careful attention to ensure they suit the purpose and fulfil all parties' expectations.

Investment fund options

It has always been necessary for crowdfunding sites to ensure that their offering per se does not comprise a collective investment scheme and, post implementation of the Alternative Investment Fund Managers Directive, an alternative investment fund (or AIF). This issue should be reviewed as part of the consideration regarding the regulated activities which might be undertaken.

There is though a second issue which now arises for many crowdfunding sites. This is where they may purposefully wish to offer some pooled, and so investment fund, arrangements.

Where there is a desire to offer some pooled fund proposition, there are particular challenges, again, in fitting the necessary features of the pooled fund to be established within the existing options for investment funds and in working out which option best suits the purpose:

- For equity offerings, EIS funds are an obvious choice given that many of the investee companies concerned might be EIS qualifying companies – or SEIS qualifying companies. There are curiosities to the typical EIS fund model itself – it being essentially a collection of discretionary managed portfolios managed on a common basis. These curiosities have been amplified by the decision that typically for EIS funds are to be treated as alternative investment funds which means that their manager should be authorised to manage an AIF and AIFMD compliance issues therefore arise – including the need for there to be an appointed depositary.
- Other fund models might be explored – the one for private equity typically being a limited partnership which is both a collective investment scheme and an AIF. This is full-square into the long established restrictions on promotion of unregulated collective investment schemes under COBS 4.12 now subject to the carve-outs which would apply where marketing the limited partnership counts as "marketing" for AIFMD purposes.
- For more scalable and more retail products:
  - Investment trusts, which are listed companies, might be considered but it is a major undertaking involving to set up a listed entity.
  - The alternative of FCA authorised investment funds would not suit the investment categories involved unless qualified investor schemes, and these would themselves be full-square within the restricted promotion of unregulated collective investment schemes, COBS 4.12 applying now subject to the carve-outs which would apply where marketing the limited partnership which counts as marketing for AIFMD purposes.

  In addition to complying with the relevant regimes for investment trusts or UK non UCITS authorised investment funds, there is also a need to comply with the AIFMD provisions.

Investment fund structuring therefore needs careful review with fund specialists who can work from first principles to devise the best route forward for the circumstances.

Future regulatory plans

The FCA is committed to review the crowdfunding market and the regulatory framework for it in 2016 and will again at that point consider whether some of the issues discussed in the original Consultation Paper CP13/13 should be reviewed – such as whether, for example, loan based crowdfunding should be within the remit of FSCS.

Note also that there are wider initiatives afoot. IOSCO has undertaken work on "Crowdfunding – an infant industry growing fast" published in 2014 and indicated its interest, and likely perceived interest within the market place, in this area. For more specific and developed provisions though, your concern may be to focus on European Commission initiatives.

The European Commission in its March 2014 Communication entitled "Unleashing the potential of crowdfunding in the European Union" http://ec.europa.eu/internal_market/finances/docs/crowdfunding/140327-communication_en.pdf viewed this as a promising new form of fundraising, noted that national level different additional rules might apply and concluded that it would be carrying out a study within 2014 exploring the potential of crowdfunding to support research and innovation and, in the context of this study, to reflect on the role which tax incentives could play in relation to crowdfunding for research and innovation. It would also set up a European crowdfunding stakeholder forum. A report on progress is expected in the course of 2015.

Building the Capital Markets Union (CMU) is a flagship initiative of the Commission on which it consulted earlier in 2015 – an action plan on Capital Markets Union is to be published later in 2015 which might include the crowdfunding proposals. In the Commission's Green Paper[1], the Commission identified that, although there is a growth in online [nature of mechanisms] such as peer to peer lending and crowdfunding, which would suggest great potential to contribute to the financing of the economy across national borders, there is limited evidence of cross border or pan European activity.

One follow up on their Communication on Crowdfunding is gathering information on industry approaches to information disclosure and member states approaches to regulation. They appreciate that the preliminary results suggest diverse national approaches in these areas may encourage crowdfunding locally but may not necessarily be compatible with each other in the cross border context.

One question therefore raised in the Commission's Green Paper is whether there are barriers to the development of appropriately regulated crowdfunding or peer to peer platforms including on a cross border basis. If so, how should they be addressed?

The EBA Board of Supervisors Opinion on Lending Based Crowdfunding Regulation across the EU was issued on 26th February 2015. The EBA considers convergence of practices across the EU for supervision of crowdfunding to be desirable in order to avoid regulatory arbitrage, create a level playing field, ensure that market participants can have confidence in this market innovation and contribute to the single European market. It thinks that the Payment Services Directive is the directive that is most feasibly applicable to lending based crowdfunding, covering the payments related aspects of crowdfunding activities. But it acknowledges that the lending regulated aspects are not covered in EU law: so several risks and risk drivers are identified which need to be addressed.

In relation to investment based crowdfunding, gaps and issues, and possible ways to address them, are helpfully summarised in the Advice on Investment Based Crowdfunding published by ESMA on 18 December 2014. In that paper, quite rightly, ESMA identify the likely prospective increase in use of collective investment schemes and so the relevance of AIFMD, EuVECA and EuSEF legislation in respect of crowdfunding propositions.

For the development of appropriately regulated crowdfunding or peer to peer platforms including on a cross border basis, ESMA think that a more appropriate legislative framework would enhance investor protection and help encourage the development of a pan European crowdfunding market. This would have the potential to offer an attractive investment proposition to investors, including a sub-set of retail investors, provided the right safeguards are in place – the use of the term "sub-set" is interesting of itself. It might hark back to the sub-set already created within the UK specific regulation for investment based crowdfunding models explained above.

The FCA is keen to work on how it should best respond to digitalisation issues and FinTech issues more widely. The FCA's Discussion Paper 15/5 issued in June on Smarter consumer communications is just one example of how it is starting to recognise that some of the more traditional approaches now need to evolve to embrace the developments in communication methods and, for our wider comments on FinTech initiatives, please see Fieldfisher's briefing paper on FinTech regulation. Developments in the crowdfunding regulation will no doubt have to dovetail with wider developments in the FinTech area, both from the UK specific perspective and within the wider EU regulatory context.

As ever, the UK regulator has been concerned to move quickly to plug gaps in regulation particularly where they can perceive any risk to investor protection especially for retail investors. The FCA have already implemented their initiatives to regulate crowdfunding whilst confirming that the rules they introduce will be consistent with existing European Directives and they will work to ensure that they remain consistent. If and when EU crowdfunding initiatives are progressed, the UK will of course have to review their position.

[1] http://ec.europa.eu/finance/consultations/2015/capital-markets-union/docs/green-paper_en.pdf

How can Fieldfisher help?

Fieldfisher is a full-service law firm with over 160 partners, with its head office in London and with a strong European presence.

Financial institutions represent a key part of our national, European and global economies – and they account for a substantial and highly important proportion of the firm's clients. We advise investment managers, investment funds including hedge funds, banks of all sizes, securities houses, brokers, dealers, insurance companies, custodians, depositaries and a range of service providers and consultants to the financial services industry.

Given Fieldfisher's leading expertise in each of financial services regulation, investment funds and technology law, we are ideally placed to assist innovative crowdfunding businesses, embrace the relevant regulation and achieve their commercial objectives in a compliant way. We act for new start-up and more experienced crowdfunding platforms and are well placed to assist crowdfunding businesses in understanding the legal and regulatory issues involved, and provide practical solutions for the challenges they present.

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