CLIFFORD CHANCE

Briefing note

17 March 2014

This week at the UK regulators

Thirty second guide: The week in overview

The spotlight has again been on the Bank of England over the past week, with further announcements as to how it will conduct its investigation in connection with suggestions that members of staff condoned, or were aware of alleged manipulation in the foreign exchange market or the sharing of confidential information.

Away from these developments, in addition to announcing an arrest in a boiler room investigation, the FCA has left consumer credit businesses which will shortly come within its regulatory purview in no doubt as to its approach. It has made clear that it intends to subject them to much more intensive scrutiny than is the case under the current regime and has stated that it expects that up to a quarter of these firms will choose to leave the market in response to the stricter arrangements. In a further reminder of its focus on understanding the experience and behaviour of consumers, it has announced the results of its first market study, which concerned the general insurance add-on sector, proposing practical remedies to alleviate findings of consumer detriment, including a ban on pre-ticked boxes.

Concluded enforcement cases have been confined to small cases. However, the modest penalty imposed in one case for failures to prevent false and misleading information from being submitted in mortgage applications provides a relatively rare exposition of the FCA's interpretation of the meaning of "recklessness" under its rules.

In other developments, the FCA has given an update on a study it is completing in collaboration with the Office of Fair Trading (and which it will complete in collaboration with the new Competition and Markets Authority from 1 April), pointing to continuing barriers to entry for smaller players in the SME banking sector and the PRA has issued a consultation paper proposing substantial extensions to the breadth of circumstances in which bonuses may be clawed back.

Further afield, a former analyst at an associate firm of SAC Capital, has become the tenth individual subject of concluded enforcement action taken by US authorities in connection with alleged and established insider trading at the firm and affiliate firms. Elsewhere, the European Parliament has adopted the draft version of new anti-money laundering legislation which will, when eventually adopted, require national registers of beneficial ownership and extend the definition of "politically exposed persons".

Bank of England announces further details of foreign exchange investigation

Further to the announcement last week that it is undertaking an internal review into allegations that officials condoned, or were aware of alleged manipulation in the foreign exchange market, or the sharing of confidential information (see This week at the UK regulators, 10 March 2014), the Bank of England has confirmed the appointment of Lord Grabiner QC to lead the investigation and outlined its proposed scope, objectives, outcomes and timescales.

It has highlighted the particular aspects of the allegations being investigated by the FCA with which its separate investigation will be concerned, confirmed the wide range of materials and individuals (from both within and outside the Bank) to which it is proposed it will have access and set out that the outcomes of the investigation will be made public, although it states that this is only likely to occur after the conclusion of the FCA's investigation. The investigation is the first publicised instance of an inquiry overseen by the Bank's Oversight Committee (see pages 32 and 33 of the Bank of England's Quarterly Bulletin, released this week, for details of the role and powers of the Oversight Committee). The press release issued by the Bank leaves open the question of whether any of the PRA's information gathering powers under Part XI of the Financial Services and Markets Act 2000 may be used to compel assistance from experts in the foreign exchange market falling within its regulatory remit.

http://www.bankofengland.co.uk/publications/Pages/news/2014/052.aspx https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWIbFgNhLNomwBl%2B33QzdFhRQAhp8D%2BxrIGReI2crGqLnALtlyZe%2FesMr9V4PyhBD55T7MDRCvp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaeIf&attachmentsize=143582

http://www.bankofengland.co.uk/publications/Documents/quarterlybulletin/2014/qb14q1.pdf

Arrest in boiler room investigation

The FCA has (on 13 March) released details of the arrest of a 21 year old man in an investigation in relation to alleged boiler room activity being undertaken in collaboration with the National Crime Agency and Kent Police. It has not released any further information at this stage, save to state that no individuals have been charged in connection with the investigation.

http://www.fca.org.uk/news/firms/an-arrest-in-fca-boiler-room-investigation

FCA announces results of its first market study and proposes action in general insurance add-on sector

The FCA has (on 11 March) announced the provisional findings of its first market study (see This week at the UK regulators, 16 July 2013), which concerned general insurance add-on products (i.e. products sold alongside or in connection with financial services and other products such as motor vehicles, mobile phones and flights).

As was expected, the study, whose methodologies involved detailed qualitative, quantitative and experimental research techniques and drew heavily upon the FCA's favoured tool of behavioural economics, found that competition in these markets is not effective and that consumers may experience poor outcomes and/or pay too much when buying insurance add-on products.

The FCA has proposed a number of remedies to the problems it has found in the markets, including the imposition of requirements for firms to follow up with customers who purchase some types of insurance over following days to check that they wish to take the product, banning pre-ticked boxes to ensure that customers actively choose to buy add-ons, requiring firms to publish ratios and improving the way that add-ons are offered through price comparison websites.

The FCA has asked all interested parties to provide comments on its proposals by 8 April, and has indicated that it will consult on rule changes before the end of 2014.

http://www.fca.org.uk/static/documents/market-studies/ms14-01.pdf

http://www.fca.org.uk/your-fca/documents/market-studies/ms14-01-annex-b

http://www.fca.org.uk/your-fca/documents/market-studies/gi-add-ons-qualitative-consumer-research-report

http://www.fca.org.uk/your-fca/documents/market-studies/gi-add-ons-quantitative-consumer-research-report

http://www.fca.org.uk/your-fca/documents/market-studies/gi-add-ons-experimental-consumer-research-report

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FCA issues statement of intent on consumer credit

Even before it assumes responsibility for the consumer credit market on 1 April, the FCA has set out its priorities in this area. It has indicated that it will immediately commence a thematic review into the way in which payday lenders and other high cost short term lenders collect debts and manage borrowers in arrears and forbearance.

The FCA's press release announcing the review is explicit about its aim to drive firms which it considers to fall below the new more exacting standards out of the market. It estimates that this may lead to up to a quarter of firms currently in the market deciding, during the term of their interim permission (i.e. before they have to apply for full FCA authorisation) to leave the market.

http://www.fca.org.uk/news/consumer-credit-countdown-review-into-debt-collection-practices-of-payday-lenders-starts-on-day-one-of-fca-regulation

SME market study progresses

The FCA has released details of the progress of the study it is conducting in partnership with the Office of Fair Trading ("OFT") into banking for small and medium sized enterprises ("SMEs"). It has indicated that their competition concerns remain. Specific findings include that the provision of bank accounts and lending is concentrated, significant barriers to entry for smaller providers persist and that such providers are confined to niches, there is limited scope for SMEs to shop around and that, in practice they do not do so, whether to seek alternatives between established providers or to use alternative sources of finance such as peer-to-peer lending, venture capital or equity finance.

Other specific issues uncovered during the study to date include the potential for security held by an SME's existing bank to act as a barrier to it obtaining services elsewhere and the extent to which various banks have complied with undertakings provided following a previous market study by the Competition Commission in 2002.

From 1 April, the functions of the OFT will pass to the new Competition and Markets Authority ("CMA"). The FCA has confirmed that it will work with the CMA to progress the market study to its conclusion and that it expects a final report to be published during summer 2014. Thereafter, the CMA will decide whether a market investigation reference should be made.

http://www.fca.org.uk/news/market-studies/market-study-into-sme-banking

FCA appoints new head of investment banking

The FCA has (on 12 March) announced that Julia Hoggett, currently a managing director responsible for a range of debt capital markets products at Bank of America Merrill Lynch, will join as Head of Investment Banking from early May. She is the latest in a succession of senior industry figures to move to the FCA supervision leadership team.

http://www.fca.org.uk/news/fca-appoints-new-head-of-investment-banking

Final Notices

The FCA has (on 13 March) imposed a financial penalty of £1,100 on City & Provincial and Mr Zaffar Hassan Tanweer , cancelled the permission of City & Financial and imposed a prohibition order on Mr Tanweer for reckless failures to prevent client mortgage applications containing false and misleading information from being submitted to lenders for approval between September 2009 and June 2011. The FCA has indicated in the final notice issued that, but for the financial situation of City & Provincial and Mr Tanweer, it would have imposed a financial penalty of £68,600.

http://www.fca.org.uk/static/documents/final-notices/city-provincial.pdf

The FCA has (on 10 March) cancelled the permission of Cathedral City Wealth Management Limited for failure to pay fees and levies due.

http://www.fca.org.uk/your-fca/documents/final-notices/2014/cathedral-city-wealth-management-limited

The FCA has (on 10 March) cancelled the permission of Newgate Finance & Properties Limited following failures to return its Retail Mediation Activity Return.

http://www.fca.org.uk/your-fca/documents/final-notices/2014/newgate-finance-properties-limited

FCA warnings

Name of firm	Date of warning	Details
AccessBI Limited	14 March	Suspension of insurance activities and agreement to certain requirements affecting its permission http://www.fca.org.uk/news/consumers/accessbi-limited
BlackRock Fund Managers Limited	12 March	Clone firm http://www.fca.org.uk/news/warnings/blackrock-fund-managers-limited-clone
FA International	11 March	Clone firm http://www.fca.org.uk/news/warnings/fa-international-clone

Policy developments

		FCA		PRA
		Proposed developments		
		Deadline for responses		
Consultation papers			13 May 2014	The Bank of England has (on 13 March) issued a consultation paper (CP6/14) on bonus clawback. It proposes the widening of the circumstances in which vested remuneration may be recouped to recover situations where there is reasonable evidence of malfeasance or material error or where the firm and business unit suffers a material downturn or failure of risk management. It also proposes that rules relating to clawback are made consistent with those relating to malus by extending the range of circumstances in which remuneration can be clawed back beyond malfeasance to instances where employees could reasonably have been expected to be aware of failure or misconduct but failed to respond adequately and where they may be deemed responsible for strategic or cultural failures by virtue of their role or seniority. http://www.bankofengland.co.uk/pra/Pages/publications/clawbackcp614.aspx

Further afield

Further charges in SEC insider dealing investigation

The US Securities and Exchange Commission ("SEC") has (on 13 March) agreed a settlement with Ronald N. Dennis , a former analyst at CR Intrinsic, an affiliate firm of SAC Capital, with insider trading in connection with shares in several technology companies. Under the settlement, Mr Dennis will be barred from working in the securities industry and will pay over US$200,000.

The settlement comes exactly a year after the SEC reached its largest ever settlement in an insider trading case with CR Intrinsic, which involved the imposition of penalties, disgorgement and interest amounting to over US$600 million. Mr Dennis is the tenth person against whom action has been concluded in connection with alleged and established insider trading at SAC Capital and CR Intrinsic.

http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370541131993

http://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171513308

New European anti-money laundering rules inch closer

The European Parliament has (on 11 March) voted in favour of the draft text of the Fourth Money Laundering Directive and an accompanying regulation on information to be included with electronic payments. Under the approved text, member's states' governments would be obliged to amend national law to provide for public central registers to list information on the ultimate beneficial owners of legal entities and tighten the customer due diligence arrangements maintained by banks, financial institutions and others. The proposed new directive also proposes the widening of the definition of "politically exposed person", which currently covers overseas individuals, is widened to encompass individuals within member states occupying prominent political and other positions.

The process of finalising the text to be adopted by member states continues, and this draft will be handed over to the new European Parliament after elections in May.

For further details of the proposals, see our previous Clifford Chance briefing.

http://www.europarl.europa.eu/news/en/news-room/content/20140307IPR38110/html/Parliament-toughens-up-anti-money-laundering-rules

https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWIbFgNhLNomwBl%2B33QzdFhRQAhp8D%2BxrIGReI2crGqLnALtlyZe1H0J%2FW1ycJr1HH1GV%2F6z4Xp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaeIf&attachmentsize=81374

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