

This week at the UK regulators

Thirty second guide: The week in overview

As part of its ongoing campaign of action in the consumer credit sector, the FCA has agreed a settlement with a pay day lender which will see a total of approximately £700,000 repaid to over 6,000 customers who wrongly received amounts exceeding the lender's affordability criteria as the result of a systems error.

In its annual report, the FCA has underlined its focus on consumer protection, stating its wish to use consumers as its "eyes and ears". Both it and the PRA have engaged with the public in relation to their annual reports to a greater extent than in previous years, the FCA through holding its inaugural public meeting this week and the PRA through a three month consultation exercise.

The FCA has issued its annual anti-money laundering ("AML") report, in which it has unveiled a new approach to the categorisation of firms according to the risk they are deemed to pose and has reaffirmed its commitment to intensive supervision and, where appropriate, enforcement action in respect of AML issues.

A raft of other papers released by the FCA last week have focused largely on competition issues. Specifically, in separate papers, it has reported on distribution channels for retail investments, set out the findings of its market study into the effectiveness of competition in the cash savings market, issued its findings on the use of dealing commission, and published an occasional paper looking at potential explanations for statistics showing that market abuse appear to be declining. Further, and together with the PRA, it has published interim findings and details of progress to date in connection with the ongoing review of competition and barriers to entry in the banking sector.

In addition, it has launched a new review into competition in the wholesale sector, calling for input on a broad range of issues. A more detailed market study may follow in due course. In a separate call for inputs, it has asked for views on proposals for the establishment of an incubator and other supportive arrangements to encourage innovation.

It has also released details of the ongoing review into the failure of HBOS PLC and has confirmed the appointment of a new non-executive director.

Further afield, regulators in the Asia Pacific region have been demonstrating that they too are committed to taking action in respect of AML compliance issues, with the Hong Kong Securities Commission imposing a relatively substantial financial penalty for AML related internal control deficiencies. Its action followed statements by the Monetary Authority of Singapore the previous week that it will be adopting an approach in relation to AML issues similar to that taken by the FSA and FCA under the "credible deterrence" banner.

Pay day lender to repay £700,000 in latest FCA settlement

The FCA has (on 14 July) agreed the latest in a series of settlements with a pay day lender since it took over responsibility for regulating consumer credit on 1 April 2014. Dollar, which uses trading names including The Money Shop, Payday UK, Payday Express and Ladder Loans, has voluntarily agreed to refund over £700,000 of interest and charges to 6,247 customers affected by a systems error between January 2013 and April 2014. The error meant that they received loan amounts in excess of Dollar's

lending criteria. A contact exercise has commenced, which is expected to lead to cash refunds of approximately £79,000 and the reduction of loan balances in other cases.

Separately, a skilled person has been appointed under section 166 of the Financial Services and Markets Act 2000 to review the process by which lending decisions are made and the borrowing experiences of customers throughout transactions from initial affordability assessment to eventual loan collection.

The action, which marks the conclusion of an investigation inherited by the FCA from the Office of Fair Trading (which previously had responsibility for consumer credit regulation) follows similar agreements with other pay day lenders and the commencement of a thematic review launched in March 2014 into the way in which pay day lenders and other high cost short term lenders collect debts and manage borrowers in arrears and forbearance (see This week at the UK regulators, 30 June 2014).

<http://www.fca.org.uk/news/payday-firm-dollar-agrees-to-improve-lending-practices-and-refund-700000-to-its-customers>

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

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWibFgNhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnAltlyZewvNg3ljCGI9625E%2BXMRFynp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=120746>

FCA seeking to use consumers as its "eyes and ears"

In its annual report (published on 10 July), the FCA has underlined its focus on consumer protection. The report summarises the initiatives undertaken and commenced during the year. It places particular emphasis on the major projects of taking on responsibility for the regulation of consumer credit and the mortgage market review, but cites other examples of the shift in focus such as the cash savings review commenced in September 2014, the results of which were published this week (see below) and the work on behavioural economics, aimed at better understanding the reasons why consumers behave in the way they do, which it commissioned at the start of its life.

The report confirms that the FCA levied £425 million in fines and authorised 1,046 firms during the year 2013/2014.

Commenting on the release of the report, and looking ahead, John Griffith-Jones, the Chair of the FCA, restated the FCA's commitment to engagement with consumers of financial services and set out his wish to use them as its "eyes and ears" to ensure that financial services properly serve their needs. The public will, for the first time, have the opportunity to discuss the report with the FCA at its inaugural Annual Public Meeting on 17 July.

The PRA has (on 17 June) already issued its annual report and accounts, and has invited members of the public to give their views via a consultation exercise closing on 17 October on the way in which the PRA has carried out its functions and whether it has achieved its statutory objectives over the past year.

<http://www.fca.org.uk/news/corporate/annual-report-13-14>

<http://www.bankofengland.co.uk/publications/Documents/annualreport/2014/prareport.pdf>

<http://www.bankofengland.co.uk/publications/Documents/annualreport/2014/prareports.pdf>

FCA sets out approach to anti-money laundering supervision

The FCA has (on 10 July) published its second anti-money laundering ("AML") annual report. In addition to giving an update on the proposed provisions of the EU Fourth Money Laundering Directive and Second Regulation on Information Accompanying Transfers of Funds, which are working their way through the EU's legislative processes, it sets out the findings from the specialist supervision work it has been carrying out in relation to AML issues. Specifically, it confirms that it has completed six "deep dive" assessments as part of its Systematic AML Programme ("SAMLP"). Further assessments are continuing and it is intended that such assessments will eventually be completed in respect of 14 major retail and investment banks operating in the UK. Some are and/or will be broader in scope, for example examining anti-bribery and corruption compliance. The report also reveals that the FCA has, on over 40 occasions since July 2013, responded to requests for additional supervisory resources to address AML issues by, for example, visiting firms to assess compliance, conducting desk-based reviews and/or assisting with interviewing or vetting of individuals put forward by firms as Money Laundering Reporting Officers.

The FCA has expressed disappointment at the findings of its SAMLP, thematic and general case work, stating that it has found "significant weaknesses", particularly in relation to the management of higher risk business. It acknowledges higher levels of engagement from senior management of large banks in particular with AML issues and sets out its conclusion that private banks and wealth management firms are now generally performing better than retail and wholesale banks in this area. It states though that it has found issues with many aspects of governance, due diligence and AML systems and controls,

particularly in relation to the identification and management of high risk customers, which, it expects, will take a number of years and significant investment to remedy.

It summarises the action it has taken, both through formal enforcement action and other channels such as the use of attestations and voluntary undertakings. It confirms that two banks have been referred to enforcement in respect of issues previously identified to them. It also sets out a new supervision approach, to be used in addition to the SAMLP, involving the classification of all regulated firms subject to the Money Laundering Regulations 2007 into four risk bands, with the aim of targeting the FCA's AML supervision resources towards the firms deemed by it to pose the highest risk. Those firms already subject to the SAMLP will occupy the highest category, whilst those in the category below will be subject to regular inspection, with reviews of their categorisation based on two or three day site visits to take place over the course of a 24 month cycle.

Reflecting statements made by the European Banking Authority and the Financial Action Task Force, the FCA has acknowledged mobile payments and virtual currencies as areas of emerging risk and, consistent with previous statements, has indicated that it is keeping them under review. It has also recognised the concerns of businesses in the money transmission sector in particular about "derisking" on the part of large banks on the grounds of AML concerns.

<http://www.fca.org.uk/static/documents/corporate/anti-money-laundering-annual-report-13-14.pdf>

FCA reports on distribution channels for retail investments

The FCA has (on 11 July) released the findings of its thematic review examining the distribution channels being used by firms to sell investments to retail customers.

The review was based on visits to 13 firms from different sectors covering a range of different established and newer business models. It found some uncertainty amongst firms as to how to interpret and apply regulatory requirements relating to suitability and the provision of simplified advice.

These findings have informed a guidance consultation paper proposing changes to rules and guidance in this area (see below for further details).

<http://www.fca.org.uk/static/documents/thematic-reviews/tr14-10.pdf>

FCA calls for inputs on Project Innovate

Further to a speech by Martin Wheatley last month in which he considered the challenges and opportunities presented by technological developments, the FCA has (on 11 July) issued a paper calling for input in relation to its proposals, as part of "Project Innovate", to establish an incubator and an innovation hub. The incubator is designed to help applicants bringing innovative ideas to the FCA through the applications process, whilst it proposes that the innovation hub would provide a designated point of contact for firms which had been authorised with the help of the incubator.

The paper invites views on particular questions relating to the hurdles to innovation under the regulatory system at present and asks respondents to describe the types of assistance which the incubator and the innovation hub could most usefully provide and the types of ideas which should be regarded as genuinely ground breaking and which should benefit from its proposed supportive arrangements.

The FCA has invited responses by 5 September.

<http://www.fca.org.uk/static/documents/project-innovate-call-for-input.pdf>

<http://www.fca.org.uk/news/the-technology-challenge>

FCA and PRA release terms of reference for HBOS review

The FCA and PRA have (on 11 July) published the detailed terms of reference for the report being undertaken into the reasons for the failure of HBOS PLC. The review, which has to date been proceeding under draft terms of reference, is not yet complete, and no estimate of the anticipated timescales for completion has been given. The document, which has been discussed with the Chairman of the Treasury Select Committee, has been released to coincide with the commencement of the process of maximisation, which allows those subject to potential criticism to make representations.

<http://www.fca.org.uk/static/documents/hbos-review-terms-of-reference.pdf>

FCA launches wholesale sector competition review

The FCA has (on 9 July) issued a call for inputs aimed at identifying areas in which competition in the wholesale

markets may be weak or not working properly. The FCA has stated that a further more detailed market study may follow if merited. The remit of the review is broad, and the FCA has indicated that it is interested in features of markets and behaviours which may inhibit or distort competition in the market infrastructure, investment management, asset management and corporate banking spheres.

The FCA has stated in its accompanying press release that it expects that there will be limited crossover with the wider Fair and Effective Markets Review being undertaken by HM Treasury.

The FCA has invited responses by 9 October. For further details, please see our Clifford Chance briefing.

<http://www.fca.org.uk/static/documents/market-studies/wholesale-sector-competition-review-call-for-inputs.pdf>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbFgNhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZezQt%2Fq0rsofM9IUc6P%2F1wanp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=87022>

FCA finds lack of competition in the cash savings market

The FCA has (on 8 July) published the interim findings of its market study into the effectiveness of competition in the cash savings market. It found that some aspects of the market are not working well for consumers and that the largest providers are able to offer lower interest rates because most customers do not shop around. The report sets out the FCA's emerging view that the fact that a large number of consumers hold savings accounts with their primary current account provider and only switch between providers rarely indicate that the market could be more competitive and that challenger banks are placed at a competitive disadvantage as they must offer higher rates of interest in order to attract and retain customers.

The market study, launched in October 2013, will continue to look at what could be done to improve customers' awareness of the interest rates they receive when opening savings accounts and during the life of the account, any steps which could be taken to make switching easier, and any other interventions which may be necessary. The FCA has stated that it expects to publish its full report in late 2014.

<http://www.fca.org.uk/static/documents/market-studies/ms14-02-interim-report.pdf>

<http://www.fca.org.uk/news/fca-to-carry-out-market-study-into-cash-savings>

FCA takes stock on barriers to entry to the banking sector

Further to the review published in March 2013 of competition in the banking sector (see This week at the regulators, 8 April 2013), the FCA and PRA have (on 7 July) released a joint report reviewing progress to date. It reports an increase in the number of firms discussing the possibility of becoming a bank, greater numbers of pre-authorisation meetings, a streamlining of the application and authorisation procedures, the relaxation of capital and liquidity requirements for firms with limited systemic impact and a "mobilisation" option enabling firms which have met essential requirements to commence providing banking services earlier than previously.

The report examines continuing barriers to competition, placing specific emphasis on the cost of agency banking, and summarises ongoing efforts to reduce barriers to entry through reviewing rules inherited from the FSA to ensure consistency with the enhanced competition mandate the FCA now has.

Finally, the report acknowledges the place of third party technology providers, but reiterates both regulators' expectations of the steps that firms should take to identify, monitor and manage risks in order to comply with relevant rules and guidance. The FCA has issued a separate document setting out the types of questions firms should consider when contemplating using the services of such providers (see more details below).

<http://www.fca.org.uk/your-fca/documents/barriers-to-entry-one-year-on>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbFgNhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZe1JZh6KRd%2F2WabPRkKQK0wnp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=219797>

<http://www.fca.org.uk/static/documents/barriers-to-entry.pdf>

FCA issues guidance on off-the-shelf technology solutions

Responding to rapid growth in the number of providers and types of services available to firms and as part of its focus on reducing barriers to entry to the banking sector (see above), the FCA has (on 7 July) issued a short paper aimed at firms contemplating using third-party technology (off-the-shelf) banking solutions. It sets out a list of questions for firms to consider when preparing for and evaluating the use of third party services critical to firms' business. It supplements the formal requirements relating to firms' IT arrangements, which are contained principally in the Threshold Conditions ("COND") and Senior Management Arrangements Systems and Controls ("SYSC") sections of the FCA's Handbook.

<http://www.fca.org.uk/static/documents/barriers-to-entry-third-party-technology-considerations.pdf>

FCA reports on dealing commission

The FCA has (on 10 July) issued a discussion paper (DP 14/3) reporting on its recent supervisory findings with stakeholders examining how the use of dealing commission functions, with particular focus on how it is used for the purchase of research.

The review found that, of 17 investment managers and 13 brokers reviewed, only two investment managers were operating at the standard expected by the FCA. It has confirmed that it is in discussions with one firm in relation to the payment of appropriate redress.

It follows a consultation exercise in November 2013 leading to a change to rules in May 2014 which made clear that firms should only pay for services directly related to executing a trade or substantive research out of dealing commission.

In a speech timed to coincide with the release of the reviews findings, Martin Wheatley, CEO of the FCA, confirmed that the FCA remains engaged in the process of shaping new European legislation on this issue. He urged asset management firms to participate in the consultation process being run by the European Securities and Markets Authority ("ESMA") on provisions of the new Markets in Financial Instruments Directive ("MiFID II"), which closes on 1 August.

<http://www.fca.org.uk/static/documents/discussion-papers/dp14-03.pdf>

FCA confirms appointment of new non-executive director

The FCA has (on 8 July) confirmed the appointment by HM Treasury of Catherine Bradley as a non-executive director with effect from 2 August. Ms Bradley has considerable experience of global investment banking, having held senior positions at a number of major non-UK based institutions over a period exceeding thirty years.

<http://www.fca.org.uk/news/catherine-bradley-appointed-as-non-executive-director>

FCA finds that markets are continuing to get cleaner

The FCA has (on 10 July) published an occasional paper exploring possible reasons for decreases in the market cleanliness statistic in successive annual reports between 2010 and 2013. The paper, which notes increases in enforcement activity over that period and excludes other possible explanations related to the methodology used to calculate the statistic, concludes that markets are continuing to get cleaner but urges caution when seeking to compare jurisdictions owing to differences in the way in which the statistic is compiled.

<http://www.fca.org.uk/static/documents/occasional-papers/op-4-market-cleanliness.pdf>

FCA imposes temporary short selling restriction

The FCA has (on 11 July), for the second time in recent weeks, imposed a temporary restriction on short selling in shares in Banco Espirito Santo. The restriction lapsed at 11.59pm on 11 July but was (on 14 July) extended until 11.59pm on 15 July.

<http://www.fca.org.uk/news/firms/temporary-restriction-in-short-selling-banco-espirito-santo-110714>

<http://www.fca.org.uk/news/temporary-restriction-in-short-selling-banco-espirito-santo-140714>

Final Notices

In separate cases, the FCA has (on 11 July) cancelled the registrations of Shahid Sultan Babar, Mohsin Shahzad Khan and Mega Advice Services Limited as small payment institutions under the Payment Services Regulations 2009 for failure to provide information required by the FCA.

<http://www.fca.org.uk/static/documents/final-notice/shahid-sultan-babar.pdf>

<http://www.fca.org.uk/static/documents/final-notice/mohsin-khan.pdf>

FCA warnings

Name of firm	Date of warning	Details
Futuro Financial	8 July 2014	Clone firm http://www.fca.org.uk/news/warnings/futuro-financial-clone
Anglo Wealth Limited t/a Anglo Wealth Investments	7 July 2014	Not authorised http://www.fca.org.uk/news/warnings/anglo-wealth-limited

Policy developments

FCA		PRA	
Proposed developments			
		Deadline for responses	
Guidance consultation	<p>Further to the findings of its thematic review into the distribution of retail investments, the FCA has (on 11 July) published a guidance consultation paper (GC 14/3) to seek to clarify provisions of the Conduct of Business Sourcebook ("COBS") and Perimeter Guidance ("PERG") relating to the business models used for the sales of investments to retail customers and the provision of simplified advice.</p> <p>http://www.fca.org.uk/your-fca/documents/guidance-consultations/gc14-03</p>	10 October 2014	

Discussion papers	<p>The FCA has (on 7 July) published a discussion paper (DP14/2) on the fairness of changes to mortgage contracts. The paper, which contains case studies on the application of the regulatory framework in scenarios such as interest rate rises, concludes by considering and inviting views on whether or how it may be appropriate to amend or update current rules and guidance, principally those contained in the Mortgage Conduct of Business Sourcebook ("MCOBS").</p> <p>http://www.fca.org.uk/static/documents/discussion-papers/dp14-02.pdf</p>	30 September 2014		
	<p>The FCA has (on 10 July) issued a discussion paper (DP 14/3) reporting on its recent supervisory findings with stakeholders examining how the use of dealing commission functions, with particular focus on how it is used for the purchase of research. See further details above.</p> <p>http://www.fca.org.uk/static/documents/discussion-papers/dp14-03.pdf</p>	10 October 2014		

Further Afield

Hong Kong and Singapore regulators take action on AML compliance

The FCA has not been the only regulator focusing on AML compliance over the past week (see above). In Hong Kong, the Securities and Futures Commission ("SFC") has (on 9 July) imposed a financial penalty of HK\$6 million on Ping An of China Securities (Hong Kong) Company Limited ("Ping An") for deficiencies in internal control, training and account opening facilities in relation to AML issues and for failing to have in place an effective internal control function. The failings occurred under a previous management team and the SFC's notice acknowledged the steps taken by Ping An to report and remedy them.

The SFC's action is the latest indicator of the rise of AML compliance up the regulatory agenda in the Asia Pacific region, which looks set to continue. For example, during the previous week, in a speech given on 2 July, Mr Ong Chong Tee, the Deputy Managing Director (Financial Supervision) of the Monetary Authority of Singapore pledged its commitment to a strategy resonant of the FSA's and FCA's credible deterrent agenda involving the more conspicuous publication of details of action taken for more serious breaches of AML requirements. In addition in the latest of a series of practical steps aimed at making the use of the financial system for the purposes of financial crime more difficult, he announced the gradual withdrawal of SGD 10,000 notes with effect from 1 October 2014.

http://www.sfc.hk/web/files/ER/PDF/14PR87_statement1.pdf

<http://www.mas.gov.sg/News-and-Publications/Speeches-and-Monetary-Policy-Statements/Speeches/2014/Combating-Financial-Crime-International-and-National-Efforts.aspx>

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