

# This week at the UK regulators

## Thirty second guide: The week in overview

The principal enforcement developments last week were the use by the FCA for the first time of its power to impose restrictions in action against two firms for failures to oversee properly their appointed representatives and other individual advisers and, separately, the confirmation of a significant penalty for market abuse following the conclusion of a long running case concerning improper disclosure of inside information. The FCA has also commenced its latest prosecution for unauthorised business activities, pursuing an individual for a range of fraud-related and other offences. Away from contested developments, the FCA has agreed the latest in a series of packages likely to lead to redress for customers of a payday lender and has issued the final findings of its market study into general insurance add-on products. It has also issued a Dear CEO letter to SIPP providers and published the findings of a thematic review concerning pension transfers.

Meanwhile, the way is now clear for the FCA and PRA to issue their long awaited consultation papers setting out the new senior managers and certification regimes as key enabling legislative provisions entered into force last week.

## FCA uses suspension power for the first time

The FCA has (on 23 July) issues a statement of misconduct to Financial Limited and Investments Limited and imposed a restriction preventing them from recruiting new appointed representatives ("ARs") and registered individuals ("RIs") (individual advisers within ARs) for 126 days. The FCA found that both firms breached Principle 3 (management and control) of its Principles for Businesses between August 2008 and April 2013 by failing to ensure that ARs and RIs were adequately supervised and controlled to minimise the risk of mis-selling and the provision of unsuitable advice to consumers. The Final Notices describe the FCA's concerns in relation to a culture of inappropriately viewing ARs and RIs, rather than their customers as the end consumer and shortcomings in relation to the collection of management information and embedding of appropriate risk-focused systems and controls in relation to recruitment, training, monitoring and control of ARs and RIs.

The FCA has stated that it would have imposed financial penalties of £12,589,134 and £621,583 respectively on Financial Limited and Investments Limited were it not for their financial positions. The duration of the restriction imposed was reduced by 30 per cent in both cases as both firms agreed to settle at an early stage.

The case is the first in which the FCA (or the FSA) has used its power to impose restrictions on firms' permissions

(under section 206A of the Financial Services and Markets Act 2000 ("FSMA")) since it received the power to do so on 8 August 2010. The action follows the FSA's thematic review in relation to the promotion and sale of unregulated collective investment schemes ("UCIS"). A skilled person has been appointed under section 166 of FSMA to oversee changes to the firms' risk management arrangements. Past business reviews in respect of pension switching recommendations and the promotion and sale of UCIS will now follow, which may lead to redress being paid. The FSA took separate action against Mr Charles Palmer, CEO of the firms' parent company in 2010 in relation to previous failings at both firms.

<http://www.fca.org.uk/static/documents/final-notices/financial-limited.pdf>

<http://www.fca.org.uk/your-fca/documents/final-notices/2014/investments-limited>

<http://www.fca.org.uk/your-fca/documents/final-notices/2010/fsa-final-notice-2010-mr-charles-palmer>

[http://www.fsa.gov.uk/smallfirms/your\\_firm\\_type/financial/pdf/findings.pdf](http://www.fsa.gov.uk/smallfirms/your_firm_type/financial/pdf/findings.pdf)

## Penalty in improper disclosure case confirmed

The FCA has (on 22 July) issued a Final Notice confirming the financial penalty of £450,000 to be imposed on Mr Ian Hannam for market abuse through improper disclosure of

inside information (contrary to section 118(3) of FSMA). Mr Hannam referred the Decision Notice issued by the FSA in February 2012 to the Upper Tribunal, which found in May 2014 that he engaged in market abuse by sending two emails containing inside information in September and October 2008. For further details of the background to the case and the lessons arising from the Upper Tribunal's lengthy judgment, see our Clifford Chance briefing.

The Final Notice now issued confirms that, further to those findings, he has since decided not to contest the level of the penalty imposed.

<http://www.fca.org.uk/static/documents/final-notice/ian-charles-hannam.pdf>

<http://www.fsa.gov.uk/static/pubs/final/ian-hannam.pdf>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbfqNhlNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZe1%2F21s4VY3XckjgzwLHV55np%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpja3xHNE7tFeHpEbaelf&attachmentsize=128962>

### Other enforcement notices

The FCA has, in separate Final Notices (all issued on 24 July) cancelled the registrations of Abacus Transfers Limited and Bluerock Foreign Exchange Limited as small payment institutions under the Payment Services Regulations 2009 ("PSRs") for failures to submit regulatory returns and failure to pay fees and levies respectively, and has cancelled the authorisation of Safe Transfer Limited as an authorised payment institution under the PSRs for failure to pay fees and levies.

<http://www.fca.org.uk/static/documents/final-notice/abacus-transfers-limited.pdf>

<http://www.fca.org.uk/static/documents/final-notice/bluerock-foreign-exchange-limited.pdf>

<http://www.fca.org.uk/static/documents/final-notice/safe-transfer-limited.pdf>

### FCA brings charges in unauthorised business case

The FCA has (on 23 July) announced that it is prosecuting Mr Phillip Boakes for 13 alleged offences under FSMA, the Companies Acts 1985 and 2006, the Theft Act 1968, the Fraud Act 2006 and the Forgery and Counterfeiting Act 1981 in connection with a scheme stated by the FCA to have been an unauthorised investment scheme operated

between October 2004 and June 2013. Mr Boakes appeared at City of London Magistrates Court on 22 July 2014, where the case was adjourned to a hearing scheduled for 5 August 2014 at Southwark Crown Court.

<http://www.fca.org.uk/news/fca-commences-criminal-prosecution-against-phillip-boakes>

### FCA agrees redress scheme with payday lender

In the latest of a series of similar agreements reached with consumer credit firms, the FCA has (on 23 July) entered into an agreement with Ariste Holding Limited ("AHL") (which trades as "Cash Genie"). The agreement, which stems from a report made by AHL to the FCA last month in relation to systems and controls issues concerning the imposition of unauthorised charges, potential misuse of customers' information and the refinancing of customers' loans, will lead to the appointment of a skilled person to oversee an investigation into the extent to which customers have been affected by these issues and a redress scheme to remedy any detriment identified.

<http://www.fca.org.uk/static/documents/requirement-notice/ahl-vreq.pdf>

### FCA confirms concerns about general insurance add-ons

Further to its provisional report issued in March 2014 (see This week at the UK regulators, 17 March 2014) the FCA has (on 24 July) published the final report setting out the final conclusions of its general insurance add-ons market study. Its report reflects feedback on its provisional findings. The final report confirms its concerns that competition in the market for selling the products, which are marketed to customers purchasing "primary" products such as other insurance products, consumer goods or travel tickets, is not effective. It found that such products often represent poor value and/or are purchased unnecessarily. It has proposed a requirement for firms to publish claims ratios as a measure of the value of such products.

The FCA has stated that it will consult on proposed remedies aimed at addressing its concerns later this year.

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

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbfqNhlNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZe8jnT1yoVtP8Dk33tUw9C0D>

[p%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=131954](http://www.fca.org.uk/static/documents/market-studies/ms14-01-final-report.pdf)

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

### FCA issues ultimatum to SIPP operators

The FCA's Director of Supervision, Clive Adamson, has (on 21 July) written to all Self Invested Personal Pension ("SIPP") operators, following up on guidance the FCA issued in October last year (FG 13/8 – see This week at the UK regulators, 14 October 2013). His letter notes the FCA's concerns at continued non-compliance with this guidance identified during a recent thematic review into enhanced transfer value pension transfer, the results of which were also released on 21 July. The review found particular failings in relation to due diligence undertaken in connection with non-standard investments and compliance

by SIPP operators with UK prudential rules. The FCA has stated that a number of supervisory steps have been taken to require firms to limit their business and some enforcement investigations have been commenced. It notes that further action will follow for continuing breaches.

<http://www.fca.org.uk/static/documents/dear-ceo-letters/dear-ceo-letter-sipp-operators.pdf>

<http://www.fca.org.uk/static/documents/finalised-guidance/fg13-08.pdf>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbFgNhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZexb1LSG5TMjrjfbUta94swHp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=136966>

<http://www.fca.org.uk/static/documents/thematic-reviews/tr14-12.pdf>

### FCA warnings

Name of firm	Date of warning	Details
Alternative Bridging Corporation	24 July 2014	Clone firm <a href="http://www.fca.org.uk/news/warnings/alternative-bridging-corporation-clone">http://www.fca.org.uk/news/warnings/alternative-bridging-corporation-clone</a>
Hunter and Black Associates	23 July 2014	Not authorised <a href="http://www.fca.org.uk/news/warnings/hunter-and-black-associates">http://www.fca.org.uk/news/warnings/hunter-and-black-associates</a>
ATM Loans UK/ Cash Cloud UK	21 July 2014	Not authorised <a href="http://www.fca.org.uk/news/warnings/atm-loans-uk">http://www.fca.org.uk/news/warnings/atm-loans-uk</a>

## Policy developments

FCA		PRA		
Proposed developments				
		Deadline for responses		
<b>Consultation papers</b>	<p>The FCA has (on 23 July) published a consultation paper (CP 14/12) on removing the requirement imposed by the Transparency Directive for firms to publish interim management statements.</p> <p><a href="http://www.fca.org.uk/static/documents/consultation-papers/cp14-12.pdf">http://www.fca.org.uk/static/documents/consultation-papers/cp14-12.pdf</a></p>	4 September 2014	19 September 2014	<p>The PRA has (on 24 July) published a consultation paper (CP 13/14) on implementing the Recovery and Resolution Directive, which will take effect from 1 January 2015. The paper covers the PRA's proposed approach to preparing, maintaining and submitting recovery plans, providing information for resolution planning purposes, entering into intragroup financing arrangements in advance of recovery, notifications to the PRA and recognition of liabilities which may be subject to bail-in.</p> <p><a href="http://www.bankofengland.co.uk/pr/Documents/publications/cp/2014/cp1314.pdf">http://www.bankofengland.co.uk/pr/Documents/publications/cp/2014/cp1314.pdf</a></p>
	<p>The FCA has (on 21 July) published a consultation paper (CP 14/11) designed to be read in conjunction with the Government's response to its consultation paper on Freedom and Choice in Pensions, giving some further detail on the guidance service intended to assist people make retirement income decisions.</p> <p><a href="http://www.fca.org.uk/your-fca/documents/consultation-papers/cp14-11">http://www.fca.org.uk/your-fca/documents/consultation-papers/cp14-11</a></p>	22 September 2014		

## Further Afield

### Legislation paves the way for senior managers and certification regimes

Some of the provisions of the Financial Services (Banking Reform) Act 2013 have (on 25 July) entered into force, paving the way for the implementation of some of the changes made in response to the recommendations of the Parliamentary Commission on Banking Standards. The sections of Part 4 which have now come into effect deal

with the scope of the senior managers and certification regimes and providing for the making of new rules of conduct and statements of policy by the FCA and PRA. The next stage of the process will be for the FCA and PRA to consult on the detail of the proposals in relation to the new senior managers and certification regimes. They are expected to do so within the next month. Details of key developments to date are set out in the table below.

<http://www.legislation.gov.uk/ukxi/2014/1819/contents/made>

Date	Event
2 July 2012	Proposal for appointment of a Joint Parliamentary Committee <a href="#">announced</a> by Chancellor of the Exchequer:
17 July 2012	Parliamentary Commission on Banking Standards ("PCBS") <a href="#">appointed</a> .
12 October 2012	Report, " <a href="#">Sound Banking: Delivering Reform</a> ", containing Draft Financial Services (Banking Reform) Bill published by HM Treasury ("HMT")
21 December 2012	PCBS' <a href="#">first report</a> published, covering issues including: <ul style="list-style-type: none"> <li>• Electrification of ring-fence</li> <li>• Approach to legislation</li> <li>• Independence of ring-fenced banks</li> <li>• Effect of separation of proprietary trading on standards</li> <li>• Whether to allow basic derivatives inside the ring-fence</li> </ul>
4 February 2013	<a href="#">First reading</a> of Financial Services (Banking Reform) Bill in House of Commons
11 March 2013	PCBS' second report, " <a href="#">Banking reform: Towards the right structure</a> " published, covering issues including: <ul style="list-style-type: none"> <li>• Reinforcement and electrification of ring-fence</li> <li>• Implementation of ring-fence</li> <li>• Capital and loss absorbency</li> <li>• Timescales for scrutiny of and recommendations in respect of senior manager arrangements</li> </ul>
11 March 2013	<a href="#">Second reading</a> of Financial Services (Banking Reform) Bill in House of Commons

15 March 2013	PCBS' third report, " <a href="#">Proprietary trading</a> ", published
19 March 2013 to 16 April 2013	Committee Stage of Financial Services (Banking Reform) Bill in House of Commons (see details of debates <a href="#">here</a> )
5 April 2013	PCBS' fourth report, " <a href="#">An accident waiting to happen: The failure of HBOS</a> ", published
19 June 2013	<p>PCBS final report, "<a href="#">Changing Banking for Good</a>" published, making recommendations in relation to:</p> <ul style="list-style-type: none"> <li>• Steps which may be taken to enable the better functioning of markets</li> <li>• A new framework for individuals in the banking sector, to replace the existing approved persons regime</li> <li>• Steps which may be taken to improve standards in relation to bank governance and culture</li> <li>• Reforms to the remuneration of senior staff</li> <li>• The regulatory and supervisory approach of the PRA and FCA</li> <li>• Sanctions and enforcement</li> </ul> <p>See <a href="#">Clifford Chance briefing</a></p>
8 July 2013	<p>Government (HMT/Department for Business, Innovation and Skills) <a href="#">response</a> to PCBS report published. Confirmed government's intention to legislate to introduce, <i>inter alia</i>,:</p> <ul style="list-style-type: none"> <li>• "senior persons" and "licensing" regimes (since re-named "senior managers" and "certification" regimes) to replace existing approved persons regime</li> <li>• new banking standards rules to replace existing statements of principles</li> <li>• new criminal offence of reckless misconduct in the management of a bank.</li> </ul>
8 July to 9 July 2013	<a href="#">Third reading</a> and report stage (see details of debates <a href="#">here</a> and <a href="#">here</a> ) of Financial Services (Banking Reform) Bill in House of Commons
10 July 2013	<a href="#">First reading</a> of Financial Services (Banking Reform) Bill in House of Lords
24 July 2013	<a href="#">Second reading</a> of Financial Services (Banking Reform) Bill in House of Lords
7 October 2013	<p>FCA <a href="#">response</a> and Bank of England <a href="#">response</a> to PCBS' report published. Bank of England ("BoE") response also issued on behalf of the PRA and FPC. FCA and BoE, <i>inter alia</i>,:</p> <ul style="list-style-type: none"> <li>• indicated their intention to consult on new "senior persons" and "licensing" arrangements during 2014, with the aim of implementation in 2015;</li> <li>• disagreed with the PCBS' recommendations in relation to remuneration and incentives;</li> <li>• agreed with conclusions in relation to governance and risk management and indicated intention to consult on new rules in 2014; and</li> </ul>

	<ul style="list-style-type: none"> <li>disagreed with the PCBS' recommendation that they should have powers to place banks in "special measures" (see also 19 June 2014 below).</li> </ul>
8 October to 23 October 2013	Committee stage of Financial Services (Banking Reform) Bill in House of Lords (see details of debates <a href="#">here</a> , <a href="#">here</a> and <a href="#">here</a> ) See <a href="#">Clifford Chance briefing</a>
26 to 27 November 2013	Report stage of Financial Services (Banking Reform) Bill in House of Lords (see details of debates <a href="#">here</a> and <a href="#">here</a> ). Scope of bill extended to cover PRA regulated firms with permission to conduct proprietary trading
9 December 2013	<a href="#">Third reading</a> of Financial Services (Banking Reform) Bill in House of Lords
11 December to 16 December 2013	"Ping pong" between House of Commons and House of Lords in relation to amendments to Financial Services (Banking Reform) Bill (see details of debates <a href="#">here</a> and <a href="#">here</a> ). House of Commons refused to accept House of Lords amendment which would have required the introduction of a licensing regime across the whole financial services industry, including, <i>inter alia</i> , minimum qualifications and adherence to a code of conduct.
18 December 2013	Financial Services (Banking Reform) Act 2013 ("FS(BR)A 2013") received <a href="#">Royal Assent</a> See <a href="#">Clifford Chance briefing</a>
19 June 2014	Statement, " <a href="#">Tackling serious failings in firms</a> ", published by FCA in response to PCBS recommendation on "special measures" arrangements for banks (which it did not accept – see 7 October 2013 above) See <a href="#">Clifford Chance briefing, This week at the UK regulators, 23 June 2014</a>
25 July 2014	Various provisions of FS(BR)A 2013 in relation to senior managers and certification regimes to enter into force
July/August 2014	FCA/PRA consultation on rules to implement provisions of FS(BR)A 2013 expected to be released
Early 2015	New regimes expected to be implemented

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