

This week at the UK regulators

Thirty second guide: The week in overview

In the only publicised concluded enforcement case last week, the FCA imposed a penalty of almost £8.4 million on an insurance firm for failings relating to its sales process and oversight over outsourced companies. Warning notice statements issued to various individuals indicated that more cases relating to benchmark rates are progressing through its enforcement processes.

Away from enforcement cases, it signalled that it will use its temporary product intervention powers for the first time by making rules, effective from October, restricting the distribution of contingent convertible instruments to retail investors. These temporary rules will be the prelude to more permanent restrictions on the promotion of these instruments to certain categories of investors. It also issued a paper setting out proposed guidance in relation to the use of social media for financial promotions and published statistics indicating a continued steady stream of appointments of skilled persons.

Further afield, in the second major consultation exercise to be commenced in recent weeks, the Monetary Authority of Singapore has published details of proposed changes to the way benchmark rates are set and administered.

FCA imposes fine for sales process failings

The FCA has (on 7 August) imposed a financial penalty of £8,373,600 on Stonebridge International Insurance Limited ("Stonebridge") for breaches of Principles 3 (management and control) and 6 (customers' interests) of its Principles for Businesses ("the Principles"). Specifically, the FCA found deficiencies in the sales process adopted by outsourcing companies between April 2011 and December 2012 through the inappropriate targeting of particular demographic groups when marketing its personal accident, accidental death and accidental cash plan insurance products and found a lack of appropriate oversight of those outsourcing companies. The penalty imposed was reduced by 30 per cent as Stonebridge agreed to settle at an early stage of the FCA's investigation.

The investigation was commenced by the FSA following initial discussion of concerns in relation to the sales process leading Stonebridge to commission its own review. The FSA disagreed with the findings of that review and required a report conducted by a skilled person under section 166 of the Financial Services and Markets Act 2000 to be conducted, the findings of which informed the decision to commence enforcement action.

The Final Notice acknowledges the various remedial steps taken by Stonebridge, including revisions to governance

and risk management frameworks and policies, cessation of sale of the products concerned, revisions to contractual arrangements with outsourcing companies and replacement of the executive management team in place at the time of the breaches.

A customer contact exercise is underway and has already led to redress payments of approximately £400,000. The FCA has estimated that up to 468,444 customers across the UK and EU could be affected, although it has not identified the proportion which may be entitled to redress.

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

FCA uses product intervention powers for the first time

The FCA has (on 5 August) made temporary rules imposing restrictions on the distribution of contingent convertible instruments ("CoCos") to retail investors. The rules will come into force on 1 October 2014 and remain in force for one year. The FCA has exercised its powers to make this type of rules (granted to it under the Financial Services Act 2012) for the first time based upon concerns that the risky and highly complex nature of CoCos makes them unsuitable for some investors. The restrictions are not absolute and will apply only to the distribution of CoCos to retail investors falling within certain prescribed categories. The content of the rules may change as the FCA has

published them at this stage to enable firms and other stakeholders to identify unintended consequence prior to their implementation.

The FCA has also indicated that it will consult on permanent rules on CoCos in September this year, with a view to the publication of a policy statement in the second quarter of 2015 and eventual implementation in October 2015 when the temporary rules lapse.

<http://www.fca.org.uk/static/documents/temporary-product-interventions/restrictions-in-relation-to-the-retail-distribution-of-cocos.pdf>

FCA figures show steady stream of skilled person reports

The FCA has (on 7 August) issued details of skilled persons reports commissioned under section 166 of FSMA during the first quarter of 2014/15. A total of 11 reports have been commissioned during the quarter, up one from the previous quarter. Approximately half related to banks (broadly the same proportion as in the last quarter), with the remainder relating to personal investment, insurance and consumer credit firms. Most of the reports commissioner related to conduct of business, governance, controls and risk management issues.

<http://www.fca.org.uk/static/documents/fca-q1-1415.pdf>

Warning notice statements

The FCA has, throughout the week, issued five warning notice statements in relation to alleged breaches in separate cases:

- On 8 August, the FCA published a warning notice statement issued on 18 July 2014 in respect of alleged breaches of Principle 1 (integrity) of the Statements of Principle and Code of Practice for Approved Persons in connection with irregularities in income statements submitted to mortgage lenders.

<http://www.fca.org.uk/static/documents/warning-notice-statements/warning-notice-statement-14-16-individual.pdf>

- On 8 August, the FCA published four warning notice statements issued variously on 18 June 2014 and 15 May 2014 in respect of alleged knowing concern by individuals in breaches of Principle 5 (market conduct) by a bank or banks in connection with bench mark rate submissions.

<http://www.fca.org.uk/static/documents/warning-notice-statements/warning-notice-statement-14-15-individual.pdf>

<http://www.fca.org.uk/static/documents/warning-notice-statements/warning-notice-statement-14-14-individual.pdf>

<http://www.fca.org.uk/static/documents/warning-notice-statements/warning-notice-statement-14-13-individual.pdf>

<http://www.fca.org.uk/static/documents/warning-notice-statements/warning-notice-statement-14-12-individual.pdf>

FCA sets out its approach to financial promotions in social media

The FCA has (on 6 August) launched a guidance consultation paper aimed at clarifying its approach to the supervision of financial promotions within social media.

The paper recognises the increasing prevalence of the use of digital media, particularly social media, to communicate with customers and issue financial promotions. It makes clear that the FCA does not wish to prevent firms from using social media, which, it acknowledges, form an integral part of many firms' marketing strategies. However, responding to perceived difficulties amongst firms in complying with the FCA rules when communicating digitally, in particular on character-limited social media platforms such as Twitter, it underlines the requirement for financial promotions conveyed through any media platform being clear, fair and not misleading. It highlights particular risks associated with brevity, and suggests steps such as the inclusion of hyperlinks to more comprehensive information.

<http://www.fca.org.uk/static/documents/guidance-consultations/gc14-06.pdf>

FCA imposes temporary restrictions on short selling

The FCA has (on 8 August) imposed a temporary restriction on short selling in shares in Banca Monte dei Pasche di Siena and TOD's. The restriction has been imposed until 23.59 on 11 August and followed a decision by another EU competent authority.

This followed a separate restriction also imposed (on 7 and 8 August respectively) on short selling in shares in Banco Comercial Português, S.A. and Banca Popolare Emilia, also imposed following action by another EU competent authority, which lapsed at 23.59 on 7 and 8 August respectively.

<http://www.fca.org.uk/news/temporary-prohibition-of-short-selling-tods>

<http://www.fca.org.uk/news/temporary-restriction-in-short-selling-banco-comercial-portugues>

<http://www.fca.org.uk/news/temporary-prohibition-of-short-selling-banca-popolare-emilia-romagna>

FCA warnings

Name of firm	Date of warning	Details
Cash Canopy UK	8 August 2014	Not authorised http://www.fca.org.uk/news/warnings/cash-canopy-uk
Leveltrade Ltd t/a LevelTrade	7 August 2014	Not authorised http://www.fca.org.uk/news/warnings/leveltrade-ltd
Thungen Financial/ Thüngen Financial	7 August 2014	Not authorised http://www.fca.org.uk/news/warnings/thungen-financial
TSL Finance Limited	7 August 2014	Clone firm http://www.fca.org.uk/news/warnings/tsl-finance-limited-clone
Heritage Asset Management Limited	6 August 2014	Not authorised http://www.fca.org.uk/news/warnings/heritage-asset-management-limited
DCI Fund Managers Ireland PLC	5 August 2014	Clone firm http://www.fca.org.uk/news/warnings/dci-fund-managers-ireland-plc-clone

Policy developments

FCA		PRA		
Proposed developments				
		Deadline for responses		
Consultation papers	<p>The FCA has (on 6 August) published a consultation paper (CP14/16) on proposed rules which will require the providers of workplace personal pension scheme to set up and maintain IGCs (Independent Governance Committees).</p> <p>http://www.fca.org.uk/static/documents/consultation-papers/cp14-16.pdf</p>	10 October 2014		
Guidance papers	<p>As detailed above, the FCA has (on 6 August) published a guidance consultation paper (GC14/6) inviting views on the proposed guidance which intends to clarify the FCA's approach to the supervision of financial promotions in social media (including in character-limited forms).</p> <p>http://www.fca.org.uk/static/documents/guidance-consultations/gc14-06.pdf</p>	6 November 2014		
	<p>The FCA has (on 6 August) published a guidance consultation paper (GC14/5) in the form of Primary Market Bulletin No 8 proposing various changes to notes contained in the Knowledge Base in relation to the Listing Rules, Prospectus Rules and Disclosure and Transparency Rules.</p>			

	http://www.fca.org.uk/news/guidance-consultations/gc14-5-primary-market-bulletin-no-8			
	The FCA has (on 5 August) published a guidance consultation paper (GC14/4) inviting views on the proposed guidance on the LTI (loan to income) ratio for residential mortgages. http://www.fca.org.uk/static/documents/guidance-consultations/gc14-04.pdf	1 October 2014		
Finalised policy and guidance				
		Implementation/effective date		
Policy statements	The FCA has (on 4 August) issued a policy statement (PS14/12) outlining their final capital rules for SIPP (Self-Invested Personal Pension) operators. http://www.fca.org.uk/static/documents/policy-statements/ps14-12.pdf	1 September 2016		
Finalised guidance	Further to consultation in July and October 2013, the FCA has (on 6 August) published finalised guidance (FG 14/7) updating various notes contained in the Knowledge Base. http://www.fca.org.uk/your-fca/documents/primary-market-bulletin-6 http://www.fca.org.uk/your-fca/documents/primary-market-bulletin-7 http://www.fca.org.uk/news/fg14-07			

Further Afield

Singapore authorities announce overhaul of benchmark regulation

The Monetary Authority of Singapore (MAS) has published its responses to the feedback received to its 14 June 2013 consultation paper on the proposed regulatory framework for financial benchmarks, which intends to enhance the integrity of the processes for setting such benchmarks. Issues addressed include the definition of a financial benchmark, the role of public consultation prior to the prescription of any new rate or index, and who may be subject to potential sanctions for benchmark manipulation.

In a further consultation paper, MAS has proposed amendments to the SFA (Securities and Futures Act), and sought views on the extent to which administrators of financial benchmarks may benefit from a separate voluntary regime. Comments on the consultation paper are due by 29 August 2014.

For full details, please see our Clifford Chance briefing.

<http://www.mas.gov.sg/~media/MAS/News%20and%20Publications/Consultation%20Papers/Response%20Paper%20for%20Financial%20Benchmarks.pdf>

<http://www.mas.gov.sg/~media/MAS/News%20and%20Publications/Consultation%20Papers/Financial%20Benchmarks%20Consultation%20Paper%20%2014Jun13.pdf>

<http://www.mas.gov.sg/~media/MAS/News%20and%20Publications/Consultation%20Papers/Financial%20benchmark%20legis%20consult.pdf>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbfqNHLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRl2crGqLnALtlyZe41xn%2FnBgkY5wHBQc9zqbsHp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=103465>

Contacts

Roger Best
Partner

E: roger.best
@cliffordchance.com

Helen Carty
Partner

E: helen.carty
@cliffordchance.com

Carlos Conceicao
Partner

E: carlos.conceicao
@cliffordchance.com

Dorian Drew
Partner

E: dorian.drew
@cliffordchance.com

Jeremy Kosky
Partner

E: jeremy.kosky
@cliffordchance.com

Rae Lindsay
Partner

E: rae.lindsay
@cliffordchance.com

Kelwin Nicholls
Partner

E: kelwin.nicholls
@cliffordchance.com

Martin Saunders
Partner

E: martin.saunders
@cliffordchance.com

Judith Seddon
Partner

E: judith.seddon
@cliffordchance.com

Luke Tolaini
Partner

E: luke.tolaini
@cliffordchance.com

Editor

Chris Stott
Lawyer

E: chris.stott
@cliffordchance.com

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www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

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