

This week at the UK regulators

Thirty second guide: The week in overview

Aside from the well-publicised conclusion of the latest round of enforcement action for historic failings relating to benchmark rate submissions, the main enforcement development last week was the imposition of the third largest fine ever imposed on an individual in an FSA or FCA enforcement case, as the Upper Tribunal upheld findings that a former hedge fund chief lacked integrity. The Upper Tribunal also ruled on an application made by an individual named in a decision notice issued to his former employer, ruling that the reference could proceed despite the fact that it was made over four months out of time.

Headlines last week were dominated by the announcement by the FCA and PRA of further detail in relation to the new Senior Managers and Certification regimes and new conduct rules (and a new criminal offence) applicable to individuals employed in banks, alongside new rules relating to remuneration, all of which are being implemented in response to the recommendations of the Parliamentary Commission on Banking Standards ("PCBS"). Consultation exercises on their proposals in these areas will run until 31 October.

In response to another recommendation of the PCBS, the FCA and PRA have confirmed that financial incentives for whistleblowers similar to those in place under the Dodd-Frank Act in the US will not become a feature of the UK enforcement landscape. It has also published the findings of a thematic review identifying shortcomings in relation to engagement with and implementation of systems and controls to ensure best execution by firms on behalf of clients and expressing concerns that some firms appear to be in continuing breach of rules relating to payment for order flow. Finally, the FCA has sought to demonstrate its commitment to transparency by publishing details of its performance on processing of various regulatory applications against a set of key performance indicators.

Further afield in the UK, the various ongoing reviews of products and practices in the financial services industry continue to gather momentum, with an announcement in relation to the composition of the panel of senior industry figures appointed to feed into HM Treasury's Fair and Effective Markets Review and a progress report from the Independent Project Board charged with conducting an audit of legacy workplace pension schemes. Meanwhile, in Singapore, the financial services regulator has commenced a consultation exercise on wide ranging enhancements to safeguards for investors.

FCA imposes fine for benchmark failings

The FCA has (on 28 July) imposed a financial penalty of £105 million on Lloyds Bank PLC and Bank of Scotland PLC (together "Lloyds") for breaches of Principles 3 (management and control) and 5 (market conduct) of the Principles for Businesses ("the Principles"). The FCA found breaches in relation to submissions in relation to the GBP BBA Repo Rate benchmark ("the Repo Rate") at the time of the firms' participation in the Bank of England's Special Liquidity Scheme ("SLS") and thereafter and, separately, in relation to GBP, USD and JPY submissions to the London Interbank Offered Rate ("LIBOR") between 2006 and 2009. The FCA's announcement in relation to the conclusion of its action was timed to co-ordinate with a corresponding announcement by the US Commodities and Futures Trading Commission setting out details of a separate

settlement in respect of LIBOR submissions over the same period with which the FCA's investigation into LIBOR submissions was concerned.

The penalty imposed by the FCA was reduced by 30 per cent as Lloyds agreed to settle at an early stage of its investigation. The Final Notice acknowledges that Lloyds has repaid £7.76 million (representing savings on fees paid in connection with the SLS attributable to the breaches in relation to the Repo Rate) to the Bank of England. Separately, the Bank of England has published correspondence with Lloyds in relation to these payments.

<http://www.fca.org.uk/static/documents/final-notices/lloyds-bank-of-scotland.pdf>

<http://www.cftc.gov/PressRoom/PressReleases/pr6966-14>

<http://www.bankofengland.co.uk/publications/Pages/news/2014/103.aspx>

Tribunal upholds fine and ban on former hedge fund chief

The Upper Tribunal has (on 30 July) published its judgment directing the FCA to impose a financial penalty of £2.7 million and a prohibition order on Mr Alberto Micalizzi, the former CEO of the now defunct Dynamic Decisions Capital Management ("DDCM") hedge fund. The Tribunal agreed with the findings of the FSA in its Decision Notice issued in March 2012 (released in May 2012 - see FSA Update, 1 June 2012) that Mr Micalizzi lacked integrity and, on occasions, acted dishonestly, breaching Principle 1 of the Code of Practice and Statements of Principle for Approved Persons, by misrepresenting the value of a fund in an effort to conceal losses in 2008. The fund in question is now in liquidation and DDCM is no longer authorised by the FCA (see Decision Notice issued to DDCM in March 2012, which, it appears, although it was referred to the Tribunal, has not been contested). Investigations by Italian authorities in connection with the collapse of DDCM are understood to be continuing.

The Tribunal rejected arguments advanced by Mr Micalizzi that the penalty should be reduced on the grounds that it would cause serious financial hardship. However, it did reduce the penalty from £3 million to £2.7 million to reflect the withdrawal by the FCA of an allegation in relation to a forged letter. The penalty, which did not contain any element of disgorgement, is the third highest ever imposed on an individual following enforcement action taken by the FSA or FCA (or the second highest if disgorgement elements of previous substantial penalties imposed on individuals are disregarded – see FSA Update, 14 November 2011 and 6 February 2012 for details of penalties imposed on Rameshkumar Goenka and Ravishankar Sinha for market abuse and involvement in a fraudulent invoicing scheme respectively).

<http://www.tribunals.gov.uk/financeandtax/Documents/decisions/Micalizzi-v-FCA.pdf>

<http://www.fsa.gov.uk/static/pubs/decisions/alberto-micalizzi.pdf>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWibFgNhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZe96MnFmmEUfLDb24p%2Bkv1xrp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=195288>

<http://www.fca.org.uk/static/pubs/decisions/ddcm.pdf>

http://www.fca.org.uk/static/pubs/final/rameshkumar_goenka.pdf

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWibFgNhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZe8oHsS8L115XMuA2WiTVt5zp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=91727>

<http://www.fsa.gov.uk/static/pubs/final/ravi-sinha.pdf>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWibFgNhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZe9wlv%2FqGqfR%2BcjXgxEd4XHfp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=135675>

Tribunal decides to allow late reference

The Upper Tribunal has (on 28 July) released its judgment (dated 11 July) setting out its detailed reasons for granting an application made by Mr Javier Martin-Artajo for his reference under section 393 of the Financial Services and Markets Act 2000 ("FSMA") to be accepted outside the statutory 28 day time limit. His reference relates to his contentions that he was identified in a decision notice issued to his former employer in September 2013, that the reasons set out in that notice were prejudicial to him and that he should have been provided with a copy of the notice and allowed to make representations on its contents. Mr Martin-Artajo was the subject of a FCA investigation, which was discontinued in December 2013. The Tribunal decided that, although some of the delays in making the reference were, with hindsight, avoidable, the reference should proceed to permit him to challenge the criticisms made of him in the notice issued to his former employer and because the delays will not, in the circumstances of the case, affect the efficiency with which the litigation can be dealt with (as the Tribunal will only hear the substantive reference once it has dealt with another linked reference).

<http://www.tribunals.gov.uk/financeandtax/Documents/decisions/Javier-Martin-Artajo-v-FCA.pdf>

FCA and PRA unveil plans on individual accountability and remuneration

The FCA and PRA have (on 30 July) released two joint consultation papers aimed at improving individual responsibility and accountability in the banking sector. The papers detail how the regulators propose to implement the

recommendations of the Parliamentary Commission on Banking Standards ("PCBS") in relation to individual accountability and remuneration, which were given legal effect by provisions of the Financial Services (Banking Reform) Act which entered into force on 25 July (see This week at the UK regulators, 29 July for more details and for a timeline setting out the progress of the work of the PCBS and subsequent steps taken to implement various of its recommendations).

Their paper, "Strengthening accountability in banks: a new regulatory framework for individuals" sets out further detail in relation to the new Senior Managers regime, which will replace the current approved persons framework for individuals in charge of banks and the Certification regime, under which banks will be required to continually assess the fitness and propriety of all their employees involved in the regulated activities it undertakes. The paper also sets out proposals for the new conduct rules which will cover all senior managers and certified persons and refers briefly to the new criminal offence also enacted in response to the PCBS' recommendation, which will enable the FCA or PRA to prosecute Senior Managers where their decisions contribute to the failure of a bank (although it notes that such prosecutions will be rare).

In their separate paper, "Strengthening the alignment of risk and reward: New remuneration rules", they propose changes focusing on the terms under which variable remuneration is paid to individuals. These include increases in the period of deferral of remuneration and the introduction of a phased approach to vesting, enhancements to firms' ability to recover variable remuneration, even where it has been paid out or vested and measures aimed at reducing the extent to which individuals can evade recovery by changing firms and strengthening the existing presumption against discretionary payments where banks have been bailed out.

The PRA has also published a policy statement setting out final rules on clawback introducing a seven year minimum period for clawback from the date of awards. Those rules take effect on 1 January 2015.

The FCA and PRA have invited responses to the papers by 31 October 2014 and have indicated that they will issue further technical consultation papers with a view to the introduction of new finalised rules in early 2015.

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlBfgNhlNomwBl%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZe2lJXvFMbNdfi61Rhsa4rTD>

[p%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=280149](http://www.fca.org.uk/static/documents/consultation-papers/cp14-13.pdf)

<http://www.fca.org.uk/static/documents/consultation-papers/cp14-13.pdf>

<http://www.fca.org.uk/static/documents/consultation-papers/cp14-14.pdf>

<http://www.bankofengland.co.uk/pradocuments/publications/cp/2014/cp1514.pdf>

<http://www.bankofengland.co.uk/pradocuments/publications/ps/2014/ps714.pdf>

FCA and PRA confirm no payments for whistleblowers in the UK

Dealing with another of the recommendations of the PCBS, the FCA and PRA have (on 30 July) issued a joint statement confirming that they have decided not to introduce financial incentives for whistleblowers similar to those in operation in the US under the provisions of the 2010 Dodd-Frank Act. Its paper sets out its findings, based on research and liaison with the US Securities and Exchange Commission, that the introduction of financial incentives would be unlikely to increase the number or quality of disclosures received, and details their practical concerns, which include that the introduction of such arrangements may lead to malicious reporting and may be inconsistent with their expectations about notification of issues and government policy more generally. The paper concludes by stating that, instead, both regulators intend to continue to seek to improve firms' whistleblowing procedures.

<http://www.fca.org.uk/static/documents/financial-incentives-for-whistleblowers.pdf>

FCA finds failings in best execution

The FCA has (on 31 July) published the findings of its thematic review on best execution and payment for order flow. The review found deficiencies in the levels of understanding in firms about the scope of their best execution obligations and in the front office business practices and supporting controls used to deliver it consistently. It found shortcomings in management engagement in relation to best execution and identified a need for all firms to prepare for the introduction of MiFID II.

It also found that a small number of firms continue to receive payment for order flow, contrary to the indications given in finalised guidance issued in May 2012, which

indicated the FSA's view that firms should not engage in the practice (see FSA Update, 21 May 2012). The FCA has stated that it is keeping compliance in this area under review and is considering how to proceed, which may include taking enforcement action.

<http://www.fca.org.uk/static/documents/thematic-reviews/tr14-13.pdf>

<http://www.fsa.gov.uk/static/pubs/guidance/fq12-13.pdf>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlBfGnlhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZeZlXnN7s5Yxj8DTG1bSvLbbp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=122277>

FCA releases details of performance on regulatory decision making

As part of its drive for greater transparency, the FCA has (on 1 August) released a summary of how it is performing against number of key performance indicators in relation to authorisations, variations of permission, payment services

and electronic money applications and waivers. The release shows that the time taken on average for processing across all four areas has risen, a trend stated to be attributable to factors including an increase in the number of poor quality applications submitted and the devotion of resources to a number of high risk cases.

<http://www.fca.org.uk/static/documents/corporate/key-performance-indicators-july-2014.pdf>

FCA imposes temporary restriction on short selling

Further to similar restrictions in respect of the same instruments in recent weeks, the FCA has again (on 1 August) imposed a temporary restriction on short selling of shares in Banco Espirito Santo. It imposed the restriction, which is in place until 11.59 on 4 August, in response to a decision made by the Portuguese regulator, the Comissão do Mercado de Valores Mobiliários.

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

FCA warnings

Name of firm	Date of warning	Details
Krypton Studios	30 July 2014	Not authorised http://www.fca.org.uk/news/warnings/krypton-studios
Eden & Bracha Ltd	30 July 2014	Not authorised http://www.fca.org.uk/news/warnings/eden-bracha-ltd
Willow and Black	29 July 2014	Not authorised http://www.fca.org.uk/news/warnings/willow-and-black
The Mortgage Centre 1 Limited t/a The Mortgage Centre	29 July 2014	Not authorised http://www.fca.org.uk/news/warnings/the-mortgage-centre-1-limited
Rolf Muller	29 July 2014	Clone firm http://www.fca.org.uk/news/warnings/rolf-muller-clone

Policy developments

FCA		PRA	
Proposed developments			
		Deadline for responses	
Consultation papers	<p>The FCA has (on 1 August) published a consultation paper (CP 14/15) on the transposition of the provisions of the Recovery and Resolution Directive into the Handbook.</p> <p>http://www.fca.org.uk/static/documents/consultation-papers/cp14-15.pdf</p>	1 October 2014	
	<p>As detailed above, the FCA and PRA have (on 30 July) published a joint consultation paper "Strengthening accountability in banks: a new regulatory framework for individuals" (FCA reference CP14/13) setting out proposals in relation to the New Senior Managers and Certification regimes and conduct rules introduced in response to the recommendations of the PCBS.</p> <p>http://www.fca.org.uk/static/documents/consultation-papers/cp14-13.pdf</p>	31 October 2014	<p>As detailed above, the FCA and PRA have (on 30 July) published a joint consultation paper "Strengthening accountability in banks: a new regulatory framework for individuals" (PRA reference CP14/14) setting out proposals in relation to the New Senior Managers and Certification regimes and conduct rules introduced in response to the recommendations of the PCBS.</p> <p>http://www.bankofengland.co.uk/pr/Pages/publications/cp/2014/cp1414.aspx</p>
	<p>As detailed above, the FCA and PRA have (on 30 July) published a joint consultation paper "Strengthening the alignment of risk and reward: New remuneration rules" (FCA reference CP 14/14) setting out new proposed rules in relation to variable remuneration.</p>	31 October 2014	<p>As detailed above, the FCA and PRA have (on 30 July) published a joint consultation paper "Strengthening the alignment of risk and reward: New remuneration rules" (PRA reference CP 15/14) setting out new proposed rules in relation</p>

	http://www.fca.org.uk/static/documents/consultation-papers/cp14-14.pdf			to variable remuneration. http://www.bankofengland.co.uk/pr/Documents/publications/cp/2014/cp1514.pdf
Finalised policy and guidance				
Policy statements			1 January 2015	As detailed above, further to a consultation paper (CP 6/14) published in March 2014 the PRA has (on 30 July) issued a policy statement (PS 7/14) setting out new finalised rules in relation to clawback. http://www.bankofengland.co.uk/pr/Documents/publications/policy/2014/clawbackcp6-14.pdf http://www.bankofengland.co.uk/pr/Documents/publications/ps/2014/ps714.pdf

Further Afield

Industry panel for Fair and Effective Markets Review announced

Further to the launch by the Chancellor of the Exchequer of the Fair and Effective Markets Review in June, the Bank of England has (on 30 July) announced the membership of the independent Market Practitioner Panel, intended to be a channel for market participants to contribute to the review. The panel, composed of senior executives from buy and sell side firms, market infrastructure providers and corporate users of financial markets, will be formed of a steering group and a number of expert groups.

<http://www.bankofengland.co.uk/publications/Pages/news/2014/107.aspx>

<http://www.bankofengland.co.uk/publications/Documents/news/2014/mppmembers.pdf>

Independent project board issues update on defined contribution workplace pension charges and benefits audit

The Independent Project Board, which is undertaking an audit of defined contribution workplace pensions, composed of representatives of the Department of Work and Pensions, the FCA, the Competition and Markets Authority, the Pensions Regulator, industry and consumers has (on 1 August) issued a paper setting out its approach and methodology. The audit stems from a report by the Office of Fair Trading in September 2013 which identified approximately £30 billion of savings in old (pre 2001) and other high charging contract and bundled-trust pension

schemes that may not be achieving value for money when compared with modern defined contribution workplace pension schemes. It was agreed between the Competition Commission and the Association of British Insurers that the audit would be conducted as an alternative to a market investigation reference. The audit is collecting data on all workplace pensions sold before 2001 and all post-2001 workplace pensions with charges over one per cent per annum. The board has indicated that it expects to issue its final report in December 2014.

<http://www.fca.org.uk/static/article-type/statement/defined-contribution-workplace-pension.pdf>

Singapore regulator proposes enhanced investor protection safeguards

The Monetary Authority of Singapore ("MAS") has issued a consultation paper seeking feedback on proposed measures to enlarge the regulatory perimeter and enhance safeguards for investors. Proposals include regulating buy-back schemes in relation to precious metals and collectively managed investment schemes sharing the characteristics of regulated collective investment schemes, introducing a complexity risk rating framework and refining the definitions of investor classes under relevant legislation. For full details, see our Clifford Chance briefing.

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbfGnhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZe41xn%2FnBgkY5V6LSdcUgNAzp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=114155>

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