

# This week at the UK regulators

## Thirty second guide: The week in overview

After a quiet spell over the Easter break, last week saw the FCA impose the two highest financial penalties of 2015 to date for client assets and complaints handling failings. The FCA has also confirmed a prohibition order imposed on a former insurance broker for fitness and propriety issues arising from false evidence submitted in separate High Court proceedings and attempts to mislead the FCA.

In policy developments, the FCA has published finalised guidance clarifying steps to be taken by multilateral trading facilities.

Further afield, the European Council has approved the fourth Money Laundering Directive, which will require changes to member states' anti-money laundering laws by mid 2017.

### FCA takes action for client asset rule breaches

The FCA has (on 14 April) imposed a financial penalty of £126 million on The Bank of New York Mellon London Branch ("BNYMLB") and The Bank of New York Mellon International Limited ("BNYMIL") for breaches of Principle 10 (client assets) of the Principles for Businesses ("the Principles") and rules set out in its Client Assets Sourcebook ("CASS") between November 2007 and August 2013. The breaches related to record keeping, requirements to prevent commingling, the use of assets held in omnibus accounts and CASS-specific governance requirements.

The financial penalty imposed was calculated using a combination of the rules in force prior to March 2010 and the revised, more stringent, rules in place after that date. Under these revised rules, set out in chapter 6.5A of the Decision Procedure and Penalties Manual ("DEPP"), financial penalties imposed in respect of breaches of client asset rules occurring after March 2010 are calculated as a percentage of the custody asset value at the relevant time. Since the financial crisis, the FSA and FCA have identified client assets as a priority area and have used these rules to impose substantially higher fines on firms for breaches in this area in a succession of enforcement cases.

The penalty imposed was reduced by 30 per cent as BNYMLB and BNYMIL agreed to settle at an early stage of the FCA's investigation and the Final Notice issued recognises that the firms have committed significant

resources to addressing and remedying the issues identified by the FCA.

<http://www.fca.org.uk/static/documents/final-notice/bank-of-new-york-mellon-london-international.pdf>

### FCA imposes fine for PPI failings

The FCA has (on 14 April) imposed a financial penalty of £20,678,300 on Clydesdale Bank PLC ("Clydesdale") for breaches of Principle 6 of the Principles in connection with the handling of complaints brought by customers who had purchased payment protection insurance ("PPI"). The FCA found that, between May 2011 and June 2013, some complaints handlers did not take into account all relevant documents and that, in a small number of cases, inaccurate information in relation to complaints was provided to customers and the Financial Ombudsman Service. It also found some instances where complaints handlers did not identify that sales of PPI to customers had been unsuitable and some deficiencies in training and monitoring.

The penalty imposed was reduced by 30 per cent as Clydesdale agreed to settle at an early stage of the FCA's investigation. The Final Notice records Clydesdale's co-operation during the FCA's investigation and confirms that Clydesdale has decided to review all PPI complaints handled prior to August 2014 and offer redress to customers where appropriate.

<http://www.fca.org.uk/static/documents/final-notice/clydesdale-bank-plc-2015.pdf>

<http://www.cbonline.co.uk/resources/55c851b2-8f8c-4886-9b76-f8625fe79f1b/ppi-response.pdf>

### Other enforcement notices

The FCA has (on 14 April) issued a Final Notice giving effect to the decision of the Upper Tribunal in August 2014 that Mr Stephen Allen, a former insurance broker, should be prohibited from performing any function in relation to any regulated activity carried on by any authorised or exempt person. The Tribunal based its decision on findings that Mr Allen submitted a forged document and gave untrue evidence in High Court proceedings and attempted to mislead the FCA. For full details of the proceedings before the Tribunal, see This week at the UK regulators, 19 August 2014. Mr Allen pursued an appeal against the Tribunal's determination to the Court of Appeal, which was dismissed in February this year. The FCA has now issued its Final Notice following the expiry of time limits for him to pursue the matter further.

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

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

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbfGnhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZeyVKu4y3EoxVM20r2Uix6gPp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=130619>

The FCA has (on 14 April) cancelled the permission of Focus Wealth Management LLP for non payment of fees and levies.

<http://www.fca.org.uk/static/documents/final-notices/focus-wealth-management-llp.pdf>

### FCA warnings

| Name of firm               | Date of warning | Details   |
|----------------------------|-----------------|---|
| Black Rock Ltd             | 13 April 2015   | Clone firm<br><a href="http://www.fca.org.uk/news/warnings/black-rock-ltd-clone">http://www.fca.org.uk/news/warnings/black-rock-ltd-clone</a>                 |
| Shields Corporate Partners | 13 April 2015   | Not authorised<br><a href="http://www.fca.org.uk/news/warnings/shields-corporate-partners">http://www.fca.org.uk/news/warnings/shields-corporate-partners</a> |

## Policy developments

| FCA                           |  | PRA                            |  |
|-------------------------------|--|--------------------------------|--|
| Finalised policy and guidance |  |                                |  |
|                               |  | Implementation /effective date |  |
| <b>Finalised guidance</b>     | <p>Following a guidance consultation paper (GC 14/9) released in December 2014, the FCA has (on 15 April) published finalised guidance (FG 15/6) in relation to multilateral trading facilities ("MTFs"). The guidance, which arises from a thematic review which examined MTFs' compliance with particular aspects of Chapter 5 of the FCA's Code of Market Conduct, includes a Dear CEO letter sent to MTFs and a consolidated list of good practice observations.</p> <p><a href="http://www.fca.org.uk/static/documents/finalised-guidance/fg15-06.pdf">http://www.fca.org.uk/static/documents/finalised-guidance/fg15-06.pdf</a></p> <p><a href="http://www.fca.org.uk/static/documents/guidance-consultations/gc14-09.pdf">http://www.fca.org.uk/static/documents/guidance-consultations/gc14-09.pdf</a></p> |                                |  |

## Further afield

### **Fourth Money Laundering Directive moves one step closer**

The EU Fourth Money Laundering Directive, which will eventually replace the current EU anti-money laundering framework, has passed the latest milestone on its stately journey. On 14 April, the European Council indicated its approval and passed the text to the European Parliament, which will vote on the proposed final wording of the directive before it is published in the Official Journal and the period for implementation by member states begins to run. Current expectations are that member states will be required to give effect to its provisions by mid 2017.

<http://data.consilium.europa.eu/doc/document/ST-5933-2015-INIT/en/pdf>

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