

This week at the UK regulators

Thirty second guide: The week in overview

In the latest of a number of such judgments, the Upper Tribunal has held that a collective reference to traders belonging to a particular part of a bank was sufficient to identify a junior trader in a Decision Notice issued by the FCA on 18 September 2012.

The FCA has published the findings of two separate thematic reviews, one dealing with dark pools and the other looking at principals and their appointed representatives in the general insurance sector. The Bank of England has issued a consultation paper proposing the establishment of an independent committee, modelled on the FCA's Regulatory Decisions Committee, to take all of the PRA's contested enforcement statutory notice decisions.

The Treasury Select Committee has published a report confirming that it approves of the appointment of Andrew Bailey as CEO of the FCA. This followed the publication of a pre-appointment questionnaire completed by Dr Bailey in which he set out his priorities, which include developing a clear mission for the FCA and strengthening the regulator's governance arrangements.

Further afield, the FCA and the Financial Services Commission of Korea have entered into a co-operation agreement intended to promote collaboration between the innovation functions of both regulators. In similar developments, following the announcement earlier in the year of co-operation agreements between the FCA, the Australian, Singaporean and Swiss regulators aimed at encouraging the development of the burgeoning fintech industry, the Australian Securities and Investments Commission and the Monetary Authority of Singapore have entered into a co-operation agreement designed to assist fintech businesses to expand into each other's markets.

Upper Tribunal finds that trader was identified in Decision Notice

The Upper Tribunal held in a judgement issued on 7 July 2016 that Mr Julien Grout, a former junior trader, had been identified by the FCA (within the meaning of section 393 of the Financial Services and Markets Act 2000) in a Decision Notice issued on 18 September 2012. Applying the test in the Court of Appeal's judgement in *FCA v Macris [2015] EWCA Civ 490* (see This week at the UK regulators, 27 May 2015), in respect of which the FCA is pursuing an appeal to the Supreme Court, the tribunal concluded that references in the Decision Notice to "the traders on the SCP" and "traders on the SCP" were sufficient to identify Mr Grout. In doing so, it had regard to external material available and the fact that Mr Grout was one of only four traders on the Synthetic Credit Portfolio (SCP). The tribunal also held that the references to Mr Grout in the Decision Notice were prejudicial to him. The FCA has sought permission to appeal the decision.

<http://www.tribunals.gov.uk/financeandtax/Documents/decisions/julien-grout-v-fca.pdf>

https://www.cliffordchance.com/briefings/2015/05/this_week

[_at_theukregulators-27may2015.html](#)

Final Notices

The FCA has on (21 July) issued a Final Notice cancelling the permission granted to H Finnikin to carry on regulated activities. The FCA found that H Finnikin had failed to comply with the regulatory requirement to submit a return or respond adequately to the FCA's repeated requests to submit the return.

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

In separate Final Notices (both issued on 22 July), the FCA has cancelled the permissions granted to Richard Williams trading as Matrix Integrated Financial Solutions and Kildare Capital (UK) Limited to carry on regulated activities. Both firms have failed to pay overdue balances to the FCA or respond to repeated requests for payment.

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

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

Bank of England proposes new enforcement decision making arrangements

The Bank of England has (on 22 July) published a consultation paper proposing the establishment of a unified Enforcement Decision Making Committee (EDMC) to take decisions in contested enforcement cases in respect of: (1) the PRA's statutory remit; (2) Financial Market Infrastructure; and (3) Resolution.

The model proposed is based largely on the FCA's Regulatory Decisions Committee. The consultation paper sets out the proposed mechanics for the appointment of a panel of members and arrangements for cooperation with the FCA and states that the Bank intends to publish guidance on its enforcement process during the course of 2017. Responses have been invited by 21 October 2016.

<http://www.bankofengland.co.uk/publications/Documents/other/edmc/cpedmc2016.pdf>

Treasury Select Committee endorses Andrew Bailey as FCA CEO

The Treasury Select Committee has (on 21 July) published a report confirming that it considers that Andrew Bailey, who became Chief Executive Officer of the FCA on 1 July, has the competence and personal independence required for the role. This followed the publication of a pre-appointment questionnaire on 20 July. In responding to the Committee's questions, Dr Bailey said that he had two principal priorities for his time as CEO. The first is to establish and embed a well understood mission for the FCA, adding that he hoped that the FCA would publish a proposal for the FCA's mission in the early autumn. The second priority was to strengthen the FCA's governance arrangements. Dr Bailey also said that he thought that the FCA would likely have to face the following "big issues" during his tenure:

- the introduction and embedding of effective competition across financial services, and thus the role of the FCA as a competition authority;
- the establishment of an effective role for the FCA to support innovation and the development of Fintech while ensuring that all the consequences of disruptive financial change can be handled;
- ensuring effective redress processes where they are needed, and in doing so moving away from the more bespoke arrangements of recent times; and

- ensuring that the UK is at the forefront of tackling financial crime of all sorts.

<http://www.publications.parliament.uk/pa/cm201617/cmselect/cmtreasy/568/56802.htm>

<http://www.parliament.uk/documents/commons-committees/treasury/Andrew-Bailey-questionnaire.pdf>

FCA sheds light on dark pools

The FCA has (on 21 July) published the conclusions of its thematic review into dark pools. The thematic review did not find breaches of regulatory requirements and acknowledges that firms have responded to previously expressed regulatory concerns about, for example, conflicts of interest. However, it did find room for improvement in a number of areas relating to areas including monitoring, best execution, marketing materials, client onboarding, operational design and integrity, confidentiality, conflicts of interest and governance. The report contains examples of good and poor practice and a list of 75 questions for operators to ask themselves to assess the quality of their compliance systems.

<http://www.fca.org.uk/your-fca/documents/thematic-reviews/tr16-05>

FCA reports on principals and their appointed representatives in the general insurance sector

The FCA has (on 22 July) published the conclusions of its thematic review into principal firms' understanding of their regulatory obligations to their appointed representatives and their level of oversight of their appointed representative's activities. The FCA identified significant shortcomings in the control and oversight of appointed representatives by many of the firms included in the review. The FCA expressed concern that these failings increased the risk of mis-selling and had given rise to actual instances of customer detriment. As a result, the FCA is taking early intervention action against five of the fifteen principal firms in the review's sample and considering the need for customer redress.

<http://www.fca.org.uk/static/documents/thematic-reviews/tr16-06.pdf>

FCA and the Financial Services Commission of Korea enter into cooperation agreement

The FCA and the Financial Services Commission of Korea

have (on 22 July) entered a cooperation agreement to provide a framework for co-operation between their respective innovation functions. Both regulators will share information about innovations in financial services in their respective markets including information relating to emerging market trends and developments, regulatory issues pertaining to innovation in financial services and

information on organisations or bodies which lead efforts to promote innovation in financial services.

<http://www.fca.org.uk/static/fca/documents/mou/fca-korean%20fsc-co-operation-agreement.pdf>

FCA warnings

Name of firm	Date of warning	Details
Carlton Brown S.A.	22 October 2015	Not authorised http://www.fca.org.uk/news/warnings/carlton-brown-sa
Hans Advisers / Hans Advisors	22 October 2015	Not authorised http://www.fca.org.uk/news/warnings/hans-advisers-advisors
Sunbird FX c/o Spring Empire Solutions Limited	22 October 2015	Not authorised http://www.fca.org.uk/news/warnings/sunbird-fx-spring-empire-solutions-limited
Goldberg Management	22 October 2015	Not authorised http://www.fca.org.uk/news/warnings/goldberg-management
UK Same Day Loans Limited	22 October 2015	Not authorised http://www.fca.org.uk/news/warnings/uk-same-day-loans-limited-cc
Regulated Broker	22 October 2015	Not authorised http://www.fca.org.uk/news/warnings/regulated-broker
Lackner Kurt	21 October 2015	Clone firm http://www.fca.org.uk/news/warnings/lackner-kurt-clone
Brixton Business Consultants	20 October 2015	Not authorised http://www.fca.org.uk/news/warnings/brixton-business-consultants

e-Quote Insurance Services	19 October 2015	Not authorised http://www.fca.org.uk/news/warnings/e-quote-insurance-services
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Policy developments

FCA		PRA		
Proposed developments				
		Deadline for responses		
Consultation papers	The FCA has (on 18 July) published a Consultation Paper (CP 16/18) on changes to the disclosure rules in the FCA Handbook to reflect the direct application of the Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation. http://www.fca.org.uk/static/fca/documents/consultation-papers/cp16-18.pdf	19 September 2016	21 October 2016	The Bank of England has (on 22 July) published a consultation paper proposing the establishment of an Enforcement Decision Making Committee that would take all of the PRA's contested enforcement statutory notice decisions. http://www.bankofengland.co.uk/publications/Documents/other/edmc/cpedmc2016.pdf

Further Afield

The Australian Securities and Investments Commission (ASIC) and the Monetary Authority of Singapore (MAS) have entered into a co-operation agreement to create dedicated teams that will support fintech businesses to expand into each other's markets by providing advice, support and approvals in relation to regulatory matters. ASIC has also released a consultation paper on its proposed measures to facilitate innovation in financial services which includes implementing a limited industry-wide regulatory sandbox to allow start-ups to test certain financial services for six months without holding a financial services licence. The co-operation agreement is similar to the agreements that both regulators entered into with the FCA earlier in the year.

More information can be found in our briefing note:

https://www.cliffordchance.com/briefings/2016/07/building_castlesinsandboxes-australiaan0.html

More information regarding the co-operation agreements between the FCA and the Australian and Singaporean regulators can be found in the 4 April 2016 edition of This Week at the UK Regulators:

https://www.cliffordchance.com/briefings/2016/04/this_week_at_theukregulators-4april2016.html

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