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Briefing note 14 April 2014

This week at the UK regulators

Thirty second guide: The week in overview

This week has seen mainstream coverage of the FCA non-executive directors' decision to appoint Clifford Chance's Simon Davis to lead the independent inquiry into the FCA's decision to brief media sources about a proposed review of life policies. The FCA has also released guidance on informing customers of the changes to pension rules following the most recent Budget. The FCA highlighted examples of best practice in the way these changes should be communicated to customers.

New data published by the FCA shows a fall in complaints against financial services firms: complaints fell by 15% in the second half of 2013, when compared with the previous six months. The FCA is also mooting the possibility of making some voluntary measures relating to overdrafts mandatory following research that suggests overdrafts are not currently providing good value.

The Upper Tribunal has determined that Achilles Macris was identified in a Decision Notice issued to JP Morgan Chase Bank NA in September 2013 in connection with the 'London Whale' matter by the FCA and should have been afforded 'third party rights'.

In another case, the Upper Tribunal has overturned a decision of the FCA's Regulatory Decisions Committee to take account of serious financial hardship in reducing a financial penalty on an independent broker for submitting fraudulent mortgage applications.

Further afield, a US judge has approved a $1.8 billion settlement between the US Government and SAC Capital Advisors, L.P.

FCA Independent Directors Appoint Clifford Chance and Publish Terms of Reference

This week Simon Davis was appointed to conduct the independent inquiry into the handling of the FCA's announcement of proposed supervisory work on the fair treatment of long standing customers in life insurance.

The Terms of Reference for the inquiry include *"why and with whose knowledge and authorisation was this briefing given, particularly to a single journalist", "why the FCA's clarificatory statement was issued so late during the day after the story was published, rather than Thursday night"*, and *"whether a false or disorderly market was present during this period"*.

http://www.fca.org.uk/news/fca-independent-directors-appoint-external-law-firm-and-publish-terms-of-reference

http://www.fca.org.uk/your-fca/documents/inquiry-terms-of-reference

Upper Tribunal Holds that Individual Referred to in FCA Notice Has Third Party Rights

A preliminary decision of the Upper Tribunal has held that Achilles Macris, albeit that he was not referred to by name, was identified in an FCA notice issued to JP Morgan Chase Bank NA in September 2013 in connection with the 'London Whale' matter. The FCA did not dispute that if Mr Macris was identified in the Final Notice then certain findings contained in that notice are prejudicial to him in that they include serious criticism. The Tribunal's ruling is to the effect that Mr Macris should have been afforded the opportunity to contest those findings.

The FCA will seek permission to appeal the decision. If permission is not granted, or the FCA's appeal is unsuccessful, the next stage in the process will be for the Tribunal to determine the substance of the findings made against Mr Macris.

http://www.tribunals.gov.uk/financeandtax/Documents/decisions/Achilles-Macris-v-FCA.pdf

http://www.fca.org.uk/news/statements/statement-on-achilles-macris

Amir Khan v FCA

The Upper Tribunal has upheld a decision of the Regulatory Decisions Committee (RDC) to impose a financial penalty of £80,000 on Mr Amir Khan.

The then FSA (for ease of reference, we will refer to the FCA) had previously issued a decision notice regarding Mr Khan finding, amongst other things, that Mr Khan had fraudulently submitted a personal mortgage application traded through his Edinburgh-based company Sovereign Worldwide Limited. Consequently, the FCA imposed a financial penalty of £80,000, withdrew his Approved Person status and made an order against Mr Khan prohibiting him from performing any function in relation to any regulated activities. Mr Khan subsequently referred the FCA's decision to impose a financial penalty of £80,000 to the Upper Tribunal.

The FCA submitted to the Upper Tribunal that the financial penalty should in fact be increased to £100,000 being the amount of the penalty originally proposed by the FCA before the RDC reduced the amount of the penalty to £80,000. The Upper Tribunal rejected the FCA's submission and upheld the RDC's decision to impose a financial penalty of £80,000, being reluctant to increase financial penalties except in clear cases, for example, where it could be proven that the conduct in question was more serious than the FCA first believed. The Upper Tribunal determined that Mr Khan's actions were dishonest and that a financial penalty of £80,000 was within the range of penalties previously applied in such cases. The Upper Tribunal also rejected the FCA's submission that issues of financial hardship should not be considered in Mr Khan's case, although the Upper Tribunal did conclude that Mr Khan had the means to pay the financial penalty imposed

.http://www.tribunals.gov.uk/financeandtax/Documents/decisions/Amir-Khan-v-FSA.pdf

FCA Publishes Complaints Data

The data released this week highlights a significant fall in the number of complaints made about the conduct of financial services firms in the second half of last year.

Complaints about mortgage firms, insurance firms, banks and building societies all decreased, though complaints concerning personal investment firms and securities and futures firms increased slightly. The FCA data suggests that the decrease may be due in large part to a fall in complaints connected to Payment Protection Insurance (PPI) mis-selling.

http://www.fca.org.uk/firms/systems-reporting/complaints-data

FCA Research Suggests Overdrafts Offer Poor Value

FCA analysis of reports it commissioned on consumer credit have led it to suggest that overdraft products currently offer poor value-for-money. The FCA suggests that this may be due to a popular perception that overdraft funds are an extension of the customer's income, leading to an absence of any pressure on banks to improve their value.

The FCA further suggests that there are incentives for banks to raise overdraft limits in order to increase revenue, although customers often perceive an increased overdraft as a gesture of trust from the bank. Of particular concern to the FCA, though, are unarranged overdrafts, which the research suggests are difficult for customers to understand and carry particularly high and opaque fees.

In light of these findings, the FCA moots the possibility of making some voluntary measures mandatory in autumn 2014.

http://www.fca.org.uk/your-fca/documents/research/consumer-credit-research-low-income

http://www.fca.org.uk/your-fca/documents/research/consumer-credit-deep-dives--credit-cards-unauthorised-overdrafts-

FCA Publishes Pensions Guidance

The FCA has published guidance on the forthcoming changes to pensions rules. The changes, taking effect from 2015, will allow pensioners to spend their pension pot in any way they see fit, including taking it as a lump sum, removing the requirement for customers to purchase an annuity.

The FCA has identified steps which firms ought to take in order to meet regulatory obligations and those which they may wish to take, in line with best practice. The guidance focuses on proactively contacting customers with clear information on the implications of the changes and reminding customers of their right to change their mind. The guidance also states that providers of advice ought to consider whether advice given previously is still suitable.

http://www.fca.org.uk/your-fca/documents/finalised-guidance/fg14-03

http://www.fca.org.uk/news/guidance-pension-reforms-announced-in-budget-2014

http://www.fca.org.uk/news/fg14-03

FCA Finds Advisory Firms Not Offering Sufficient Clarity on Charges and Services

As part of its Retail Distribution Review (RDR), the FCA has published statistics showing that advisory firms are currently failing to provide adequate transparency about charges and the services which they offer. The requirements on clarity, which the FCA describes as "straightforward" are intended to ensure customers have sufficient information to make informed decisions and to ensure a proper level of competition in the market.

Two firms identified during the Review as having particularly egregious failings are likely to be referred to the FCA's Enforcement and Financial Crime Division.

http://www.fca.org.uk/your-fca/documents/thematic-reviews/tr14-06

FCA warnings

Name of firm	Date of warning	Details
Stover Limited	10 April 2014	Not authorised http://www.fca.org.uk/news/warnings/stover-limited
Edward Evans Group	9 April 2014	Not authorised http://www.fca.org.uk/news/warnings/edward-evans-group
BlackRock Offshore Bullion Investment Fund	9 April 2014	Clone firm http://www.fca.org.uk/news/warnings/blackrock-offshore-bullion-investment-fund-clone
IAF Capital Limited	8 April 2014	Clone firm http://www.fca.org.uk/news/warnings/iaf-capital-limited-clone
SVS Securities	8 April 2014	Clone firm http://www.fca.org.uk/news/warnings/svs-securities-clone
ABC Direct Solutions	7 April 2014	Not authorised http://www.fca.org.uk/news/warnings/abc-direct-solutions

Policy developments

FCA				PRA
Finalised policy and guidance				
		Implementation/effective date		
Finalised guidance	In light of the Budget announcement on pensions policy, firms will need to make changes to their operational processes and procedures. They will also need to consider how to treat customers who are making a decision about their retirement income in the coming year. The FCA has therefore decided to issue guidance to outline expectations of firms during this interim period (i.e. from Budget 2014 to April 2015). http://www.fca.org.uk/your-fca/documents/finalised-guidance/fg14-03	09/04/2014		

Further Afield

SAC Settlement in Respect of Insider Trading

A US judge has approved a $1.8 billion settlement between the US Government and SAC Capital Advisors, L.P. which brings an end to the long-running insider trading investigation into the hedge fund.

The hedge fund has closed itself to external investment and renamed itself Point72. Its founder, Steven Cohen, faces further investigations from the US Securities and Exchange Commission, which could yet see him barred from the securities industry for failing to adequately supervise employees, though he denies any wrongdoing.

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