

This week at the UK regulators

Thirty second guide: The week in overview

The main headline last week was the announcement by HM Treasury of a wide ranging review of the way in which wholesale markets operate, which responds to many of the issues highlighted by previous enforcement action in this area. The UK government will not wait for the outcome of the review before taking steps to extend the scope of existing and forthcoming legislation to expand the application of the new senior managers and certification regimes and existing criminal market abuse regimes with the aim of increasing standards of conduct in the wholesale markets sector. HM Treasury used the announcement of the review to confirm that the UK will not be opting in to the EU Directive on Criminal Sanctions for Market Abuse which, together with the Market Abuse Regulation and a raft of other European legislation, progressed towards implementation last week through publication in the EU Official Journal.

In other announcements, the FCA provided an update on the progress of its market study into the retirement income market, amending its scope and the timescales within which it will be completed, and the Bank of England published a framework to assist firms with identifying and dealing with cyber risk.

HM Treasury announces markets review

HM Treasury has (on 12 June) announced a wide ranging review into the way in which wholesale markets operate. The review will be led by Minouche Shafik, Deputy Governor of the Bank of England, with Martin Wheatley (CEO of the FCA) and Charles Roxburgh (Director General of Financial Services at HM Treasury) co-chairing. The review will examine regulated and unregulated fixed income, currency and commodity markets, although its findings and recommendations are expected to be of wider application in the wholesale markets, and are intended to influence the international debate in addition to effecting change in the UK.

HM Treasury has indicated that, whilst the 12 month review is ongoing, it will take action domestically. Specifically, it has set out its intentions to extend the new offences incorporated in the Financial Services Act 2012 in relation to the manipulation of benchmarks (which currently only cover the London Inter Bank Offered Rate) to other benchmarks, to extend the effect of the new senior managers and certification regimes (in relation to which detailed rules are expected this year) to branches of foreign banks in addition to UK institutions, and to further expand the criminal market abuse regime.

The UK government used the announcement to confirm, on the day that it was published in the EU Official Journal (see below), that the UK will not opt in to the EU Directive on Criminal Sanctions for Market Abuse, preferring to adapt

and supplement the already relatively sophisticated UK criminal market abuse regime.

Consultation on the proposed measures and on the areas to be covered by the review will take place in autumn 2014.

<https://www.gov.uk/government/publications/fair-and-effective-markets-review-terms-of-reference>

FCA gives update on retirement income market study

The FCA has (on 9 June) published an update on the market study commenced in February 2014 in relation to the retirement income market. It has revised the terms of reference of the study and has amended the timescales within which it expects to report its findings. For full details see our Clifford Chance briefing.

<http://www.fca.org.uk/news/fca-updates-retirement-income-market-study-terms-of-reference>

<http://www.fca.org.uk/your-fca/documents/market-studies/retirement-income-market-study-revised-terms-of-reference>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWibFgNhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZe1%2F21s4VY3XcGk6zwBiE73p%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJ a3xHNE7tFeHpEbaelf&attachmentsize=99284>

Bank of England launches framework to counter cyber risk

The Bank of England has (on 10 June) launched a framework to assist financial services firms with identifying areas where they may be vulnerable to sophisticated cyber attack. The framework, known as "CBEST", provides

access to specialist intelligence and analysts and penetration tests, key performance indicators and benchmarks to enable firms to understand and mitigate their exposure.

<http://www.bankofengland.co.uk/publications/Pages/news/2014/088.aspx>

FCA warnings

Name of firm	Date of warning	Details
CMBS Portfolio	13 June 2014	Not authorised http://www.fca.org.uk/news/warnings/cmbs-portfolio
NBF Forex	13 June 2014	Clone firm http://www.fca.org.uk/news/warnings/nbf-forex-clone
Loans 4 u	13 June 2014	Not authorised http://www.fca.org.uk/news/warnings/loans-4-u-cc
Cash Buddy	11 June 2014	Not authorised http://www.fca.org.uk/news/warnings/cash-buddy-cc
D B Ingram and Associates LLC	11 June 2014	Not authorised http://www.fca.org.uk/news/warnings/d-b-ingram-and-associates-llc
Seth Cohen LLP	11 June 2014	Not authorised http://www.fca.org.uk/news/warnings/seth-cohen-llp
ZoomPayday	11 June 2014	Not authorised http://www.fca.org.uk/news/warnings/zoompayday-cc
BBC Debts.com	11 June 2014	Not authorised http://www.fca.org.uk/news/warnings/bbc-debts-com-cc

Phoenix Debt Solutions Limited	10 June 2014	Not authorised http://www.fca.org.uk/news/warnings/phoenix-debt-solutions-limited-cc
PL Securities	10 June 2014	Not authorised http://www.fca.org.uk/news/warnings/pl-securities
Ayrshire Debt Solutions Limited	10 June 2014	Not authorised http://www.fca.org.uk/news/warnings/ayrshire-debt-solutions-limited-cc
Rothstein & Company Oil Rig Contractors Limited	9 June 2014	Not authorised http://www.fca.org.uk/news/warnings/rothstein-company-oil-rig-contractors-limited
JAML / JAM	9 June 2014	Clone firm http://www.fca.org.uk/news/warnings/jaml-jam-clone

Policy developments

FCA		PRA	
Proposed developments			
		Deadline for responses	
Consultation papers	The FCA has (on 11 June) published a consultation paper (CP 14/9) proposing changes to rules contained in the Client Assets Sourcebook ("CASS") in relation to client money held in individual savings accounts in response to changes announced in the 2014 budget. http://www.fca.org.uk/static/documents/consultation-papers/cp14-09.pdf	25 June 2014	

Finalised Policy and Guidance				
		Implementation date/effective date		
Policy statements	<p>Further to consultation in July 2013, the FCA has (on 10 June) issued a policy statement (PS 14/9) making changes to CASS in relation to the application of those rules to investment business.</p> <p>http://www.fca.org.uk/your-fca/documents/consultation-papers/cp13-5</p> <p>http://www.fca.org.uk/static/documents/policy-statements/ps14-09.pdf</p>	5 June 2014		
Finalised guidance	<p>Further to consultation in July 2013, the FCA has (on 12 June) issued finalised guidance detailing responses and changes to be made to the Financial Crime Guide contained in the Handbook. The guide will be updated to include examples of good and poor practice in the financial crime systems and controls maintained by firms involved in trade finance.</p> <p>http://www.fca.org.uk/static/documents/finalised-guidance/fg14-05.pdf</p> <p>http://fshandbook.info/FS/html/FC/A/FC/link/PDF</p> <p>http://media.fshandbook.info/Legislation/2014/FCA_2014_34.pdf</p>	12 June 2014		

Further Afield

Key European financial services legislation progresses towards implementation

12 June saw the publication of a raft of new legislation in the EU Official Journal, marking the start of the period within which member states have to take steps to implement their various new requirements.

The Market Abuse Regulation (Regulation No 596/2014 on market abuse) updates and strengthens the existing framework on market integrity and investor protection provided by the existing Market Abuse Directive (2003/6/EC) which will be repealed, and includes measures aimed at ensuring that regulation keeps pace with developments in technology and market practice. Its provisions will apply from July 2016.

The Directive on Criminal Sanctions for Market Abuse (Directive 2014/57/EU) complements the Market Abuse Regulation by providing for harmonised criminal offences of insider dealing and market manipulation, and the imposition of maximum criminal penalties of not less than 4 and 2 years imprisonment for the most serious market abuse offences. Member states implementing its provisions which, as noted above, will not include the UK, will have to make sure that such behaviour, including the manipulation of benchmarks, is a criminal offence, punishable with effective sanctions. Member states implementing its provisions have two years to transpose them into their national law everywhere in Europe.

The Directive on Markets in Financial Instruments repealing Directive 2004/39/EC (MiFID II) and the Regulation on Markets in Financial Instruments (MiFIR) introduce various measures aimed at making financial markets more efficient, resilient and transparent. Member States have two years to transpose the new rules which will be applicable starting January 2017. For full details, see our Clifford Chance briefing.

Completing the suite of legislation published last week were, the Directive on the Recovery and Resolution of Credit Institutions and Investment Firms ("BRRD") and the recast Directive on Deposit Guarantee Schemes ("DGS"). The BRRD provides a complete framework for the crisis management of banks, while the DGS Directive strengthens the protection of citizens' deposits in case of bank failures. Member States must now transpose both texts into their national legislation within the defined timeline.

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWibFgNhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZe4DHh7FS7sAo4f%2BYyqobPZTp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=519079>

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

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ
© Clifford Chance 2013

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street, London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Casablanca ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh* ■ Rome ■ São Paulo ■ Seoul ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

*Clifford Chance has a co-operation agreement with Al-Jadaan & Partners Law Firm in Riyadh.