

This week at the UK regulators

Thirty second guide: The week in overview

This week saw an Upper Tribunal decision, applying the Court of Appeal's judgment in the *Macris* case, that a former senior trader, Christian Bittar, had been identified in an FCA Decision Notice. This meant that the FCA should have provided a copy and allowed him to make representations in relation to it. This decision has in some respects been overtaken by other developments, as the Serious Fraud Office charged the first 10 individuals with EURIBOR manipulation, including Mr Bittar.

FCA Director of Enforcement and Market Oversight Mark Steward's speech on culture and governance this week will be of interest to firms given the increasing focus on the implementation of the Senior Managers and Senior Insurance Managers Regimes. In this respect the PRA and FCA released a joint consultation paper on consequential amendments relating to the Senior Insurance Managers Regime.

The FCA also published recommendations for implementing a regulatory sandbox to create a 'safe space' in which businesses can test innovative products and services.

SFO charges first individuals with EURIBOR manipulation

The Serious Fraud Office ("SFO") announced that it has (on 13 November) issued criminal proceedings against 10 individuals for conspiracy to defraud in connection with the ongoing investigation being conducted by the SFO concerning the alleged manipulation of EURIBOR. The individuals charged will make their first appearance at Westminster Magistrates' Court on 11 January 2016. Those charged include Mr Christian Bittar, who has also been the subject of proceedings before the Upper Tribunal concerning whether or not he had been identified by the FCA in a Decision Notice concerning alleged LIBOR and EURIBOR manipulation (see further details below).

<http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2015/sfo-charges-first-individuals-with-euribor-manipulation.aspx>

Upper Tribunal finds that former senior trader was identified in LIBOR/EURIBOR Decision Notice

The Upper Tribunal issued a decision on 10 November 2015 that Christian Bittar, a former senior trader, was identified (within the meaning of FSMA s.393) by the FCA in a Decision Notice issued on 23 April 2015 in relation to serious misconduct related to LIBOR and EURIBOR. The Upper Tribunal followed the Court of Appeal's judgment in the case of *Financial Conduct Authority v Macris* [2015]

EWCA 490 (see our previous briefing for details). The Upper Tribunal rejected the idea that the test in *Macris* for determining whether someone had been identified in a Decision Notice was to be met by reference to knowledge that could only be obtained by extensive investigation of available sources, such as the type of enquiries that a thorough investigative journalist would undertake, but rather by reference to information which objectively an acquaintance/market participant might reasonably have known. The Upper Tribunal explained that an acquaintance did not include someone with intimate knowledge of relevant events or those who worked in Mr Bittar's immediate team. This category would however include Mr Bittar's counterparts in banks other than the one by which he was employed at the relevant time and customers and counterparties of his business unit.

<http://www.tribunals.gov.uk/financeandtax/Documents/decisions/Bittar-v-FCA-preliminary-issue-decision.pdf>

http://www.cliffordchance.com/briefings/2015/05/this_week_at_theukregulators-27may2015.html

Enforcement notices

The Upper Tribunal has (in a judgment dated 3 November but released last week) ordered the FCA to pay £100,000 in costs to Angela Burns, further to its decision earlier this year that she breached Principle 1 (integrity) of the Statements of Principle for Approved Persons, and the imposition of a financial penalty of £20,000 and a prohibition order. Ms Burns had claimed over £1.8 million in costs based upon arguments about the FCA's conduct of

the investigation and enforcement proceedings pursued against her.

<http://www.tribunals.gov.uk/financeandtax/Documents/decisions/Burns-v-FCA-decision-on-costs.pdf>

The FCA has (on 13 November) issued two final notices in relation to Fast Track Money Transfer (UK) Limited and Salam Transfer Limited. The FCA refused Fast Track's application for registration as an authorised payment institution, because Fast Track had not provided any evidence that it has opened a safeguarding account to fulfil the requirement of taking adequate measures to safeguard payment service users' funds. The FCA refused Salam's application for registration as a small payment institution and to perform money remittance payment services as the application was incomplete despite a history of correspondence. Of note is that the FCA had offered to refund the application fee should Mr Salam wish to discontinue the application process given the circumstances that there had been a death in the family.

<http://www.fca.org.uk/static/fca/documents/final-notices/fast-track-money.pdf>

<http://www.fca.org.uk/static/fca/article-type/final%20notice/salam-transfer.pdf>

The FCA has (on 12 November) published two related final notices in relation to AR Capital and Ashley Rudland. The FCA refused the application by AR Capital LP for Ashley Rudland to perform the CF1 (director), CF3 (chief executive), CF28 (systems and controls), CF29 (significant management) and CF30 (customer) functions, as they had concerns about his lack of financial services experience, lack of required investment management industry qualifications and lack of understanding of the FCA rules and regulatory framework. The FCA also refused AR Capital's application for permission to carry on the activity of managing investments for similar reasons, namely a lack of readiness, willingness and organisation to comply with regulatory requirements, material deficiencies in the firm's proposed business plan, lack of required financial resources and the deficiencies in the application for Ashley Rudland to be the sole approved person for the firm.

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

<http://www.fca.org.uk/static/fca/documents/final-notices/ashley-rudland-ar-capital.pdf>

The FCA has (on 9 November) published a final notice cancelling the interim permission for Highview Financial Services Limited as a result of Highview's persistent failure

to comply with FOS awards made against it.

<http://www.fca.org.uk/static/documents/final-notices/highview-financial-services-limited.pdf>

Mark Steward gives speech on culture and governance

The FCA's newly arrived Director of Enforcement and Market Oversight, Mark Steward has (on 11 November) given a speech to the MetricSteam Governance, Research and Compliance Summit in London. He warned that culture was in danger of becoming "*merely regulatory*" and emphasised the importance of understanding the business, having effective systems and controls and a "*healthy dose of reality*" so that senior managers do not simply 'set and forget' those systems and controls. He suggested some ways of thinking about whether the right culture exists, including considering how long it takes for problems to escalate to the right person, how many problems "*linger in the draft box*" and how difficult it is to fix things once they are detected.

<http://www.fca.org.uk/news/culture-and-governance>

FCA proposes "regulatory sandbox" for innovative firms

The FCA has (on 10 November) published a report in relation to fostering competition and growth in financial services. The report sets out the FCA's recommendations for implementing a regulatory sandbox to create a 'safe space' in which businesses can test innovative products, services, business models and delivery mechanisms without all of the normal regulatory consequences for doing so, for example by making products available to a limited number of consumers. This includes suggestions for legislative change. The FCA has set up a sandbox@fca.org.uk email address for those who would like to contribute to the development of the sandbox unit, but will engage with stakeholders over the coming months, including through an event in December 2015 (see <https://innovate.fca.org.uk/> for more details). Chris Woolard, Director of Strategy and Competition at the FCA delivered a speech at the FinanceAsia Annual Summit in Hong Kong on the topic.

<http://www.fca.org.uk/static/documents/regulatory-sandbox.pdf>

<http://www.fca.org.uk/news/innovation-in-financial-services>

FCA warnings

Name of firm	Date of warning	Details
INRIS UCITS Fund PLC	13 November 2015	Clone firm http://www.fca.org.uk/news/warnings/inris-ucits-fund-plc-clone
Trust Loans	13 November 2015	Not authorised http://www.fca.org.uk/news/warnings/trust-loans-cc
Whitaker Corporate Partners	13 November 2015	Not authorised http://www.fca.org.uk/news/warnings/whitaker-corporate-partners
Viva Loans	11 November 2015	Clone firm http://www.fca.org.uk/news/warnings/viva-loans-clone-cc

Policy developments

FCA		PRA	
Proposed developments			
		Deadline for responses	
Consultation papers	<p>The FCA and PRA have (on 12 November) published an occasional consultation paper (FCA CP 15/37 and PRA CP41/15) on consequential amendments to the Senior Insurance Managers Regime</p> <p>http://www.fca.org.uk/static/documents/consultation-papers/cp15-37.pdf</p>	<p>Chapter 1 (Rulebook Parts relevant to the Society of Lloyd's): 25 November 2015</p> <p>Chapters 4 and 5 (Senior Managers Regime, Senior Insurance Managers Regime and definitions related to credit unions): 11 January 2016</p> <p>Chapters 2 and 3 (SS13/13 on market risk and SS 12/13 on counterparty credit risk): 11 February 2016</p>	<p>The FCA and PRA have (on 12 November) published an occasional consultation paper (FCA CP 15/37 and PRA CP41/15) on consequential amendments to the Senior Insurance Managers Regime</p> <p>http://www.fca.org.uk/static/documents/consultation-papers/cp15-37.pdf</p>

Guidance consultations	<p>The FCA has (on 12 November) published Guidance Consultation 15/6 for firms outsourcing to the 'cloud' and other third party IT services</p> <p>http://www.fca.org.uk/static/documents/guidance-consultations/gc15-06.pdf</p> <p>The PRA also issued a note relating to this, reminding dual-regulated firms that if they are considering outsourcing critical or important functions to a third-party IT provider, including to the Cloud, should liaise with their usual supervisory contact.</p> <p>http://www.bankofengland.co.uk/pa/Documents/publications/reports/noterecloud.pdf</p>	12 February 2016		
Discussion papers	<p>The FCA has (on 13 November) published a discussion paper (DP 15/6) on possible FCA Handbook changes to reflect the introduction of the Innovative Finance ISA and the regulated activity of advising on peer-to-peer agreements. The discussion paper has been published on the basis that relevant legislation will be brought forward by Parliament and the FCA will therefore need to review its approach once relevant legislation is made.</p> <p>http://www.fca.org.uk/static/fca/article-type/discussion%20papers/dp-15-06-innovative-finance-isas.pdf</p>	31 December 2015		

Finalised Policy and guidance				
		Implementation/effective date		
Policy statements			1 June 2016	The PRA has (on 13 November) published a policy statement

				<p>(PS25/15) on contractual stays in financial contracts governed by third country law, providing feedback to CP 19/15 on the same topic. This contains the PRA Rulebook: CRR Firms and Non-Authorised Persons: Stay in Resolution Instrument 2015.</p> <p>http://www.bankofengland.co.uk/pra/Documents/publications/ps/2015/ps2515.pdf</p> <p>http://www.bankofengland.co.uk/pra/Documents/publications/ps/2015/ps2515app1.pdf</p> <p>The rules prohibit in scope firms from creating new obligations or materially amending existing obligations under certain financial arrangements unless the counterparty has agreed in an enforceable manner to be subject to similar restrictions (or 'stays') on early termination and close-out to those that would apply as a result of a UK firm's entry into resolution, or the write-down or conversion of a UK firm's regulatory capital at the point of non-viability, if the financial arrangement were governed by the laws of any part of the UK.</p>
Supervisory statements				<p>The PRA has (on 13 November) published a supervisory statement (SS42/15) on contractual stays in financial contracts governed by third country law and its approach to the rules set out in the policy statement mentioned above.</p> <p>http://www.bankofengland.co.uk/pra/Documents/publications/ss/2015/ss4215.pdf</p>
			11 November 2015	<p>The PRA has (on 11 November) published an update to its</p>

				<p>supervisory statement (SS11/13) on Internal Ratings Based (IRB) approaches to remove expectations that had been superseded by decisions or technical standards adopted by the European Commission.</p> <p>http://www.bankofengland.co.uk/prd/Documents/publications/ss/2015/ss1113update.pdf</p>
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