CLIFFORD

CHANCE

Briefing note

9 November 2015

This week at the UK regulators

Thirty second guide: The week in overview

In another week without significant enforcement developments, the most important development was the release by the FCA of a consultation paper setting out the FCA's policy proposals and proposed FCA Handbook changes relating to the implementation of the Market Abuse Regulation.

The FCA also published an Interim Report in relation to its market study on the credit card sector, and confirmed it had commissioned 13 skilled persons reports in Q2 2015/16.

Further afield, the US Securities and Exchange Commission has filed securities fraud charges against a Scottish trader whose false tweets caused sharp drops in the stock prices of two companies, and also announced a whistleblower award of more than $325,000.

Enforcement Notices

The FCA has (on 5 November 2015) issued a Final Notice imposing a notice of decision to cancel the permission granted to Tiuta Plc (in liquidation). The FCA determined that Tiuta is failing to satisfy the Threshold Conditions in that the FCA is not satisfied that Tiuta's resources are appropriate in relation to the regulated activities it has permission to carry on. Specifically, Tiuta is unable to meet its liabilities as they have fallen due and is in liquidation.

http://www.fca.org.uk/static/fca/documents/final-notices/tiuta%20plc.pdf

The FCA has (on 4 November 2015) issued a Final Notice imposing a notice of decision to cancel the permission granted to Kudu Emerging Markets Limited. The FCA determined that Kudu is failing to satisfy the Threshold Conditions in that the FCA is not satisfied that Kudu is a fit and proper person. This is because Kudu failed to comply with the regulatory requirement to submit various regulatory returns and has not been open and co-operative in all its dealing with the FCA, in breach of Principle 11 (Relations with regulators) of the FCA's Principles for Business.

http://www.fca.org.uk/static/documents/final-notices/kudu-emerging-markets-limited.pdf

The FCA has (on 4 November 2015) issued a Final Notice refusing an application made under 55A of the Financial Services and Markets Act 2000 for Part 4A permission to carry on the regulated activities of limited permission credit broking, consumer hire and broking vehicle consumer hire agreements. The FCA determined that Auto Leasing's failure to provide requested information and its failure to respond to the FCA's communications meant that the FCA cannot ensure that Auto Leasing will satisfy the Threshold Conditions in relation to all of the regulated activities for which Auto Leasing would have permission if the application was granted.

http://www.fca.org.uk/static/documents/final-notices/auto-leasing-uk-limited.pdf

FCA unveils proposed changes for implementation of the Market Abuse Regulation

The FCA has (on 5 November 2015) published a consultation paper (CP15/35) on the implementation of the Market Abuse Regulation. The consultation paper sets out the FCA's policy proposals and proposed FCA Handbook changes which include changes to the Listing Rules, DTRs and Market Conduct Sourcebook.

As the Market Abuse regime in the EU will be governed by the Market Abuse Regulation (MAR) going forward, changes to the UK's current legislation and the FCA Handbook are required to ensure they are consistent with MAR. It is proposed that this will include the deletion of provisions in the FCA Handbook where MAR contains an equivalent provision. The relevance of this is that once the changes come into effect (expected 3 July 2016), readers of the FCA Handbook will need to have a good working knowledge of MAR as provisions formerly in the Handbook which are now dealt with by MAR will simply be deleted.

Separately, as the new regime is governed by an EU regulation, the FCA only has options for implementation in relation to (i) public disclosure of inside information and (ii) the threshold for notification of managers' transactions. In this regard, the FCA is proposing the following:

Public disclosure of inside information: MAR requires that where an issuer has delayed the disclosure of inside information, when such information is announced, the issuer must (i) notify its regulator of the fact disclosure was delayed and (ii) provide a written explanation of how the company satisfied the conditions to enable it to delay disclosure. In relation to (ii), the FCA can either decide to implement either in a manner that will require the issuer to file a written explanation as a matter of routine, or only to file it on request from the FCA. The FCA's intention is to implement in a way that would require an issuer to submit a written explanation only on request from the FCA.

Threshold for notification of managers' transactions: MAR requires there to be a minimum threshold of EUR 5,000 within a calendar year before any notification is required, and Member States may increase this threshold to EUR 20,000. The FCA intends to adopt the minimum threshold for notification of managers' transactions of EUR 5,000.

The FCA seeks comments on its proposals by 4 February 2016.

http://www.fca.org.uk/static/fca/documents/consultation-papers/cp-15-35-mar.pdf

FCA publishes Interim Report regarding market study on the credit card sector

The FCA has (on 3 November 2015) published an Interim Report (MS14/6.2) in relation to its market study on the credit card sector, which was launched in November 2014. The interim findings set out that in most of the market, competition is working fairly well for consumers. Consumers value the flexibility offered by credit cards and firms compete strongly for custom on some features. The FCA identified a range of potential remedies to make the market work better for consumers including measures to help consumers find the best deals, measures to reduce problematic credit card debt and proposals to make firms do more to identify customers who may be struggling to repay. The FCA seeks comments on the Interim Report by 8 January 2016.

http://www.fca.org.uk/static/documents/market-studies/ms14-6-2-ccms-interim-report.pdf

Reports commissioned

The FCA has commissioned 13 skilled persons reports in Q2 2015/16, slightly down on the 14 reports commissioned in Q1 2015/16.

http://www.fca.org.uk/static/documents/skilled-persons-q2-15-16.pdf

FCA warnings

Name of firm	Date of warning	Details
Getco Europe Ltd	6 November 2015	Clone firm http://www.fca.org.uk/news/warnings/getco-europe-ltd-clone
Fidelity Personal Investing	5 November 2015	Clone firm http://www.fca.org.uk/news/warnings/fidelity-personal-investing-clone
www.sunshineloans.co.uk	3 November 2015	Clone firm http://www.fca.org.uk/news/warnings/sunshineloans-clone
Matt Tamara & Co.	3 November 2015	Clone firm

		http://www.fca.org.uk/news/warnings/matt-tamara-co-clone
Aldrich Limited Mergers & Acquisitions Services	3 November 2015	Not authorised http://www.fca.org.uk/news/warnings/aldrich-limited-mergers
Ledger & Simmons LLP	2 November 2015	Not authorised http://www.fca.org.uk/news/warnings/ledger-simmons-llp

Policy developments

FCA				PRA
Proposed developments				
		Deadline for responses		
Consultation papers	As set out in greater detail above, the FCA has (on 5 November 2015) published a consultation paper (CP15/35) on the implementation of the Market Abuse Regulation. http://www.fca.org.uk/static/fca/documents/consultation-papers/cp-15-35-mar.pdf	4 February 2016		

Further Afield

SEC charges Scottish trader regarding false tweets

On 5 November 2015, the US Securities and Exchange Commission (SEC) filed securities fraud charges in the federal court in the Northern District of California against James Alan Craig, a Scottish trader, whose false tweets allegedly caused sharp drops in the stock prices of two companies and triggered a trading halt in one of them. The SEC's complaint charges that Craig committed securities fraud in violation of section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5, and seeks a permanent injunction against future violations, disgorgement and a monetary penalty.

http://www.sec.gov/news/pressrelease/2015-254.html

SEC Announces Whistleblower Award of More Than $325,000

On 4 November 2015, the SEC announced a whistleblower award of more than $325,000 awarded to a former investment firm employee who provided the SEC with information, including a detailed description of the misconduct and the identity of the individuals involved, which permitted the SEC to bring a successful enforcement action. The SEC has noted that the whistleblower waited until leaving the firm to come forward to the SEC and that the award might have been higher had they not hesitated.

http://www.sec.gov/news/pressrelease/2015-252.html

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

Editors

Chris Stott
Lawyer
E: chris.stott
@cliffordchance.com

Eleanor Matthews
Lawyer
E: eleanor.matthews
@cliffordchance.com