

# This week at the UK regulators

## Thirty second guide: The week in overview

In a relatively busy run up to the Christmas break, the FCA has concluded three separate enforcement cases relating to failures in client asset handling, trading controls issues, and misappropriation and misapplication of client funds. Away from enforcement actions, the PRA and FCA have published policy statements setting out the final rules on the application of the Senior Managers and Certification Regimes to incoming branches of non-EEA banks and the FCA has launched its first consultation on the implementation of MiFID2 in the UK, focusing on issues relating to the secondary trading of financial instruments.

Further afield, a challenge to the Government's plan to remove the so-called reverse burden of proof from the Senior Managers Regime was defeated in the House of Lords.

### FCA takes action for misuse of client assets

On 17 December 2015 the FCA imposed a financial penalty of £20,000 on Vroni O'Brien for breaches of Statement of Principle 2 (due skill care and diligence) and Statement of Principle 7 (compliance by firm with regulatory requirements) and prohibiting her from performing any significant influence function. Ms O'Brien held CF1 (Director) and CF3 (Chief Executive) functions at Joint Aviation Services Limited, an insurance broker ("Joint Aviation"). The FCA found that between 1 April 2011 and 30 June 2012 Ms O'Brien caused Joint Aviation to transfer more funds from Joint Aviation's client accounts to Joint Aviation's business account than Joint Aviation was due in commissions, to hold money other than client money in one of Joint Aviation's client accounts and to use money from Joint Aviation's client account to pay Joint Aviation's business expenses in breach of rules set out in the Client Assets Sourcebook ("CASS").

Ms O'Brien agreed to settle only after proceedings before the Upper Tribunal had been commenced and so received no settlement discount. The penalty was increased by almost £5,000 for the purposes of deterrence at step 4 of the FCA's penalty calculation methodology set out in the Decision Procedures and Penalties Manual ("DEPP").

<http://www.fca.org.uk/static/fca/documents/final-notices/vroni-mavis-obrien.pdf>

### FCA bans individual following director disqualification proceedings

On 16 December 2015, the FCA prohibited Simon Silva Peake from performing any controlled function. Mr Silva-

Peake had performed the CF1 (Director), CF11 (MLRO) and CF30 (Customer) functions at Quintillion Asset Management between October 2007 and November 2011. On 9 June 2014, Mr Silva-Peake undertook to be disqualified from acting as a director for 11 years pursuant to section 1A of the Company Directors Disqualification Act 1986. The signed undertaking attached a schedule of unfit conduct which stated that Mr Silva-Peake, whilst performing the controlled functions listed above, caused or allowed the misappropriation of £659,270 of clients' funds, and caused or allowed further financial losses to clients by transferring £2,063,022 of clients' funds into inappropriate investments.

<http://www.fca.org.uk/static/fca/documents/final-notices/simon-mark-silva-peake.pdf>

### FCA takes action for trading controls issues

On 15 December 2015 The FCA imposed a financial penalty of £6,038,504 on Threadneedle Asset Management Limited ("Threadneedle") for breaches of Principles 3 (management and control) and 11 (relations with regulators) of the Principles for Businesses between June 2010 and February 2012. It found that there were inaccuracies in indications given to the Financial Services Authority in relation to steps taken to address issues in the fixed income area of its front office and did not put in place adequate controls in that area, in particular to prevent errors occurring and to mitigate the risks of fund managers initiating, booking and executing their own trades.

The penalty imposed was reduced by 20 per cent as Threadneedle agreed to settle at stage two of the FCA's executive settlement procedures.

<http://www.fca.org.uk/static/fca/documents/final->

[notices/threadneedle-asset-management.pdf](#)

## FCA refreshes its approach to advancing its objectives

On 16 December 2015 the FCA published a revised version of a paper setting out its approach to advancing its objectives, taking account of feedback received in relation to the first version published in July 2013 and other necessary changes. On the same date the FCA also published a separate Feedback Statement (FS15/5) setting out its responses to feedback received. The guidance is based around the FCA's three operational objectives enshrined in the Financial Services and Markets Act 2000 (as amended by the Financial Services Act 2012) of protecting consumers, ensuring market integrity and promoting effective competition.

It is noteworthy that "bringing more enforcement cases", which was listed in the 2013 version of the document as the first means of establishing credible deterrence for consumer protection, has now been removed from the list in the 2015 version of the document.

Other amendments reflect the introduction of the FCA's competition powers and the forthcoming introduction of the Senior Managers and Certification Regimes, and the Market Abuse Regulation.

<http://www.fca.org.uk/static/fca/documents/corporate/fca-approach-advancing-objectives-2015.pdf>

## Individual accountability regime: Regulators publish final rules for incoming branches

The PRA and FCA have published policy statements setting out the final rules on the application of the Senior Managers Regime ("SMR") and the Certification Regime ("CR") to UK branches of non-EEA banks and PRA-designated investment firms.

Both the PRA and FCA published near-final rules in August 2015, but were unable to clarify the rules until Parliament approved an HM Treasury order extending the definition of "relevant authorised persons" under 71A of FSMA to incoming branches. That order came into force on 9 November 2015.

The PRA policy statement (PS29/15) confirms the final rules for non-EEA branches, which are identical to those set out in the PRA's policy statement published in August 2015 (PS20/15). Alongside the policy statement, the PRA has updated its supervisory statement on strengthening individual accountability in banking (SS28/15), which sets

out the PRA's expectations of how relevant firms should comply with the SMR and CR.

The FCA policy statement (PS15/30) clarifies the near-final rules set out in its feedback statement in August 2015 (FS15/3), which have been revised, and the reasons for the changes made. In particular, amendments have been made in response to the FCA's consultation on removing the territorial limitation for material risk takers ("MRTs") in the application of the certification regime and conduct rules (CP15/22), which closed on 7 September 2015, to clarify their territorial scope. The FCA intends to publish its feedback to CP15/22 and final rules in early 2016. A number of important questions regarding the application of the CR outside the UK remain to be answered in that document.

The FCA has highlighted that any further changes to the final rules on incoming branches that might occur in light of that policy statement will be set out clearly in that policy statement and in particular concerning the breadth of the new "client dealing significant harm function".

The final rules will come into effect on 7 March 2016.

The PRA and FCA have also jointly published a policy statement on amendments to various forms (PRA PS30/15 and FCA PS15/32) for use by PRA and FCA-authorized firms and individual candidates for approval as approved persons, key function holders, credit union non-executive directors and notified non-executive directors.

<http://www.bankofengland.co.uk/pradocuments/publications/ps/2015/ps2915.pdf>

<http://www.bankofengland.co.uk/pradocuments/publications/ps/2015/ps2015.pdf>

<http://www.bankofengland.co.uk/pradocuments/publications/ss/2015/ss2815update.pdf>

<http://www.fca.org.uk/static/fca/documents/policy-statements/ps15-30.pdf>

<http://www.fca.org.uk/static/documents/feedback-statements/fs15-03.pdf>

<http://www.fca.org.uk/static/documents/consultation-papers/cp15-22.pdf>

<http://www.fca.org.uk/static/documents/policy-statements/ps15-32.pdf>

<http://www.bankofengland.co.uk/pradocuments/publications/ps/2015/ps3015.pdf>

## FCA agrees new memoranda of understanding

On 22 December, the FCA published a memorandum of understanding ("MoU") agreed with the Competition and Markets Authority in relation to the exercise of their concurrent competition powers. For further details of these powers, see our Clifford Chance briefing.

On 18 December 2015, the FCA published a revised MoU that it has entered into with the Financial Ombudsman Service (FOS). The FOS published the original version of

the MoU in April 2013.

<http://www.fca.org.uk/static/documents/mou/fca-cma-concurrent-competition-powers-mou.pdf>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbfGhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZexAl3n8ryFnMwEuZN1Njb5zp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=117441>

<http://www.fca.org.uk/static/fca/documents/mou/mou-fos.pdf>

## FCA warnings

Name of firm	Date of warning	Details
Peterson Group	18 December 2015	Not authorised <a href="http://www.fca.org.uk/news/warnings/peterson-group">http://www.fca.org.uk/news/warnings/peterson-group</a>
Dirk Swinnen/ DS Trading	16 December 2015	Clone firm <a href="http://www.fca.org.uk/news/warnings/dirk-swinnen-clone">http://www.fca.org.uk/news/warnings/dirk-swinnen-clone</a>
Christmas Loans	16 December 2015	Not authorised <a href="http://www.fca.org.uk/news/warnings/christmas-loans-cc">http://www.fca.org.uk/news/warnings/christmas-loans-cc</a>
Melbinger Leopold & Partners	14 December 2015	Clone firm <a href="http://www.fca.org.uk/news/warnings/melbinger-leopold-and-partners-clone">http://www.fca.org.uk/news/warnings/melbinger-leopold-and-partners-clone</a>

## Policy developments

FCA		PRA	
Proposed developments			
		Deadline for responses	
<b>Consultation papers</b>	<p>The Payment Systems Regulator has (on 17 December) published a consultation paper (CP15/44) in relation to its regulatory fees for 2016/17.</p> <p><a href="http://www.fca.org.uk/static/documents/consultation-papers/cp15-44.pdf">http://www.fca.org.uk/static/documents/consultation-papers/cp15-44.pdf</a></p>	11 February 2016	
	<p>The FCA has (on 15 December) launched its first consultation on the implementation of MiFID2 in the UK (CP15/43). The FCA has decided to consult in stages, as it considers there is currently insufficient clarity on the MiFID2 implementing measures, in particular the delegated acts, to consult on the full changes required to the Handbook.</p> <p>The FCA's first consultation mainly covers secondary trading of financial instruments and sets out proposed changes to the FCA Handbook in relation to:</p> <ul style="list-style-type: none"> <li>trading venues, including issues around regulated markets (RMs), multilateral trading facilities (MTFs) and organised trading facilities (OTFs);</li> <li>changes to the regime for systematic internalisers (SIs);</li> <li>expanded transparency requirements;</li> </ul>	8 March 2016	

	<ul style="list-style-type: none"> <li>• market data, including the Data Reporting Services Providers (DRSP) category of firms and transaction reporting;</li> <li>• algorithmic and high frequency trading (HFT) requirements;</li> <li>• passporting and UK branches of non-EEA firms;</li> <li>• the extension of some conduct of business obligations set out in the Principles for Business sourcebook (PRIN); and</li> <li>• changes to the scope in the Perimeter Guidance Manual (PERG).</li> </ul> <p>The FCA has also confirmed that where provisions are directly applicable through regulations, the FCA does not intend to copy rules into the Handbook unless necessary and will instead include references to them and update the Reader's Guide accordingly. Where rules are directly applicable, the FCA will not consult on the rules.</p> <p>The FCA intends to launch at least one further consultation on MiFID2 issues not covered in this consultation paper in the first half of 2016, which will include the conduct issues covered in the FCA's discussion paper (DP15/3), which was launched in March 2015. The FCA has also highlighted ongoing discussions between the EU Commission, EU Parliament and EU Council on a possible delay to the MiFID2 application date and notes that if there is a change to the legislated timetable, the FCA's implementation plans will take that into account.</p>			
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	<p>Alongside the proposed changes to the FCA Handbook, the FCA is consulting on a prototype of its MiFID2 Handbook Guide for trading venues and data reporting service providers, which is intended to clarify how the FCA's approach to implementing MiFID2 is addressed through the sourcebooks and will be expanded to coincide with issues dealt with in future consultations.</p> <p><a href="http://www.fca.org.uk/static/documents/consultation-papers/cp15-43.pdf">http://www.fca.org.uk/static/documents/consultation-papers/cp15-43.pdf</a></p>			
	<p>The FCA has (on 17 December) published an addendum to its December 2015 quarterly consultation paper (CP15/42).</p> <p>There have been two changes to the proposed rule in SUP 16.22.1R in relation to the scope of the Annual Financial Crime Report. The amendments introducing clauses (4) and (5) clarify that, alongside the UK pure reinsurers and EEA insurers captured by the published instrument, the policy intention is that this return would also apply to general insurance intermediaries which generated over £5 million in revenue as at the firm's previous accounting reference date; and EEA pure reinsurers. The FCA has extended the consultation period to 18 February 2016 (it was previously 4 February 2016).</p> <p><a href="http://www.fca.org.uk/static/fca/article/consultation%20paper/cp15-42-addendum.pdf">http://www.fca.org.uk/static/fca/article/consultation%20paper/cp15-42-addendum.pdf</a></p>			

Finalised Policy and guidance				
		Implementation/effective date		
<b>Policy statement</b>	<p>The FCA has (on 16 December) published a policy statement (PS15/30 ) and final rules relating to the application of the new individual accountability regimes to UK branches of foreign banks (see further details above).</p> <p><a href="http://www.fca.org.uk/static/fca/documents/policy-statements/ps15-30.pdf">http://www.fca.org.uk/static/fca/documents/policy-statements/ps15-30.pdf</a></p>	7 March 2016	7 March 2016	<p>The PRA has (also on 16 December) published a policy statement (PS29/15) and final rules on the application of the new individual accountability regimes to UK branches of non-EEA banks (see further details above).</p> <p><a href="http://www.bankofengland.co.uk/p ra/Documents/publications/ps/2015/ps2915.pdf">http://www.bankofengland.co.uk/p ra/Documents/publications/ps/2015/ps2915.pdf</a></p>
			1 January 2016, except for the Handbook (Rulebook Consequential s) Instrument 2015, which will come into force on 7 March 2016	<p>The PRA has published a policy statement (PS28/15) on the PRA Rulebook: Part 4. The policy statement sets out the final rules following two consultations on the PRA Rulebook: Part 4 (CP28/15), published in August 2015, and Chapter 1 of the PRA's occasional consultation paper (CP41/15), published in November 2015.</p> <p>Among other things, the policy statement sets out final rules relating to certain aspects of:</p> <ul style="list-style-type: none"> <li>• financial conglomerates;</li> <li>• group risk systems for CRR firms; and</li> <li>• regulatory reporting.</li> </ul> <p>Following CP41/15 the policy statement also sets out final rules to consolidate the Lloyd's: Actuaries, Auditors and Financial Services Compensation Scheme (FSCS) Part and the Lloyd's Part of the PRA Rulebook into a single Part.</p> <p>The PRA has made no amendments to any of the instruments as a result of feedback received to CP28/15 and no responses were received</p>

				to Chapter 1 of CP41/15. <a href="http://www.bankofengland.co.uk/pra/Documents/publications/ps/2015/ps2815.pdf">http://www.bankofengland.co.uk/pra/Documents/publications/ps/2015/ps2815.pdf</a>
	The FCA has (on 16 December) published a policy statement (PS15/31) on changes to the FCA's approved persons regime for insurance firms not subject to the Solvency II Directive (2009/138/EC) (PS15/31).  <a href="http://www.fca.org.uk/static/documents/policy-statements/ps15-31.pdf">http://www.fca.org.uk/static/documents/policy-statements/ps15-31.pdf</a>	7 March 2016		
<b>Supervisory statements</b>				

## Further Afield

### European Commission publishes latest market abuse implementing directive

On 18 December, the European Commission Implementing Directive ((EU) 2015/2392) on the Market Abuse Regulation relating to reporting to competent authorities of actual or potential infringements of MAR was published in the Official Journal of the EU (OJ). The Implementing Directive will enter into force on 7 January 2016.

[http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2015.332.01.0126.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.332.01.0126.01.ENG)

### Individual accountability regimes: Challenge to removal of reverse burden of proof defeated in House of Lords

The Government's plans to amend the SMR by removing the presumption of responsibility for Senior Managers (through the Bank of England and Financial Services Bill) were challenged by an amendment to that bill proposed and supported by various peers on 15 December. Following

a debate, the amendment was very narrowly defeated (by 200 votes to 198), so the Government's plans remain on track, at least for the time being. The bill will now be read for a third time in the House of Lords.

<http://www.publications.parliament.uk/pa/ld201516/ldhansrd/text/151215-0002.htm>

**This week at the UK regulators will return on 11 January 2016. We wish all our readers a Merry Christmas and a Happy New Year.**

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