

This week at the UK regulators

Thirty second guide: The week in overview

Although no significant enforcement cases were concluded last week, the UK regulators released several consultation papers and statements. The FCA published a feedback statement on its 'Call for Inputs on the use of Big Data in retail general insurance'. Meanwhile, the PRA published a supervisory statement on 'Solvency II: Changes to internal models used by UK insurance firms'. It also published two consultation papers: the first updated supervisory statements 'Solvency II: regulatory reporting, internal model outputs' and 'Solvency II: ORSA and the ultimate time horizon', while the second set out a draft supervisory statement on the PRA's expectations of general insurance firms regulated by it in relation to significant general insurance loss events which might affect firms' solvency and future business plans.

Away from the financial services regulators, the National Crime Agency issued guidance on submitting Suspicious Activity Reports.

Further afield, the Hong Kong Monetary Authority warned authorised institutions not to be heavy-handed in anti-money laundering (AML) and counter-terrorist financing checks, while the Hong Kong Securities and Futures Commission notified the industry of its AML concerns. Across the pond, the US Securities and Exchange Commission charged Ernst & Young former partners with violating auditor independence rules. It also issued a whistleblower award of more than \$4 million, bringing its whistleblower programme's awards to over \$111 million. In other news, the New York Department of Financial Services put forward proposals for cybersecurity regulations to protect consumers and ensure the safety and soundness of the New York State's financial services industry.

FCA publishes feedback statement on its 'Call for Inputs on the use of Big Data in retail general insurance'

On 21 September 2016, the FCA published a Feedback Statement summarising the responses received to its 'Call for Inputs on the use of Big Data in retail general insurance' (GI) and outlining its responses to the issues raised (FS16/5). As a result of the findings, the FCA will co-host a roundtable with the Information Commissioner's Office to discuss data protection and the use of data in retail GI with relevant stakeholders. The regulator will also start discovery work to look at pricing practices in a limited number of retail GI firms later this year.

<https://www.fca.org.uk/publications/feedback-statements/fs16-5-call-inputs-big-data-retail-general-insurance>

PRA publishes supervisory statement on 'Solvency II: Changes to internal models used by UK insurance firms'

On 21 September 2016, the PRA published a Supervisory Statement on 'Solvency II: Changes to internal models used by UK insurance firms' (SS12/16). The statement sets

out the PRA's expectations in respect of firms applying for approval for a major change to their approved internal models or an extension of scope to an approved internal model. The statement also sets out the PRA's expectations in respect of firms applying to alter their approved internal model change policy.

<http://www.bankofengland.co.uk/pr/Pages/publications/ss/2016/ss1216.aspx>

The National Crime Agency (NCA) issues guidance on submitting better quality Suspicious Activity Reports (SARs)

The NCA has issued guidance to those involved in submitting SARs, setting out its expectations in terms of the content and format of SARs. The guidance offers the clearest indication to date of what the agency expects from reporters.

<http://www.nationalcrimeagency.gov.uk/publications/732-guidance-on-submitting-better-quality-sars/file>

Enforcement Notices

On 20 September 2016, the FCA published a final notice against Danmirr Capital Limited, refusing its application for

permission to carry on the regulated activity of credit broking, debt adjusting and debt counselling, following the regulator's repeated requests to the company for further information in relation to its incomplete application.

<https://www.fca.org.uk/sites/default/files/danmirr-capital-limited.pdf>

On 21 September 2016, the FCA issued a final notice against Gemmax Solutions Limited, cancelling the registration granted to the company as a small payment institution under the Payment Services Regulations 2009 as a result of the company failing to pay various overdue balances to the regulator and failing to respond adequately to repeated requests for payment.

<https://www.fca.org.uk/sites/default/files/gemmax-solutions-ltd.pdf>

FCA warnings

Name of firm	Date of warning	Details
Loan.co.uk	19 September 2016	Clone firm https://www.fca.org.uk/news/warnings/loan-co-uk-clone-fca-authorized-firm
All UK Lenders	19 September 2016	Clone firm https://www.fca.org.uk/news/warnings/all-uk-lenders-clone-fca-authorized-firm

Policy developments

FCA				PRA
Proposed developments				
		Deadline for responses		
Consultation papers	On 20 September 2016, the FCA closed its consultation on changes to the disclosure requirements in		21 December 2016 respectively	On 21 September 2016, the PRA published two consultation papers (CPs).

	<p>the Handbook in order to reflect the direct application of the Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation from 31 December 2016 (CP16/18). The FCA is anticipated to publish feedback on responses and issue a Policy Statement this winter once comments have been reviewed.</p> <p>https://www.fca.org.uk/publications/consultation-papers/changes-handbook-disclosure-rules-reflect-direct-application-priips</p>		<p>The first paper sets out proposed updates to both Supervisory Statement (SS) 25/15, 'Solvency II: regulatory reporting, internal model outputs', and SS26/15, 'Solvency II: ORSA and the ultimate time horizon' (CP31/16). This paper is relevant to non-life UK insurance firms within the scope of Solvency II and to the Society of Lloyd's in respect of each of their Syndicates and in respect of outputs of the Lloyd's internal model.</p> <p>http://www.bankofengland.co.uk/pr/Pages/publications/cp/2016/cp3116.aspx</p> <p>The PRA also published a paper that sets out a draft SS on its expectations of general insurance firms regulated by the PRA, in relation to significant general insurance loss events which might affect firms' solvency and future business plans (CP32/16). This paper is relevant to all PRA-regulated general insurance firms in scope of the Solvency II Directive, and to the Society of Lloyd's and managing agents. The SS sets out the PRA's expectations of how such firms, particularly those operating in the global specialty insurance and reinsurance market known as the London market, might plan for and respond to such an event.</p> <p>http://www.bankofengland.co.uk/pr/Pages/publications/cp/2016/cp3216.aspx</p>
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Finalised Policy and guidance				
		Implementation/effective date		
Finalised guidance	<p>On 21 September 2016, the FCA published 'CRD IV Pillar 2 Summary and Stress Testing Observations', which provides a summary of existing Pillar 2 policy arising from CRD IV together with EBA SREP guidelines.</p> <p>https://www.fca.org.uk/sites/default/files/crd-iv-pillar-2-summary-stress-testing-observations.pdf</p>			

Further Afield

Hong Kong banks warned not to be heavy-handed in anti-money laundering checks

As the FCA commences another round of thematic work on anti-money laundering (AML) compliance, a sense of proportionality has been brought to the issue by the Hong Kong Monetary Authority (HKMA). It has warned authorised institutions that applying overly stringent AML checks that are not commensurate with the risks presented when opening and maintaining customer accounts risks excluding legitimate businesses from basic financial services. The HKMA's comments come amid concerns voiced by the city's 29 chambers of commerce about foreign investors not being able to open company bank accounts in Hong Kong. Meanwhile, the SFC notified the industry of its AML concerns, reporting that the SFC Enforcement Division is investigating a number of cases of SFC licensed brokerages with suspected inadequate AML internal controls and is expecting to bring a number of enforcement proceedings as a result.

<http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=16PR95>

It seems likely that the guidance issued by the HKMA will presage similar warnings in Europe. Indeed, in a speech

this week, Megan Butler re-emphasised that the FCA does not want firms to take a "tick-box" legalistic approach to financial crime compliance and noted, in the context of concerns about de-risking, that firms should focus on identifying "genuine money laundering risks". The European Supervisory Authorities are expected to address the issue of "de-risking", and to remind firms of the importance of genuinely applying a risk based approach in guidance they will issue under the Fourth Money Laundering Directive in 2017. Until then, it is expected that national regulators, including the FCA, will be urged to adopt a more balanced approach when assessing how firms have met their obligations.

For further details, please see our Clifford Chance briefing.

https://www.cliffordchance.com/briefings/2016/09/walking_the_tightropehongkongbankswarne.htm

The US Securities and Exchange Commission (SEC) charges Ernst & Young former partners with violating auditor independence rules

On 19 September 2016, the SEC announced that Ernst & Young has agreed to pay \$9.3 million to settle charges that two of the firm's audit partners got too close to their clients on a personal level and violated rules that ensure firms maintain their objectivity and impartiality during audits. The three of the four individuals involved have been subject to financial penalties, and all have been suspended from appearing and practicing before the SEC as accountants, which includes not participating in the financial reporting or

audits of public companies. These are the first SEC enforcement actions for auditor independence failures due to close personal relationships between auditors and client personnel.

<http://www.sec.gov/news/pressrelease/2016-187.html>

The SEC issues \$4 million whistleblower award

On 20 September 2016, the SEC announced an award of more than \$4 million to a whistleblower whose original information alerted the agency to a fraud. This brings the total amount awarded under the SEC's whistleblower programme to more than \$111 million since its inception in 2011.

<https://www.sec.gov/news/pressrelease/2016-188.html>

New York Department of Financial Services (NYDFS) proposes cybersecurity regulations

The NYDFS recently issued a proposed regulation intended to protect financial institutions from potential cyber-attacks. The regulation would require banks, insurance companies, and other financial services institutions regulated by the NYDFS to establish and maintain a cybersecurity programme designed to protect consumers and ensure the safety and soundness of the New York State's financial services industry. The proposed regulation is subject to a 45-day notice and public comment period before its final issuance.

<http://www.dfs.ny.gov/about/press/pr1609131.htm>

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