

This week at the UK regulators

Thirty second guide: The week in overview

This week saw the FCA publish a summary of the main findings and conclusions of the skilled persons' report into how the Royal Bank of Scotland treated SME customers referred to its Global Restructuring Group between 2008 and 2013. In a case involving The Pensions Regulator, the Upper Tribunal has rejected an application by an individual to pursue a reference relating to a determination notice issued in 2011.

In policy developments, the Bank of England has announced new rules intended to end the "too big to fail" position of UK banks and building societies by shifting liability to creditors and shareholders rather than taxpayers. The new rules will come into force in 2022, although banks will have to meet interim requirements by 2020.

Further afield, regulators in New York have imposed a significant penalty on a Chinese bank for anti-money laundering failings, and French legislators have adopted an important new law imposing obligations on businesses to take steps to detect and prevent corruption.

Upper Tribunal rejects application to refer 2011 determination notice

The Upper Tribunal has (on 7 November 2016) ruled that Mr Robert Angus Hill could not make a reference to the tribunal out of time in respect of a determination notice issued by The Pensions Regulator on 28 October 2011.

Under the Determination Notice, the Regulator prohibited Mr Hill and others from being a trustee of the Hugh Mackay Retirement Benefits Scheme and from occupational pension schemes established under trust in general on the basis that they were not fit and proper persons.

On 12 September 2016, Mr Hill referred the determination notice to the Upper Tribunal, over four years and nine months out of time. Mr Hill claimed that the stress, anxiety and family upset caused by the various investigations meant that he was not in a position physically or mentally to make the reference until now. The trustees, who only had limited resources as a result of the regulatory action and related civil litigation, argued that they had been told by their lawyers that to appeal the determination notice would cost time and money, even though there was no fee for filing a reference. Mr Hill has recently set up a new company but he was unable to take a role as a director or to own more than 20 per cent of the issued share capital as he was banned as a trustee.

The tribunal ruled that the reference should not be admitted out of time because the delay in making the reference had been a long one and there was no good reason for it. The investigations into Mr Hill were completed by September

2014 and another two years had passed before he made his reference. The tribunal also noted that Mr Hill is able to make an application to the Regulator for a revocation of the prohibition order against him.

http://taxandchancery_ut.decisions.tribunals.gov.uk/Documents/decisions/Hill%20EOT%20Decision%20for%20website.pdf

Bank of England announces new bailout rules

The Bank of England has (on 8 November 2016) announced new rules designed to make it easier to manage the failure of banks and building societies in an orderly way, as part of reforms to end taxpayer bailouts in the UK.

<http://www.bankofengland.co.uk/financialstability/Documents/resolution/mrelpolicy2016.pdf>

Following a public consultation, the Bank of England has published a policy on setting the Minimum Requirement for own funds and Eligible Liabilities (MREL), which is a requirement under the EU Bank Recovery and Resolution Directive. These requirements will make it possible to resolve failing banks by ensuring that they hold sufficient equity and debt to absorb losses. It will enable the recapitalisation of businesses that need to keep operating during the process because they provide important financial services to households and businesses. This process is called 'bail-in'.

The new rules will be introduced in two phases. Banks will

be obliged to comply with interim requirements by 2020. From 1 January 2022, the largest UK banks will hold sufficient resources to allow the Bank of England to resolve them in an orderly way.

<http://www.bankofengland.co.uk/publications/Pages/news/2016/082.aspx>

FCA warnings

Name of firm	Date of warning	Details
Carnegie Asset Management	10 November 2016	Clone firm https://www.fca.org.uk/news/warnings/carnegie-asset-management-clone-fca-authorized-firms
UK Loans	8 November 2016	Clone firm https://www.fca.org.uk/news/warnings/uk-loans-clone-fca-authorized-firm
Sanderson Partners	8 November 2016	Clone firm https://www.fca.org.uk/news/warnings/sanderson-partners-clone-fca-authorized-firm
City Asset Management	8 November 2016	Clone firm https://www.fca.org.uk/news/warnings/city-asset-management-clone-fca-authorized-firm

Policy developments

FCA		PRA	
Finalised Policy and guidance			
		Implementation/effective date	
Policy statements		1 January 2022	The PRA has (on 8 November 2016) issued a policy statement (PS30/16) on the minimum

				<p>requirement for own funds and eligible liabilities (MREL) in response to Consultation Paper CP44/15.</p> <p>http://www.bankofengland.co.uk/p/ra/Documents/publications/ps/2016/ps3016.pdf</p> <p>The PRA has also issued a supervisory statement (SS16/16) setting out the PRA's expectations on the relationship between the minimum requirement for own funds and eligible liabilities (MREL) and both capital and leverage ratio buffers, as well as the implications that a breach of MREL would have for the PRA's consideration of whether a firm is failing, or likely to fail, to satisfy the Threshold Conditions.</p> <p>http://www.bankofengland.co.uk/p/ra/Documents/publications/ss/2016/ss1616.pdf</p>
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Further Afield

France passes new Sapin 2 anti-corruption provisions

The French National Assembly has (on 8 November 2016) adopted the "Sapin 2" law, which requires large French companies and groups to take measures to prevent and detect acts of corruption and influence peddling committed in France or abroad.

The law requires companies with more than 50 employees to put in place a system to monitor and collect information as part of the anti-corruption measures provided for by the law. The new system, also allows for measures similar to deferred prosecution agreements (DPAs). The maximum fine will amount to 30 percent of the company's annual turnover.

The anti-corruption provisions will come into effect from May or June 2017, depending on the date of enactment of the law.

New York banking regulator turns aggressive enforcement on Chinese Banks

The Agricultural Bank of China Limited and its New York branch (on 4 November 2016) agreed to pay to the New York State Department of Financial Services \$215 million to settle charges for violation of New York State's anti-money laundering laws and regulations.

The consent order issued by the DFS in connection with the settlement also provides that the Bank will engage an independent monitor that will report directly to the DFS for a period of two years. The Order follows a consent order issued against the Bank and the NY Branch by the Federal Reserve in September 2016 and highlights the growing enforcement risks facing Chinese and other non-US banks

with branches in New York. The Order underscores that non-US banks operating DFS-licensed banking offices must ensure that such offices operate in compliance with applicable New York and federal AML and sanctions requirements.

<http://www.dfs.ny.gov/about/press/pr1611041.htm>

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