

# This week at the UK regulators

## Thirty second guide: The week in overview

In a week without any concluded enforcement cases, the only development was the publication of a decision by the Upper Tribunal. It permitted the FCA to amend its statement of case in connection with a reference pursued by a former bank employee relating to the FCA's decision to identify him in a Decision Notice.

In other developments, the FCA published final rules implementing the provisions of the Market Abuse Regulation concerning delays in the disclosure of inside information. It released a statement about cooperation with the Bank of England in connection with market infrastructure matters and signed the latest in a series of agreements with foreign regulators in relation to fintech support, this time with the Ontario Securities Commission. It also issued a statement concerning its approach to delays in compliance with EMIR 1 March 2017 variation deadline, stating that it will take a risk-based approach, looking at firms' efforts taken to comply.

The PRA published a consultation paper setting out proposed adjustments to its Pillar 2A capital framework. It also published a supervisory statement outlining its expectations for liquidity reporting by 'relevant third-country firms' and updates to two supervisory statements, the first concerning the PRA's expectations of how credit unions should comply with core regulatory requirements, and the second aimed at firms to which CRD IV applies, which sets out the PRA's expectations in relation to market risk. Completing a relatively busy week of policy developments, it published a policy statement on pre-issuance notification rules.

Further afield, in Hong Kong, the Court of First Instance has issued a judgment disqualifying a director as the Securities and Futures Commission's targeting of directors intensifies, whilst the US Securities and Exchange Commission has issued new guidance on the use of "robo-advisers".

### Upper Tribunal permits FCA to amend statement of case in third party rights reference

On 20 February, the Upper Tribunal published a judgment permitting the FCA to make all except one of its requested amendments to its Statement of Case in relation to the reference made by Mr Christian Bittar on 12 May 2015. His reference concerns the FCA's decision to identify him in a decision notice released in April 2015 and is being pursued alongside parallel regulatory and criminal proceedings concerning his alleged involvement in misconduct relating to benchmark rate submissions.

[https://assets.publishing.service.gov.uk/media/58ab2e0e40f0b67ec800001e/Christian\\_Bittar\\_v\\_FCA\\_Case\\_Management\\_decision.pdf](https://assets.publishing.service.gov.uk/media/58ab2e0e40f0b67ec800001e/Christian_Bittar_v_FCA_Case_Management_decision.pdf)

### FCA publishes a statement regarding the effectiveness of its cooperation arrangements with the Bank of England

On 22 February, the FCA published a statement concerning the operation of its arrangements for cooperation with the Bank of England regarding market infrastructure. The FCA and the Bank of England concluded that the arrangements for co-operation remain effective. It states that FCA and Bank of England staff will work together to take forward suggested improvements identified by industry to enhance co-ordination between the authorities where a new product or project encompasses trading platforms and clearing houses in the same group.

<https://www.fca.org.uk/news/news-stories/market-infrastructure-mou-2016-performance-statement>

### FCA enters fintech agreement with Ontario Securities Commission

On 22 February, the FCA and the Ontario Securities Commission signed an agreement allowing them to refer to

one another innovative businesses seeking to enter the other's market. The regulators may provide support to innovative businesses to help reduce regulatory uncertainty and time to market.

<https://www.fca.org.uk/news/press-releases/fca-and-osc-sign-co-operation-agreement-support-innovative-businesses>

### FCA and the Practitioner Panel to ask firms to complete single joint survey in 2017

The FCA has indicated that this year, it and the Practitioner Panel will ask firms to complete a single survey, the results of which will be used to better understand the issues affecting firms and help them improve how they work.

<https://www.fca.org.uk/news/news-stories/fca-and-practitioner-panel-launch-new-joint-survey-2017>

### FCA issues statement regarding risk-based approach to delays in compliance with EMIR 1 March 2017 variation deadline

The FCA welcomed the statements made by the European Supervisory Authorities and the International Organization of Securities Commissions on this issue. The FCA acknowledged that new regime for variation margin may require a number of significant changes for many firms, and that some firms may not be in a position to comply fully with the Regulatory Technical Standards by 1 March 2017 despite efforts. In supervising firms' progress, the FCA will

take a risk-based approach and use judgement as to the adequacy of progress, taking into account the position of particular firms and the credibility of the plans they have made.

<https://www.fca.org.uk/news/news-stories/fca-statement-emir-1-march-2017-variation-margin-deadline>

### The two faces of the FCA's review of UK primary equity markets: "immediate technical enhancements" coupled with a potentially far-reaching consultation on market structure

On 14 February 2017, the FCA published a consultation paper (CP17/4) and a discussion paper (DP17/2) as part of its review of the effectiveness of the UK primary markets. The consultation paper mostly proposes a technical simplification and codification of current market practice. However, the discussion paper foreshadows the possibility of far-reaching changes to market structures involving, among other things, a potential re-think of standard listings, a new segment for secondary listings by international issuers and the possibility of structural changes to encourage long-term capital. For further details, see our Clifford Chance briefing.

[https://www.cliffordchance.com/briefings/2017/02/the\\_two\\_faces\\_of\\_the\\_fcas\\_review\\_of\\_uk\\_primary.html](https://www.cliffordchance.com/briefings/2017/02/the_two_faces_of_the_fcas_review_of_uk_primary.html)

## FCA warnings

Name of firm	Date of warning	Details
Courington Law	20 February 2017	Not authorised <a href="https://www.fca.org.uk/news/warnings/courington-law">https://www.fca.org.uk/news/warnings/courington-law</a>

## Policy developments

FCA		PRA	
Proposed developments			
		Deadline for responses	
<b>Consultation papers</b>			31 May 2017
			<p>On 24 February, the PRA published a consultation paper (CP3/17) setting out proposed adjustments to the PRA's Pillar 2A capital framework which came into force on 1 January 2016.</p> <p><a href="http://www.bankofengland.co.uk/p/ra/Pages/publications/cp/2017/cp317.aspx">http://www.bankofengland.co.uk/p/ra/Pages/publications/cp/2017/cp317.aspx</a></p>

Finalised Policy and guidance			
		Implementation/effective date	
<b>Supervisory statements</b>			23 February 2017
			<p>On 23 February, the PRA issued an update to a supervisory statement (SS2/16) that sets out the PRA's expectations of how credit unions should comply with core elements of the regulatory framework contained in the Credit Union Rulebook Part.</p> <p><a href="http://www.bankofengland.co.uk/p/ra/Pages/publications/ss/2017/ss216update.aspx">http://www.bankofengland.co.uk/p/ra/Pages/publications/ss/2017/ss216update.aspx</a></p> <p>On 23 February, the PRA published a supervisory statement (SS1/17) outlining the PRA's expectations for liquidity reporting by PRA-regulated UK branches of third-country, and non-EU EEA, credit institutions</p>

				<p>and designated investment firms ('relevant third-country firms').</p> <p><a href="http://www.bankofengland.co.uk/p/ra/Pages/publications/ss/2017/ss117.aspx">http://www.bankofengland.co.uk/p/ra/Pages/publications/ss/2017/ss117.aspx</a></p> <p>On 23 February, the PRA issued an update to a supervisory statement (SS13/13) aimed at firms to which CRD IV applies, which sets out the PRA's expectations in relation to market risk and should be considered in addition to requirements set out in CRD IV Articles 325–377, the Market Risk Part of the PRA Rulebook and the high-level expectations outlined in 'The PRA's approach to banking supervision'.</p> <p><a href="http://www.bankofengland.co.uk/p/ra/Pages/publications/ss/2017/ss1313update.aspx">http://www.bankofengland.co.uk/p/ra/Pages/publications/ss/2017/ss1313update.aspx</a></p>
Policy statements	<p>On 24 February, the FCA published a policy statement (PS 17/2) on changes to chapter 2.5 of the Disclosure and Transparency Rules relating to delay in the disclosure of inside information. The paper summarises responses to consultation paper CP 16/38, which closed on 6 January 2017 and contains final rules implementing the relevant provisions of the Market Abuse Regulation and associated guidance issue by ESMA.</p> <p><a href="https://www.fca.org.uk/publication/policy/ps17-02.pdf">https://www.fca.org.uk/publication/policy/ps17-02.pdf</a></p> <p><a href="https://www.fca.org.uk/publication/consultation/cp16-38.pdf">https://www.fca.org.uk/publication/consultation/cp16-38.pdf</a></p>	24 February 2017	23 February 2017	<p>On 23 February, the PRA published a policy statement (PS4/17) providing feedback to responses, and final rules and supervisory statements to Consultation Paper (CP36/16) and containing corrections to the Pre-Issuance Notification (PIN) rules for an administrative error in the final rules presented in PS2/16 'Amendments to the Pre-Issuance Notification regime'.</p> <p><a href="http://www.bankofengland.co.uk/p/ra/Pages/publications/ps/2017/ps417.aspx">http://www.bankofengland.co.uk/p/ra/Pages/publications/ps/2017/ps417.aspx</a></p>

## Further Afield

### **Hong Kong court orders disqualification and repayment as targeting of directors intensifies**

The Hong Kong Court of First Instance has ordered that three former directors of First Natural Foods Holdings Limited be disqualified from acting as directors for up to twelve years and that the former chairman repay more than HK\$84 million allegedly embezzled from the Company. The judgment is the latest illustration of the Securities and Futures Commission's focus on targeting of corporate entities and directors it suspects of misfeasance. For further details, see our Clifford Chance briefing.

[https://www.cliffordchance.com/briefings/2017/02/hong\\_kong\\_court\\_ordersdisqualificationan.html](https://www.cliffordchance.com/briefings/2017/02/hong_kong_court_ordersdisqualificationan.html)

<http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=17PR24>

### **US Securities and Exchange Commission publishes guidance on "robo-advisers"**

On 23 February, the SEC published information and guidance for investors and the financial services industry on the fast-growing use of "robo-advisers", which are registered investment advisers that use computer algorithms to provide investment advisory services online with often limited human interaction.

<http://www.sec.gov/news/pressrelease/2017-52.html>

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