Briefing note 6 March 2017

This week at the UK regulators

Thirty second guide: The week in overview

In a week without any concluded enforcement cases, the main news was that the FCA has finalised plans to place a deadline on payment protection insurance complaints, and has published a policy statement on the subject. It has also published a consultation paper on the IPO process, related to a wider programme of work that is designed to increase the efficiency and effectiveness of primary markets.

The FCA has set out its view that investment managers are still failing to ensure effective oversight of best execution, and that investment management firms continue to fail to meet its expectations on their use of dealing commission. As part of its strategy of engaging with consumers, it has also set out guidance aimed at helping over 55 year olds to recognise fraudulent activity.

In other developments, from 1 March the Bank of England has become the Prudential Regulation Authority and now exercises its functions through the Prudential Regulation Committee. The PRA published an approach document concerning its approach to banking supervision, a note aimed at small and mid-tier banks and buildings societies considering applying for the IRB approach to credit risk and a policy statement setting out the final rules for the loan to income flow limit to operate on a four-quarter rolling basis.

The UK Treasury Committee published a report on the appointment of the Bank of England's Deputy Governor for Markets and Banking whilst, further afield, the Hong Kong Securities and Futures Commission launched a consultation on proposed amendments to the Securities and Futures (Professional Investor) Rules regarding matters to be counted in ascertaining whether individuals meet the monetary threshold to qualify as professional investors.

In the US, the Securities and Exchange Commission has charged a Mexico-based homebuilder for a $3.3 billion accounting fraud.

The FCA finalises plans to place a deadline on PPI complaints

On 2 March, the FCA confirmed, in a policy statement (for further details of which, see below) that it will introduce a deadline for making new, payment protection insurance (PPI) complaints. The final deadline for making a new PPI complaint will be 29 August 2019. To encourage consumers to decide whether to act about PPI before the deadline, the FCA will run a two-year consumer communications campaign, which will be launched in August 2017. The FCA has also made final rules and guidance related to how firms should handle complaints in light of the UK Supreme Court judgment in *Plevin v Paragon Personal Finance Ltd*.

https://www.fca.org.uk/news/press-releases/fca-finalise-plans-place-deadline-ppi-complaints

FCA finds investment managers still failing to ensure effective oversight of best execution and use of dealing commission

On 3 March, the FCA reported its findings from supervisory work looking at how investment managers deliver best execution for their clients. It found that most firms failed to take on board the findings of the FCA's 2014 thematic review The FCA will revisit best execution in 2017 to see what steps investment management firms have taken to assess gaps in their approaches.

On the same day, it reported its findings from a review analysing dealing commission expenditure across 31 investment managers between 2012 and 2015. In this area, it similarly found that the majority of firms are still falling short of its expectations and concluded that more work needs to be done by investment management firms. Given these findings and the implementation of MiFID II, the FCA has indicated it will continue to focus on the use of dealing commission.

In a speech delivered on 1 March, Christopher Woolard, the FCA's Executive Director of Strategy and Competition, delivered a speech underlining the FCA's commitment to ensuring the efficiency and effectiveness of these and other aspects of the operation of the UK primary markets. Mr Woolard referred to the FCA's recently published consultation paper on the IPO process (for further details of which, see below), and the FCA discussion paper and consultation paper published earlier this year, which seek to improve the effectiveness and efficiency of the sector.

https://www.fca.org.uk/news/news-stories/investment-managers-still-failing-ensure-effective-oversight-best-execution

https://www.fca.org.uk/news/speeches/efficiency-effectiveness-approach-primary-markets

https://www.fca.org.uk/news/news-stories/firms-continue-fail-meet-our-expectations-use-dealing-commission

Bank of England becomes Prudential Regulation Authority

On 1 March 2017, the Bank of England (BoE) became the PRA under the Financial Services and Markets Act 2000. The Bank of England and Financial Services Act 2016 transfers the functions of the PRA to the BoE. These functions were formerly performed by a subsidiary of the BoE. The BoE will exercise its functions as the PRA through a new Prudential Regulation Committee, which replaces the PRA Board.

http://www.bankofengland.co.uk/publications/Documents/news/2017/026.pdf

PRA sets out its approach to banking supervision

This week, the PRA published a document outlining its approach to banking supervision. This document sets out how the PRA seeks to carry out its role in respect of deposit-takers and investment firms. It is designed to help regulated firms and the market understand how the PRA supervises these institutions, and to aid accountability to the public and Parliament.

http://www.bankofengland.co.uk/publications/Documents/praapproach/bankingappr1603.pdf

FCA warns consumers about tactics used by investment fraudsters to deceive over 55s

On 1 March, as part of its consumer engagement strategy the FCA published a press release reporting their findings on tactics investment fraudsters use to deceive over 55s.

https://www.fca.org.uk/news/press-releases/inside-mind-scammer-tactics-investment-fraudsters

PRA publishes note following the PRA Internal Ratings Based (IRB) seminar for small and mid-tier banks and building societies

On 24 February, the PRA published a note following a seminar aimed at small and mid-tier banks and buildings societies considering applying for the IRB approach to credit risk. The PRA aims to update its IRB Supervisory Statement (SS11/13) to clarify certain supervisory expectations and will consult on the proposed clarifications in due course.

http://www.bankofengland.co.uk/pra/Documents/publications/reports/irbseminar240217.pdf

Treasury Committee reports on appointment of the Deputy Governor for Markets and Banking

On 2 March, the UK Treasury Committee published a short report on the appointment of Charlotte Hogg as the BoE's Deputy Governor for Markets and Banking. The Committee considered the suitability of Ms Hogg for the role against the following criteria and concluded that she has the requisite levels of personal independence and professional competence.

https://www.publications.parliament.uk/pa/cm201617/cmselect/cmtreasy/1039/1039.pdf

FCA warnings

Name of firm	Date of warning	Details
JP Morgan Courtage	3 March 2017	Clone firm https://www.fca.org.uk/news/warnings/jp-morgan-courtage-clone-firm
Tide U Over	2 March 2017	Clone firm https://www.fca.org.uk/news/warnings/tide-u-over-clone
Mr Instant Cash	2 March 2017	Clone firm https://www.fca.org.uk/news/warnings/mr-instant-cash-clone
Gem Loans / Jem Loans	2 March 2017	Clone firm https://www.fca.org.uk/news/warnings/gem-loans-jem-loans-clone
Loan2Pocket	28 February 2017	Clone firm https://www.fca.org.uk/news/warnings/loan2pocket-clone-firm
Blackfriars Asset Management	28 February 2017	Clone firm https://www.fca.org.uk/news/warnings/blackfriars-asset-management-clone

Policy developments

	FCA		PRA	
		Proposed developments		
		Deadline for responses		
Consultation papers	On 1 March, the FCA published a consultation paper (CP17/5)	1 June 2017		

	proposing a package of measures to reform the availability of information during the UK equity IPO process. This consultation is related to a wider programme of work that is designed to increase the efficiency and effectiveness of primary markets. https://www.fca.org.uk/news/press-releases/fca-proposes-reforms-availability-information-uk-equity-ipo-process			

Finalised Policy and guidance				
		Implementation/effective date		
Policy statements	On 2 March, the FCA published a policy statement (PS17/3) including final rules and guidance on PPI complaints. https://www.fca.org.uk/publications/policy-statements/ps17-3-payment-protection-insurance-complaints	29 August 2017/31 March 2017	27 February 2017	On 27 February, the PRA published a policy statement (PS5/17 with Appendix) setting out the final rules for the loan to income flow limit to operate on a four-quarter rolling basis. http://www.bankofengland.co.uk/pra/Pages/publications/ps/2017/ps517.aspx

Further Afield

Hong Kong: SFC proposes to standardise rules for prescribing professional investors

On 1 March, the SFC launched a consultation on proposed amendments to the Securities and Futures (Professional Investor) Rules (PI Rules) to allow joint accounts with non-associates and assets held in investment vehicles owned by individuals to be counted in ascertaining whether individuals meet the monetary threshold to qualify as professional investors. Under the proposals, the SFC envisages that more persons will qualify as professional investors. Nevertheless, intermediaries remain subject to the suitability requirement and other fundamental requirements when serving them. The public is invited to submit their comments to the SFC on or before 3 April 2017.

http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=17PR17

US Securities and Exchange Commission Charges Mexico-Based Homebuilder in $3.3 Billion Accounting Fraud

On 3 March, the US Securities and Exchange Commission (SEC) announced that Mexico-based homebuilding company Desarrolladora Homex S.A.B. de C.V. has agreed to settle charges that it reported fake sales of more than 100,000 homes to boost revenues in its financial statements during a three-year period. The SEC alleged that Homex, one of the largest homebuilders in Mexico at the time, inflated the number of homes sold during the three-year period by approximately 317 percent and overstated its revenue by 355 percent (approximately $3.3 billion). The SEC's complaint highlighted, for example, that Homex reported revenues from a project site in the Mexican state of Guanajuato where every planned home was purportedly built and sold by Dec. 31, 2011. Satellite images of the project site on March 12, 2012, show it was still largely undeveloped and the vast majority of supposedly sold homes remained unbuilt.

http://www.sec.gov/news/pressrelease/2017-160.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

Michael Lyons
Partner

E: michael.lyons
@cliffordchance.com

Kelwin Nicholls
Partner

E: kelwin.nicholls
@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

Anne Collins
Lawyer
E: anne.collins
@cliffordchance.com