

This week at the UK regulators

Thirty second guide: The week in overview

The main enforcement development last week was the FCA's well publicised decision to exercise its powers to require the payment of restitution in respect of market abuse by a listed company at the head of a supermarket group. It decided not to impose a financial penalty, recognising that the same conduct has been the subject of negotiations with the Serious Fraud Office which have led to a deferred prosecution agreement being agreed in principle was published (although that agreement still awaits approval by the Court).

The other important enforcement development was the imposition by the FCA of a financial penalty on an individual for disclosing confidential information over the WhatsApp messaging platform.

In the week when draft secondary legislation transposing parts of the Markets in Financial Instruments Directive (MiFID II), the FCA encouraged firms to submit applications for MiFID II authorisation. Its Director of Supervision also set out his vision of cooperation with the credit sector in a speech. For its part, the PRA set forth its vision for the 2017 stress test.

Away from the FCA and PRA, the Financial Reporting Council commissioned an independent review of aspects of its enforcement procedures

Further afield, the Chinese securities regulator has imposed a substantial fine on an individual for market manipulation and in Switzerland, the Federal Criminal Court awarded compensation to victims of a former Swiss fund manager found guilty last year of cheating 2,000 investors out of around 800 million Swiss francs. In an important development in Australia, the introduction of deferred prosecution agreements has moved a step closer with the release of a detailed consultation paper on the proposed scheme.

The FCA breaks new ground by ordering a listed company to pay redress for market abuse

On 28 March, the FCA issued a final notice in respect of Tesco PLC ("Tesco"). It found that Tesco had committed market abuse on 29 August 2014 by issuing a trading update that contained an inflated profit forecast. It found that a false market had existed in Tesco's shares until 22 September 2014 when Tesco corrected the overstated profit forecast. The FCA exercised its powers under section 384 of the Financial Services Markets Act (FSMA) for the first time against a listed company, ordering that restitution be made to shareholders and bondholders who had suffered a loss as a result of the misstatement during the period from 29 August 2014 and 22 September 2014.

The SFO has confirmed that it and Tesco's subsidiary Tesco Stores Limited have agreed in principle to enter into a deferred prosecution agreement in respect of substantially the same conduct as referred to in the final notice, contingent on the approval of the Crown Court at a public hearing scheduled for 10 April 2017. In recognition of

the proposed payment by Tesco Stores Limited of a fine of £128,992,500, the FCA has decided not to impose any financial penalty in respect of its findings of market abuse.

For further details, see our Clifford Chance briefing.

<https://www.fca.org.uk/sites/default/files/publications/final-notices/tesco-2017.pdf>

<https://www.sfo.gov.uk/2017/03/28/sfo-confirms-dpa-principle-tesco/>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbFgNhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZe8MtQcspyEpc0khXMULlq4%2Fp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=108300>

FCA fines investment banker for disclosing client information

On 30 March, the FCA fined Christopher Niehaus, a former investment banker, £37,198 for sharing client confidential information over WhatsApp. The FCA found that Mr Niehaus received client confidential information during the course of his employment and, on a number of occasions

between 24 January and 16 May 2016, improperly shared that information with both a personal acquaintance and a friend, who was also a client of the firm using the WhatsApp messaging platform. Mr Niehaus provided full admissions to the FCA in an early interview and benefitted from a 15 per cent discount on the penalty imposed as a result (in addition to a 30 per cent discount received under the FCA's executive settlement procedures to reflect the fact that he settled at an early stage).

<https://www.fca.org.uk/publication/final-notice/christopher-niehaus-2017.pdf>

FCA publishes near final rules on MiFID II

On 31 March, the FCA issued near-final rules on the implementation of MiFID II. The rules cover the new categorisation of firms, position limits and reporting for commodity derivatives and systems and controls requirements for firms providing MiFID investment services.

This followed the publication (on 28 March) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017 (SI 2017/488), which amends the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 to transpose parts of MiFID II.

<https://www.fca.org.uk/news/press-releases/fca-publishes-near-final-rules-mifid-ii-encourages-firms-submit-applications>

http://www.legislation.gov.uk/uksi/2017/488/pdfs/uksi_2017_0488_en.pdf

FCA's director of supervision discusses credit regulation

On 30 March, Jonathan Davidson, the FCA's Director of Supervision shared his view on the credit sector. Mr Davidson delved into the FCA's understanding of consumer behaviour and the need to maintain a model of credit regulation with a long term outlook. He highlighted the regulator's and the industry's progress in improving standards and engaging in dialogue.

<https://www.fca.org.uk/news/speeches/keeping-up-with-credit-sector>

PRA discloses the nature of its 2017 stress test

On 27 March, the PRA issued guidance on the methodology of its 2017 stress test. The annual cyclical scenario will incorporate severe and synchronised UK and global macroeconomic and financial market conditions and will include a rise in the Bank Rate. The PRA also indicated that it will run an additional exploratory scenario looking at how the UK banking system might evolve if recent headwinds to bank profitability persist or intensify.

<http://www.bankofengland.co.uk/financialstability/Documents/stresstesting/2017/keyelements.pdf>

Financial Reporting Council launches review on tougher sanctions

The Financial Reporting Council (FRC) has, on 30 March, commissioned an independent review of the sanctions imposed under its enforcement procedures. The review will be conducted by an independent panel chaired by former Court of Appeal Judge, Sir Christopher Clarke. The panel also features Andrew Long, the former Chairman of the FCA's Regulatory Decisions Committee. It will consider matters such as whether the FRC's reasons for imposing sanctions set out in its guidance and policies remain appropriate, the fairness and the effectiveness of the range of sanctions available under the enforcement procedures, and whether the financial penalty sanctions, in particular, are adequate to safeguard the public interest and deter wrongdoing.

<https://www.frc.org.uk/News-and-Events/FRC-Press/Press/2017/March/Independent-review-of-Financial-Reporting-Council.aspx>

FCA warnings

Name of firm	Date of warning	Details
G R Ranking Limited / Paydayloan	30 March 2017	Not authorised https://www.fca.org.uk/news/warnings/g-r-ranking-limited-paydayloan
Cartwright & Blyth Associates	29 March 2017	Not authorised https://www.fca.org.uk/news/warnings/cartwright-blyth-associates
CWA Options	28 March 2017	Not authorised https://www.fca.org.uk/news/warnings/cwa-options
Prime FX Ltd	27 March 2017	Not authorised https://www.fca.org.uk/news/warnings/prime-fx-ltd
ReLoan UK	27 March 2017	Clone firm https://www.fca.org.uk/news/warnings/reloan-uk-clone
Pulse Finance	27 March 2017	Clone firm https://www.fca.org.uk/news/warnings/pulse-finance-clone
Guaranteed Loans	27 March 2017	Clone firm https://www.fca.org.uk/news/warnings/guaranteed-loans-clone

Policy developments

FCA		PRA		
Proposed developments				
		Deadline for responses		
Consultation papers	The FCA is consulting on the fifth set of implementation proposals for MiFID II and seeking views on the proposed changes to the FCA handbook. https://www.fca.org.uk/publication/consultation/cp17-08.pdf	12 May 2017 for Chapters 3 and 4 and 23 June 2017 for Chapter 2.		
			28 June 2017	The PRA is consulting the market about the proposed changes to the internal ratings based approach to clarify expectations for firms applying for IRB model approval. http://www.bankofengland.co.uk/p/ra/Documents/publications/cp/2017/cp517.pdf The PRA has, on 31 March 2017, published a policy statement (PS6/17), providing feedback on the response to the PRA Consultation Paper 1/17 'Financial Services Compensation Scheme – Management Expenses Levy Limit 2017/18' and final rules for the Financial Services Compensation Scheme (FSCS) Management Expenses Levy Limit (MELL) for 2017/18. http://www.bankofengland.co.uk/p/ra/Documents/publications/ps/2017/ps617.pdf

Further Afield

China's securities regulator imposes substantial fine for market manipulation

On 31 March, the China Securities Regulatory Commission levied a RMB 1.2 billion (\$174 million) a businessman and his associates for manipulating mainland-listed securities. Tang Hanbo was found guilty of manipulating the stock price of Zhejiang China Commodities Group. Mr Hanbo was found to have derived an unlawful profit by ramping up and maintaining trading prices and volumes in order to mislead investors into trading in the same stock.

For further details, see our Clifford Chance briefing.

https://www.cliffordchance.com/briefings/2017/03/china_regulator_leviesshugefineformarke.html

Victims of 'Swiss Madoff' awarded compensation

Press reports indicate that on 30 March, Switzerland's Federal Criminal Court ordered Dieter Behring, a former Swiss fund manager found guilty last year of cheating 2,000 investors out of around 800 million Swiss francs, to reimburse a total of CHF 207 million francs to one group of victims. The judgment did not specify how many investors would be compensated but it was reported that 816 investors were awarded compensation while 373 more were told to pursue civil court claims.

Australian government proposes introduction of deferred prosecution agreements

In a consultation paper issued on 31 March, the Australian government has issued proposals for the introduction of a scheme enabling prosecutors to enter into deferred prosecution agreements (DPAs) with cooperating corporate entities in respect of serious crime such as foreign bribery, fraud and money laundering. Pointing to the use of DPAs in the US and UK, the Minister for Justice has heralded their introduction as a positive step towards enhancing corporate culture and providing prosecutors with an additional tool to encourage proactive self-reporting and cooperation. The release of this more detailed proposed scheme follows an earlier proposal released in 2016, which sought views in principle as to the introduction of DPAs in Australia. The consultation paper invites responses by 1 May 2017 and indicates that the government intends to introduce the scheme later this year.

<https://www.ag.gov.au/Consultations/Pages/Proposed-model-for-a-deferred-prosecution-agreement-scheme-in-australia.aspx>

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