

# This week at the UK regulators

## Thirty second guide: The week in overview

The FCA announced last week that investigations have increased 75% over the past year, although there were no major publicised enforcement outcomes. The FCA published its approach to implementing the revised Payment Services Directive and warned firms requiring new permissions under MiFID II which have not yet sought authorisation to take immediate action.

In Hong Kong, the Securities and Futures Commission secured its first criminal conviction against an entity for actively marketing in Hong Kong regulated activities carried out outside Hong Kong without a licence.

## FCA investigations up 75 per cent

Mark Steward, the FCA's Executive Director of Enforcement and Market Oversight, announced on 20 September that there has been an approximate 75% increase in the number of ongoing investigations being conducted by the FCA over the past year. He attributed this increase to three factors: more investigations into capital market disclosure issues; an extension to the scope of the reporting regime for firms, brought about by the Market Abuse Regulation, which has given the FCA a richer and more varied market picture, leading to more cases being selected for investigation; and the FCA's change in approach when deciding whether to open an investigation.

<https://www.fca.org.uk/news/speeches/better-view>

## FCA finalises revised PSD2 requirements

On 19 September, the FCA published its approach to implementing the revised Payment Services Directive ("PSD2") which is required to be implemented into the national law of all EU

member states by 13 January 2018. More services will be brought within the FCA's remit by PSD2 including account aggregation services aimed at helping consumers to manage their finances by bringing all of their bank account data together in one place, and services that allow consumers to make payments in different ways online, without using a credit or debit card. PSD2 also introduces a number of new requirements around how firms treat their customers and handle their complaints, and the data they must report to the FCA and requires existing payment institutions and e-money institutions to be re-authorised or re-registered. The FCA has reminded firms that they should consider whether they now need to seek authorisation or registration as a consequence of changes to the scope of regulation made by PSD2. Applications will open on 13 October 2017.

<https://www.fca.org.uk/news/press-releases/fca-finalises-revised-psd2-requirements>

## **FCA warns firms to take immediate action to seek MiFID II authorisation**

On 18 September, the FCA published a reminder that MiFID II applies from 3 January 2018 and gave some more detail about its approach to the transition.

MiFID II captures some financial entities which have not previously required authorisation. Some firms who are already authorised may also need new authorisations or a Variation of Permission ("VoP") to carry out certain activities. Following up on a previous statement in which it indicated that firms requiring new authorisations or a VoP needed to submit a complete application by 3 July 2017 (and that applications made after that date were not guaranteed to be determined in time), the FCA has urged any firm which needs new permissions under MiFID II but which has not yet submitted a complete application to take immediate action.

The FCA separately stated (at the AFME European Compliance and Legal Conference on 20 September) that it would act proportionately, when deciding whether to take enforcement action against firms covered by MiFID II, which have not transitioned in time for 3 January 2018.

<https://www.fca.org.uk/news/news-stories/mifid-ii-authorisation-and-variation-permissions>

## **FCA publishes findings from the Ageing Population Project**

On 21 September, the FCA published an Occasional Paper outlining the findings from a project that explored how the ageing population would impact the Financial Services industry.

The document also includes actions which the FCA and industry could take to better support older people including setting out some ideas for firms to consider in ways that fit their business models, such as looking at product and service design, customer support, and reviewing and adapting strategies.

<https://www.fca.org.uk/news/press-releases/fca-publishes-findings-ageing-population-project>

## **FCA and Hong Kong Insurance Authority sign Fintech co-operation agreement**

On 21 September, the FCA announced that it has entered into a co-operation agreement with the Hong Kong Insurance Authority ("HKIA") to enhance collaboration in supporting Fintech innovation. Under the agreement, which was concluded on 12 September, the FCA and the HKIA will cooperate on information sharing on innovation and referrals in relation to firms seeking to innovate in each other's markets.

This follows on from a raft of agreements amongst authorities on Fintech innovation. In the most recent examples of such agreements, last week the Hong Kong Securities and Futures Commission concluded separate cooperation agreements with the Monetary Authority of Singapore and the Securities Commission Malaysia.

<https://www.fca.org.uk/news/press-releases/fca-hong-kong-insurance-authority-sign-fintech-co-operation-agreement>

<https://www.fca.org.uk/publication/mou/fca-ia-co-operation-agreement.pdf>

## FCA warnings

| Name of firm                           | Date of warning   | Details   |
|--|-------------------|---|
| Rathbone Brothers                      | 19 September 2017 | Clone<br><a href="https://www.fca.org.uk/news/warnings/rathbone-brothers-clone">https://www.fca.org.uk/news/warnings/rathbone-brothers-clone</a>                                    |
| Asset Consulting / Consultant Services | 19 September 2017 | Non-authorized<br><a href="https://www.fca.org.uk/news/warnings/asset-consulting-consultant-services">https://www.fca.org.uk/news/warnings/asset-consulting-consultant-services</a> |

## Policy developments

| FCA                      |  | PRA                    |  |
|--------------------------|--|------------------------|--|
| Proposed developments    |  |                        |  |
|                          |  | Deadline for responses |  |
| <b>Policy Statements</b> | <p>The FCA has published a policy statement (PS17/19) '<i>Implementation of the revised Payment Services Directive</i>' confirming changes to the FCA Handbook and Approach Document guidance, and new non-Handbook directions for excluded firms, to reflect PSD2 and the PSRs 2017.</p> <p><a href="https://www.fca.org.uk/publication/policy-statements/ps17-19-implementation-revised-payment-services-directive">https://www.fca.org.uk/publication/policy-statements/ps17-19-implementation-revised-payment-services-directive</a></p> | 19 September           | <p>The PRA published an updated version of the supervisory statement (SS18/15) '<i>Depositor and dormant account protection</i>'. The only update is to section the use of FSCS badge on the information sheet contained in Annex 1 of the Depositor Protection Part.</p> <p><a href="http://www.bankofengland.co.uk/pr/pages/publications/ss/2017/ss1815update2.aspx">http://www.bankofengland.co.uk/pr/pages/publications/ss/2017/ss1815update2.aspx</a></p> |
|                          | <p>The FCA has published a policy statement (PS17/20) '<i>Transaction cost disclosure in workplace pensions</i>' confirming changes to the FCA Handbook rules that</p>   | 20 September           |  |

|                           |  |              |  |  |
|---------------------------|--|--------------|--|--|
|                           | <p>require firms managing money on behalf of defined contribution workplace pension schemes to disclose administration charges and transaction costs to the governance bodies of those schemes using a standard approach.</p> <p><a href="https://www.fca.org.uk/publication/policy/ps17-20.pdf">https://www.fca.org.uk/publication/policy/ps17-20.pdf</a></p>   |              |  |  |
| <b>Finalised Guidance</b> | <p>The FCA has published the guidance <i>'Payment Services and Electronic Money: Our Approach'</i>. This Approach Document is designed to help firms navigate the payment services and e-money regulatory requirements. It replaces the existing Payment Services and E-Money Approach Documents.</p> <p><a href="https://www.fca.org.uk/publication/finalised-guidance/fca-approach-payment-services-electronic-money-2017.pdf">https://www.fca.org.uk/publication/finalised-guidance/fca-approach-payment-services-electronic-money-2017.pdf</a></p> | 19 September |  |  |

## Further Afield

### Hong Kong regulator secures first conviction for overseas unauthorised business

On 21 September, the Eastern Magistrates' Court in Hong Kong convicted ETRADE Securities Hong Kong Limited of actively marketing to the Hong Kong public US brokerage services provided by ETRADE Securities LLC which was not a licensee of the SFC. This is the first criminal conviction secured by the SFC against an entity for the offence of actively marketing in Hong Kong regulated activities carried out outside Hong Kong without a licence under the SFC. ETRADE Securities Hong Kong Limited was fined HK\$20,000 and ordered to pay the SFC's investigation costs.

## 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

**Matthew Newick**  
Partner

E: matthew.newick  
@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

**Lydia Drake**  
Lawyer

E: Lydia.drake  
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

[www.cliffordchance.com](http://www.cliffordchance.com)

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

© Clifford Chance 2013

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street, London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to [nomorecontact@cliffordchance.com](mailto:nomorecontact@cliffordchance.com) or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Casablanca ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh\* ■ Rome ■ São Paulo ■ Seoul ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

\*Clifford Chance has a co-operation agreement with Al-Jadaan & Partners Law Firm in Riyadh.