

This week at the UK regulators

Thirty second guide: The week in overview

In a week without significant enforcement developments, the FCA has published a policy statement relating to the Insurance Distribution Directive and, jointly with the PRA, issued a consultation paper relating to the management expenses levy limit. Meanwhile, the PRA published a follow-up statement on consumer credit, indicating key findings and action points from its 2017 review into consumer credit lending. The FCA also issued a lengthy response to the findings of the UK Parliament's Committee on Work and Pensions on the British Steel Pension Scheme.

Further afield, regulators warned about the risks involved with cryptocurrencies, flagging the need for investor caution, and the European Securities and Markets Authority issued a consultation paper on the use of its product intervention powers in relation to contracts for differences and binary options.

Enforcement Notices

In separate Final Notices published on 17 January 2018, the FCA imposed cancellations on Mr Ian Emery, Mr Richard Adams, SK Motors Limited, Ms Shelby Elaine Dewar, Mr Chris Towers, trading as Clarity Copiers (Cornwall) and Yorkshire Gas & Electrical Ltd, for failures to be open and cooperative.

<https://www.fca.org.uk/publication/final-notices/ian-emery-2018.pdf>

<https://www.fca.org.uk/publication/final-notices/richard-adams-2018.pdf>

<https://www.fca.org.uk/publication/final-notices/sk-motors-limited-2018.pdf>

<https://www.fca.org.uk/publication/final-notices/shelby-elaine-dewar-2018.pdf>

<https://www.fca.org.uk/publication/final-notices/clarity-copiers-cornwall-2018.pdf>

<https://www.fca.org.uk/publication/final-notices/yorkshire-gas-electrical-ltd-2018.pdf>

In a Final Notice published on 16 January 2018, the FCA prohibited Mr Alok Dhanda from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. The decision to ban him was based upon remarks made by the sentencing judge in 2016 in respect of Mr Dhanda's conviction for various fraud offences.

<https://www.fca.org.uk/publication/final-notices/alok-dhanda-2018.pdf>

In a Second Supervisory Notice published on 16 January 2018 (dated 15 November 2017), the FCA confirmed it has decided not to rescind certain requirements imposed upon Stargate Capital Management Limited and Stargate Corporate Finance Ltd by a Re-issued First Supervisory Notice dated 27 June 2017. However, the FCA concluded that certain other requirements imposed by the Re-issued First Supervisory Notice should be rescinded as it is satisfied that the two firms have complied with those particular requirements in full.

<https://www.fca.org.uk/publication/supervisory-notices/second-supervisory-notice-stargate-capital-management-limited-2018.pdf>

FCA responds to Work and Pensions Select Committee's statement on British Steel Pension Scheme

Following a statement issued by the UK Parliamentary Select Committee on Work and Pensions on 12 January 2018, Andrew Bailey of the FCA has (on 18 January 2018) issued a seven-page letter to the Committee's chairman, Labour MP Frank Field, rejecting statements made by the Committee that the FCA's efforts to protect members of the British Steel Pension Scheme has been grossly inadequate. Along with rejecting the Committee's conclusion, the letter also noted the FCA's disagreement with the Committee's statement that the FCA could be sleepwalking into another mis-selling scandal, and stated that the FCA has been carrying out "detailed, extensive and robust action that has been targeting the issues we have seen in BSPS but more broadly across the entire pensions

advice landscape".

<http://www.parliament.uk/business/committees/committees-a-z/commons-select/work-and-pensions-committee/news-parliament-2017/fca-correspondence-17-19/>

<https://www.fca.org.uk/publication/correspondence/fca-response-to-wpsc-statement-on-british-steel-pension-scheme.pdf>

PRA follows up on consumer credit

The PRA has (on 17 January 2018) published a follow-up to its statement on consumer credit (published on 4 July 2017), in the form of a letter sent to the Chairs of relevant firms. This letter communicates the PRA's key findings and action points following its review of PRA-regulated firms' consumer credit lending in the first half of 2017. The PRA's main finding concerns weaknesses in management information and governance, with other findings relating to medium term economic risk, affordability assessments and product specific points, for example, concerning 0% interest credit cards. The PRA will communicate firm-specific

feedback from the review to individual firms.

<https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/letter/2017/follow-up-to-pra-statement-on-consumer-credit.pdf?la=en&hash=00023C625ADE4BDD307BD2CD71C965C77C789C47>

FCA warnings

Name of firm	Date of warning	Details
EJS Gesrion D'actifs / EJS Placements Financiers	19 January 2018	Clone firm https://www.fca.org.uk/news/warnings/ejs-gesrion-d%E2%80%99actifs-ejs-placements-financiers-clone
Karel Besta / KB Financial Solutions	17 January 2018	Clone firm https://www.fca.org.uk/news/warnings/karel-besta-kb-financial-solutions-clone-eea-authorized-firm
Prime Admin Services	16 January 2018	Not authorised https://www.fca.org.uk/news/warnings/prime-admin-services
Skyblue Capital	15 January 2018	Not authorised https://www.fca.org.uk/news/warnings/skyblue-capital

Policy developments

FCA		PRA		
Proposed developments				
		Deadline for responses		
Consultation papers	<p>On 18 January 2018, the FCA and PRA published a joint consultation paper (CP 18/2) in relation to the management expenses levy limit for the Financial Services Compensation Scheme.</p> <p>https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2018/cp318.pdf?la=en&hash=7945DCEA03D35D0C3F60BD D62AC7F97C2C8AB88E</p>	16 February 2018	16 February 2018	<p>On 18 January 2018, the PRA and FCA published a joint consultation paper (CP 3/18) in relation to the management expenses levy limit for the Financial Services Compensation Scheme.</p> <p>https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2018/cp318.pdf?la=en&hash=7945DCEA03D35D0C3F60BD D62AC7F97C2C8AB88E</p>

Finalised Policy and guidance				
		Implementation/effective date		
Policy statements	<p>On 19 January 2018, the FCA published a policy statement (PS18/1) setting out the near-final rules for the implementation of the Insurance Distribution Directive.</p> <p>https://www.fca.org.uk/publication/policy/ps-18-1.pdf</p>			

Further Afield

European Securities and Market Authority's consults on temporary product intervention measures

The European Securities and Markets Authority ("**ESMA**") has (on 18 January 2018) issued a consultation paper on the possible use of its product intervention powers to protect retail investors against risks arising from contracts for differences ("**CFDs**") and binary options.

Measures ESMA is considering include: (1) prohibiting the marketing, distribution and sale of binary options to retail investors; (2) restricting the marketing, distribution and sale to retail clients of CFDs; and (3) restricting or prohibiting the marketing, distribution and sale to retail clients of CFDs on cryptocurrencies.

The deadline for responses is 5 February 2018.

<https://www.esma.europa.eu/press-news/esma-news/esma-consults-potential-cfd-and-binary-options-measures-protect-retail>

https://www.esma.europa.eu/sites/default/files/library/esma_35-43-904_call_for_evidence_-_potential_product_intervention_measures_on_cfds_and_bos_to_retail_clients.pdf

North American regulators reiterate concerns about cryptocurrencies

The Chairman of the US Securities and Exchange Commission ("**SEC**"), Jay Clayton, has (on 4 January 2018) issued a joint statement with SEC Commissioners Kara Stein and Michael Piwowar commending the press release from the North American Securities Administrators Association ("**NASAA**") on 4 January 2018 which highlights issues and concerns relating to cryptocurrencies, initial coin offerings ("**ICOs**") and other cryptocurrency-related investment products. The NASAA statement reminds investors to be cautious about investments involving cryptocurrencies, stressing that cryptocurrencies are not insured or controlled by a central bank or other governmental authority, are subject to little or no regulation and are highly volatile. In addition, SEC and CFTC enforcement directors have (on 19 January 2018) issued a joint statement regarding virtual currency enforcement actions, noting that if market participants engage in fraud under the guise of offering digital instruments then the SEC and CFTC will look beyond form and examine the

substance of the activity. The statement also noted the SEC and CFTC would prosecute violations of the federal securities and commodities laws.

These statements echo concerns in other parts of the world. On 27 December 2017 the Singapore court released the first decision in Singapore relating to cryptocurrencies, dismissing the plaintiff's summary judgment application. The case will now go to trial. The decision highlights the legal implications of trades entered into through smart contracts, and the reversibility of such trades where a computer error is alleged. In the UK, the FCA has previously issued statements concerning cryptocurrencies. For example, on 14 November 2017 the FCA warned that contracts for differences with cryptocurrencies as the underlying investment are "*extremely high-risk, speculative products*" (key concerns being price volatility, leverage, charges and funding costs, and price transparency). The FCA also flagged that cryptocurrencies are not issued or back by a central bank or government. In addition, on 12 September 2017 the FCA issued a statement warning about the risks of ICOs (key risks highlighted being no investor protection, unregulated space, price volatility, potential for fraud and inadequate documentation).

<https://www.sec.gov/news/public-statement/statement-clayton-stein-piwowar-010418>

<http://www.nasaa.org/44073/nasaa-reminds-investors-approach-cryptocurrencies-initial-coin-offerings-cryptocurrency-related-investment-products-caution/>

<https://www.sec.gov/news/public-statement/joint-statement-sec-and-cftc-enforcement-directors>

https://www.cliffordchance.com/briefings/2018/01/singapore_court_dismissessummaryjudgmen.html

<https://www.fca.org.uk/news/news-stories/consumer-warning-about-risks-investing-cryptocurrency-cfds>

<https://www.fca.org.uk/news/statements/initial-coin-offerings>

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