C L I F F O R D
C H A N C E

Briefing note

29 January 2018

This week at the UK regulators

Thirty second guide: The week in overview

The main UK regulatory enforcement activity last week consisted of action against a firm for failures to maintain appropriate systems and controls to prevent market abuse and separate decisions to take action against another firm and its majority shareholders for client money failings. FCA officials gave speeches raising concerns and reminding firms of their obligations in relation to cyber resilience and Packaged Retail and Insurance-based Investment Products.

In policy developments, the FCA published a consultation paper on SME access to the Financial Ombudsman Service and policy statements on client money and unbreakable deposits, and the Insurance Distribution Directive.

Further afield, Hong Kong Securities and Futures Commission issued a circular highlighted compliance failures in product selling practices and launched a three month consultation on proposed amendments to takeovers rules.

FCA fines firm for poor market abuse controls and failure to report suspicious client transactions

On 25 January, the FCA imposed a financial penalty of £1,049,412 on Interactive Brokers (UK) Limited ("**IBUK**"), an online broker for failings in its post-trade systems and controls for identifying and reporting suspicious transactions in the period February 2014 to February 2015. IBUK delegated its post-trade monitoring to a team based at a US company within its group, but the FCA found that it breached Principle 3 (management and control) of the Principles for Businesses by failing to adequately input into the design and calibration of the monitoring systems, test their operation or provide effective oversight of the US team's conduct. The FCA also identified three occasions between February 2014 and February 2015 on which IBUK failed to report suspicious trading by IBUK clients.

For further details, see our Clifford Chance briefing.

https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWIbFgNhLNomwBl%2B33QzdFhRQAhp8D%2BxrIGReI2crGqLnALtlyZeyJIcVte1ys5Nkl6KnJSfa3p%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaeIf&attachmentsize=215826

https://www.fca.org.uk/news/press-releases/fca-fines-interactive-brokers-uk-limited

FCA takes action against firm and majority shareholder for client money failings

On 26 January, the FCA published Decision Notices in respect of One Call Insurance Services Limited ("**One Call**") and its majority shareholder Mr John Radford. The Decision Notice in respect of One Call sets out that the FCA has decided to impose on it a financial penalty of £684,000 and a restriction on charging renewal fees for 121 days from the date of issue of any Final Notice. The decision was made as a result of One Call failing to adequately protect client monies, which led to it inadvertently spending client money to finance its own working capital requirements, make payments to directors and capitalise a third party.

The Decision Notice in respect of Mr Radford sets out that the FCA has decided to fine him £468,600 and prohibit him from having any responsibility for client or insurer money in relation to regulated activity in financial services. The decision is based on findings by the FCA that he failed to carry out his responsibilities in relation to client monies with due skill, care and diligence and failing to establish robust systems and controls for assessing whether effective risk transfer agreements with insurers were in place.

A third party has made a reference to the Upper Tribunal in relation to certain statements in these Decision Notices.

https://www.fca.org.uk/news/press-releases/fca-publishes-decision-notices-against-one-call-insurance-services-limited-and-john-lawrence-radford

FCA Head of Technology, Resilience & Cyber underlines importance of resilience for firms

In a speech delivered on 25 January, Robin Jones, FCA Head of Technology, Resilience & Cyber discussed the importance of constantly assessing the vulnerability of key assets to cyber attack. He also highlighted lessons which could be learned from recent cyber attacks, including the need to have robust contingency and communications plans in place and highlighted the FCA's risk-based approach to supervision in this area, which concentrates on firms with the potential to cause most harm to consumers and markets.

https://www.fca.org.uk/news/speeches/building-cyber-resilience

FCA issues statement on communications in relation to Packages Retail and Insurance based Investment Products

On 24 January 2018, the FCA released a statement on communications in relation to Packaged Retail and Insurance-based Investment Products ("PRIIPs"). PRIIP manufacturers are required to prepare and publish a Key Information Document, including performance scenarios, for each of their PRIIPs. The FCA responded to concerns raised by some forms that the performance scenario information in these documents may appear too optimistic and have the potential to mislead customers by stating that it is comfortable with a PRIIP manufacturer providing explanatory materials to investors in such cases.

https://www.fca.org.uk/news/speeches/building-cyber-resilience

FCA warnings

Name of firm	Date of warning	Details
Global Multi-Asset Management	23 January 2018	Clone of Authorised Firm
Cross Ocean Adviser	23 January 2018	Clone of Authorised Firm

Policy developments

FCA		PRA	
Proposed developments			
		Deadline for responses	

Consultation papers	**Consultation on SME access to the Financial Ombudsman Service and Feedback to DP15/7: SMEs as Users of Financial Services (CP18/3)** At present, only individual consumers and micro-enterprises can access the Ombudsman if they have a dispute with a financial services firm. Under changes proposed by the FCA, the eligibility criteria to access the Ombudsman would change, so businesses with fewer than 50 employees, annual turnover below £6.5 million and an annual balance sheet (i.e. gross assets) below £5 million would become eligible. The FCA also proposes to extend eligibility to personal guarantors of corporate loans, provided the borrowing business also meets the eligibility criteria. https://www.fca.org.uk/news/press-releases/financial-conduct-authority-consults-widening-access-financial-ombudsman-service-small-businesses	22 April 2018		

Finalised Policy and guidance				
		Implementation/effective date		
Policy statements	**Client money and unbreakable deposits (PS18/2)** Some investment firms are experiencing increasing difficulty depositing client money at banks. Industry feedback suggests that this is partly due to the combined effects of the liquidity rules applicable to banks and a rule in the Client Assets sourcebook (CASS) that prevents a firm from placing client money in bank	22 January 2018		

	accounts with unbreakable terms of longer than 30 days (30-Day Rule). The FCA proposes changing the 30-Day Rule to ensure customers continue to be adequately protected by firms holding their client money. https://www.fca.org.uk/publications/policy-statements/ps18-2-client-money-unbreakable-deposits **Insurance Distribution Directive implementation – Feedback and near-final rules to CP17/33 and other IDD consultations (PS18/1)** In this Policy Statement, the FCA responds to feedback it received to CP17/33 (its third Insurance Distribution Directive CP), as well as feedback on certain matters deferred from CP17/23 (the second CP), and feedback to the IDD-related aspects of two Quarterly Consultation Papers (CP17/32 and CP17/39). https://www.fca.org.uk/publications/policy-statements/ps18-1-insurance-distribution-directive-implementation-feedback-and-near-final-rules			

Further Afield

Hong Kong SFC issues circular to highlight compliance failures in product selling practices

On 25 January 2018, the Hong Kong Securities and Futures Commission issued a circular to licensed corporations ("**LCs**") on the standards it expects of them when they sell fixed-income and structured products. The circular reminds LCs of their obligations to comply with the suitability requirement and, in particular, draws attention to the SFC's expected standards for product due diligence, measures to identify whether any suitability obligation has been triggered, assessment of suitability framework and the retention of compliance records.

http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=18PR7

Hong Kong SFC consults on proposed amendments to takeover rules

On 19 January 2018, the Hong Kong Securities and Futures Commission launched a three month consultation on proposed amendments to the Codes on Takeovers and

Mergers and Share Buy-backs. Key proposals increase the voting approval threshold for whitewash waivers to 75% of independent shareholders, empower the Takeovers Panel to require compensation to be paid to shareholders who have suffered as a result of breaches of the Codes and require persons dealing with the Takeovers, Executive, Takeovers Panel and Takeovers Appeal Committee in all Codes transactions to co-operate promptly and provide true, accurate and complete information.

http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=18PR5

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