

# This week at the UK regulators

## Thirty second guide: The week in overview

The main enforcement development last week was the conclusion of long running civil proceedings culminating in the FCA obtaining restitution orders worth approximately £16.9 million against various companies and individuals for their parts in unauthorised collective investment schemes. In other concluded enforcement developments, the FCA imposed a fine and prohibition order on an individual found to have made false statements and falsified documents relating to investment advice qualifications.

The FCA issued statements supporting the product intervention measures imposed by the European Securities and Markets Authority in respect of the marketing, sale and distribution of binary options and Contracts for Difference to retail consumers and welcoming the transition agreement reached in Brexit negotiations. In the latter, it gave some indications about the continuation of passporting arrangements in the run up to the UK's withdrawal from the EU.

The FCA published policy statements on pension transfer advice and staff remuneration and monitoring arrangements in the consumer credit sector (with accompanying non-handbook guidance on the latter). It also started consultations on the extension of the guidance set out in the Financial Crime Guide for firms to cover insider dealing and market manipulation and on further guidance relating to pension transfer advice. The PRA issued policy statements on authorisation and supervision arrangements for branches of international banks and insurers.

Further afield, in a move reflecting the intense media attention in relation to allegations of data misuse during elections, the Singapore financial services regulator announced its intention to develop guidance for all financial services firms relating to the use of data analytics and artificial intelligence.

## Enforcement notices

On 26 March, the FCA imposed a financial penalty of £34,000 and a prohibition order on Mr Alexander Stuart for making false and misleading statements and falsifying various documents in relation to qualifications required to be obtained by retail investment advisers under the Retail Distribution Review. The FCA found that he breached Principle 1 (integrity) of the Statements of Principle for Approved Persons. The financial penalty imposed was reduced by 30 per cent to reflect the fact that Mr Stuart settled at an early stage of the FCA's investigation.

In separate final notices, all published on 29 March, the FCA imposed cancellations on Khalsa (Bradford) Credit Union Limited, L27 (Liverpool) Credit Union Limited and Polmaise Community Credit Union Limited. In all cases, cancellations were imposed for failures to be open and cooperative.

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

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

<https://www.fca.org.uk/publication/final-notices/l27cul-final-notice-2018.pdf>

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

## FCA secures restitution orders worth £16.9 million

In a judgment running to 477 pages handed down on 26 March, the High Court has made restitution orders under section 382 of the Financial Services and Markets Act 2000 against Capital Alternatives Limited, Renwick Haddow, Marcia Hargous, Robert McKendrick and a number of other individuals associated with the company. The Court found that a total of £16.9 million paid to them by investors should be repaid as the schemes, which ran between 2009 and 2013 were unlawfully promoted to the public by false, misleading and deceptive statements. The orders follow a ruling in linked but separate proceedings that the schemes concerned amounted to unauthorised collective investment schemes.

Case reference: Financial Conduct Authority (a company limited by guarantee) v Capital Alternatives Limited and 15

others.

<https://www.fca.org.uk/news/press-releases/fca-wins-case-against-capital-alternatives-limited-and-others>

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### FCA issues statement on ESMA product intervention measures

On 27 March, the FCA issued a statement setting out details of the product intervention measures agreed by the European Securities and Markets Authority (ESMA) to prohibit the marketing, distribution or sale of binary options to retail clients and to restrict the marketing, distribution or sale to retail clients of Contracts for Difference, including rolling spot forex and financial spread bets. The measures will be imposed under regulation 40 of the Markets in Financial Instruments Regulation and will have an initial duration of three months, at which point they may be renewed.

The FCA has stated its support for the measures and has indicated that it expects to consult on whether to apply them more permanently. It has also confirmed that it continues to work with HM Treasury and the Bank of England/PRA.

<https://www.fca.org.uk/news/statements/fca-statement-esma-temporary-product-intervention-retail-cfd-binary-options>

### FCA welcomes Brexit withdrawal agreement

On 28 March, the FCA issued a statement welcoming the transition agreement reached between UK and EU negotiators in relation to the UK's withdrawal and confirmed that firms and funds will continue to benefit from passporting arrangements during the implementation period, which is intended to run from 29 March 2019 to the end of December 2020. It also confirmed that it expects that firms and funds that will be solo regulated by the FCA will have to notify it if they wish to benefit from the planned Temporary Permissions Regime and that it is continuing to work with HM Treasury and the Bank of England/PRA in relation to the EU(Withdrawal) Bill, which will be likely to contain provisions to ensure that the FCA Handbook functions effectively after Brexit.

For wider analysis on the transition agreement, see our Clifford Chance briefing.

<https://www.fca.org.uk/news/statements/fca-statement-eu-withdrawal-following-march-european-council>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbFgNhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZeybupKkFXIEqz3H0H4hmJ9np%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=531325>

### FCA warnings

Name of firm	Date of warning	Details
Credit Extra Cash / CreditExtraCash	27 March 2018	Clone of authorised firm
Blue Insurance UK	27 March 2018	Clone of authorised firm
All Purpose Loans	28 March 2018	Clone
Olsson Capital	28 March 2018	Unauthorised firm

Verge Finance Private Lending	29 March 2018	Unauthorised firm
Personal Loan Now	29 March 2018	Clone
KayaFX	29 March 2018	Unauthorised firm
The Castlebrook Properties HMO Properties Bond / Castlebrook Properties	03 April 2018	Clone of UK registered company

### Policy developments

FCA		PRA	
Proposed developments			
		Deadline for responses	
<b>Consultation papers</b>	<p>On 26 March, in addition to publishing a policy statement setting out finalised rules in relation to pension transfer advice (see below in relation to PS 18/6), the FCA published a consultation paper (CP 18/7 ). Proposals include requiring advisers undertaking pension transfer advice to have the same qualifications as investment advisers. The consultation paper also seeks views on whether the FCA should intervene in charging structures.</p> <p><a href="https://www.fca.org.uk/publications/consultation-papers/cp18-7-improving-quality-pension-transfer-advice">https://www.fca.org.uk/publications/consultation-papers/cp18-7-improving-quality-pension-transfer-advice</a></p> <p>On 28 March, the FCA published a consultation paper (CP 18/8 ) on fees charged by the Payment</p>	25 May 2018	

	Systems Regulator. <a href="https://www.fca.org.uk/publication/consultation-papers/cp18-8-psr-regulatory-fees">https://www.fca.org.uk/publication/consultation-papers/cp18-8-psr-regulatory-fees</a>			
<b>Guidance consultation</b>	On 27 March, the FCA published a guidance consultation paper (GC 18/1 ) proposing a new chapter for the Financial Crime Guide for firms covering insider dealing and market manipulation and making other miscellaneous changes. For more details, see our Clifford Chance briefing .  <a href="https://www.fca.org.uk/publication/guidance-consultation/gc18-01.pdf">https://www.fca.org.uk/publication/guidance-consultation/gc18-01.pdf</a>  <a href="https://www.cliffordchance.com/briefings/2018/03/market_abuse_systemsandcontrolsMustGoBeyond.html">https://www.cliffordchance.com/briefings/2018/03/market_abuse_systemsandcontrolsMustGoBeyond.html</a>	28 June 2018		

Finalised Policy and guidance				
		Implementation/effective date		
<b>Policy statements</b>	On 26 March, the FCA released Policy Statement 18/6 ( PS 18/6 ) on Advising on Pension Transfers, which implements new rules including some requiring transfer advice to be provided as a personal recommendation taking account of consumers' individual circumstances and replacing current transfer value analysis with a requirement to undertake a personalised analysis of consumers' options and a comparison showing the value of benefits being given up.  Also on 26 March, the FCA published a consultation paper (CP 18/7) proposing further	25 May 2018	29 March 2018	On 28 March, the PRA published two separate policy statements (PS 3/18 and PS 4/18 ) on its approach to branch authorisation and supervision in relation to banks and insurers.  <a href="https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2018/ps318.pdf?la=en&amp;hash=E83AC495359333506CF4AC036784D793CEC06888">https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2018/ps318.pdf?la=en&amp;hash=E83AC495359333506CF4AC036784D793CEC06888</a>  <a href="https://www.bankofengland.co.uk/prudential-regulation/publication/2017/international-insurers-pras-approach-to-branch-authorisation-and-">https://www.bankofengland.co.uk/prudential-regulation/publication/2017/international-insurers-pras-approach-to-branch-authorisation-and-</a>

	changes to rules and guidance in relation to pension transfers (see further details above).  <a href="https://www.fca.org.uk/publications/policy-statements/ps18-6-advising-pension-transfers">https://www.fca.org.uk/publications/policy-statements/ps18-6-advising-pension-transfers</a>			<a href="#">supervision</a>
	On 27 March, the FCA published a policy statement (PS 18/7) setting out finalised rules and guidance in relation to staff incentives, remuneration and performance management in consumer credit firms (see further details below).  <a href="https://www.fca.org.uk/publications/policy-statements/ps18-7-staff-incentives-remuneration-performance-management">https://www.fca.org.uk/publications/policy-statements/ps18-7-staff-incentives-remuneration-performance-management</a>	1 October 2018	Will apply for financial year ending 31 March 2019	On 29 March, the PRA published a policy statement (PS 5/18) on the Financial Services Compensation Scheme – Management Expenses Levy Limit for 2018/19.  <a href="https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2018/ps518.pdf?la=en&amp;hash=FBB52888CB94F7AFCF2ED0EC971D3A96D0650CA4">https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2018/ps518.pdf?la=en&amp;hash=FBB52888CB94F7AFCF2ED0EC971D3A96D0650CA4</a>
<b>Finalised guidance</b>	Also on 27 March, the FCA released non-handbook guidance ( FG 18/2) on how consumer credit firms should manage risks related to how they pay and monitor the performance of their staff.  <a href="https://www.fca.org.uk/publications/finalised-guidance/fq18-2-proposals-staff-incentives">https://www.fca.org.uk/publications/finalised-guidance/fq18-2-proposals-staff-incentives</a>	27 March 2018		

## Further Afield

### Singapore regulator to examine responsible use of data analytics

On 2 April, the Monetary Authority of Singapore announced that it proposes to work with key industry stakeholders to develop a guide to promote the responsible and ethical use of artificial intelligence and data analytics by financial institutions. Its press release states that the guide, in relation to which it will be engaging with industry during the second quarter of 2018, will set out key principles and best practices and will be aimed at all financial services institutions, not only those in the fintech sector.

Although the press release does not expressly mention the ongoing controversy surrounding alleged data misuse by Cambridge Analytica and Facebook, the decision to prepare specific guidance is likely to be based at least in part on these recent prominent headlines. As outlined in our Clifford Chance briefing, those allegations are currently largely confined to conduct of social media companies and political consultants during elections but there is significant potential for the way in which organisations in other industries, including financial services, have used customers' online data.

<http://www.mas.gov.sg/News-and-Publications/Media-Releases/2018/MAS-and-financial-industry-to-develop-guidance-on-responsible-use-of-data-analytics.aspx>

[https://www.cliffordchance.com/briefings/2018/03/facebook\\_data\\_misuseandwhyitmatters.html](https://www.cliffordchance.com/briefings/2018/03/facebook_data_misuseandwhyitmatters.html)

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