

# This week at the UK regulators

## Thirty second guide: The week in overview

Last week saw the announcement of the conclusion of the latest action taken by the FCA for anti-money laundering breaches, and the first example of the use of its powers under the Money Laundering Regulations 2007 in a commercial banking context. It also finally imposed a financial penalty of £8 million in its long running action against a now defunct Canadian entity for market abuse following a favourable judgment in the Court of Appeal last month. Other developments include the emergence in the press of more details about the identity of an individual arrested last month in an insider dealing investigation, which remains ongoing.

The PRA released details of substantial proposed changes to the structure and format of its rulebook. The amended rules, which adapt the current framework and add provisions based on the experience of the financial crisis, further underline the autonomy it and the FCA have to draw up their own strategies for regulation and which would significantly broaden the discretion available to it to make judgments as to firms' actions and take supervisory and/or enforcement action accordingly.

Further afield, the European Court of Justice has dismissed a challenge pursued by the UK to some provisions of EU legislation relating to short selling and certain aspects of credit default swaps.

## FCA takes action on commercial banking anti-money laundering controls

The FCA has (on 23 October) imposed a financial penalty of £7,640,400 on **Standard Bank PLC** ("Standard Bank") for breaches of the Money Laundering Regulations 2007. Specifically, the action, the first taken by the FCA (or by the FSA before it) in relation to anti-money laundering ("AML") compliance in the commercial banking sector, related to the policies and procedures required to be maintained in relation to customer due diligence on corporate customers connected with Politically Exposed Persons ("PEPs"). It is the latest in a line of enforcement cases to arise from the FSA's thematic review into AML compliance in banks, the results of which were released in June 2011.

The financial penalty imposed was reduced by 30 per cent as Standard Bank settled at an early stage of the investigation under the FCA's executive settlement procedures (which apply equally to action taken under MLR 2007 as to regulatory action taken under the Financial Services and Markets Act 2000 ("FSMA") and rules contained in the FCA's Handbook).

The Decision Notice records the full co-operation provided during the FCA's investigation, that the breaches ended in July 2011, and notes that Standard Bank has taken significant steps at substantial expense to address the findings of the investigation.

<http://www.fca.org.uk/static/documents/decision-notices/standard-bank-plc.pdf>

## Other enforcement notices

- Further to the ruling of the Court of Appeal on 19 December 2013 (see This Week at the UK Regulators, 6 January 2014), the FCA has (on 24 January) issued a Final Notice to **7722656 Canada Inc (formerly carrying on business as Swift Trade Inc)** confirming the imposition of a financial penalty of £8 million for market abuse.

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbFgNhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZe%2Bsv0%2BdlIPC4iibeimZ7Vd1Pp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=117169>

<http://www.fca.org.uk/static/documents/final-notices/7722656-canada-inc.pdf>

- The FCA has (on 23 January) published a notice of undertaking agreed with **Kensington Mortgage Company Limited** under the Unfair Terms in Consumer Contracts Regulations 1999 in relation to its mortgage terms and conditions.

<http://www.fca.org.uk/static/documents/undertakings/kensington-mortgage-company-limited.pdf>

## PRA proposes re-draft of rulebook

The PRA has (on 21 January) issued a consultation paper setting out proposals for substantial changes to the structure and content of the rules it inherited from the FSA in April 2013, with the consolidation of an amended set of rules into a "PRA only" rulebook. It has previously made commitments to do so in its approach documents and in a consultation paper (CP 8/13) released in October 2013. The PRA has invited firms to respond by 21 March 2014. Until feedback is considered and the proposals are finalised, rules and guidance relating to the PRA's functions and responsibilities will remain in its section of the Handbook.

The most eye-catching proposals are its plans to replace the six Principles for Businesses ("the Principles") inherited from the FSA with nine "Fundamental Rules". Some of these are adapted versions of the Principles as they currently stand. Others are completely new provisions which respond directly to issues in relation to firms' stability encountered during and since the global financial crisis. In some instances, the changes expressly extend the reach of regulation beyond the regulated activities for which firms have permission, and significantly increase the freedom available to the PRA to take action based upon subjective evaluations of the day to day business and strategies of firms. See the table below for the proposed new Fundamental Rules in full and details of their derivation.

Also amongst the other important changes proposed are revisions to rules relating to the PRA's information gathering powers and amendments to the rules governing the appointment of "skilled persons" to prepare reports (under section 166 of FSMA) or to gather information (under section 166A of FSMA) currently contained in the Supervision ("SUP") section of the Handbook. These changes include the inclusion of more detailed positive obligations on firms to co-operate with the PRA. Other proposed changes put forward in the paper include updates as to the circumstances in which the PRA intends to exercise its financial stability information gathering power and the excision of some sections of guidance from the Handbook, which, it is proposed, would be placed on the PRA website instead.

The effect of these proposed changes, if they progress in their current form, would be to further broaden the scope both of the already wide-ranging Principles, which serve as the overarching framework encapsulating the standards expected of firms, and of the powers available to the PRA to supervise compliance with them and take enforcement

action where it finds breaches. The PRA's principal focus remains on maintaining stability and soundness through proactive supervision. However, since it inherited its powers and responsibilities from the FSA, by commencing high profile reviews and investigations on several occasions, it has shown that enforcement action is not the sole preserve of the FCA. These changes would further add to its flexibility and discretion to take enforcement action if appropriate in a wider range of scenarios.

The PRA's paper is also a reminder of the non-prescriptive nature of FSMA and of the substantial latitude available to it and the FCA to formulate their own approaches to regulation through drawing up their own rules and guidance. The next example of this will be the release by the FCA and the PRA of draft rules on the new senior managers and certification regimes, expected during the first half of this year (see our Clifford Chance briefing ). This consultation paper gives some brief clues as to how the PRA may interpret individuals' responsibilities and its role in this area, referring, for example, (at paragraphs 3.24 and 3.25 in relation to proposed new Fundamental Rule 6) to the importance it will attach to the effective apportionment of responsibility between senior managers.

## The PRA's proposed nine Fundamental Rules

	Fundamental Rule	Derivation
1	A firm must act with integrity	Principle 1
2	A firm must act with due skill, care and diligence	Principle 2
3	A firm must act in a prudent manner	New
4	A firm must at all times maintain adequate financial resources	Principle 4
5	A firm must have in place sound and effective risk strategies and risk management systems	Principle 3
6	A firm must organise and control its affairs responsibly and effectively	Principle 3
7	A firm must deal with its regulators in an open, co-operative and timely way and must appropriately disclose to the PRA anything relating to the firm of which the PRA would reasonably expect notice	Principle 11
8	A firm must prepare for resolution so, if the need arises, it can be resolved in an orderly manner with minimum disruption of critical services	New
9	A firm must not knowingly or recklessly give the PRA information that is false or misleading in a material particular	New

<http://www.bankofengland.co.uk/pr/Documents/publication/s/policy/2014/rulebookcon214.pdf>

<http://www.bankofengland.co.uk/pr/Pages/supervision/approach/default.aspx>

<http://www.bankofengland.co.uk/pr/Documents/publication/s/policy/2013/ocp8-13.pdf>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbFgNhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZe8X0tVFvCrgo1wnSJm6LHXfp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=122627>

## Suspect in insider dealing investigation named

Press reports have named an individual arrested on 12 December 2013 in North Yorkshire in connection with an investigation being conducted by the FCA into suspected insider dealing and market abuse (see This Week at the UK Regulators, 17 December 2013 ) as Paul Coyle, the former Group Treasurer and Head of Tax at Morrisons Supermarkets PLC. No action is reported to have yet been taken against him and the investigation is understood to be continuing.

<http://www.fca.org.uk/news/press-releases/one-arrested-in-fca-insider-dealing-investigation>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbfGhNlNomwBl%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZe14gf%2F5gyOygabPRkKQK0wnp%0D%0A5mt12P8Wnx03DzsaBGwslB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=167498>

## FCA warnings

Name of firm	Date of warning	Details
FE wealth management	24 January	Clone firm <a href="http://www.fca.org.uk/news/warnings/fe-wealth-management-clone">http://www.fca.org.uk/news/warnings/fe-wealth-management-clone</a>
LGS Commerce Insurance	23 January	Clone firm <a href="http://www.fca.org.uk/news/warnings/lgs-commerce-insurance-clone">http://www.fca.org.uk/news/warnings/lgs-commerce-insurance-clone</a>
Asia World Capital	22 January	Not authorised <a href="http://www.fca.org.uk/news/warnings/asia-world-capital">http://www.fca.org.uk/news/warnings/asia-world-capital</a>
Ledbury Moore	22 January	Not authorised <a href="http://www.fca.org.uk/news/warnings/ledbury-moore">http://www.fca.org.uk/news/warnings/ledbury-moore</a>
Alfred Weber Wealth Management	22 January	Clone firm <a href="http://www.fca.org.uk/news/warnings/alfred-weber-wealth-management-clone">http://www.fca.org.uk/news/warnings/alfred-weber-wealth-management-clone</a>
OffShore Private Bank PLC/Offshore Private Scotland PLC	21 January	Not authorised <a href="http://www.fca.org.uk/news/warnings/offshore-private-bank-plc">http://www.fca.org.uk/news/warnings/offshore-private-bank-plc</a>
The Prime Mortgage & Finance Limited	21 January	Not authorised <a href="http://www.fca.org.uk/news/warnings/the-prime-mortgage-finance-limited">http://www.fca.org.uk/news/warnings/the-prime-mortgage-finance-limited</a>
Zelomit Insurance	21 January	Clone firm <a href="http://www.fca.org.uk/news/warnings/zelomit-insurance-clone">http://www.fca.org.uk/news/warnings/zelomit-insurance-clone</a>

GlassRise Bank	21 January	Clone firm <a href="http://www.fca.org.uk/news/warnings/glassrise-bank-clone">http://www.fca.org.uk/news/warnings/glassrise-bank-clone</a>
FE wealth management	20 January	Clone firm <a href="http://www.fca.org.uk/news/warnings/chelsea-financial-clone">http://www.fca.org.uk/news/warnings/chelsea-financial-clone</a>

## Policy developments

FCA		PRA	
Proposed developments			
		Deadline for responses	
<b>Consultation papers</b>	The FCA and PRA have (on 20 January) issued a joint consultation paper (CP 14/1) on the level of the management expenses levy for the Financial Services Compensation Scheme for 2014/2015. <a href="http://www.fca.org.uk/static/documents/consultation-papers/cp14-01.pdf">http://www.fca.org.uk/static/documents/consultation-papers/cp14-01.pdf</a>	17 February 2014	See details in FCA column
		21 March 2014	The PRA has (on 21 January) issued a consultation paper (CP 2/14) proposing changes to the rules contained in its Handbook (see above for further details). <a href="http://www.bankofengland.co.uk/pradocuments/publications/policy/2014/rulebookcon214.pdf">http://www.bankofengland.co.uk/pradocuments/publications/policy/2014/rulebookcon214.pdf</a>

## Further Afield

### European Court of Justice dismisses UK short selling challenge

The European Court of Justice has (on 22 January) delivered its judgment on the United Kingdom's legal challenge against the regulation on short selling and certain aspects of credit default swaps. The UK had asked the ECJ to annul Article 28 of the regulation, which empowers the European Securities and Markets Authority to prohibit or impose conditions on the entry by natural or legal persons into short sales or similar transactions, or to require such persons to notify or publicise such positions.

<http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-01/cp140007en.pdf>

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=146621&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=402447>

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