

This week at the UK regulators

Thirty second guide: The week in overview

In a busy week of enforcement action, the most significant development has been the first use by the FCA of its power to release details of warning notices. The releases earlier today closely followed the imposition of a substantial financial penalty on an investment bank for failings relating to the pricing mechanisms it used in its transition management business, and associated systems and controls issues relating to communications with customers. In other enforcement action, the FCA finalised a prohibition order made against a former senior executive based upon judicial criticism in separate civil proceedings, which, the FSA and FCA found, impugned his integrity. Issues relating to integrity have also been to the fore in the first enforcement case taken against an individual adviser in connection with rules introduced under the Retail Distribution Review. Meanwhile, away from formal enforcement action, as one major consumer redress scheme concluded with the announcement that over £31 million will be paid to approximately 3,000 investors in Arch Cru products following the conclusion of the compensation scheme commenced in December 2012, another, aimed at paying redress to customers who may have been mis-sold card and/or identity protection products, commenced.

Amongst the policy development material issued this week are potentially significant proposals aimed at tightening the requirements imposed on sponsors, whilst the PRA has continued to take steps towards the implementation of a separate rulebook.

FCA releases details of warning notices for the first time

The FCA has today (on 3 February) released statements containing details of warning notices issued to two individuals in connection with alleged involvement in the attempted manipulation of the London Inter Bank Offered Rate ("LIBOR"). The statements, which disclose that warning notices were issued to the individuals concerned on 28 November 2013, do not name those individuals, or the institutions by which they were employed. One alleges that the particular individual was knowingly concerned in breaches by an institution of Principle 5 (market conduct) of the FSA's Principles for Businesses ("the Principles"), whilst the other alleges that the individual to which it relates was knowingly concerned in breaches of Principles 3 (management and control) and 5. Both set out brief particulars of the alleged conduct.

The statements are brief (running to less than one page each) and generic, but are significant. This is the first occasion that the FCA has released details of warning notices since the Financial Services Act 2012 amended section 391 of the Financial Services and Markets Act 2000 to enable it to publish such details. The amendment enables the FCA to publish details of its enforcement action at a much earlier stage of proceedings than had previously

been the case. Warning notices record the allegations against firms or individuals and differ importantly from decision notices, which set out determinations made (either as the result of settlement discussions or following a contested process before the Regulatory Decisions Committee ("RDC")), as to whether infringements have occurred and the level of penalties to be imposed.

The individuals concerned will now have the opportunity to make representations to the RDC. Representations will assist the RDC in determining whether or not a breach occurred and if so, the extent of any breach and, if appropriate, the level of any penalties to be imposed. In theory, the individuals concerned could reach a settlement with the FCA, although such settlements after the issue of warning notices are rare. Until either of those processes are completed, the allegations made against them will remain unproven. If it is determined that breaches have occurred, further details (including the names of the individuals) are likely to be released at that stage in decision notices.

Institutions, employees, and their advisers have previously expressed concerns in relation to the potential for unfairness in the use of the FCA's power to publish details of warning notices. The FCA responded to those concerns in its policy statement (PS 13/9) on publishing details of warning notices, released in October 2013 which set out a

number of safeguards and gave details of the circumstances in which it proposed to publish the identity of individuals concerned. When issuing its statements today, the FCA has put some of those safeguards into practice, deciding not to name the individuals to whom the warning notices relate. It has also been relatively circumspect in the way in which it has released the statements, placing them on its website without issuing an accompanying press release. It remains to be seen whether this is an approach which will be replicated in future cases where it chooses to put the public on notice of action being taken against firms or individuals, particularly those involving allegations of failures to treat customers fairly.

<http://www.fca.org.uk/static/documents/warning-notice-statements/warning-notice-statement-14-1-individual.pdf>

<http://www.fca.org.uk/static/documents/warning-notice-statements/warning-notice-statement-14-2-individual.pdf>

FCA takes action for pricing breaches

The FCA has (on 30 January) imposed a financial penalty of £22,885,000 on **State Street Bank Europe Limited and State Street Global Markets International Limited** ("State Street"). The action related to breaches of Principles 3 (management and control), 6 (customers' interests) and 7 (communications with clients) of the FCA's Principles for Businesses ("the Principles") in connection with pricing arrangements used in its transition management business.

The FCA found overcharging of six clients between June 2010 and September 2011 and shortcomings in the handling of concerns raised by the clients concerned. It has pointed to the case as a reminder of its commitment to taking enforcement action in both the retail and wholesale sectors.

The Final Notice acknowledges the steps taken by State Street's UK senior management to take steps including promptly investigating concerns, implementing a remediation programme and bolstering its control functions and governance arrangements.

The penalty imposed was reduced by 30 per cent as State Street agreed to settle at an early stage of the FCA's executive settlement procedures.

<http://www.fca.org.uk/your-fca/documents/final-notices/2014/state-street>

FCA bans executive based on Court's criticism

Further to a Decision Notice issued in March 2012, the FCA has (on 27 January) imposed a prohibition order on **Mr Anthony Verrier**, finding that he is not a fit and proper person to act as an approved person. It based its conclusion that he lacks integrity upon findings made in separate civil action (in the High Court and subsequently the Court of Appeal) in which he gave evidence as a witness, and specific remarks made by judges in relation to his credibility and honesty.

Mr Verrier had referred the action based upon this judicial criticism, initiated by the FSA and taken over by the FCA, to the Upper Tribunal, but recently withdrew his reference.

For full details of the action and commentary, see FSA Update, 21 May 2012.

<http://www.fsa.gov.uk/static/pubs/decisions/anthony-verrier.pdf>

<http://www.fca.org.uk/your-fca/documents/final-notices/2014/anthony-verrier>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbfGnhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZeZlXnN7s5Yxj8DTG1bSvLbbp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=122277>

FCA fines and bans adviser for falsifying RDR certificates

In the first enforcement action against an individual adviser since the implementation of new rules and guidance introduced under the Retail Distribution Review ("RDR"), the FCA has (on 30 January) imposed a financial penalty of £19,900 and a prohibition order on **Mr Ewan King**. The FCA found that he lacks integrity and is not a fit and proper person to act as an approved person as he breached Principle 1 (integrity) of the Statements of Principle and Code of Practice for Approved Persons ("APER") by falsifying statements of professional standing intended to give the impression to a firm that he had obtained appropriate qualifications from the Chartered Insurance Institute ("CII"). The CII has also taken separate disciplinary action against Mr King.

Calculating the penalty to be imposed, the FCA assessed Mr King's conduct as falling into the most serious category of misconduct (level 5, at step 2 of its penalty calculation

methodology at chapter 6.5B.2G of its Decision Procedure and Penalties Manual), although the penalty imposed was reduced by 30 per cent as Mr King agreed to settle at stage one of the FCA's executive settlement procedures.

<http://www.fca.org.uk/your-fca/documents/final-notice/2014/ewan-king>

FCA invites consumers to claim card protection redress

The FCA has today (on 3 February) announced the commencement of a redress scheme for consumers who believe that they may have been mis-sold card and/or identity protection products from Card Protection Plan Limited ("CPP") or their bank or building society. It has indicated that claim forms will be sent to potentially eligible customers during February, and that they should return them by the end of August, with a view to redress payments being made where appropriate by mid-March 2015.

The announcement follows the grant of approval by the High Court of the scheme of arrangement voluntarily agreed between CPP, the banks and building societies involved and the FCA, details of which were released in August last year (see This week at the UK regulators, 27 August 2013)

<http://www.fca.org.uk/news/cpp-redress-scheme-opens>

<http://www.fca.org.uk/news/consumer-redress-agreed-for-mis-sold-cpp-insurance>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbfGqNHLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZe1RWLR2kWXjbE7foMQ9KFYHp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=119035>

FCA announces Arch Cru payouts

Further to the compensation scheme initiated in May 2012, the FCA has announced that the total amount of redress to

be paid out has been assessed at £31.47 million. The announcement follows a lengthy process of assessment by firms which have historically sold high-risk products based on investments in private equity and private finance to customers. The exercise of establishing whether customers are entitled to compensation has been overseen by the FCA. Over 85 per cent of 3,414 sales surveyed were found to have been unsuitable.

For further details of the compensation scheme, see FSA Update, 8 May 2012.

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbfGqNHLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZe%2FxbFDMK7o1LDb24p%2Bkv1xrp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=116757>

<http://www.fca.org.uk/news/firms/31m-in-compensation-to-be-paid-out-following-fcas-arch-cru-consumer-redress-scheme>

FCA imposes temporary restriction on short selling

On 27 January, exercising powers under articles 23(1) and 26(4) of the EU Regulation on Short Selling and Certain Aspects of Credit Default Swaps, the FCA imposed a temporary restriction on short selling in shares in **Banco Popolare**.

<http://www.fca.org.uk/news/firms/temporary-restriction-in-short-selling>

FCA warnings

Name of firm	Date of warning	Details
AFI – Alternative Financial Investments	31 January	Not authorised http://www.fca.org.uk/news/warnings/afi-alternative-financial-investments
Nova Portfolio Management	30 January	Not authorised http://www.fca.org.uk/news/warnings/nova-portfolio-management-clone
Al Reen Capital	28 January	Falsely purporting to be authorised by the FCA http://www.fca.org.uk/news/warnings/al-reen-capital

Policy developments

FCA		PRA	
Proposed developments			
		Deadline for responses	
Consultation papers	The FCA has (on 30 January) issued a consultation paper (CP14/2) proposing changes to the Listing Rules in relation to the experience, skills, knowledge and expertise of sponsors. http://www.fca.org.uk/news/cp14-2-proposed-amendments-to-the-listing-rules	30 April 2014	

Finalised policy and guidance				
		Implementation/effective date		
Policy Statements	<p>Further to a consultation paper issued in July 2013 (in consultation paper CP13/4), the FCA has (on 31 January) published final rules (in Policy Statement 14/1) on the circumstances in which advisers may receive referral payments.</p> <p>The FCA has stated that final rules in relation to the other proposals set out in the consultation paper published in July 2013; minor amendments in relation to reporting arrangements for complaints against advisers are scheduled to be published in June 2014.</p> <p>http://www.fca.org.uk/static/documents/consultation-papers/cp13-04.pdf</p> <p>http://www.fca.org.uk/static/documents/policy-statements/ps14-01.pdf</p>	31 December 2014	Various	<p>Further to a previous policy statement released in December 2013, the PRA has (on 30 January) released its response to consultation on the proposals set out in Occasional Consultation Paper 8/13 (issued in October 2013) on rule amendments relating to CRD IV and material relating to the PRA's proposals to create separate PRA rulebook.</p> <p>http://www.bankofengland.co.uk/pradocuments/publications/policy/2013/ocp8-13.pdf</p> <p>http://www.bankofengland.co.uk/pradocuments/publications/policy/2013/responsesps613.pdf</p> <p>http://www.bankofengland.co.uk/pradocuments/publications/policy/2014/responsescp8-13ps1-14.pdf</p>

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