

# This week at the UK regulators

## Thirty second guide: The week in overview

In a busy week of enforcement action, the FCA and PRA announced the imposition of a public censure on a bank in connection with failings in its control and risk management framework pre-2013 and for publishing misleading information in its 2012 Financial Statements. Last week also saw the imposition of a financial penalty and a partial prohibition order on an individual for advice failings relating to Self-Invested Personal Pension Schemes. Away from the FCA, the Upper Tribunal has fined two individuals pursued by the FCA in respect of the promotion of bonds based on traded life insurance and the High Court has used its power to impose financial penalties in market abuse cases for the first time.

In policy developments, the FCA and PRA published important final rules on the application of new individual accountability regimes to branches of overseas institutions and on changes to the approved persons regimes for Solvency II firms. The FCA also published a consultation paper on changes to the regime for insurers not subject to Solvency II.

### FCA and PRA impose public censure

On 11 August, the FCA and PRA announced the imposition of a public censure on the Co-operative Bank PLC ("Co-op Bank"). The FCA based its action on breaches of Listing Rule 1.3.3 through publication of misleading information in its 2012 Financial Statements regarding its capital position, and on findings of failures to be open with its regulators by failing to notify the FSA (and then the FCA) of intended changes to two senior positions. The FCA said that the failings merited a substantial financial penalty, but that following serious consideration about the impact of such a penalty (in particular with regards to Co-op Bank's turnaround plan to ensure the adequacy of its capital resources) it had decided that a public censure was appropriate and proportionate.

The PRA imposed a public censure for failings in Co-op Bank's control and risk management framework during the period July 2009 to December 2013. In a finding mirroring that of the FCA, the PRA also found that Co-op Bank had not been open with its regulators. The PRA said that it considered the failings to be sufficiently serious to warrant a financial penalty of around £120 million but that it had concluded that imposing such a penalty would not advance its statutory objective to promote the safety and soundness of the firms it regulates. The PRA noted that following changes to its board and senior management in 2013, Co-op Bank began to properly address concerns around its risk management framework and policies.

<http://www.fca.org.uk/your-fca/documents/final-notices/2015/the-co-operative-bank-plc>

<http://www.bankofengland.co.uk/pr/Documents/supervision/enforcementnotices/en110815.pdf>

### High Court uses financial penalty powers for first time in DMA market abuse case

The High Court has (on 12 August) handed down its judgment in *FCA v Da Vinci Invest Limited and others*. The case is the first in which the High Court has exercised its power to impose a penalty for market abuse under section 129 of the Financial Services and Markets Act 2000 ("FSMA"), which provides an alternative to the statutory notice procedure in enforcement cases where the FCA applies to the High Court using its powers to seek injunctions and/or restitution under section(s) 381 and/or 383 of FSMA.

The case concerned three Hungarian traders who engaged in market abuse through "spoofing" or "layering" in 2010 and 2011 using an algorithm. The traders traded through two companies: Da Vinci Invest ("DVI"), a Swiss hedge fund which allowed the traders to trade on its behalf, and Mineworld, a Seychelles company controlled by the traders. The two companies entered into contracts for difference ("CFDs") with two direct market access ("DMA") providers. The Court found that the traders and their company Mineworld had deliberately engaged in market abuse and that DVI had engaged in market abuse recklessly by allowing the traders to trade on its behalf. The court imposed penalties totalling £7,570,000 and imposed a permanent injunction restraining market abuse.

The Court's judgment provides useful clarification in several

areas, which may be applied in future cases on similar facts. It seems likely that such cases will follow given the FCA's interest in taking action in relation to this type of market abuse. Firstly, it confirmed that market abuse can be committed by trading CFDs hedged on an exchange and that it is not necessary for the FCA to show any particular state of mind on the part of the person whose behaviour is in question in order to establish that the person engaged in market abuse. In addition, the Court gave clarification in relation to the duties of market participants, holding that although DMA providers are required to have systems in place to detect market abuse, DVI was not entitled to rely on its DMA provider to detect and prevent market abuse by its traders. Finally, making remarks which may be of wider application, it set out the correct formulation of the test for when an injunction will be appropriate in market abuse cases (based on whether there is a "reasonable likelihood" of further market abuse) and made a number of observations in relation to the approach to be adopted when calculating financial penalties in accordance with the Decision Procedures and Penalties ("DEPP") section of the FCA's Handbook.

<http://www.fca.org.uk/news/fca-secures-high-court-judgment-awarding-injunction-and-over-7-million-in-penalties>

Case reference: *FCA v Da Vinci Invest Limited and others* [2015] EWHC 2401 (Ch)

## Upper Tribunal fines directors of traded life bonds firm

In a judgment handed down on 11 August, the Upper Tribunal has found that Mr Timothy Roberts and Mr Andrew Wilkins, who were formerly CEO and Compliance Director of Catalyst Investment Group Limited ("Catalyst") breached various of the Statements of Principle for Approved Persons ("APER") in connection with the promotion of bonds issued by ARM Asset Backed Securities ("ARM"), a Luxembourg based firm, in 2009 and 2010. The Tribunal's decisions followed references pursued by Messrs Roberts and Wilkins further to Decision Notices published in 2013.

Agreeing with the fine proposed by the FCA, the Tribunal has imposed a financial penalty of £450,000 on Mr Roberts based on findings that he breached Principles 1 (integrity) and 6 (due skill, care and diligence) of APER.

The Tribunal has imposed a financial penalty of £50,000 on Mr Wilkins in connection with breaches of Principle 6 (due skill, care and diligence) of APER. It has referred the matter of whether a prohibition order should be imposed on him back to the FCA for determination. The FCA had originally

decided to impose a financial penalty of £100,000 on Mr Wilkins.

The action was based on the promotion by Catalyst of bonds issued by ARM in circumstances where necessary approvals had not been received from the Luxembourg regulator. The Tribunal found that funds collected from investors were not appropriately ringfenced and that communications to investors and independent financial advisers contained inaccurate and misleading information.

<http://www.tribunals.gov.uk/financeandtax/Documents/decisions/Timothy-Alan-Roberts-and-Andrew-Wilkins-v-FCA.pdf>

<http://www.fca.org.uk/static/documents/decision-notice/timothy-alan-roberts.pdf>

<http://www.fca.org.uk/static/documents/decision-notice/andrew-peter-wilkins.pdf>

## FCA fines and bans individual for SIPP advice failures

In the latest of a line of enforcement cases relating to shortcomings in advice provided to customers in connection with Self-Invested Personal Pension Schemes ("SIPPs"), the FCA has (on 13 August) published a Final Notice imposing a financial penalty on Mr Robert Shaw, a director and shareholder at TailorMade Independent Limited ("TMI"), a firm that provided advice to customers who were considering transferring their pension funds to unregulated investments via SIPPs. The FCA has also withdrawn his approval to perform the CF1 function and made an order prohibiting Mr Shaw from performing any significant influence function.

The FCA found that Mr Shaw breached Principle 7 of APER by failing to take reasonable steps to ensure that the business of TMI complied with the relevant requirements and standards of the regulatory system. In particular, it found that Mr Shaw failed to take reasonable steps to ensure that TMI assessed the suitability of the underlying product contained within the SIPP for customers and failed to identify a conflict of interest arising from payments received from an introducer.

<http://www.fca.org.uk/static/documents/final-notice/robert-ian-shaw.pdf>

## Other Enforcement Notices

In separate Final Notices, the FCA has (on 11 August) cancelled the registrations of Unitransfer Limited, Mobile Money Transfer Limited and Exotic Money Services Limited as a result of failures to pay overdue balances to the FCA.

<http://www.fca.org.uk/static/documents/final-notices/unittransfer-limited.pdf>

<http://www.fca.org.uk/static/documents/final-notices/mobile-money-transfer-limited.pdf>

<http://www.fca.org.uk/static/documents/final-notices/exotic-money-services-limited.pdf>

The FCA has (on 14 August) published a Final Notice refusing M8's Rates Loans Limited's application for permission to carry on certain regulated activities in

connection with home credit agreements.

<http://www.fca.org.uk/static/documents/final-notices/m8s-rates-loans.pdf>

The FCA has (on 12 August) published a First Supervisory Notice dated 10 July 2015 discontinuing the listing of the shares of A.G.L (S.J.) Investments Limited (formerly Atia Group Limited) with effect from 11 August 2015.

<http://www.fca.org.uk/static/documents/supervisory-notices/a-g-l-s-j-investments-limited.pdf>

## FCA warnings

Name of firm	Date of warning	Details
24x7 Payday Loans	14 August 2015	Clone firm <a href="http://www.fca.org.uk/news/warnings/24x7-payday-loans-clone-cc">http://www.fca.org.uk/news/warnings/24x7-payday-loans-clone-cc</a>
Jacob Grunfield Global Limited	13 August 2015	Not authorised <a href="http://www.fca.org.uk/news/warnings/jacob-grunfield-global-limited-clone">http://www.fca.org.uk/news/warnings/jacob-grunfield-global-limited-clone</a>
Instant Loans UK	13 August 2015	Clone firm <a href="http://www.fca.org.uk/news/warnings/instant-loans-uk-clone-cc">http://www.fca.org.uk/news/warnings/instant-loans-uk-clone-cc</a>
Norton Finance Group Limited	13 August 2015	Clone firm <a href="http://www.fca.org.uk/news/warnings/norton-finance-group-limited-clone">http://www.fca.org.uk/news/warnings/norton-finance-group-limited-clone</a>
Parrish Eastway Limited / Parrish Eastway Partners Limited	13 August 2015	Not authorised <a href="http://www.fca.org.uk/news/warnings/parrish-eastway-limited">http://www.fca.org.uk/news/warnings/parrish-eastway-limited</a>
Christopher Brian Financial Consultants	11 August 2015	Not authorised <a href="http://www.fca.org.uk/news/warnings/christopher-brian-financial-consultants-cc">http://www.fca.org.uk/news/warnings/christopher-brian-financial-consultants-cc</a>
Discretionary Unit Fund	10 August 2015	Clone firm

Managers	<a href="http://www.fca.org.uk/news/warnings/discretionary-unit-fund-managers-clone">http://www.fca.org.uk/news/warnings/discretionary-unit-fund-managers-clone</a>
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## Policy developments

FCA		PRA		
Proposed developments				
		Deadline for responses		
<b>Consultation papers</b>	The FCA has (on 13 August) published a Consultation Paper (CP 15/25) on certain changes to the approved persons regime for insurers not subject to Solvency II. <a href="http://www.fca.org.uk/static/documents/consultation-papers/cp15-25.pdf">http://www.fca.org.uk/static/documents/consultation-papers/cp15-25.pdf</a>	12 October 2015	Responses on Chapter 1 are requested by 14 September 2015 with responses on all other chapters requested by 14 November 2015	The PRA has (on 14 August) issued an Occasional Consultation Paper (CP29/15) proposing miscellaneous and minor amendments to PRA rules and supervisory statements. <a href="http://www.bankofengland.co.uk/p/ra/Documents/publications/cp/2015/cp2915.pdf">http://www.bankofengland.co.uk/p/ra/Documents/publications/cp/2015/cp2915.pdf</a>
			13 November 2015	The PRA has (on 14 August) issued a Consultation Paper (CP28/15) setting out proposals to redraft certain modules of the PRA Handbook. It is the fourth in a planned series of consultations aimed at reshaping Handbook material inherited from the FSA to create a Rulebook, containing only PRA rules. <a href="http://www.bankofengland.co.uk/p/ra/Documents/publications/cp/2015/cp2815.pdf">http://www.bankofengland.co.uk/p/ra/Documents/publications/cp/2015/cp2815.pdf</a>
			12 October 2015	The PRA has (on 13 August) issued a Consultation Paper (CP27/15) setting out proposals for new Parts of the PRA Rulebook that would apply only to insurance firms that are outside the scope of Solvency II from 1

				January 2016. <a href="http://www.bankofengland.co.uk/p/ra/Documents/publications/cp/2015/cp2715.pdf">http://www.bankofengland.co.uk/p/ra/Documents/publications/cp/2015/cp2715.pdf</a>
			12 October 2015	The PRA has (on 13 August) issued a Consultation Paper (CP26/15) setting out the details of the Senior Insurance Managers Regime for non-Solvency II firms. <a href="http://www.bankofengland.co.uk/p/ra/Documents/publications/cp/2015/cp2615.pdf">http://www.bankofengland.co.uk/p/ra/Documents/publications/cp/2015/cp2615.pdf</a>
			21 September 2015	The PRA has (on 10 August) issued a Consultation Paper (CP25/15) seeking feedback on a draft supervisory statement that sets out the PRA's expectations of firms where it has an option to specify a different approach to that published in the Implementing Technical Standards for the Solvency II reporting templates and the Solvency II public disclosure statements. <a href="http://www.bankofengland.co.uk/p/ra/Documents/publications/cp/2015/cp2515.pdf">http://www.bankofengland.co.uk/p/ra/Documents/publications/cp/2015/cp2515.pdf</a>
<b>Finalised policy and guidance</b>				
			<b>Implementation date</b>	
<b>Feedback Statements</b>	The FCA has (on 13 August) released Feedback Statement 15/3 setting out near final rules in relation to the application of new individual accountability regimes to UK branches of overseas banks. <a href="http://www.fca.org.uk/static/documents/feedback-statements/fs15-03.pdf">http://www.fca.org.uk/static/documents/feedback-statements/fs15-03.pdf</a>		7 March 2016	

<b>Policy statements</b>	The FCA has (on 13 August) published final rules (PS15/21) on the approved persons regime for Solvency II firms. <a href="http://www.fca.org.uk/static/documents/policy-statements/ps15-21.pdf">http://www.fca.org.uk/static/documents/policy-statements/ps15-21.pdf</a>	7 March 2016	7 March 2016	The PRA has (on 13 August) published a Policy Statement (PS 20/15) providing feedback on CP9/15 Strengthening accountability in banking; UK branches of foreign banks. The Policy Statement contains final and near-final rules. <a href="http://www.bankofengland.co.uk/pra/Documents/publications/ps/2015/ps2015.pdf">http://www.bankofengland.co.uk/pra/Documents/publications/ps/2015/ps2015.pdf</a>
			7 March 2016	The PRA has (on 13 August) published a Policy Statement (PS 22/15) setting out final PRA rules to implement the Senior Insurance Managers Regime for Solvency II firms. <a href="http://www.bankofengland.co.uk/pra/Documents/publications/ps/2015/ps2215.pdf">http://www.bankofengland.co.uk/pra/Documents/publications/ps/2015/ps2215.pdf</a>
			7 March 2016/ 7 March 2017	The PRA has (on 13 August) published a Policy Statement (PS 21/15) setting out final rules to revise the current approved persons regime for those insurance firms outside the scope of Solvency II. <a href="http://www.bankofengland.co.uk/pra/Documents/publications/ps/2015/ps2115.pdf">http://www.bankofengland.co.uk/pra/Documents/publications/ps/2015/ps2115.pdf</a>

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