

This week at the UK regulators

Thirty second guide: The week in overview

The main development last week was the announcement that HM Treasury ("HMT") intends to abandon the controversial presumption of responsibility for Senior Managers under the new individual accountability regimes due to enter into force in March 2016 and that it is pursuing draft legislation which, if enacted, will extend the scope of the new regimes into all parts of the financial services industry. The presumption of responsibility, which up until last week was a key feature of the Senior Managers Regime, would have reversed the burden of proof in enforcement actions.

In other developments, the PRA has published a consultation paper providing more detail regarding the implementation of the ring-fencing regime and the FCA and HMT have issued a consultation paper as part of the Financial Advice Markets Review seeking views on possible "advice gaps" in the financial advice market. HMT and the Home Office have also published the outcome of the UK's first national risk assessment of money laundering and terrorist financing in the UK. The report identifies a number of areas in which the UKs AML and CTF regimes can be strengthened.

HMT abandons presumption of responsibility for Senior Managers and extends the scope of the new regimes

Last week saw several important developments for institutions (and individuals) which have been preparing for the introduction of new individual accountability regimes, and for those in firms which have not had to concern themselves with the regimes to date, but which have now been brought within scope.

HMT has indicated that it proposes to remove the presumption of responsibility for Senior Managers under the new individual accountability regimes due to enter into force in March 2016. Until now, it has been proposed that, in order to avoid personal liability, Senior Managers would have to establish that they had taken "reasonable steps" to avoid breaches by firms occurring or continuing.

Although initial press reports indicated that this would be replaced by an obligation on Senior Managers to have taken "all appropriate steps to prevent a regulatory breach from occurring", the amendment to the relevant legislation now published makes clear that Senior Managers will be liable where they "do not take such steps as a person in the senior manager's position could reasonably be expected to take to avoid the contravention occurring (or continuing)". If enacted, this change, which responds to concerns voiced by many institutions and individuals about reversing the burden of proof for Senior Managers, will effectively mean that there will be no change to the status quo, whereby the FCA and PRA are obliged to prove that an individual's conduct fell short of what was reasonable in the particular

circumstances. The regulators have previously indicated that they intend to release further guidance later in the autumn concerning what will amount to "reasonable steps".

HMT has also outlined its intentions to extend the scope of the individual accountability regimes beyond those institutions currently covered (which are preparing for the introduction of the regimes in March 2016) to all parts of the financial services industry by 2018.

Other associated changes are the proposed application of the Senior Managers Regime to all directors, which will see all non-executive directors (not only those who chair key committees) covered by the regimes, and the proposed removal of the obligation on firms to prevent known or suspected breaches of the Conduct Rules.

These proposed changes are being brought forward through the draft Bank of England and Financial Services Bill, which had its first reading in the House of Lords on 14 October and which is due to be debated in more detail during the coming weeks. It is due to receive its second reading this week. A more detailed Clifford Chance briefing will follow this week.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468328/SMCR_policy_paper_final_1510_2015.pdf

PRA publishes consultation paper on the implementation of ring-fencing

The PRA has (on 15 October) published two consultation papers on post-crisis reforms aimed at enhancing the

resilience and recoverability of firms. The first sets out the PRA's policy on three important areas for the ring-fencing of core activities that is expected to take effect from 1 January 2019: the capital and liquidity requirements applicable to a ring-fenced body; the management of intra-group exposures and the use of market infrastructures. The second consults on the PRA's proposed framework to require firms to ensure continuity of critical shared services to facilitate recovery action, resolution or post resolution restructuring. The PRA intends the framework to apply to those firms that receive critical shared services supporting functions that are critical to the economy; however, an addendum consultation paper will be published by the PRA in due course defining the scope of the framework.

<http://www.bankofengland.co.uk/pr/Documents/publications/cp/2015/cp3715.pdf>

<http://www.bankofengland.co.uk/pr/Documents/publications/cp/2015/cp3815.pdf>

FCA and HMT consult on potential "advice gaps" in the financial advice market

As part of the Financial Advice Markets Review launched in August, the FCA and HMT has (on 12 October) issued a consultation paper seeking views on: the extent and causes of the advice gap for those people who do not have significant wealth or income; the regulatory or other barriers firms may face in giving advice and how to overcome them; how to create the right regulatory environment for firms to innovate and grow; the opportunities presented by new and emerging technologies to provide cost-effective and user-

friendly advice services; and how to encourage a healthy demand side for financial advice. The closing date for comments is 22 December 2015.

<http://www.fca.org.uk/static/documents/famr-cfi.pdf>

Final Notices

The FCA has (on 16 October) published a Final Notice prohibiting Mr Kweku Adoboli from performing any function in relation to a regulated activity. Mr Adoboli was convicted on 20 November 2012 of two counts of fraud by abuse of position as a result of unauthorised trading that caused losses amounting to \$2.2 billion. For more information regarding Mr Adoboli's convictions please see our briefing of 26 November 2012.

http://www.cliffordchance.com/briefings/2012/11/fsa_update_-_26_november2012.html

<http://www.fca.org.uk/static/documents/final-notices/kweku-mawuli-adoboli.pdf>

The FCA has (on 12 October) published a Final Notice cancelling Benbron Solutions Limited's registration on account of failure to pay amounts owing to the FCA.

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

The FCA has (on 12 October) published a Final Notice cancelling A A A Insurance Limited's permission to carry on regulated activities on account of its failure to file a Retail Mediation Activities Return.

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

FCA warnings

Name of firm	Date of warning	Details
Global Capital Wealth Limited	16 October 2015	Not authorised http://www.fca.org.uk/news/warnings/global-capital-wealth-limited
Southampton West Savings Credit Union	15 October 2015	Not authorised http://www.fca.org.uk/news/warnings/southampton-west-savings-credit-union

TRM Group	15 October 2015	Not authorised http://www.fca.org.uk/news/warnings/trm-group
Oak Tree Finance / Oak Tree Financials	14 October 2015	Not authorised http://www.fca.org.uk/news/warnings/oak-tree-finance
Wigston Private Bank	14 October 2014	Clone Firm http://www.fca.org.uk/news/warnings/wigston-private-bank-clone
Cryptoconomist Limited	14 October 2014	Not authorised http://www.fca.org.uk/news/warnings/cryptoconomist-limited
HH Hubwise Holdings Limited	14 October 2014	Clone Firm http://www.fca.org.uk/news/warnings/hh-hubwise-holdings-ltd-clone
SMP Forex	13 October 2014	Not authorised http://www.fca.org.uk/news/warnings/smp-forex

Policy developments

FCA		PRA	
Proposed developments			
		Deadline for responses	
Consultation papers	The FCA and HMT has (on 12 October) published a Consultation Paper as part of Financial Advice Markets Review seeking views on how best to address any advice gaps in the financial advice markets. http://www.fca.org.uk/static/documents/famr-cfi.pdf	22 December 2015	

			15 January 2016	The PRA has (on 15 October) published a consultation paper (CP37/15) setting out proposals for the implementation of ring-fencing. http://www.bankofengland.co.uk/pr/Documents/publications/cp/2015/cp3715.pdf
			Closing date to be published in the addendum to CP38/15.	The PRA has (on 15 October) published a consultation paper (CP38/15) setting out its proposed framework to require firms to ensure continuity of critical shared services to facilitate recovery action, resolution or post-resolution restructuring. http://www.bankofengland.co.uk/pr/Documents/publications/cp/2015/cp3815.pdf

Further Afield

HMT and the Home Office have published the outcome of the UK's first national risk assessment (NRA) of money laundering and terrorist financing risk in the UK, which responds to the UK's obligations under the 2012 Financial Action Task Force (FATF) recommendations. Among other things, the NRA discusses domestic risks within the regulated sector, including financial institutions and other regulated professionals, the risks associated with new payment methods and international risks to the UK.

The report identifies three areas where the UK's anti-money laundering and counter-terrorist financing (AML/CTF) regime could be further strengthened in relation to:

- so-called 'high-end' money laundering through financial and professional services sectors, where proceeds are often held in bank accounts, real estate or other investments, rather than cash;
- inconsistencies in the UK's supervisory regime and areas for improvement in the sharing of information between supervisors; and

- ensuring law enforcement agencies prioritise AML activities.

The NRA findings will contribute to the Government's AML action plan, which was announced in December 2014, and will build on the 2013 Serious and Organised Crime Strategy to enhance AML/CTF capabilities. Both the NRA and action plan will be kept under review to inform the next mutual evaluation of the UK on AML/CTF capabilities by the FATF.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468210/UK_NRA_October_2015_final_web.pdf

Contacts

Roger Best
Partner

E: roger.best
@cliffordchance.com

Helen Carty
Partner

E: helen.carty
@cliffordchance.com

Carlos Conceicao
Partner

E: carlos.conceicao
@cliffordchance.com

Dorian Drew
Partner

E: dorian.drew
@cliffordchance.com

Jeremy Kosky
Partner

E: jeremy.kosky
@cliffordchance.com

Rae Lindsay
Partner

E: rae.lindsay
@cliffordchance.com

Kelwin Nicholls
Partner

E: kelwin.nicholls
@cliffordchance.com

Martin Saunders
Partner

E: martin.saunders
@cliffordchance.com

Judith Seddon
Partner

E: judith.seddon
@cliffordchance.com

Luke Tolaini
Partner

E: luke.tolaini
@cliffordchance.com

Editors

Chris Stott
Lawyer

E: chris.stott
@cliffordchance.com

Matthew Burn
Lawyer

E: matthew.burn
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

© Clifford Chance 2013

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street, London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Casablanca ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh* ■ Rome ■ São Paulo ■ Seoul ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

*Clifford Chance has a co-operation agreement with Al-Jadaan & Partners Law Firm in Riyadh.