

This week at the UK regulators

Thirty second guide: The week in overview

This week saw the Bank of England and the FCA publish their report into the failure of HBOS in 2008. The report places ultimate responsibility for the collapse of HBOS with relevant members of the board of directors but it also criticises the FSA for its flawed approach to the supervision of HBOS. An independent report by Andrew Green QC found that the FSA's approach to the enforcement investigations that followed the failure of HBOS was materially flawed and he recommended that the PRA and the FCA should now consider prohibition proceedings against former executives.

The FCA also published the Terms of Reference for its asset management case study. The aim of the study will be to understand whether competition is working effectively or whether intervention by the FCA is required.

PRA and FCA publish review into failure HBOS

The PRA and the FCA published (on 19 November) their review into the failure of HBOS Group. The review concluded that ultimate responsibility for the failure of HBOS rests with relevant members of the board of directors and senior management, who failed to set an appropriate strategy for the firm's business and failed to challenge a flawed business model which placed inappropriate reliance on continuous growth without due regard to risks involved. The regulators also found that flaws in the Financial Services Authority's (FSA) supervisory approach meant that it failed to appreciate the full extent of HBOS' risks and was not in a position to intervene until it was too late.

An independent report by Andrew Green QC concluded that the decision-making process adopted by the FSA in its enforcement investigations relating to the failure of HBOS was "materially flawed". Mr Green QC found that the FSA failed to give proper consideration to the investigation of HBOS itself or former members of the Board. As a result, Mr Green QC has recommended that the PRA and the FCA should now consider whether any former senior managers of HBOS should be the subject of enforcement investigation with a view to prohibition proceedings. The PRA and FCA have announced that they will conclude a review as to whether further enforcement action should be taken as early as possible next year.

<http://www.bankofengland.co.uk/publications/Pages/news/2015/086.aspx>

<http://www.fca.org.uk/news/publication-of-hbos-failure-review>

FCA fines and bans former investment analyst

The FCA has fined Mothahir Miah, a former investment analyst at Aviva Investors Global Services Limited (Aviva Investors), £139,000 and imposed a prohibition order on him for a practice known as "cherry picking". The FCA found that, between January 2010 and October 2012, Mr Miah exploited weaknesses in trading systems and controls in order to delay the booking and allocation of trades. Aviva Investors has paid significant amounts of compensation to a number of long-only funds and was fined £17.6 million in February 2015 in connection with these weaknesses (See This week at the UK regulators, 2 March 2015). The FCA found that Mr Miah's conduct meant that he could assess the performance of a trade during the day and allocate trades which had performed well to his preferred hedge funds (which were those that paid performance fees) and trades which had performed poorly to other funds which paid lower or no performance fees).

<http://www.fca.org.uk/news/fca-fines-and-bans-former-investment-analyst-at-aviva-investors>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbFgNhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZe9%2By6mXxqQuVuCQfe4ARxc7p%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=123378>

Tribunal rejects late reference

The Upper Tribunal has (on 17 November) dismissed an application made by Mr Saim Koksai (trading as Arcis Management Consultancy) regarding a reference made by

him in connection with the variation of his permission granted under Part 4A of FSMA. The reference was made over five months late and the Tribunal found insufficient justification for the delay.

<http://www.tribunals.gov.uk/financeandtax/Documents/decisions/Koksal-Arcis-v-FCA.pdf>

FCA launches asset management market study

The FCA has (on 18 November) published the Terms of Reference for its asset management market study. The aim of the study will be to understand whether competition is working effectively to enable investors to get value for

money when purchasing asset management services.

The FCA aims to publish an interim report in summer 2016 and a final report in early 2017.

If the FCA concludes that competition is not working well, it may intervene through rule-making, introducing firm specific remedies or enforcement action, publishing general guidance or proposing enhanced industry self-regulation.

The FCA has invited responses to the Terms of Reference by 18 December 2015.

<http://www.fca.org.uk/your-fca/documents/market-studies/ms15-02-1-asset-management-market-study-tor>

FCA warnings

Name of firm	Date of warning	Details
Strategic Global Investments by Milena Beranova (aka Strategic Global)	20 November 2015	Clone firm http://www.fca.org.uk/news/warnings/strategic-global-investments-clone
Carter Flanagan Limited / Carter Flanagan Private Asset Management	20 November 2015	Not authorised http://www.fca.org.uk/news/warnings/carter-flanagan-limited
Market Alliance	18 November 2015	Not authorised http://www.fca.org.uk/news/warnings/market-alliance
Innovative Market Strategies Limited	18 November 2015	Not authorised http://www.fca.org.uk/news/warnings/innovative-market-strategies-limited
Capital Corp Global Investing aka Capital Corp	16 November 2015	Clone firm http://www.fca.org.uk/news/warnings/capital-corp-global-investing-clone
Pay Corporation	16 November 2015	Not authorised http://www.fca.org.uk/news/warnings/pay-corporation

Brooks and Fisher Associates	16 November 2015	Not authorised http://www.fca.org.uk/news/warnings/brooks-and-fisher-associates
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Further Afield

SEC brings fraud charges following "pump-and-dump" in Marley Coffee stock

On 17 November 2015, the US Securities and Exchange Commission (SEC) announced fraud charges against several individuals involved in a \$78 million "pump-and-dump" scheme involving the stock of Jammin' Java, a company that operates as Marley Coffee and uses trademarks of late reggae artist Bob Marley to sell coffee products. The SEC alleges that Shane Whittle, the former CEO of Jammin' Java, used a reverse merger to secretly gain control of millions of shares in the company and that Mr Whittle and others then orchestrated a sham financing arrangement designed to create the false appearance of legitimate third-party interest and investment in the company. Two of Mr Whittle's alleged co-conspirators were British brothers Alexander and Thomas Hunter, who were previously charged in a separate SEC case for touting multiple penny stocks using a fake stock picking robot.

SFC bans Orient Securities researcher for 15 years following conviction for bribery

On 16 November 2015, the Hong Kong Securities and Futures Commission (SFC) banned Mr Gong Yueyue, former head of research at Orient Securities (Hong Kong), from re-entering the industry for 15 years following his conviction for an offence of bribery by the Eastern Magistrates' Court. In March 2014, Mr Gong was found to have accepted a bribe of HK\$100,000 from a third party to revise a research report relating to China Household Holdings. The third party, who had asked Mr Gong to prepare a research report on the company in late 2013, showed a draft of the report to China Household Holdings and then requested that Mr Gong raise the target share price. On the day the research report with the revised target share price was published, Mr Gong received HK\$100,000 from the third party. Mr Gong was sentenced to one year's imprisonment in February 2015.

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