

This week at the UK regulators

Thirty second guide: The week in overview

Last week saw an end to speculation about the identity of the new CEO of the FCA, with confirmation that Andrew Bailey, currently CEO of the PRA, is to take up the role in July 2016. He will replace Tracey McDermott, who has acted as interim CEO since Martin Wheatley resigned in September 2015.

The FCA and PRA have launched investigations into certain former HBOS senior managers following the report by Andrew Green QC published in November 2015 regarding the FSA's enforcement actions following the failure of HBOS. The FCA has also acknowledged longstanding uncertainty amongst firms who will be subject to the Senior Managers Regime from 7 March about whether senior individuals within legal functions will be covered by the regime, indicating that it will consult on the issue.

In the criminal courts, six interbank brokers charged with conspiring with Tom Hayes to manipulate the Japanese Yen LIBOR benchmark rate have been acquitted on all counts by a jury. A further 17 individuals are currently awaiting trial in relation to alleged manipulation of the US Dollar LIBOR rate and the EURIBOR rate.

FCA appoints Andrew Bailey as its new CEO

HM Treasury announced that it has (on 26 January 2016) appointed Andrew Bailey as the permanent new CEO of the Financial Conduct Authority. Mr Bailey is currently the Deputy Governor for Prudential Regulation at the Bank of England and CEO of the Prudential Regulation Authority. He is expected to take up the role in July 2016 once his successor at the PRA has been found and he has been appointed for a five year term. Bailey will succeed Tracey McDermott, who has acted as interim CEO since Martin Wheatley stepped down from the post in September 2015.

<http://www.fca.org.uk/news/andrew-bailey-appointed-as-new-chief-executive-of-the-fca>

FCA and PRA launch investigations into certain former HBOS senior managers

The FCA and PRA have decided to start investigations into certain former HBOS senior managers following a report by Andrew Green QC regarding the Financial Services Authority's enforcement actions following the failure of HBOS. This report recommended that the FCA and PRA should consider whether any former HBOS senior managers should be the subject of an enforcement investigation. The investigations will determine whether or not any prohibition proceedings should be commenced against certain former HBOS senior managers. The FCA and PRA say that they are continuing to review materials

with a view to making further decisions regarding other former HBOS senior managers.

<http://www.fca.org.uk/news/fca-and-pra-investigations-into-hbos-senior-managers>

FCA seeks to clarify approvals required for legal function under the Senior Managers Regime

The FCA has sought (on 27 January 2016) to clarify uncertainty as to whether an individual in charge of a firm's legal function requires approval under the Senior Managers Regime. The FCA has stated that, since publishing its final rules for a new accountability framework for individuals working in banks, building societies and credit unions in July 2015, it had come to its attention that significant uncertainty exists in the market regarding firms' legal function. It has added that while it had not included such a role in its indicative list of business activities and functions, responsibility for the management of the legal function was not excluded, and it took the view that many firms would need to identify the role as an overall responsibility Senior Management Function (SMF) when allocating senior management responsibilities if it was not covered by another specific SMF in the firm. It has acknowledged that while in some cases, the individual in question may clearly require approval – for example, if they have responsibility for another area that is clearly captured, such as risk management – in other cases, it will be less clear.

The FCA has set out plans to consult in this area and

stated that, in the interim, firms that have sought to make decisions in good faith about whether or not approval is needed, on the basis of the current published rules and other communications, should not need to change their approach.

<http://www.fca.org.uk/news/supervisory-intentions-overall-responsibility-legal-function-under-senior-managers-regime>

Treasury Select Committee publishes correspondence relating to IT system failures

The Treasury Select Committee (TSC) has (on 25 January 2016) published correspondence between its chairman Andrew Tyrie MP, and various banks, the FCA and the PRA in relation to IT systems failures at each of the banks during the period June to November 2015. The letters set out the committee's view of the risks associated with the failures and suggest that the response to the episodes should be led by the PRA.

<http://www.parliament.uk/business/committees/committees-a-z/commons-select/treasury-committee/news-parliament-2015/it-system-failures-correspondence-15-16/>

Enforcement notices

The FCA has (on 27 January 2016) published final notices cancelling the permission of Ray Alexander Wilson, Manchester Plumbing Supplies Limited and EVS Trading Limited. A similar final notice was published in respect of WH Car Sales Limited on 26 January 2016. The FCA was not satisfied that they are fit and proper persons because they failed to comply with the regulatory requirement to submit a consumer credit return (CCR007) for the period ended 31 March 2015. They also failed to comply with Principle 11 because they were not been open and co-operative with the FCA and they failed to respond adequately to the FCA's requests for them to submit the return. The FCA concluded therefore that they failed to satisfy the threshold conditions set out at FSMA 2000, Schedule 6 in relation to the regulated activities for which WHCSL has had a permission.

<http://www.fca.org.uk/your-fca/documents/final-notices/2016/wh-car-sales-limited>

<http://www.fca.org.uk/your-fca/documents/final-notices/2016/evs-trading-limited>

<http://www.fca.org.uk/your-fca/documents/final-notices/2016/manchester-plumbing-supplies-limited>

<http://www.fca.org.uk/your-fca/documents/final-notices/2016/ray-alexander-wilson>

The FCA has (on 26 January 2016) published a final notice in refusal of an application for approval of Mrs Veena Bhandari to perform the controlled function of CF3 (Chief executive) for William Albert Securities Limited (WASL). The FCA stated that it was not satisfied that Ms Bhandari is a fit and proper person and, in particular, that she has the required competence and capability. WASL and Ms Bhandari were invited to attend an interview to provide the FCA with an opportunity to assess her fitness and propriety but the invitation was refused.

<http://www.fca.org.uk/your-fca/documents/final-notices/2016/veena-bhandari>

The FCA has (on 26 January 2016) published a final notice in refusal of an application by Money Clinic Debt Management Limited for Part 4A permission to carry on the regulated activities of debt counselling, debt adjusting and credit broking. The FCA was not satisfied that Money Clinic's business model is appropriate to meet the requirements of the relevant rules on the basis of its onerous fee structure. It was also not satisfied that Money Clinic can be effectively supervised or that it has the appropriate resources.

<http://www.fca.org.uk/your-fca/documents/final-notices/2016/money-clinic-debt-management>

FCA publishes Handbook Notice 29

The FCA has (on 29 January 2016) published Handbook Notice 29 introducing the Handbook and other material made by the FCA Board under its legislative powers on 28 January 2016. It also contains information about other publications relating to the Handbook and, if appropriate, lists minor corrections made to previous instruments made by the Board.

<http://www.fca.org.uk/your-fca/fca-handbook-notice-29>

FCA warnings

Name of firm	Date of warning	Details
Loans to You	26 January 2016	Clone firm http://www.fca.org.uk/news/warnings/loans-to-you-clone-cc
Loans Expert Online	25 January 2016	Clone firm http://www.fca.org.uk/news/warnings/loans-expert-online-clone-cc

Policy developments

FCA		PRA	
Finalised policy and guidance			
		Implementation/effective date	
Supervisory statements		29 January 2016	<p>The PRA has (on 29 January) published a supervisory statement (SS32/15) setting out the PRA's expectations of firms and providing further clarity on Pillar 2 data reporting. This supervisory statement should be read alongside Policy Statement 3/16 (see below), which includes the Reporting Pillar 2 Part of the PRA Rulebook, and Statement of Policy – The PRA's methodologies for setting Pillar 2 capital.</p> <p>http://www.bankofengland.co.uk/p/ra/Pages/publications/ss/2016/ss3215update.aspx</p>

Policy statements			29 January 2016	<p>The PRA has (on 29 January) published a policy statement (PS2/16) providing feedback on responses to CP29/15 on amendments to the Pre-Issuance Notification (PIN) regime applicable to Capital Requirements Regulations (CRR) firms (these include banks, building societies and PRA UK designated investment firms) and insurers (these include Solvency II Firms and Non-Directive firms).</p> <p>http://www.bankofengland.co.uk/pr/Pages/publications/ps/2016/ps216.aspx</p>
			29 January 2016	<p>The PRA has (on 29 January) published a policy statement (PS3/16) following Consultation Paper 45/15 "Pillar 2: Update to reporting data items and instructions". The Policy Statement sets out changes to the Pillar 2 data items (FSA071 to FSA082) and reporting instructions. It is relevant to banks, building societies and PRA-designated firms.</p> <p>http://www.bankofengland.co.uk/pr/Pages/publications/ps/2016/ps316.aspx</p>

Further Afield

Six interbank brokers acquitted in LIBOR manipulation trial

As has been widely reported, six interbank brokers have been found not guilty of all charges by a jury at Southwark Crown Court following a four month trial in connection with alleged manipulation of the Japanese Yen LIBOR (JPY LIBOR) benchmark interest rate. The SFO alleged that the six brokers (formerly employed by ICAP, RP Martin and Tullett Prebon) conspired with Tom Hayes, who has been convicted and sentenced to 14 years imprisonment (since

reduced to 11 years by the Court of Appeal), to defraud in that they agreed, upon instruction by Hayes, to influence the submissions of panel banks in the JPY LIBOR setting process.

A further trial of six individuals charged with the manipulation of US Dollar LIBOR is scheduled to begin on 15 February 2016, while a trial of 11 individuals charged with the manipulation of the Euro Interbank Offered Rate (EURIBOR) is scheduled to begin on 4 September 2017.

<https://www.sfo.gov.uk/2016/01/29/libor-defendants-acquitted-update/>

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

Jason Epstein
Lawyer

E: jason.epstein
@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.