

This week at the UK regulators

Thirty second guide: The week in overview

The main enforcement developments last week related to bench mark rate setting. The FCA has concluded one case by imposing a public censure and a prohibition order to a former submitter. In a separate case, it has issued a Decision Notice (which has been referred to the Upper Tribunal) in respect of a trader, setting out its intention to impose a prohibition order. In non-contentious developments relating to bench mark rates, the Bank of England has announced that it will take overall responsibility for the setting of the SONIA (Sterling Overnight Index Average) interest rate benchmark.

In other developments, Tracey McDermott has confirmed this week that she will leave the FCA when she hands over her Acting Chief Executive role to the incoming permanent Chief Executive, Andrew Bailey, on 1 July 2016. Further to a review by HM Treasury undertaken in 2014 and the publication of a report evaluating its enforcement response to the failure of HBOS, the FCA and the PRA have issued a consultation paper on proposals to change some aspects of enforcement processes. The FCA has also published its sandbox eligibility criteria in readiness to accept applications from 9 May, has invited feedback on its interim report on its investment and corporate banking market study and has published various papers, including in relation to the availability of information in the IPO process and the anticipation of order flow by high-frequency traders.

FCA publicly censures former LIBOR submitter...

The FCA has (on 12 April) publicly censured and prohibited Paul White, who submitted rates for JPY and CHF LIBOR from 2007 to 2010, from performing any function in relation to any regulated financial activity. This is based on the FCA's finding that he deliberately closed his mind to the risk that he was acting contrary to proper standards of market conduct. Were it not for Mr White's serious financial hardship, the FCA would have fined him £250,000. This is the FCA's fourth public action against a trader for manipulating LIBOR submissions, and follows fines and bans in early 2015 for senior executives for LIBOR compliance failures.

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

... and publishes details of proposed action against former LIBOR trader

The FCA has also (on 14 March) published a Decision Notice in respect of Arif Hussein, setting out its intention to impose a prohibition order preventing him from performing any function in relation to any regulated activity. Mr Hussein has referred the matter to the Upper Tribunal. The FCA alleges that Mr Hussein lacks integrity based upon its findings that, whilst a derivatives trader in 2009, he

informed GBP LIBOR submitters of his preferences for GBP LIBOR rates on the basis of his trading positions, and did so while closing his mind to the risk the submitters would use those preferences to influence the submissions they made.

<http://www.fca.org.uk/static/documents/decision-notices/arif-hussein.pdf>

Other enforcement notices

The FCA has (on 14 April) published a Final Notice to Glyn Goodyear, cancelling his Part 4A permission to carry out regulated activities following findings by the FCA that he had committed breaches of particular rules relating to complaints handling contained and Principles 6 (Customers' interests) and 11 (Relations with regulators) of its Principles for Businesses.

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

In separate Final Notices (all released on 14 April), the FCA has cancelled the permissions of M I Wealth Management Limited, Mr Lester Evans and Mr David Sayer trading as D M Sayer and Co (Insurance) for various failures to pay fees and levies and/or to file required returns

<http://www.fca.org.uk/static/fca/documents/final-notices/m-i-wealth-management.pdf>

<http://www.fca.org.uk/static/fca/documents/final->

[notices/lester-evans.pdf](#)

<http://www.fca.org.uk/static/fca/documents/final-notices/d-m-sayer.pdf>

FCA proposes changes to enforcement processes

In a consultation paper responding to the findings of a review conducted by HM Treasury in 2014 and the subsequent report of Andrew Green QC dealing with the FSA's enforcement response to the failure of HBOS, the FCA has (on 14 April) proposed some changes to various aspects of its enforcement processes. See further details in the table below.

The most noteworthy of the proposed changes are suggestions that "focused resolution agreements" could be used to agree some or all facts and breaches in cases which are only partially contested and/or that the question of penalty only could be referred to the Regulatory Decisions Committee ("RDC") (in which case a 30 per cent discount for early settlement would apply).

It also proposes the introduction of an expedited route to Tribunal bypassing RDC, the abolition of the lower stage 2 and stage 3 discounts where settlement does not take place at the earliest stage, arrangements for pre-Stage 1 meetings and for the FCA to identify the key evidence on which its case relies at the commencement of Stage 1 (when it is necessary to help resolve factual disputes or to assist subjects and their representatives to make informed decisions about settlement). It proposes that the length of stage 1 should remain as 28 days, to be extended only in exceptional circumstances and discusses potential mechanisms for greater involvement of FCA senior management in settlement discussions.

<http://www.fca.org.uk/static/fca/documents/consultation-papers/cp16-10.pdf>

FCA publishes sandbox eligibility criteria

Following the FCA's sandbox report of November 2015 (see This week at the UK regulators, 17 November 2015), the FCA has (on 11 April) published its sandbox eligibility criteria and default standards for sandbox testing parameters. The firms that meet these criteria will be able to apply to test out their innovative ideas without immediately incurring all the normal regulatory consequences.

In a speech delivered on the same day, Christopher Woolard, FCA Director of Strategy and Competition, focused on the UK's regulatory sandbox, describing it as "a

bold and complex project for any regulator to undertake". Applications will be accepted from 9 May 2016. Describing the FCA's approach to thinking about the sandbox, he identified the key question for the regulator as how to create a sandbox that gives industry the freedom to break new ground and encourage creative solutions when there is a limited public appetite to accept business failure if things go wrong, particularly in financial services. He noted two main challenges for the regulator to tackle: how to deliver a sandbox that lowers barriers to testing within the existing regulatory framework; and how to ensure that risks from testing novel solutions are not transferred from firms to consumers.

<http://www.fca.org.uk/static/fca/documents/sandbox-eligibility-criteria.pdf>

<http://www.fca.org.uk/static/fca/documents/default-standards-sandbox-%20testing-parameters.pdf>

<http://www.fca.org.uk/news/innovate-finance-global-summit>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbfGqNhLNomwBl%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZexAl3n8ryFnMkOTQBZOd3TLp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=142348>

FCA comments on survey of customer understanding of transactions

The FCA has published (on 12 April) a press release summarising the findings of a survey of 17 retail banks and building societies commissioned by it reviewing how firms ensure their customers understand the products they have bought. The survey responded to one of the recommendations of the Parliamentary Commission on Banking Standards that firms should be able to 'demonstrate that they are fulfilling a duty of care to their customers, embedded in their approach to designing products, providing understandable information to consumers and dealing with complaints'. The Commission's report also included the statement that 'a bank has a responsibility to ensure that customers have had a reasonable opportunity to understand a transaction, having regard to their knowledge and personal circumstances.'

The survey reports that, in general, firms demonstrated good practice, but there remains concern that some firms may not effectively be distinguishing between customer understanding and customer satisfaction. The FCA has indicated that it will continue to monitor this area and undertake further follow up work in due course.

<http://www.fca.org.uk/news/customer-understanding-of-transactions>

Tracey McDermott to leave the FCA in July 2016

The FCA has (on 12 April) announced that Tracey McDermott will leave the FCA on 1 July 2016. Ms McDermott has been the Acting Chief Executive of the FCA since September 2015 and will hand over to Andrew Bailey, appointed as the permanent Chief Executive in January, when she leaves.

<http://www.fca.org.uk/news/tracey-mcdermott-to-leave-fca>

FCA reports on investment and corporate banking market study and seeks feedback on IPO process

The FCA has (on 13 April) published the interim report of its investment and corporate banking market study (MS15/1.2). The report is published alongside two other papers: a discussion paper on the availability of information in the IPO process (DP16/3) and Occasional Paper 15 entitled "Quid pro quo? What factors influence IPO allocations to investors?" (see table below for more information).

The FCA's market study focused on choice, transparency, bundling and cross-subsidisation in debt and equity capital markets, and mergers and acquisitions. It also considered links between competition in these primary market services and related activities such as corporate lending and broking, and ancillary services. Interim findings include that cross-selling could make it harder for banks that do not offer lending facilities to compete for primary market services, and that there is evidence that some banks may seek to reward favoured investor clients when allocating shares in an IPO. The FCA will be undertaking supervisory work with a targeted group of banks to better understand how potential conflicts of interests are managed when shares in IPOs are allocated. The FCA is asking for views on the interim report and potential remedies by **25 May 2016**. Following engagement with stakeholders, the FCA expects to publish its final report in the summer, and consult on any proposed interventions.

Occasional Paper 15 seeks to understand whether the IPO allocation process works in the interest of issuer clients or whether conflicts of interest may result in banks favouring their highest-revenue clients when deciding on final allocations in IPOs. The paper draws on data gathered as part of the FCA's market study of investment and corporate banking (MS15/1.2). The paper sets out some findings in

relation to the factors influencing syndicate banks' and book runners' allocations to various types of investors.

<http://www.fca.org.uk/static/documents/market-studies/ms15-1-2-interim-report.pdf>

<http://www.fca.org.uk/static/documents/discussion-papers/dp16-3.pdf>

<http://www.fca.org.uk/static/documents/occasional-papers/occasional-paper-15.pdf>

Bank of England to administer SONIA interest rate benchmark

The Bank of England has (on 13 April) together with the Wholesale Markets Brokers' Association (WMBA) announced that the Bank will become the administrator of the Sterling Overnight Index Average (SONIA) interest rate benchmark. The WMBA will continue to calculate and publish SONIA as it does currently, but on behalf of the Bank, which will provide oversight and governance. The Bank views reform of SONIA as necessary, given its role as a critical benchmark in sterling markets, and in view of the limited size of the market for brokered deposits, on which SONIA is currently based. The Bank plans to broaden the range of transactions underpinning SONIA to include bilaterally negotiated, as well as brokered, transactions in order to make it more resilient.

<http://www.bankofengland.co.uk/publications/Pages/news/2016/046.aspx>

FCA publishes occasional paper on anticipation of order flow by high-frequency traders

The FCA has (on 15 April) published Occasional Paper 16, entitled 'Are high-frequency traders anticipating the order flow? Cross-venue evidence from the UK market'. The paper investigates, using order book data from the UK equity market, whether by exploiting their speed advantage, high frequency traders (HFTs) can predict when orders are going to arrive at different trading venues and trade in advance of slower traders. The FCA did not find evidence that HFTs systematically anticipate near-simultaneous marketable orders sent to different trading venues by pure non-HFTs. However, when analysing longer time periods (measured in seconds or tens of seconds), it found patterns consistent with HFTs anticipating the order flow of pure non-HFTs.

<http://www.fca.org.uk/static/documents/occasional-papers/occasional-paper-16.pdf>

FCA warnings

Name of firm	Date of warning	Details
ICash Advance	15 April 2016	Clone firm http://www.fca.org.uk/news/warnings/i-cash-advance-clone-cc
Raymund Servais	15 April 2016	Clone firm (of EEA authorised firm) http://www.fca.org.uk/news/warnings/raymund-servais-clone
Quick All Loans	15 April 2016	Not authorised http://www.fca.org.uk/news/warnings/quick-all-loans-cc
CJR Investments	14 April 2016	Not authorised http://www.fca.org.uk/news/warnings/cjr-investments
Bradley and Rogers/Bradley Rogers LLC	14 April 2016	Not authorised http://www.fca.org.uk/news/warnings/bradley-rogers
Norbert Mach	13 April 2016	Clone firm http://www.fca.org.uk/news/warnings/norbert-mach-clone
Rhombus Commercial Brokerage	13 April 2016	Not authorised http://www.fca.org.uk/news/warnings/rhombus-commercial-brokerage
Mapletree Investments Limited	13 April 2016	Clone firm http://www.fca.org.uk/news/warnings/mapletree-investments-limited-clone
Liberum Capital	11 April 2016	Clone firm http://www.fca.org.uk/news/warnings/liberum-capital-clone

Policy developments

FCA		PRA	
Proposed developments			
		Deadline for responses	
Consultation papers	<p>The FCA and PRA have (on 14 April) jointly published a consultation paper (FCA CP16/10 / PRA CP14/16) on the proposed implementation of the Enforcement Review (HMT's 18 December 2014 'Review of enforcement decision making at the financial services regulators') and the Green Report (Andrew Green QC's report into the FSA's enforcement actions following the failure of HBOS). The paper includes proposed changes to the FCA's Decision Procedure and Penalties Manual (DEPP) and Enforcement Guide. Chapters 2, 5 and 6 are FCA-only proposals. Chapters 3 and 4, which consult in respect of regulator cooperation (FCA and PRA) and subjects' understanding and representations in the context of enforcement investigations, are the subject of a joint consultation by the FCA and PRA. See further details above.</p> <p>http://www.fca.org.uk/static/fca/documents/consultation-papers/cp16-10.pdf</p>	14 July 2016	
	<p>The FCA and the FCA Payments Systems Regulator (PSR) have (on 15 April) published a consultation paper (CP16/11) setting out policy decisions on the</p>	13 May 2016	

	<p>allocation, calculation, and collection of PSR fees for 2016/17, and further proposals for consultation. The paper follows the PSR's December 2015 consultation on its proposed approach for allocating, calculating and collecting the PSR's Annual Funding Requirement for 2016/17.</p> <p>http://www.fca.org.uk/static/documents/consultation-papers/cp16-11.pdf</p>			
Discussion papers	<p>The FCA has (on 13 April) published a discussion paper (DP16/3) on the availability of information in the UK Equity IPO process (see further details above). It has the aim of ensuring market participants have access to the right information at the right time during the IPO process, and puts forward alternative IPO process models comprising different combinations of: a requirement to delay the release of any research by analysts at banks connected to the IPO until after the prospectus is published, and a requirement to invite analysts from unconnected banks and independent research providers to any meetings with management.</p> <p>http://www.fca.org.uk/static/documents/discussion-papers/dp16-3.pdf</p>	13 July 2016		

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

Ellen Lake
Lawyer

E: ellen.lake
@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.