

# This week at the UK regulators

## Thirty second guide: The week in overview

In a week with no notable enforcement activity, the FCA published a number of policy documents including a feedback statement suggesting further rules to protect investors using crowdfunding platforms; a consultation paper on enhancing conduct of business rules for firms providing contract for difference products to retail clients; a thematic review into general insurance intermediaries' professional indemnity insurance; a "Dear CEO" letter to firms that administer debt management plans and final guidance on the fair treatment of long-standing customers in the life insurance sector.

The FCA also announced that it has entered into a co-operation agreement with the Hong Kong Monetary Authority in order to encourage collaboration in the promotion of financial innovation.

Further afield, the SEC announced that the agency's Director of Enforcement was leaving by the end of the year and the Hong Kong Securities and Futures Commission began enforcement proceedings in a case of alleged insider dealing.

### FCA and the Hong Kong Monetary Authority enter into co-operation agreement on financial innovation

The FCA and Hong Kong Monetary Authority have (on 7 December) entered into a co-operation agreement which will allow the FCA and HKMA to collaborate on a number of initiatives such as referrals of innovative firms, joint innovation projects, information exchange and experience sharing to facilitate financial innovation in the UK and Hong Kong.

This is the fifth such co-operation agreement that the FCA has signed with international authorities. Earlier in the year, the FCA signed similar agreements with authorities in Australia, Singapore, South Korea and China.

<https://www.fca.org.uk/publication/mou/fca-hkma-co-operation-agreement.pdf>

### FCA publishes feedback statement on crowdfunding

Earlier this year, the FCA published a call for input on its review of the rules it introduced in February 2014 to protect investors on loan-based and investment-based crowdfunding platforms. On 9 December, the FCA published an interim feedback statement in which it said that it had concerns that aspects of the loan-based crowdfunding market currently posed some risks of consumer detriment. The FCA has indicated that it plans to consult in the first quarter of 2017 on the changes to its rules governing crowdfunding. Specifically, it has stated

that it intends to strengthen the rules regarding wind-down plans to reduce the risk to investors of the plans not operating as expected; impose additional requirements or restrictions on cross-investment to address the risks posed by crowdfunding platforms allowing investment in loans that originate on other platforms; extend the usual mortgage-lending standards to loan-based crowdfunding platforms where the lender is not acting by way of business; and put in place more prescriptive rules on the content and timing of disclosures. In the meantime, the FCA continues to conduct consumer and market research on the crowdfunding market and may therefore seek to consult on further rule changes following the conclusion of this exercise in early 2017.

<https://www.fca.org.uk/publication/feedback/fs16-13.pdf>

### FCA publishes findings of thematic review into general insurance intermediaries' professional indemnity insurance

The FCA has published (on 5 December) the findings of its thematic review into general insurance intermediaries' professional indemnity insurance. The purpose of the review was to evaluate the individual policies purchased by a sample of firms to determine whether they complied with the requirements of MIPRU (Prudential Sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries). The FCA found that there was sufficient breadth within the market to provide choice and that firms were able to obtain cover for high limits of indemnity.

It found though that policies reviewed contained a number

of exclusion clauses that concerned the FCA as their effect could be to reduce the scope of the cover below that required by MIPRU and inaccuracies, notably around the scope of cover for Financial Ombudsman awards and for any appointed representatives that a firm might have. The FCA has reiterated that it expects other general insurance intermediaries to review their professional indemnity insurance policies to ensure that they meet with MIPRU requirements.

<https://www.fca.org.uk/publication/thematic-reviews/tr16-9.pdf>

### FCA sends "Dear CEO" letter to CEOs of Debt Management Plan firms

The FCA has (on 8 December) sent a "Dear CEO" letter to the CEO's of firms that administer Debt Management Plans ("DMPs") to remind firms of their obligations to maintain contact with the customer and regularly monitor and review their financial position and circumstances, including conducting an annual review of the DMP. In the letter, the FCA stated that it is not sufficient to conduct a "desk based" review of the DMP and that firms must take all reasonable steps to encourage customers to participate meaningfully in the review process to ensure that they have up-to-date

information regarding the customers' financial circumstances.

<https://www.fca.org.uk/publication/correspondence/dear-ceo-expectations-firms-administer-debt-management-plans.pdf>

### Final Notices

The FCA has (on 5 December) issued separate Final Notices cancelling each of Pinks Agri Ltd and (Be)Spoke Derby Limited's permissions to carry on regulated activities. Both firms had failed to pay overdue balances to the FCA or respond to repeated requests for such payment. Accordingly, the FCA concluded that neither firm was a fit and proper person.

<https://www.fca.org.uk/publication/final-notices/pinks-agri-limited.pdf>

The FCA has (on 7 December) issued a Final Notice refusing Warranty Management Services' application for approval of Andy Pattini to perform the controlled function of CF1. The FCA was not satisfied that Mr Pattini was a fit and proper person to perform the controlled function.

<https://www.fca.org.uk/publication/final-notices/warranty-management-services-limited-2016.pdf>

### FCA warnings

Name of firm	Date of warning	Details
Novostar Finance Co Ltd	9 December 2017	Not authorised <a href="https://www.fca.org.uk/news/warnings/novostar-finance-co-ltd">https://www.fca.org.uk/news/warnings/novostar-finance-co-ltd</a>
Ernst Hofsetter Asset Management	7 December 2016	Clone firm <a href="https://www.fca.org.uk/news/warnings/ernst-hofsetter-asset-management-clone-eea-authorized-firm">https://www.fca.org.uk/news/warnings/ernst-hofsetter-asset-management-clone-eea-authorized-firm</a>
Kleinwort Benson Private Bank Limited	7 December 2016	Clone firm <a href="https://www.fca.org.uk/news/warnings/kleinwort-benson-private-bank-limited-clone-fca-authorized-firm">https://www.fca.org.uk/news/warnings/kleinwort-benson-private-bank-limited-clone-fca-authorized-firm</a>
Reinhard Hofer International / Reinhard Hofer Venture Partners	6 December 2016	Clone firm <a href="https://www.fca.org.uk/news/warnings/reinhard-hofer">https://www.fca.org.uk/news/warnings/reinhard-hofer</a>

		<a href="#">international-reinhard-hofer-venture-partners-clone</a>
Lawson Management Group LLC	5 December 2016	Not authorised <a href="https://www.fca.org.uk/news/warnings/lawson-management-group-llc">https://www.fca.org.uk/news/warnings/lawson-management-group-llc</a>
Totally Money	5 December 2016	Clone firm <a href="https://www.fca.org.uk/news/warnings/totally-money-clone">https://www.fca.org.uk/news/warnings/totally-money-clone</a>
Westburn Finance / Finance 2 All	5 December 2016	Clone firm <a href="https://www.fca.org.uk/news/warnings/westburn-finance-clone">https://www.fca.org.uk/news/warnings/westburn-finance-clone</a>
CM-CIC Asset Management	5 December 2016	Clone firm <a href="https://www.fca.org.uk/news/warnings/cm-cic-asset-management-clone">https://www.fca.org.uk/news/warnings/cm-cic-asset-management-clone</a>

In last week's edition we reported that a Warning Notice had been issued to London Cape Equities Group. Please note that the FCA has now removed this Warning Notice from its website.

## Policy developments

FCA		PRA	
Proposed developments			
		Deadline for responses	
<b>Consultation papers</b>	<p>The FCA has (on 6 December) published a consultation paper (CP16/40) on enhancing conduct of business rules for firms providing contract for difference products to retail clients.</p> <p>The consultation paper outlines the FCA's concern that there is increasing evidence of poor conduct and risk to investors' protection and proposes a package of policy measures designed to address those risks.</p>	7 March 2017	

	<p>The consultation paper also considers binary bets (which allow a client to bet on whether the price of a financial instrument will be higher or lower than a fixed threshold at a future point in time) which are currently regulated by the Gambling Commission but which are expected to be regulated by the FCA following the transposition of MiFID II. The FCA is concerned that binary bets pose a risk to investors and question whether they serve a genuine investment need. The consultation paper discusses potential policy approaches to address these concerns.</p> <p><a href="https://www.fca.org.uk/publication/consultation/cp16-40.pdf">https://www.fca.org.uk/publication/consultation/cp16-40.pdf</a></p>			
<b>Feedback statements</b>	<p>The FCA has (on 9 December) published a feedback statement (FS 16/13) to the call for input to the post-implementation review of the FCA's crowdfunding rules.</p> <p><a href="https://www.fca.org.uk/publication/feedback/fs16-13.pdf">https://www.fca.org.uk/publication/feedback/fs16-13.pdf</a></p>			

Finalised Policy and guidance				
		Implementation/effective date		
<b>Finalised guidance</b>	<p>The FCA has (on 9 December) published finalised guidance (FG 16/8) on the fair treatment of long-standing customers in the life insurance sector.</p> <p>The FCA has indicated that the purpose of the guidelines is to ensure that closed-book customers who have life insurance policies that are closed to new business do not receive less attention than customers who</p>	9 December 2016		

	<p>have recently taken out a new policy. Accordingly, the guidelines provide detailed information on the actions that firms should take in order to treat closed-book customers fairly, including conducting product reviews at least every five years and providing customers with regular information about the policy's performance and charges.</p> <p><a href="https://www.fca.org.uk/publication/finalised-guidance/fg16-8.pdf">https://www.fca.org.uk/publication/finalised-guidance/fg16-8.pdf</a></p>			
<b>Statements of policy</b>				<p>The PRA has (on 5 December) published a Statement of Policy setting out its approach to implementing the systemic risk buffer.</p> <p><a href="http://www.bankofengland.co.uk/p/ra/Documents/publications/sop/2016/srbapproach.pdf">http://www.bankofengland.co.uk/p/ra/Documents/publications/sop/2016/srbapproach.pdf</a></p>

## Further Afield

### SEC Enforcement Director to leave by the end of the year

The SEC has (on 8 December) announced that its Enforcement Director, Andrew Ceresney, will leave the SEC by the end of the year after nearly four years as head of the agency's largest division.

<http://www.sec.gov/news/pressrelease/2016-259.html>

### The Hong Kong Securities and Futures Commission commence further insider dealing proceedings

The Securities and Futures Commission ("SFC") has commenced proceedings in the Market Misconduct Tribunal (MMT) against Mr Augustine Cheong Kai Tjeh, a former senior executive of an affiliate of Titan Petrochemicals Group Limited (Titan), and his mother Ms Gan Ser Soon, for alleged insider dealing in Titan shares in 2012. It is alleged that Mr Cheong and Ms Gan knew that Titan and its affiliates would likely default on certain fixed rate senior

notes and on the then outstanding bank loans when they sold their Titan shares in January 2012.

The SFC is seeking orders for Mr Cheong and Ms Gan to disgorge losses they avoided suffering and the agency has also instituted parallel proceedings in the Court of First Instance seeking an order to restore relevant counterparties to the position that they would have been had they not bought shares from Mr Cheong and Ms Gan.

These proceedings are one of a number of enforcement actions commenced in the past month or so by the SFC. For further information on the SFC's recent notable enforcement action please see the following briefing:

[https://www.cliffordchance.com/briefings/2016/11/shanghai\\_hong\\_kongstockconnectsrcandsf.html](https://www.cliffordchance.com/briefings/2016/11/shanghai_hong_kongstockconnectsrcandsf.html)

<http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=16PR135>

## 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

**Michael Lyons**  
Partner

E: michael.lyons  
@cliffordchance.com

**Kelwin Nicholls**  
Partner

E: kelwin.nicholls  
@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](http://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](mailto: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.