Kinetic Partners

A Division of DUFF & PHELPS

regulatory focus

Issue 83

A synopsis of the Financial Conduct Authority's (FCA) latest news and publications issued in March 2015.

Welcome to Kinetic Partners' latest issue of *regulatory focus*, our regulatory newsletter for the financial services community.

The FCA has been busy with enforcement actions, and is increasingly taking actions against firms and individuals with regards to financial crime and the management of conflicts of interest.

Conflicts of interest

Recently, the Upper Tribunal upheld the FCA's decision to fine and ban two senior individuals at Arch Financial Products LLP for being reckless in their management of conflicts of interest. Arch acted as investment manager for both the Arch Cru funds and the Guernsey cells that the funds invested in, which created a conflict of interest. It said that Arch and two of the partners lacked integrity because they failed to ensure that Arch adequately identified, recorded and mitigated the conflicts of interest within the business.

In April 2014, the FCA banned two partners at 1 Stop Financial Services for its advice on self-invested personal pensions (SIPPs) and for failing to disclose and manage conflicts of interest. The partners were directors of a firm that referred almost a quarter of 1 Stop's SIPP customers in exchange for commission payments.

Furthermore, last month the FCA fined Aviva Investors £17.6m for failing to manage conflicts of interest fairly. Aviva Investors employed a strategy whereby funds that paid differing levels of performance fees were run by the same desk. A proportion of these performance fees were paid to traders, creating a conflict of interest as these traders had an incentive to select one fund over another. Weaknesses in Aviva's systems and controls and risk monitoring went unaddressed for almost eight years, creating an unacceptable risk of trader misconduct.

Following these recent enforcement cases, the FCA reminded firms in its February 2015 Regulatory Round-up that it is senior management's responsibility to set clear standards for the firm. Responsibility for identifying conflicts and how to manage them should be clearly allocated and the controls in place must be reviewed regularly. In addition, staff must have clear guidance on how to recognise a potential issue and when to escalate it to management.

We therefore encourage firms to review their conflicts of interest policies and registers and to provide staff with training.

Financial crime

Credible deterrence is central to the FCA's approach in bringing enforcement actions against firms for financial crime and FCA states that it has made progress in this aim. FCA will build on this progress by bringing more enforcement cases and pushing for tough penalties against firms. It will also aim to pursue more cases against individuals and hold senior management accountable for their actions. Its aim to pursue criminal prosecutions, including for insider dealing and market manipulation, is demonstrated by the number of enforcement actions brought recently by the FCA.

Regulatory highlights this month include:

- DP 15/3 FCA's approach to implementing MiFID II conduct of business and organisational requirements
- FCA's Business Plan for 2015/16
- CP 15/8 Quarterly consultation paper No.8
- FCA fines and prohibits Stephen Bell, former director of network Financial Group, from performing compliance oversight function

Regulatory Update
We also provide regulatory updates on key developments as and when these arise.
For further information, including recent updates, please visit here.

- FATCA update: Cayman Islands open Automatic Exchange of Information Portal
- Budget 2015
- HMRC announcement on UKFIs
- The EBA publishes its CRD IV remuneration guidelines consultation
- SFC update | Fund management activities survey 2014
- SFC report on Asset management

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Policy Documents

DP 15/3: FCA's approach to implementing MiFID II conduct of business and organisational requirements

26 March

Following the financial crisis, the Markets in Financial Instruments Directive ("MiFID I") has been revised to strengthen investor protection and financial market transparency. MiFID II came into force on 2 July 2014, must be transposed by the FCA by July 2016 and will take effect on 3 January 2017. The FCA has published a discussion paper which provides first indications of the approach the FCA is minded to take and seeking early views on its policy choices implementing certain MiFID II conduct of business and organisational requirements.

This paper will be of interest to many different types of firms and in particular:

- discretionary investment management firms;
- financial advisers;
- local authorities, and firms that conduct business with local authorities;
- stockbrokers and others that provide personal recommendations to their clients on shares, bonds and/or derivatives;
- firms providing services in relation to insurance-based investments and pensions; and
- firms currently exempt from MiFID II under Article 3.

The paper seeks views on a number of areas including:

- whether the FCA should apply MiFID II conduct of business rules (e.g. suitability, appropriateness test and client reporting) to insurance-based investment products and pensions;
- the application of certain investor protection requirements to structured deposits;

- putting in place similar rules to the Retail Distribution Review ("RDR") in relation to discretionary investment management activities, including a total ban on receipt of third party payments by discretionary managers even if rebated to clients. The FCA would also like to hear views as to whether, as an alternative to banning all rebates, only cash rebates should be banned;
- whether the existing opt-up regime is appropriate in determining whether local authorities have the necessary expertise and knowledge to warrant being treated as professional clients. The FCA's preference is to strengthen the opt-up conditions, possibly such that only those local authorities which can currently meet the criteria to be categorised as per se professionals would be able to opt-up;
- the requirements for financial advisers to be treated as independent, and how this could be implemented for advice given on shares, bonds, derivatives and structured deposits;
- MiFID II style remuneration requirements for all sales staff and advisers in regulated firms regardless of the type of business they undertake (i.e. applying high level standards to non-MiFID II firms as well);
- the application of the full MiFID II rules in relation to the recording of telephone conversations and electronic communications to investment managers;
- practical methods to implementing MiFID II's requirements for disclosure of costs and charges, including developing a standardised format for disclosure; and
- the application of MiFID II inducement rules to investment advisers and other firms.

January 2017 may sound like a date in the distant future however this paper acts as a reminder that it is moving ever nearer. Firms affected by MiFID II need to be willing to engage in dialogue at this stage if they want to influence FCA thinking on the topics covered. The FCA intends to publish a consultation on the rule changes later in 2015 ahead of finalised rules in 2016.

The FCA has a dedicated MiFID II page which can be accessed here.

Key milestones can be viewed here.

The Discussion Paper can be found here.

Firms affected by MiFID II need to be willing to engage in dialogue at this stage if they want to influence FCA thinking on the topics covered.

FCA's Business Plan for 2015/16 and details of new supervision and authorisation divisions

24 March

The FCA published its 2015/16 Business Plan on 24th March 2015, which is of interest to all regulated firms. For the first time this year, the Business Plan also includes the FCA's Risk Outlook. The Risk Outlook continues to centre on the FCA's seven key areas of focus. Whilst these remain largely unaltered from last year, financial crime is a new joiner for 2015/16.

Forward-looking areas of focus for 2015/16 include technology; poor culture and controls and the associated threat to market integrity; large back-books of existing consumers which may expose firms to acting against the best interests of their customers (for example, where existing consumers do not have the desire or confidence to switch providers); pensions, retirement income products and distribution methods that may deliver poor consumer outcomes; poor culture and practice in consumer credit affordability assessments that could result in unaffordable debt - especially for young consumers; sharper focus on issues that need to be considered in unfair contract terms; and the importance of firms' systems and controls in preventing financial crime.

The FCA uses its Business Plan to set out its key priorities for the coming year. The FCA's five key priorities for 2015/2016 include:

- A strategic markets-led approach using a market-focused work programme, with increased scrutiny of wholesale market integrity and competition.
- Protecting consumers, especially in the context of changes to pension legislation and consumer credit.
- Individual accountability, ensuring that senior individuals in positions of responsibility are held accountable for how their firm operates.
- International issues, focussing on international engagement, implementation of EU policy and financial crime.
- Its people, diversity and inclusion, and the training and education of staff.

Under the strategic markets-led approach to regulation the FCA will introduce its markets-focussed programme to highlight areas of focus such as inducements and conflicts of interest within retail investments and asset management, as well as post-authorisation reviews of funds within the investment management sector.

There is a renewed focus on competition following the FCA's market study into competition in investment and corporate banking. In addition, the FCA will assume powers in which it can act against anti-competitive behaviour, with the Competition Markets Authority.

Whilst the FCA notes that improvements have been made in the cultures of regulated firms, it confirmed that tone from the top, business structures and the impact of incentives on behaviour will remain hot topics for the coming year.

The full Business Plan, including the Risk Outlook can be found here.

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CP15/8: Quarterly consultation paper No. 8

6 March

The FCA's latest Quarterly Consultation Paper, CP15/8, was published on 6 March 2015. The QCP focuses on three main areas:

- Minor amendments to CASS and CONC
- Changes to the remuneration reporting submission method
- Changes impacting AIFMs and AIF depositaries

The changes to the CASS rules were mainly to confirm FCA's intention when making the changes previously detailed in PS14/9 and include clarifications in relation to:

- Allowing firms to undertake external custody reconciliations against a third party's system records for uncertified units of securities governed by the relevant uncertified securities regulations in Ireland, Jersey, Guernsey and Isle of Man.
- The rules related to mixed payments received by clearing members.
- Making it clear that Authorised Fund Managers can transfer client money through a corporate account when transferring to a third party.
- To confirm that loan-based crowdfunding is subject to CASS.
- Make clear what contributes to the client money pool during a primary pooling event to ensure it includes identifiable in house accounts.

The remuneration reporting requirements are only applicable to IFPRU firms. Firms subject to this requirement have previously submitted these reports in excel format via email. The QCP is consulting on moving submission of these reports to GABRIEL and firms will be required to submit, where applicable, two reports (REP004 (Remuneration Benchmarking) and REP005 (High Earners Report)).

The FCA is proposing to add additional guidance to FUND 3 that will contain questions and answers aiming to clarify how they interpret certain aspects of the valuation requirements.

The FCA is proposing to add additional guidance to FUND 3 that will contain questions and answers aiming to clarify how they interpret certain aspects of the valuation requirements. The additional guidance will be of interest to all UK AIFMs, non-EEA AIFMs managing AIFs marketed into the UK, AIF depositaries, and advisers and service providers such as external valuers. The proposed clarifications include the following:

- FCA considers that the person making the final determination on the value of the asset, or portfolio of assets, is the person deemed to be performing the valuation function. Where the person performing the valuation function seeks input from a third-party adviser or price provider to arrive at their determination, the third-party is not considered to be performing the valuation function.
- The right of a board of directors or the trustees of AIFs to contractually override a valuation figure provided by the AIFM or external valuer, does not mean that the board of directors or trustees are performing the valuation function, provided that the right to override is only used on an exceptional basis.
- Safeguards that should be in place to ensure the functional independence of the valuation function when performed by the AIFM itself. This includes the role of portfolio managers on valuation committees and the input they provide to the person performing the valuation function.

The proposed questions and answers also clarify that:

- The valuation function involves valuing all the investments in the AIF, including assets with a negative value and short positions.
- The AIFM has ultimate responsibility for the valuation of all the AIF's assets.
- An external valuer can be appointed by the AIFM or by the AIF.

The consultation paper can be found here.

FG 15/4: Social media and customer communications, the FCA's supervisory approach to financial promotions in social media

13 March

The FCA published Finalised Guidance FG15/4 - Social media and customer communications on 13th March 2015 following detailed engagement and consultation with the industry.

The Finalised Guidance sets out the FCA's supervisory approach to financial promotions in social media and should be of interest to all firms that make use of social media. The FCA defines social media as media that is digital and includes 'websites and applications that enable users to create and share content or participate in social networking' including, for example:

- blogs
- microblogs (Twitter)
- social and professional networks (Facebook, LinkedIn, Google+)
- forums
- image and video-sharing platforms (YouTube, Instagram, Vine, Pinterest)

The FCA has reminded firms that any form of communication (including social media) is capable of being a financial promotion if it includes an invitation or inducement to engage in financial activity. The purpose of the guidance is to help firms comply with the FCA's financial promotions rules when using social media and sets out in further detail specific areas that firms need to consider, and provides some solutions and illustrative examples.

The FCA advises firms that communications through social media can reach a wide audience very rapidly, which firms should take into account when deciding the medium and nature of their promotions. One way of managing this risk is the use of software that enables advertisers to target particular groups very precisely. Furthermore, firms should consider whether it is appropriate to use character-limited media as a means of promoting complex features of financial products or services.

Specific illustrative examples include:

- Stand-alone compliance - each communication needs to be considered as a promotion in its own right.
- Risk warnings and other required statements are required for all promotions. Images of risk warnings may be used where character limitations apply or firms may use signpost links to a website containing a financial promotion. The guidance provides examples of good and bad practice.
- Image advertising offers a means of advertising a firm's existence via reference to its name, logo or associated image where character limitations might otherwise prevent detailed financial promotions.
- Recipients sharing or forwarding communications - responsibility for sharing or forwarding a firm's communications lies with the recipient sharing or forwarding it. However, the issuing firm must ensure the original communication is clearly targeted and compliant in the first instance. The issuer will remain responsible for any compliance breaches in the original and not the sharer.
- Unsolicited financial promotions - firms are reminded cold calling rules apply in respect of social media as with any other form of unsolicited financial promotions.
- Approval and record-keeping requirements apply to social media promotions as for any other financial promotion.

Further details can be found here.

The FCA advises firms that communications through social media can reach a wide audience very rapidly, which firms should take into account when deciding the medium and nature of their promotions.

CP 15/11: Implementation of the Transparency Directive amending Directive (2013/50/EU) and other Disclosure Rule and Transparency Rule changes

20 March

The Transparency Directive ("TD") predominantly harmonises requirements on companies regarding information disclosure. It not only focuses on disclosure requirements and how regulated information is distributed, but also addresses the disclosures that investors must make about the positions they hold in companies.

The Transparency Directive Amending Directive "TDAD" came into force on 26 November 2013 following a review of TD by the European Commission ("EC"). Each Member State is required to implement the TDAD within 24 months of that date and the responsibility for implementation in the UK is shared between the Treasury and the FCA. This joint consultation between the two bodies sets out proposals for implementing the TDAD, proposals on other TD modifications made by the TDAD which may impact the current regime and miscellaneous changes proposed by the FCA to the Disclosure Rules and Transparency Rules ("DTR") that are not required by TDAD.

The paper will be of interest to:

- issuers of securities admitted to trading on a regulated market where the UK acts as home or host Member State and the FCA's DTRs apply;
- listed companies who are required to comply with DTR;
- issuers of securitised derivatives who the FCA considers should comply with DTR as if they were an issuer of debt securities as defined in the DTRs;
- issuers of securities admitted to trading on a prescribed market in the UK;
- firms advising issuers;
- firms advising persons investing or dealing in listed securities;
- firms or persons investing or dealing in listed securities;
- primary information providers; and
- consumers who directly or indirectly deal and invest in listed securities or shares admitted to trading on a prescribed market.

Proposed DTR changes include; stock lending transactions to be disclosed by the lender and the borrower using the existing TR-1 Form and allowing all investment managers (including those in the UK) to disclose at the EU minimum standard, irrespective of their jurisdiction.

Comments on the proposals should be submitted to the FCA by 20 May 2015. Feedback is expected to be published towards the end of the year.

The consultation paper can be found here.

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The FCA has identified weakness in ways that firms design and develop their products but has provided guidance on how to mitigate continued weaknesses.

TR15/2: Structured Products: Thematic Review of Product Development and Governance

5 March

Following the publication of its Finalised Guidance on structured products in 2012 the FCA has identified that more work is required by firms regarding the development of new structured products.

The FCA has identified weakness in ways that firms design and develop their products but has provided guidance on how to mitigate continued weaknesses. The FCA has highlighted that there needs to be greater emphasis on ensuring that firms match products to consumer needs and when providing products to investors, firms should account for the sophistication of investors and must bridge any knowledge gaps, where required. The FCA stressed the importance of providing customers with clear and balanced information about the products and any associated risks. In order to ensure the fair treatment of customers, firms should clearly demonstrate the economic value of the product, including information about stress-testing and potential investment returns as well as risks to customers' capital.

In addition, the FCA focused on the importance of product governance being present throughout the product life cycle. This should include: identification of a target market; a product designed to meet the identified need; a robust product approval process for new products; and distributors as well as end customers being provided with appropriate information that takes into account the complexities that can be associated with structured products. Once this has been undertaken the product should then be monitored until its end of life.

Given the potential complexities of some structured products, their attractiveness to retail customers and associated risks, the FCA encourages firms to review their development processes for structured products. This is not only in light of the publication of this thematic review, but comes ahead of the implementation of the Packaged Retail and Insurance-based Investment Products Regulation ("PRIPS") and the recast Markets in Financial Instruments Directive ("MiFID II").

The Thematic Review can be found here.

Supervision Matters

While the proposed rules are aimed at the banking sector, all FCA regulated firms should be aware of the steps being taken to improve standards in the financial services industry.

Nothing to fear from high standards - speech by Martin Wheatley, Chief Executive of the FCA

16 March

This article is of relevance to all FCA or PRA regulated firms. While the proposed rules are aimed at the banking sector, all FCA regulated firms should be aware of the steps being taken to improve standards in the financial services industry.

This month the Chief Executive of the FCA, Martin Wheatley, delivered a speech at Bloomberg. The speech sought to make the benefits of implementing higher standards clear, when addressing the core issues affecting trust between UK banks and society.

Mr Wheatley spoke of the Regulators' attempt at improving confidence in the period since the financial crisis, and contrasted it with financial services firms who are just now coming to terms with the idea of improving accountability, in order for societal concerns to be addressed.

The Chief Executive claimed there to be a general acceptance by firms of the need to increase accountability within the financial services industry. Mr Wheatley talked of the strong correlation between accountability and commercial growth, stating it to be the back drop for the recent publications on the senior managers regime and the accountability regime.

The shift to individual accountability

The senior managers regime (SMR) is steadily moving towards its implementation, with the FCA and PRA rules on accountability due to be published in summer 2015 and a deadline for firms to submit their grandfathering notifications by February 2016, ahead of the March 2016 launch.

The new regime will see firms being required to produce a detailed organogram, setting out the allocation of responsibilities, reporting lines and governance arrangements. In addition, the statement of responsibility will need to set out defined areas of accountability across 17 management functions, including money laundering reporting, compliance oversight and internal audit. The intention is to make individual responsibilities clearer, including those of Non Executives.

Presumption of responsibility

The new regime will see senior managers take on the burden of proof, with managers having to demonstrate that reasonable steps have been taken to prevent a contravention occurring. Mr Wheatley noted that the new regime should be an entirely manageable process for the majority of firms, however that the Regulator is aware of some concern within the industry. A number of firms believe the Regulator will be more likely to take action following the rule change. Mr Wheatley stressed the Regulator's position, claiming that any action will be proportionate and fair and would largely involve senior managers taking common-sense actions. He also expressed his hope that the new regime will mean that heightened accountability will reduce the need for action to be pursued against individuals, as it is hoped that the changes will lead to a decrease in the frequency of misconduct.

Good governance

The Chief Executive talked of the need for a strengthening of the approved person regime, by introducing a certification regime. This is intended to deal with significant blind spots within organisations that enables individuals in middle management to hold significant levels of power without ever being subject to the Regulator's fit and proper standards.

The certification regime aims to mitigate these risks by placing greater expectations on firms to assess and monitor individuals who were in a position to potentially cause significant harm. The FCA has also committed to providing structural underpinning to this process, which will involve a requirement for regulatory references to be obtained when moving between firms.

Conduct rules

In tandem with the SMR and certification regime, the FCA looks to introduce a new set of conduct rules which aims to capture individuals involved in financial service activity in banks.

The rules are high level and of significance to a much greater number of employees than previously. These new rules require individuals to act with integrity and professionalism, whilst also paying regard to the interests of consumers; treating them fairly, and being open and co-operative with regulators.

For further details, please see the links below:

Speech | Nothing to fear from high standards

Article | CP15/9: A new regulatory framework for individuals

Article | CP15/10: UK branches of foreign banks

Enforcement Matters

FCA fines and prohibits Stephen Bell, former director of network Financial Group, from performing compliance oversight function

13 March

The former compliance director of network Financial Group, Mr Stephen Bell, has been fined £33,800 for systemic weakness in the design and execution of the Firm's compliance systems and controls. Mr Bell was also banned from performing the compliance oversight function at FCA regulated firms and the ban will stand indefinitely.

Mr Bell was responsible for compliance systems and controls at the Financial Group between August 2008 and January 2013. He designed and implemented the firms' systems and controls, and was therefore found to have been "knowingly concerned in the firms' breaches" as noted in the Final Notices issued against the firms in July 2014.

The FCA was particularly concerned with the firms' inadequate systems and controls in areas such as 'recruitment, training, monitoring and control of its ARs and CF30s'. The firms' compliance and file checking processes were also found to be inadequate in identifying and assessing risks.

The FCA's acting director of enforcement and market oversight division, Georgina Philippou, claimed the former finance director's failings to be "particularly serious" in nature, largely due to the fact that the firms had previously been "put on notice of the need for significant improvements" in their systems and controls and compliance. The acting director stressed the importance of having an effective compliance director at regulated firms and expressed the importance of having effective systems and controls in place across a network that minimise risk of mis-selling and look to provide suitable advice to consumers.

Mr Bell chose to settle the case in the early stages of the investigation and therefore qualified for a 30% reduction of the fines levied. Excluding the discount the FCA would have fined Mr Bell a total of £48,389.

For further details, click here to view the final notice issued to Mr Stephen Bell.

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Former chief executive of stockbroker firm fined £450,000 and banned from the financial services industry

13 March

Sam Kenny, the former chief executive of stockbroking firm Gracechurch Investments Limited, has been banned and fined £450,000 by the FCA.

Mr Kenny led Gracechurch while it routinely mis-sold small-cap stocks through pressure, misrepresentation and unsuitable advice. He also gave unsuitable advice himself while he was conflicted and tried to mislead the FCA with false information. FCA found breaches of Principles 1 and 7 of the Principles for Approved Persons (APER).

APER 1 states that "An approved person must act with integrity in carrying out his accountable functions". FCA consider that he breached this obligation because he attempted to mislead the FCA; he advised clients when he had a significant conflict of interest; he personally imposed pressure on clients and misrepresented material facts when advising clients to purchase certain small-cap stocks; and he employed a senior manager at the firm without the necessary regulatory approval, knowing that that person was responsible for encouraging staff to pressure sell.

In relation to APER 7, which states "An approved person performing an accountable significant-influence function must take reasonable steps to ensure that the business of the firm for which he is responsible ...complies with the relevant requirements and standards of the regulatory system", the FCA noted breaches because of his responsibility for Gracechurch's deficient suitability assessment criteria and broker remuneration structure.

The firm's compliance officer, Carl Davy was also banned and would have been fined £175,000 would this not have caused serious financial hardship. The firm is in insolvent liquidation, otherwise it would have been fined £1.5m.

Further details can be found here.

> Mr Kenny led Gracechurch while it routinely mis-sold small-cap stocks through pressure, misrepresentation and unsuitable advice.

The FCA imposes £2.1m fine and places restrictions on Bank of Beirut after it misled the regulator

5 March

Following supervisory visits to the British subsidiary of Bank of Beirut ("the Bank") in 2010 and 2011, the FCA became concerned about the firm's culture. In particular, the regulator believed too little consideration was being given to the risk that the firm be used for financial crime. The Bank was required to take a number of actions to address these concerns however repeatedly provided misleading information to the regulator indicating that it had completed remedial actions when it had not.

The UK arm of the Bank has been barred from signing up new customers that are resident or incorporated in high risk jurisdictions for 126 days (for the purposes of this restriction, high risk jurisdictions were defined as countries which have a score of 60 or below in Transparency International's Corruption Perceptions Index).

Anthony Wills, former compliance officer and Michael Allin, the internal auditor at the firm, have been fined £19,600 and £9,900, respectively. Both failed to deal with the regulator in an open and cooperative way and failed to disclose information of which the FCA would reasonably expect notice when responding to queries about the actions taken to mitigate financial crime risk.

The FCA expects to have an open and cooperative relationship with firms and timely and proactive communication with the regulator is of fundamental importance. Comments made by senior management influenced Mr Will's actions, however this does not excuse his misconduct. As compliance officer, he was uniquely placed to know the full situation in relation to the Bank's regulatory compliance and with responsibility for communicating with the FCA, should have resisted any senior management influence in this regard. He was personally bound by his own regulatory responsibilities as an approved person. Georgina Philippou, acting director of enforcement and market oversight, commented "...Wills and Allin provided a number of misleading communications to us, which is a serious breach of their responsibilities as approved persons. We are reliant on compliance officers and internal audit to act as a first line of defence, to support effective regulation at firms and to show backbone even when challenged by their colleagues."

Press release can be found here.

The regulator believed too little consideration was being given to the risk that the firm be used for financial crime.

Former Group Treasurer and Head of Tax at Morrisons plc sentenced to 12 months imprisonment for insider dealing

3 March

Paul Coyle, the former Group Treasurer and Head of Tax at Wm Morrison Supermarkets plc, pleaded guilty to two counts of insider dealing and was sentenced to 12 months in prison. The court also ordered him to pay £15,000 towards prosecution costs and a Confiscation Order in the sum of £203,234.

Mr Coyle took advantage of the confidential price sensitive information about Morrisons' ongoing talks regarding a proposed joint venture with Ocado Group plc. He traded in Ocado shares between 12 February and 17 May 2013 via two online accounts which were in the name of his partner. He made profits of more than £79,000.

Georgina Philippou, Acting Director of Enforcement and Market Oversight commented on the case: "Abuse of inside information in this way undermines the integrity of the UK financial markets. We are committed to prosecuting insider dealing to ensure our markets remain a 'level playing field' for all participants".

Further details can be found here.

The FCA is committed to prosecuting insider dealing to ensure our markets remain a 'level playing field' for all participants".

Former senior trader sentenced and fined for insider dealing

19 March

On 19 March, Julian Rifat was sentenced at Southwark Crown Court to 19 months imprisonment for insider trading and ordered to pay a £100,000 fine and costs of £159,402. Mr Rifat, a former senior execution trader and portfolio strategist at Moore Europe Capital Management LLC, was arrested five years ago for passing inside information to an associate, Graeme Shelley (previously a broker at Novum Securities), who then traded for their joint benefit. His conviction is attributed to the investigative work carried out for "Operation Tabernula", the FCA's largest insider dealing investigation responsible for obtaining 27 convictions so far. Mr Rifat was given credit for his previous guilty plea and significant personal extenuating circumstances by his Honour Judge MCCreath. Commenting on the case, Georgina Philippou, FCA's acting director of enforcement and market oversight, stated that all market professionals must "play by the rules" in order for the efficient running of financial markets.

The Press Release can be found here.

His conviction is attributed to the investigative work carried out for "Operation Tabernula"... responsible for obtaining 27 convictions so far.

Retired accountant found guilty of insider dealing in connection with Logica Plc

30 March

Following on from the case mentioned last month, Kenneth Carver, a retired accountant, was fined £35,212 for buying 62,000 shares in Logica Plc on the basis of inside information provided by Ryan Willmott, a family friend and employee of Logica Plc. Mr Willmott had inside information about a potential takeover of Logica. When CGI Inc publically announced its intention to make a cash acquisition of Logica, the share price increased by 59%. Mr Carver sold his shares shortly after the announcement making a profit of £24,206.70.

Ryan Willmott was sentenced to 10 months imprisonment on 27 March 2015 after pleading guilty to three counts of insider dealing.

The press releases can be found as follows:

http://www.fca.org.uk/news/ryan-willmott-sentenced-to-imprisonment-for-insider-dealing

http://www.fca.org.uk/news/kenneth-carver-fined-for-insider-dealing

Kenneth Carver, a retired accountant, was fined £35,212 for buying 62,000 shares in Logica Plc on the basis of inside information.

Tribunal partly upholds the FCA's decision to fine Tariq Carrimjee for assisting a client to commit market abuse

6 March

The Upper Tribunal upheld the FCA's decision to fine Tariq Carrimjee £89,004 and found the amount to be appropriate given the serious nature of his failings. Mr Carrimjee, an investment and fund manager, held senior positions at Somerset Asset Management and was responsible for compliance oversight. Mr Carrimjee failed to escalate the risk that his client, Rameshkumar Goenka, might have been intending to engage in market manipulation, a risk that should have been apparent to Carrimjee according to the FCA. Rameshkumar Goenka was fined $9,621,240, approximately £6 million, in November 2011 for market abuse.

The Upper Tribunal found that Mr Carrimjee failed to act with due skill, care and diligence, however it did not uphold the FCA's decision that he had acted without integrity.

Further details can be found here.

The Upper Tribunal found that Mr Carrimjee failed to act with due skill, care and diligence.

Philip Boakes sentenced following FCA prosecution

6 March

Earlier this month Phillip Boakes was found guilty of accepting deposits without authorisation, fraudulent trading and using a forged instrument, by Southwark Crown Court. Boakes was found to have defrauded investors of more than £3.5million, and was sentenced to 14 years imprisonment, reduced to 10 years for the guilty plea. HHJ Lorraine-Smith claimed the crime took the form of a "classic Ponzi scheme", impacting a large number of people over a prolonged period of time. The judge went on to state that lives had been changed and life savings lost in order for Boakes and his family to "live a lavish lifestyle" that he could "not begin to afford but for his fraudulent activities". Due to the blatant disregard for the law, Boakes received the longest sentenced imposed as a result of any FCA or FSA prosecution.

The Ponzi scheme was facilitated by Boakes' use of CurrencyTrader Ltd, a company owned and operated by the convicted. The Firm carried out foreign exchange and spread betting services, encouraging people to invest on the premise of guaranteed annual returns of 20% or greater. In reality, Boakes was not authorised to accept deposits and the pledge of guaranteed returns was a fallacy. In classic Ponzi scheme fashion, the returns were funded from the deposits themselves or from funds received from new investors.

The director of enforcement and market oversight, Georgina Philippou, said that Boakes used "fraud and forged documents" to take advantage of those "who trusted him to invest their money". The director went on to warn that the regulator "will not hesitate to take the strongest action to ensure that consumers are protected and individuals are held to account for actions that undermine the integrity of the financial services industry".

Boakes misled some of his clients into thinking that he was still an FCA approved Independent Financial Adviser (IFA), with a total of 30 investors entrusting him with more than £3.5million. The scheme eventually collapsed, with investors losing more than £2.5million; £1.3million of which was squandered by Boakes' lavish lifestyle.

Boakes' was unsuccessful in his trading, losing approximately £1million of the £2.1million invested. He admitted to failing to trade investors' money as promised, lied about the value of the funds and the return they would generate, and used client money for his own benefit.

The Press Release can be found here.

The director of enforcement and market oversight, Georgina Philippou, said that Boakes used "fraud and forged documents" to take advantage of those "who trusted him to invest their money".

Former Rabobank trader banned following LIBOR fraud conviction

17 March

Paul Robson, a former Rabobank money markets trader has been banned by the FCA from working in the UK financial services industry after admitting taking part in a conspiracy to manipulate Rabobank's LIBOR submissions for the benefit of trading positions.

Mr Robson, a Senior Trader on Rabobank's Money Markets and Short Term Forwards desk in London, was charged by the Department of Justice and has subsequently pleaded guilty to conspiracy. He is currently awaiting sentence. In light of this criminal conviction for an offence of dishonesty, FCA has found that Mr Robson lacks honesty and integrity and is therefore not fit and proper. He will now not be able to carry out any function at an authorised firm.

Fourteen warning notices have now been issued to individuals in relation to LIBOR misconduct and the FCA has imposed 7 fines on firms totalling £532m.

The Press release can be found here.

A former Rabobank money markets trader has been banned by the FCA from the UK financial services industry.

FCA bans and fines two individuals for pension advice failings

20 March

Lloyd Pope and Peter Legerton, Directors of TailorMade Independent Ltd ("TMI"), have been fined and banned from senior positions in the financial services industry by the FCA for failures relating to assessing suitability of investments, improper consideration and disclosure of conflicts of interests as well as deficient oversight of compliance.

TMI provided advice to customers on transferring their existing pension funds into unregulated investments such as green oil, biofuels, farmland and overseas property via SIPPs.

Both men failed to ensure that TMI undertook risk assessments on investments made through customers' SIPPs and that it assessed whether these investments were suitable for their customers. Both individuals failed to ensure that customers' needs were met when recommending these higher risk investment products. More than half of the customers invested in overseas property which was operated by the Harlequin group, currently under investigation by the Serious Fraud Office.

Failures related to assessing suitability of investments, improper consideration and disclosure of conflicts of interests as well as deficient oversight of compliance.

In addition, the Firm did not adequately manage, mitigate and disclose conflicts of interests, even after this issue had been raised by external compliance consultants. It was found that Mr Legerton received commission payments from the sale of these investment products, although this conflict was never disclosed to customers.

The FCA has found that 1,661 of TMI's customers have been put at significant risk of investing via SIPPs in investment products which are not suitable, with many being faced with the possibility of losing the money saved within their pension funds or final salary schemes. The FCA continues to encourage customers to consider the risks associated with switching pensions, particularly given the risk posed by unsuitable investment products.

The Press release can be found here.

Final notices can be found at the following links:

http://www.fca.org.uk/your-fca/documents/final-notices/2015/lloyd-arnold-pope

http://www.fca.org.uk/your-fca/documents/final-notices/2015/peter-charles-legerton

Other Developments

FCA consults on 2015/16 fees for regulated firms

26 March

On 26th March, the FCA announced in a press release that it is consulting on fees for regulated firms for the 2015/16 financial year. This consultation is relevant for all fee payers and can be found in "CP15/14: FCA Regulated fees and levies: rates proposals 2015/16". These fees are used to cover the cost of the FCA's regulatory activities, with fees for individual firms based on the areas of business they undertake.

The FCA stated that its 2015/16 annual funding requirement is £481.6m, up from £446.4m in 2014/15, and it has proposed an 8.4% rise in fees to meet this increase of £35.2m. According to the UK financial regulator, the annual funding requirement will be used to deliver the programme of work set out in its 2015/16 business plan (including market studies and work on pensions, market study into competition in investment banking and implementing the Parliamentary Commission on Banking Standard's recommendations on accountability), the development of its information systems and the continuing need to invest in its human resources. The FCA stated that 38% of regulated firms will continue to pay the minimum fee which will increase from £1000 to £1084, the first increase since 2010.

The consultation paper also sets out the proposed fees for the Money Advice Service (MAS) and Ombudsman Service, which are collected by the FCA on their behalf. In addition, the FCA has proposed fees for firms offering consumer credit, the pension guidance levies and the Payment Systems Regulator, which fall outside the FCA's annual funding requirement.

In the release Martin Wheatley, the FCA chief executive, said:

"These proposals seek to share the cost of being regulated and ensure the FCA has the right resources in place to deliver appropriate protection for consumers and make markets work well."

Firms can check their prospective fees for next year based on these proposals using the FCA fees calculator. The consultation closes on 18 May 2015, and the FCA expects to confirm changes to its fees in summer 2015.

Further details can be found here.

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regulatory focus

Contacts

If you have any questions regarding articles in this issue, or for further information, please contact the relevant person:

Compliance and Regulatory Consulting

monique.melis@kinetic-partners.com
andrew.shrimpton@kinetic-partners.com
john.griffiths@kinetic-partners.com

Corporate recovery and restructuring

geoff.varga@kinetic-partners.com

Forensic and dispute services

nick.matthews@kinetic-partners.com

Risk consulting and infrastructure

alan.picone@kinetic-partners.com

Tax advisory

stephen.rabel@kinetic-partners.com
marie.barber@kinetic-partners.com

Regulated funds services

killian.buckley@kinetic-partners.com

Editors

Jane.Stoakes@kinetic-partners.com
Amelie.Snape@kinetic-partners.com

Offices

New York

675 Third Avenue, Floor 21, New York, NY 10017, United States
t: +1 212 661 2200

London

One London Wall, Floor 10, London, EC2Y 5HB, United Kingdom
t: +44 20 7862 0700

Hong Kong

Unit 4103, 41st Floor, Tower Two, Lippo Centre
89 Queensway, Hong Kong
t: +852 3470 9003

Cayman Islands

The Harbour Centre, Floor 1, PO Box 10387,
42 North Church Street, Grand Cayman, Cayman Islands, KY1-1004
t: +1 345 623 9900

Channel Islands

3rd Floor, 13 Broad Street, St Helier, Jersey JE2 3RR
t: +44 1534 603 130

Dublin

Floor 1, 27-29 Pembroke Street Lower, Dublin 2, Ireland
t: +353 1 661 8966

Chicago

444 N Wabash Avenue, 5th Floor, Chicago, IL 60611, United States
t: +1 917 225 4690

Luxembourg

65 rue d'Eich, L-146,1 Luxembourg
t: +352 26 10 88 06 20

Singapore

37th Floor, Singapore Land Tower, 50 Raffles Place, Singapore 048623
t: +65 6829 7000

Switzerland

Boulevard Georges Favon 43 - RDC, CH-1204 Geneva, Switzerland
t: +41 22 320 9434

www.kinetic-partners.com