



regulatory focus

Issue 88

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

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

Move from ONA to Connect

Last year the FCA launched Connect, its new online system, to replace the Online Notifications and Applications (ONA) system for the submission of applications and notifications. "Read only" access is still available to existing ONA users allowing them to continue to have access to previously submitted applications.

The FCA announced in its September Regulatory round-up that from 8pm on Friday 23 October the "read only" access will no longer be available. Therefore firms are encouraged to save any forms or documents that they may require for their records as, after this point, the FCA will not be able to supply any copies.

Changes to the FCA Handbook, the Financial Services Register and GABRIEL

On 21 September 2015, GABRIEL moved to a new location and can now only be accessed at: gabriel.fca.org.uk/portal_authentication_service/appmanager/merportal/desktop. To log onto GABRIEL, users should select 'Proceed to GABRIEL' and enter their login details, which remain unchanged. The FCA has updated its GABRIEL User Management Quick Reference Guide, which is available at: www.fca.org.uk/static/documents/gabriel/gabriel-quick-reference-guide.pdf.

The FCA launched a new Financial Services Register, which allows users to search for firms, individuals or collective investment schemes by their name, reference number or postcode. Users can also search for some investment exchanges and consumer credit firms that have interim permissions, making it no longer necessary to search the Consumer Credit Interim Permission Register separately. The FCA hopes that the Register will help to prevent consumers from being cheated by unauthorised firms or those that are known to be running a scam. Firms and associated individuals that the FCA believes consumers should avoid dealing with are highlighted in red and have a warning symbol next to them on the new Register.

On 29 August 2015, the FCA launched a new Handbook website, which is available at www.handbook.fca.org.uk/. The FCA believes the website is more accessible for users, as it is now easier to find information. Among other new characteristics, the website has an improved search function, glossary definitions displayed in a pop-up window, a cleaner layout and a timeline so users can see when rules changed. The PRA also launched its own PRA Rulebook website on the same day.

Regulatory highlights this month include:

- Market Watch - commodities trading thematic review
- Changes to the FCA's supervisory model
- FCA censures the Co-Operative Bank for listing rules breaches and failing to be open with the regulator
- Upper Tribunal releases judgment on action against Timothy Roberts and Andrew Wilkins
- FCA secures High Court judgment against five individuals for market abuse

Regulatory Update

We also provide regulatory updates on key developments as and when these arise. For further information, including recent updates, please visit [here](#).

- [CP 15/27: UCITSV Implementation and other changes to the Handbook affecting investment funds](#)
- [OCIE's 2015 Cybersecurity Examination Initiative](#)
- [AIFMD Deferral Mechanism](#)
- [FinCEN Proposes AML requirements for Investment Advisors](#)
- [Changes to the Securities and Futures \(Financial Resources\) Rules](#)
- [Extending Profits Tax Exemption for Offshore Private Equity Funds](#)

OUR RECENT AWARDS

ONE STAR 'VERY GOOD'
ACCREDITATION
2015
Best Companies UK

BEST OVERALL
ADVISORY FIRM IN THE US
2014
HFMWeek

BEST ASIAN ADVISORY FIRM
FOR REGULATION
AND COMPLIANCE
2014
HFMWeek

BEST EUROPEAN ADVISORY
FIRM FOR REGULATION
AND COMPLIANCE
2014
HFMWeek

BEST ADVISORY FIRM
REGULATION AND COMPLIANCE
2014
HFMWeek

BEST SEC REGISTRATION
TEAM - HONG KONG
2014
Acquisition International

UCITS FUND ADVISOR OF
THE YEAR - IRELAND
2014
Acquisition International

Contents

Enforcement Matters	2
FCA censures The Co-operative Bank for listing rules breaches and failing to be open with the regulator	2
FCA secures High Court judgment against five defendants for market abuse	2
FCA fines and bans Robert Shaw of TailorMade Independent Ltd.	3
Upper Tribunal releases judgment on action against Timothy Roberts and Andrew Wilkins	3
FCA fines and bans Keydata's former finance director	3
Supervision Matters	4
Market Watch - Commodities Trading Thematic (CT) Review	4
Changes to the FCA's Supervisory Model	4
Other Developments	5
Latest updates in respect of MiFID II	5
Georgina Philippou appointed as the FCA's new Chief Operating Officer	5

Enforcement Matters

FCA censures The Co-operative Bank for listing rules breaches and failing to be open with the regulator

11 August

The FCA issued a public censure against The Co-operative Bank plc ("Co-op Bank") for breaching its Listing Rules. These rules require issuers to ensure that they do not publish misleading information so that investors can make fully informed decisions.

In a joint investigation conducted with the PRA, the FCA also found that the Co-op Bank fell short of its responsibility to be open with the regulators.

The Co-op Bank breached the FCA's Listing Rule 1.3.3R (misleading information not to be published) by stating in its financial statements for the year ending 31 December 2012 that it had adequate capital in the most severe stress scenarios, despite the fact that since 15 January 2013, when the FSA issued Co-op Bank with revised capital requirements, it did not have sufficient capital to meet its revised Capital Planning Buffer. In its annual report, Co-op bank fell significantly below the standards expected of listed companies in the UK.

Co-op Bank also breached Principle 11, which requires firms to be open and cooperative with regulators and disclose information of which the regulators might reasonably expect to be aware. It failed to notify the FCA or PRA of intended changes to two senior positions and the reason behind those changes in the period April 2012 to May 2013. A key aspect of complying with Principle 11 is that firms should tell the FCA at the earliest opportunity if they identify any potential or actual misconduct, significant risks, or anything that might affect their ability to comply with FCA rules and regulations.

It should be noted that investigations into senior individuals at Co-op Bank during the relevant period are ongoing.

The press release can be found [here](#).

FCA secures High Court judgment against five defendants for market abuse

12 August

The High Court recently ruled that two companies and three individuals (incorporated or resident abroad in Switzerland, the Seychelles and Hungary) were guilty of committing market abuse in relation to 186 UK-listed shares, and were ordered to pay a total of £7,570,000 to the FCA in fees and penalties. The defendants were Da Vinci Invest Ltd, Mineworld Ltd, Mr Szabolcs Banya, Mr Gyorgy Szabolcs Brad and Mr Tamas Pornye.

The market abuse was achieved using a strategy known as "layering" (sometimes known as "spoofing"), which involved the entering and trading of share orders on the electronic platform of the London Stock Exchange ("LSE") and multi-lateral trading facilities ("MTFs") in order to mislead the market by influencing the apparent supply and demand of a particular stock and enabling them to trade those shares at an artificial price.

The defendants typically used a combination of large and small orders entered on one side of the LSE's order book. The large orders were placed at prices close enough to the best bid or offer to give a false impression of the supply or demand for a stock but were far enough away to limit the risk of them being successfully traded. The accused were found to have no intention of trading these orders. Once the price had been moved to an advantageous level, the defendants initiated a trade on the other side of the order book in order to profit from the price movement that they had created.

Georgina Philippou, acting Director of Enforcement and Market Oversight, described the abuse as "sophisticated" and stated that the resulting action taken by the FCA clearly demonstrates that it is prepared to take 'robust action to ensure the integrity of the UK markets'. A number of enforcement actions have been taken against firms or individuals for layering, including cases against Swift Trade and Michael Coscia.

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The resulting action taken by the FCA clearly demonstrates that it is prepared to take 'robust action' to ensure the integrity of the UK markets.

The FCA's initial action occurred in July 2011, when they successfully applied for an interim injunction restraining Da Vinci Invest Ltd, Da Vinci Invest PTE Ltd, Mineworld Ltd, Mr. Szabolcs Banya, and Mr. Gyorgy Szabolcs Brad from committing market abuse and freezing the assets of all three companies. This is the first time that the FCA has requested that the High Court impose a permanent injunction restraining market abuse and a penalty. A hearing is to be scheduled to settle various consequential issues including the conditions of the final injunction. The defendants have the right to apply for permission to appeal.

The press release can be found [here](#).

FCA fines and bans Robert Shaw of TailorMade Independent Ltd.

13 August

On 13 August 2015, the FCA banned Robert Shaw, a former director of TailorMade Independent Ltd ("TMI"), from performing any significant influence function at an authorised firm, and fined him £165,900 (including a 30% Stage 1 settlement discount).

TMI, which is currently in liquidation and has been declared "in default" by the FSCS, provided advice to customers who were considering transferring their pension funds into unregulated investments via SIPPs. The company provided advice on investments such as green oil, biofuels, farmland and overseas property. Between 2010 and 2013, 1,661 customers invested £112,420,985 in these investment products. Of these customers, 923 invested in overseas property developments operated by Harlequin, which is currently under investigation by the Serious Fraud Office.

The FCA pursued enforcement action against Mr Shaw for two reasons, the first being that Mr Shaw should have ensured that TMI considered the suitability of investment products for its clients, which it failed to do. Secondly, Mr Shaw's conflict of interest in benefitting financially from being the shareholder and director of an unregulated business which referred clients to TMI should have been identified and disclosed to clients, and no adequate disclosure was ever made.

The press release can be found [here](#).

Upper Tribunal releases judgment on action against Timothy Roberts and Andrew Wilkins

18 September

On 7 October 2013, the FCA published decision notices against Timothy Roberts and Andrew Wilkins, former employees of Catalyst Investment Group Limited ("Catalyst"), the UK distributor of bonds issued by ARM Asset Backed Securities SA ("ARM"), for recklessly misleading investors when promoting bonds issued by ARM. Catalyst was also censured by the FCA.

Timothy Roberts, the former chief executive of Catalyst was fined £450,000 and banned from holding any role in regulated financial services, while Andrew Wilkins, a former director of the firm, was fined £100,000 and prevented from holding significant influence functions in the future. Both men were involved with compliance matters, particularly in regards to financial promotions.

Mr Roberts permitted Catalyst to promote the bonds and collect funds from potential investors despite the CSSF's request that ARM cease to issue bonds until it received the appropriate license to do so. The funds collected by Catalyst were not ring fenced in order that investors could be repaid if ARM did not receive a license. Mr Roberts and Mr Wilkins allowed Catalyst to give misleading information regarding the status of ARM's license to IFAs in a letter sent out in December 2009.

The FCA found that both men failed to act with due care, skill and diligence and that Mr Roberts' conduct also demonstrated a lack of integrity. Mr Roberts and Mr Wilkins disagreed with the FCA's decision and referred their cases to the Upper Tribunal.

On 11 August 2015, the Upper Tribunal (the "Tribunal") published its judgment in regards to Mr Roberts and Mr Wilkins' appeal, releasing additional reasons for its ruling on 18 September 2015. The Tribunal upheld the FCA's fine and ban on Mr Roberts, agreeing that he is not a fit and proper person. The Tribunal also concurred that his behaviour showed a reckless disregard for the interests of investors and that he acted without due skill, care and diligence.

In regards to Mr Wilkins, the Tribunal disagreed with the FCA's opinion that he acted recklessly and without integrity; it highlighted that Mr Wilkins relied upon the firm's compliance function, legal advice and on Mr Roberts during the time in question. The Tribunal fined Mr Wilkins £50,000. The FCA has been asked by the Tribunal to reconsider whether Mr Wilkins should be prevented from holding significant influence functions in the future. The Tribunal did however concur with the FCA that Mr Wilkins acted without due care, skill and diligence. The Tribunal also disagreed with the FCA's opinion that Mr Roberts and Mr Wilkins did not appropriately update Catalyst's compliance officer regarding the status of ARM's license prior to 24 December 2009.

The press release can be found [here](#).

FCA fines and bans Keydata's former finance director

22 September

Craig McNeil, former finance director at Keydata Investment Services Limited ("Keydata" or "the firm"), has been fined £350,000 (including a 30% discount for early stage settlement) and prohibited from performing any significant influence function for breaches of Principle 4 and 6 of the FCA's Statements of Principle and Code of Practice for Approved Persons.

Keydata designed and sold investment products to retail investors via IFAs. These products were supported by the firm's investment in bonds issued by Luxembourg special purpose vehicles, including one called SLS Capital S.A. ("SLS") which invested in portfolios of life settlement policies. After Keydata was put into administration in June 2009, Keydata's administrators discovered that SLS had failed to make certain payments that were due to the firm in respect of the products since early 2008 and the firm instead funded £4.2 million in income payments to investors from its own resources, masking the problems with SLS. The FCA said that McNeil was aware of these payments and failed to report the matter to the FCA when he was aware it had not been reported. He also failed to challenge a decision to enter into a complicated transaction

The FCA found that both men failed to act with due care, skill and diligence and that Mr Roberts' conduct also demonstrated a lack of integrity.

The FCA relies on senior directors such as McNeil to let us know about significant risks in their firms, especially when they have a direct bearing on customers' investments.

which attempted to obtain security for the missed SLS income payments. He permitted the release of £500,000 of Keydata's corporate funds without having a clear understanding of the transaction or its risks. While Keydata paid the funds to the seller, Keydata did not, in fact, obtain the security.

The FCA noted that Mr McNeil did not comply with the provisions of the Code for Approved Persons and did not act in accordance with Principle 4, which states that an approved person must deal with the FCA and other regulators in an open and cooperative way and must disclose appropriately any information that the FCA would reasonably expect to be given notice of. The FCA further stated that McNeil breached Principle 6, which requires that an approved person exercise due skill, care and diligence in managing the business of a firm for which they are responsible.

Georgina Philippou, acting director of enforcement and market oversight at the FCA, said that: "The FCA relies on senior directors such as McNeil to let us know about significant risks in their firms, especially when they have a direct bearing on customers' investments. It was not reasonable in the circumstances for McNeil to rely on the fact that other directors might eventually tell us what was happening. If McNeil had acted, and acted quickly, concerns about SLS may have come to light sooner. Further, as Keydata's finance director, McNeil should have understood the risks of the transactions he was authorising."

The Press Release can be found [here](#).

Supervision Matters

Market Watch - Commodities Trading Thematic (CT) Review

September 2015

In September the FCA published its 49th Market Watch newsletter. The focus of the newsletter centered on the high level observations made by the regulator following its review of 12 trading and broking firms across the Oil, Energy, Metals and Soft commodities sectors. Within these firms, the FCA reviewed governance and culture, the adequacy of front office controls as well as controls relating to market abuse.

The effectiveness of the controls, management and governance frameworks in place within firms varied widely. Examples of good practice were found with some firms having in place formal governance structures with clear decision-making committees as well as escalation procedures. However, it was noted that others did not have such formal controls and were unable to clearly show whether senior management had sufficient oversight of the risks posed to their firms, particularly those posed to the front office. Few firms demonstrated intraday management information and risk monitoring despite the level of risk in some commodities markets.

Some firms were complacent to the risk of market abuse and many firms had not considered or implemented changes following findings from recent market abuse enforcement cases. In addition, many firms had not completed a Code of Market Conduct risk assessment and were unable to show that they had sufficient monitoring in place that covered a number of market abuse risks.

A number of firms were unable to demonstrate that they had sufficiently considered, monitored and managed prudential risk. Exposure to credit risk was not clearly examined in some cases and in other cases firms did not undertake stress testing and scenario analysis in their assessments of liquidity risk.

Internal understanding of market abuse was generally not up to standard and the identification and escalation processes regarding suspicious transactions were inadequate. Only 2 of the 12 firms in the sample had submitted STRs relating to commodities trading.

In addition, it was found that where firms had surveillance systems in place that recorded communications within the firm, sample monitoring could have been undertaken more effectively in order to negate potential risks, i.e. at periods where the risk of market abuse may be higher, such as periods around public announcements.

The FCA confirmed that they saw the best control frameworks where the Compliance function was integrated with the front office, for example by having physical presence on the trading floor and attending trader/broker meetings. Furthermore, examples of good practice were seen in firms where emphasis was placed on good culture, including knowledge and experience, being passed down from senior traders to junior members of the team and where the successful completion of compliance processes, such as training, were embedded within the variable remuneration structure at the firm.

Generally awareness of market abuse risk was poor amongst the sample of firms reviewed. It is clear that many firms still need to give greater consideration to market abuse risks within their business and embed appropriate controls to manage and mitigate potential areas of risk.

The September edition of Market Watch can be found [here](#).

Changes to the FCA's Supervisory Model

September 2015

Tracey McDermott, the FCA's Acting Chief Executive, announced in the FCA's September edition of Regulatory round-up that the FCA is making changes to its current supervisory model. In support of a sector-based approach, the FCA is moving away from the C1-C4 conduct categories and firms will be categorised as either 'fixed portfolio' or 'flexible portfolio'. Approximately 70 firms will have already been notified that they have changed category, with their categorisation moving from 'fixed' to 'flexible' or 'flexible' to 'fixed'.

It is clear that many firms still need to give greater consideration to market abuse risks within their business and embed appropriate controls to manage and mitigate potential areas of risk.

Fixed portfolio firms will remain subject to a programme of firm or group-specific supervision (Pillar I) while flexible portfolio firms will only be subject to event-driven reactive supervision (Pillar II) and thematic issue or product supervision (Pillar III). The FCA will proactively monitor flexible portfolio firms by various means, including sectoral analysis and market-based thematic work, a regular baseline monitoring of regulatory returns and a combination of communication, education and engagement tailored to address key risks on a market level.

To help firms understand the new supervisory model, the FCA has published guides to their approach to the supervision of both fixed and flexible portfolio firms.

www.fca.org.uk/your-fca/documents/corporate/supervision-guide-flexible

www.fca.org.uk/your-fca/documents/corporate/supervision-guide-fixed

www.fca.org.uk/your-fca/documents/fca-factsheets

Other Developments

Latest updates in respect of MiFID II

September

On 17 July 2015, the FCA held a MiFID II implementation roundtable, the minutes of which were published in August. During the meeting, the FCA provided various industry bodies, including the Association for Financial Markets in Europe, the Association of Investment Companies and the Wealth Management Association, with an update on the MiFID II implementing measures.

The FCA said that the various bodies concerns came under four main categories: policy concerns, technical challenges, uncertainty over key processes and interpretation. Issues raised included concerns about the extent of systems changes that will be required to implement various requirements, such as those relating to best execution disclosures, transaction reporting and position reporting, and concerns regarding the uncertainty about what the legislation requires in certain areas, including the boundaries between OTFs and MTFs, fields in various reporting regimes and aspects of the suitability regime.

The FCA told those in attendance that their concerns had been passed to policy experts across the FCA, and that they appreciate that industry will face difficulties and challenges in the transition from MiFID to MiFID II, especially as key information about the overall size of the European market and evolution of market structure will only be available once MiFID II has been implemented for some time. However, the FCA reiterated that firms needed to plan effectively for implementation and therefore they encouraged firms to start identifying how MiFID II will practically impact them, though there was acknowledgement that firms could not achieve the impossible.

At a European level, ESMA published its final draft [regulatory technical standards \(RTS\)](#) on MiFID II/ MiFIR on 28 September 2015. The RTS will now be sent to the European Commission for adoption after which the European Council and Parliament will have either a one or three month period to make objections. The final step will be to publish these Regulations on the EU Official Journal.

The RTS do not cover the issue of dealing commissions but cover instead the following key areas:

- Pre and post- trade transparency
- Market microstructural issues
- Data publication and access - Transaction reporting
- Requirements applying on and to trading venues
- Commodity derivatives
- Market data reporting
- Post trading issues
- Best execution

Georgina Philippou appointed as the FCA's new Chief Operating Officer

22 September

Tracey McDermott, the acting Chief Executive of the FCA, has announced that Georgina Philippou has been appointed the new Chief Operating Officer of the FCA. Ms Philippou, who is currently the acting Director of Enforcement and Market Oversight, will assume her new position in November.

Speaking on the appointment, Tracey McDermott commented that Ms Philippou "brings a wealth of regulatory experience here and overseas that's invaluable in ensuring that the FCA is able to operate effectively across all its priorities and objectives". Ms McDermott continued by saying that Ms Philippou's "extensive experience and wide knowledge of the approaches of international regulators means she is well placed to know what we need to be able to perform and deliver value for money at the level expected by ourselves and by the industry."

Ms Philippou is the final appointment to the FCA's Executive Committee as all director positions are now filled. Commenting on the Executive Committee, Ms McDermott stated that the FCA "now has in place an Executive Committee with a range of experience from the industry and regulation both here and abroad" that will follow a new strategy centred on providing high quality regulations.

For the press release please click [here](#).

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