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UK PUBLICATIONS

1. THE FCA CONSULTS ON ITS APPROACH TO CROWDFUNDING

The FCA published an eagerly awaited consultation on its approach to crowdfunding and similar activities towards the end of October (CP13/13). This consultation represents a further publication in the series of consultations surrounding the ongoing transfer of consumer credit activities from the Office of Fair Trading to the FCA which takes place in April 2014. The consultation is open until 19 December.

The document broadly divides crowdfunding into loan-based crowdfunding and investment-based crowdfunding and sets out the FCA's proposals in relation to each. Chapter 3 deals with loan-based crowdfunding, which the FCA sees as lower risk than investment-based crowdfunding. In it the FCA explains that it wishes to introduce a more disclosure-orientated regime. This will be based on similar principles to the FCA regime in place already for investments, and will require firms to provide investors with the necessary information to make informed decisions. Firms will also have to ensure that all communications are clear, fair and not misleading.

The FCA is looking to outline a series of core requirements to protect investors' interests, including conduct of business requirements, rules on minimum capital thresholds, client money protections, dispute resolution, and reporting requirements. In addition, firms will be required to take steps to ensure that loans already existing continue to be administered if the platform fails.

Its proposals for investment-based crowdfunding are set out in Chapter 4 of the document and include a change of approach to make the market more accessible for retail investors. The FCA also intends to develop competition and facilitate access to alternative finance options, but it is keen to ensure that only investors who are able to understand and bear the risks participate in it. Therefore, it is suggesting tough restrictions on firms' abilities to promote this form of crowdfunding. Further, where the firm has not provided advice in relation to the service, the firm will be required to confirm that the potential investor understands the risks involved. The FCA has stated its intention to carry out a full review of the industry in 2016.

2. OUTSOURCING IN THE ASSET MANAGEMENT INDUSTRY REVIEWED

On 4 November the FCA published its report on the thematic review it carried out on outsourcing in the asset management industry (TR13/10). 17 asset managers and 3 hedge fund managers were selected for the review from across the industry.

The FCA saw the review as an important step, since the asset management industry is increasingly outsourcing critical functions to a small number of service providers that are usually part of complex international banking groups. This means that it is becoming highly dependent on providers which will have exposures to other activities and risks at group level. The FCA wanted to ensure that asset managers understand the risks connected with outsourcing and that customers are not being affected.

The review focussed on two key areas of risk relating to the outsourcing of critical activities. The first, that of resilience risk, concerned asset managers having sufficient contingency plans to ensure that, were a provider to fail suddenly or be unable to provide the outsourced services for an indefinite period, it would still be able to provide services to its customers. The second is oversight risk. This is the risk that if asset managers fail to oversee their service providers effectively, it will lead to poor outcomes for their customers.

With regard to resilience risk, the FCA remarked that it has started to see improvements in asset managers' planning for failure of service providers, following the publication of its December 2012 "Dear CEO" letter on outsourcing. In addition, the Outsourcing Working Group, formed in July 2013, is devising principles to guide the industry on standardisation, exit planning and oversight models. Its key aim is to improve portability between providers.

The FCA found that all asset managers had some form of oversight arrangements in place, though their effectiveness was variable in each firm. Only a few were able to demonstrate high standards of oversight consistently across all outsourced activities. Where oversight was lacking, this was usually down to insufficient expertise for the area within the asset manager.

The FCA expects asset managers going forward to review their outsourcing arrangements, and where appropriate, enhance contingency plans for the failure of a service provider. They should also review and update oversight arrangements where necessary.

3. FCA PUBLISHES REPORT ON REVIEW OF ANTI-MONEY LAUNDERING AND ANTI-BRIBERY AND CORRUPTION CONTROLS IN ASSET MANAGEMENT AND PLATFORM FIRMS

The FCA published the report of its thematic review of anti-money laundering and anti-bribery and corruption systems and controls (TR13/9) for asset management and platform firms on 31 October. It reviewed 22 firms to see how they were managing the risks in these sectors associated with money laundering and bribery and corruption. Compliance with financial sanctions regimes was explicitly not covered.

The Regulator stressed that, although it found some good examples of money laundering and bribery and corruption risk management, it found common weaknesses across the firms in the review. It expected firms to have done more to assess their systems and controls, considering the emphasis it has put on these areas in recent communications with the industry.

With regard to anti-money laundering controls, the FCA found a varying level of decency. Firms are meeting their obligations in some areas, but require improvement in others. However, in relation to anti-bribery and corruption controls, it found there is still work to be done, especially when dealing with and monitoring third party relationships, such as those with agents or introducers. The results of the review also called into question the effectiveness of training in many firms. The FCA was particularly concerned with its findings connected to firms which are part of major financial groups. These firms should be aware of the FCA's expectations, and in some cases where significant weaknesses were found, they are firms which have actually been the subject of previous regulatory attention. The report also provides useful examples of good and poor practice in relation to anti-money laundering and anti-bribery and corruption systems and controls at Chapter 3.

The FCA stated that it has provided feedback to the firms which were part of the review, but it expects all firms to consider the examples of good and poor practice in Chapter 3 to improve their own systems and controls, including firms outside the asset management sector. They should also review the FCA's Financial Crime: a Guide for Firms for further helpful guidance.

4. FCA PROPOSES NEW RULES ON DEALING COMMISSION FOR INVESTMENT MANAGERS

On 25 November, the FCA published a new consultation paper (CP13/17) regarding its proposals for new rules on the use of dealing commission for investment managers. The proposals are designed to update the FSA's rules on dealing commission which came into force in 2006, and will affect investment managers, Alternative Investment Fund Managers ("AIFMs") and UCITS management companies. They will also interest customers of investment managers such as institutional investors and retail investors, as well as trade associations, brokers and research and market data providers.

The FSA published a report on its thematic supervisory work in relation to conflicts of interest between asset managers and their customers in November 2012, which has, according to the FCA, led to some investment managers improving their focus on managing conflicts, including oversight of controls on the use of dealing commission. However, it believes there is still a lack of clarity and investment managers continue to go beyond the intended perimeter of the rules.

Therefore, in the consultation the FCA proposes to:

- clarify the provisions in Chapter 11.6 of the Conduct Of Business Sourcebook ("COBS") in the FCA Handbook, which set out the criteria determining the characteristics of exempt research, and creating a presumption that a good or service is not exempt research where the criteria are not met;
- define corporate access in the FCA Handbook Glossary and add specific guidance on the treatment of corporate access for the use of dealing commission;
- provide guidance on the FCA's expectations where firms purchase eligible research in a bundled package with other non-eligible goods and services that cannot be paid for with dealing commission.

The FCA hopes that the proposals will drive behavioural change by encouraging investment managers to improve controls over the use of commissions, which may also lead to a reduction in costs passed to the customer's funds and improved transparency. The consultation closes on 25 February 2014 and a policy statement is expected in the spring.

5. NEW FCA WEBPAGE FOR INVESTMENT FIRMS WHICH QUALIFY TO REMAIN UNDER BIPRU AFTER 1 JANUARY 2014

The FCA published a new webpage resource for those investment firms which, from 1 January 2014, may qualify to remain under the existing FCA Prudential Sourcebook for Banks, Building Societies and Investment Firms ("BIPRU"), rather than move across to the new Prudential Sourcebook for Investment Firms ("IFPRU"), which transposes the provisions of CRD IV and comes into force on that date. BIPRU transposed the requirements of the Capital Requirements Directive (2006/48/EC and 2006/49/EC) (together the "CRD") as amended, up to and including CRD III, into UK law.

The webpage sets out the types of investment firm which will qualify to remain under the current BIPRU regime; what these firms will need to do immediately; and how they may limit their permissions under the Financial Services and Markets Act 2000 ("FSMA") accordingly. The presumption is that a firm will be subject to the CRD IV provisions in IFPRU unless that firm confirms to the FCA that it meets the criteria to remain under CRD III. In doing so it must also limit its permissions under Part 4A of FSMA and there is a specific application form available on the webpage for this.

The FCA explained that it had previously written to CF10s at specific investment firms in October, which it had identified as being eligible to remain under BIPRU, so the information on the webpage is for firms not targeted in these communications. It states that the information could be relevant to any investment firm, but may be particularly relevant to firms which have matched principal broker or box management limitations against a permission for dealing in investments as principal.

EUROPE

1. ESMA PUBLISHES ITS LETTER TO THE EUROPEAN COMMISSION ON THE EUROPEAN SYSTEM OF FINANCIAL SUPERVISION

The European Securities and Markets Authority ("ESMA") has published a letter dated 31 October 2013. The letter is written by its chairman, Steven Maijoor to Michel Barnier, the European Commissioner for Internal Markets and Services. ESMA published the letter on its website on 13 November 2013.

The letter sets out ESMA's views on the operation of the European System of Financial Supervision ("ESFS") and its proposals for improving its operation. The European Commission is currently undertaking a review of the ESFS and ESMA would like the European Commission to take its views into account. The proposals include the following:

- **Consultation during level 1 negotiations**

  ESMA explains its view that the timetable for level 2 work should have more consideration when level 1 initiatives are being developed. Together with the European Supervisory Authorities ("ESAs"), a timetable should be prepared, setting out the amount of time necessary to draft level 2 measures. In addition, it would be helpful if the relevant ESA could provide advice on which level 2 measures are most critical to the operation of the level 1 initiative.

- **Temporary relief**

  Provisions such as clearing obligations, publication of post-trade information and reporting to trade repositories have to be applied simultaneously across markets, although neither ESMA nor the national competent authorities have the power to modify or suspend these obligations to reflect market circumstances. ESMA believes that the European Commission should introduce new tools in those areas where ESMA mandate further to harmonise requirements, such as for example in relation to clearing obligations. This would not be a general power to suspend any obligation, but would allow ESMA to suspend certain obligations or provide further guidance in well-defined situations, backed up by specific provisions in legislation.

- **Collecting information**

  ESMA considers that the ESAs should be provided with a stronger mandate in their respective legislative acts and with adequate resources to allow for the collection of information and the development of a comprehensive IT function in liaison with national authorities, in order to ensure that there is further harmonisation of available information across regulatory authorities.

- **ESMA's budget**

  Unsurprisingly, ESMA also believes that its budget should be increased.

2. DISCUSSION PAPER ON IMPLEMENTING MEASURES UNDER THE MARKET ABUSE REGULATION

ESMA has published a discussion paper which sets out its views on the implementing measures it is required to develop under the Market Abuse Regulation ("MAR"). The discussion paper was published on 14 November 2013.

The implementing measures for MAR will take the form of delegated acts of the European Commission, Regulatory Technical Standards ("RTS") and guidelines. The implementing measures are central to the European market abuse and insider dealing regime, as they set out how MAR's scope is to be implemented in practice by market participants, trading platforms, investors, issuers and those active in the financial markets.

The discussion paper covers the ten areas of MAR in respect of which ESMA was required to provide input. These include:

- the conditions to be met by buy-back programmes and stabilisation measures to benefit from the exemption from market abuse prohibitions;
- indicators and signals of market manipulation;
- criteria to establish accepted market practices or AMPs;
- arrangements, systems and procedures for reporting orders and suspicious transactions; and
- the format of insider lists.

The terms of the request made by the European Commission to ESMA to provide technical advice on those aspects of MAR which will have to be specified in delegated acts are set out in a mandate dated 8 November 2013 (issued however on 21 October 2013).

Although the discussion paper is based on the agreed level 1 compromise text of MAR, ESMA explains in the discussion paper that the text is still undergoing legal review and so has not yet been published in the Official Journal of the EU (the "Official Journal").

As stated in the related ESMA press release, the deadline for responding to the proposals in the discussion paper is 27 January 2014. ESMA will consider the responses in the first quarter of 2014 and will consult further in Spring 2014. It also intends to carry out a full consultation on its draft Regulatory Technical Standards in due course, the timing depending on when MAR is published in the Official Journal.

3. OMNIBUS II

On 14 November 2013, the European Parliament, the European Commission and the Council of the EU published press releases announcing that political agreement had been reached on the proposed Omnibus II Directive on 13 November 2013. This agreement will enable the Solvency II Directive to be implemented.

Member States now have to endorse the political agreement reached. Currently, the European Parliament intends to consider and vote on Omnibus II at first reading during its plenary session to be held from 3 to 6 February 2014. However, before then the European Parliament is expected to vote to adopt the proposed second Directive extending the transposition and application dates of Solvency II, known as the Second Quick Fix Directive. This is scheduled for the plenary session to be held from 18 to 21 November 2013.

The new rules on the Solvency II Directive will apply as of 1 January 2016.

4. CONSULTATION PAPER ON COMPLAINTS HANDLING

On 6 November 2013, the Joint Committee of the European Supervisory Authorities ("ESA") issued a consultation paper by ESMA and the European Banking Authority ("EBA"). This contains draft guidelines for complaints handling in the securities and banking sectors.

The Consultation asks for comments on seven draft guidelines on complaints handling that are intended to:

- clarify expectations on firms systems and controls relating to complaints handling;
- provide guidance on the provision of information to complainants and the procedures for responding to complaints;
- ensure consumer protection by harmonising firm's complaints handling arrangements; and
- ensure a minimum level of supervisory convergence across the EU in relation to complaints handling arrangements.

The draft Guidelines apply to investment firms, UCITS management companies and UCITS investment companies that have not designated a management company, external alternative investment fund managers ("AIFMs") providing certain MiFID services, credit institutions, payment institutions and E-money institutions.

The draft Guidelines are an adaptation of the complaints handling guidelines published by EIOPA in June 2012 and have not been changed to any significant extent. The aim is to ensure a consistent approach to complaints handling across the banking, investment and insurance sectors.

The deadline for responses to the consultation is 7 February 2014 and ESMA and the EBA intend to publish a final report and guidelines in the first quarter of 2014. Following this, Competent authorities will be expected to incorporate the guidelines into their supervisory practices.

5. THE SINGLE RESOLUTION MECHANISM FOR THE EUROPEAN BANKING UNION

On 7 November 2013, the European Central Bank ("ECB") published its opinion (dated 6 November 2013) on the European Commission's legislative proposal for a Regulation establishing a single resolution mechanism ("SRM Regulation") for the European banking union.

The ECB is fully supportive of the SRM Regulation and believes it to be a necessary compliment to the Single Supervisory Mechanism ("SSM"). The ECB has issued an accompanying press release, which highlights following specific comments made by the ECB on the legislative proposal:

- The SRM should be established by the time that the ECB assumes its full supervisory responsibilities under the SSM. The ECB supports the proposed timetable that the SRM should enter into force by the middle of 2014 and become fully operational by 1 January 2015. It also believes that the bail-in tool should be implemented earlier than 1 January 2018, as currently proposed.

- The SRM's scope should cover all credit institutions established in member states participating in the SSM.
- The roles and responsibilities of resolution authorities and supervisory authorities should be kept distinct. The ECB argues that the supervisor should have sole responsibility for applying early intervention measures, for assessing whether a credit institution is failing or likely to fail and for assessing whether a firm or a group will no longer be viable without a capital write-down or conversion, or whether extraordinary public support is required.
- The ECB should have an open invitation to observe all meetings of the Single Resolution Board ("SRB").

The Presidency of the Council of the EU has published a report (dated 5 November 2013, but published on 7 November 2013) for the Permanent Representatives Committee ("COREPER") on its proposed general approach to the European Commission's legislative proposal for the SRM Regulation for the European Banking Union.

The report states that the Council's compromise text dated 4 November 2013 addressed the main issues raised by Member States "to the extent possible". The report sets out the key open issues on which the Presidency believes further political guidance is necessary. These open issues include the following:

- **Decision-making mechanisms of the SRM**

  The Presidency believes that an EU institution vested with executive powers should be involved at least at the stage where a "decision to trigger" the resolution is taken. There is disagreement as to whether this institution should be the Council for the European Commission.

- **The voting modalities of the SRB**

  The Presidency proposes a compromise relating to how the SRB takes its decisions.

- **Scope of the SRM**

  The European Commission proposes that the SRM Regulation applies to the entire banking sector of Member States that participate in the SSM. However, there have been strong suggestions made that the scope of the SRM should be narrowed to cover only the entities that qualify as "significant" according to the criteria listed in the SSM Regulation and that will be directly supervised by the ECB. Currently, this is estimated as being less than 150 banks.

- **Financing arrangements of the SRM**

  The European Commission proposes a single fund to finance resolution of banks and banking groups of participating Member States. However, some people believe that any resolution funding should be sourced in all cases from national funds in participating Member States.

  The Presidency has invited COREPER to recommend the Council of the EU to finalise agreement on the general approach and if this is not possible, to recommend that the Council resolve the outstanding key issues set out in the report.

  On 6 November 2013, the Council of the EU published a compromise proposal (dated 4 November 2013) on the SRM Regulation.

6. PRIPs Key Information Documents Regulation

The European Parliament's Economic and Monetary Affairs Committee ("ECON") published its report on 7 November 2013 on the proposal for a Regulation on Key Information Documents ("KID") for investment products.

There are a number of concerns with the European Commission's proposal, including the following.

- **Scope**

The scope of the Regulation should not be restricted to "packaged" investments or investments with an unknown return or partly unknown return. All savings or investment products should have a KID available for consumers, without exception.

- **Tax**

  The local tax regime applicable to the investment product is essential to compare one investment product against another. Without supplementary information relating to the tax regime, costs and remuneration, a choice based on the KID cannot be an informed choice.

- **Risk indicator**

  Indicative future performance scenarios based on a multi-factor analysis (such as counterparty risks) are preferable to risk indicators based on the track record of past performance.

- **Destination of funds**

  Information on the impact of the investment product with respect to environmental, social and governance criteria are essential considerations for the retail investor.

- **Liability regime and sanctions**

  The powers of the ESAs should be strengthened and the exceptions to the publication of sanctions should be deleted.

ECON voted in favour of the proposed PRIPs KIB Regulation in October 2013. The European Parliament is scheduled to consider the PRIPs KIB Regulation during its 10-13 March 2014 plenary session.

On 20 November 2013, the European Parliament published a press release reporting that at its plenary session on 20 November 2013, it had voted to adopt amendments to the European Commission's proposal for a Regulation on a KID for packaged retail investment products ("PRIPs").

The press release provides an overview of the key aspects of the amendments to the PRIPs KID Regulation. The principle onus is to provide clear, comparable and complete information on investment products in a mandatory two-page A4 document.

The European Parliament had scheduled a debate and vote on the PRIPs KID Regulation following the adoption by the ECON of the draft report on the PRIPs KID Regulation on 22 October 2013. However, at that time, the required qualified majority of ECON members was not achieved in support of a vote of a mandate to enter into negotiations with the Council of the EU.

On 21 November 2013, the European Parliament published the text of the amendments to the European Commission's proposal for a Regulation on a KID for PRIPs that it adopted at its plenary session on 20 November 2013.

The minutes of the plenary session explain that the European Parliament adopted the amendments to the proposed PRIPs KID Regulation, but that it agreed to postpone a vote on the draft legislative resolution contained in a draft report adopted by ECON on 22 November 2013. Accordingly, the matter has been referred back to ECON for reconsideration. This will give the European Parliament more time to reach an agreement with the Council of the EU and the European Commission on the amendments adopted.

7. UCITS IV

The Council of the European Union has published a compromise proposal on 28 November 2013 relating to the European Commission's legislative proposal on UCITS V. This is the Presidency's fourth compromise proposal on UCITS V and follows a compromise proposal dated 8 November 2013.

UCITS V consists of proposed reforms to the UCITS regime intended to address issues relating to the depositary function, manager remuneration and administrative sanctions. The European Commission published UCITS V on 3 July 2012.

SPEECHES

1. THE FCA DISCUSSES ITS ASSESSMENT OF CONDUCT RISK AT THE MORTGAGE INDUSTRY CONFERENCE AND EXHIBITION

At the Council of Mortgage Lenders ("CML") Mortgage Industry Conference and Exhibition, Linda Woodall, Director of Mortgages and Consumer Lending at the Financial Conduct Authority ("FCA"), set out what the FCA's supervisory approach to the mortgage lending sector will mean in practice.

In the speech, published on 6 November, she reiterated that the FCA is and will continue to be exercising better use of judgement, more forward looking and more outcome-focussed than its predecessor, the Financial Services Authority ("FSA"). There was a hint that firms can expect substantive and rigorous testing as part of the Mortgage Market Review following new rules and guidance due next spring.

The main part of the speech focussed on "conduct risk". She explained that the FCA has no definition of the term, since there can be no "one size fits all" definition. It is particular to each firm and its assessment must not simply be a box ticking exercise. The starting point for the FCA in reviewing it will be firms' business models and strategies. It will look to assess whether firms really are considering customer outcomes alongside commercial objectives. She also stated that good firm culture would be central to ensuring the fair treatment of customers. The FCA will assess firm culture through what it observes within a firm, not by reviewing it directly. It will also look at governance, especially information flows within firms and how the board behaves in adopting and applying customer and market focussed values. The FCA will also speak with a wider range of individuals within firms when assessing them, than the FSA did.

She referred to the FCA's most recent Conduct Risk Outlook publication and expanded upon what the FCA sees as the inherent drivers of conduct risk: first, where there is an imbalance of information between the product provider and the consumer; second, behavioural bias and ensuring that a consumer is recommended the correct product; third, where a consumer has inadequate financial capability. Many of these themes will be carried forward to the next Outlook due in the first quarter of 2014.

With regard to the Mortgage Credit Directive, the FCA intends to publish a consultation paper on it mid-way through 2014. She stated that the FCA expects the Directive to be adopted in the next few weeks.

2. FCA SUPERVISION IN THE ASSET MANAGEMENT SECTOR

Clive Adamson, FCA Director of Supervision, spoke about the FCA's vision for the asset management sector in the UK at the FCA Asset Management Conference in London. The speech was published on 30 October. Striking the right balance between maintaining a measured regulatory approach and encouraging opportunities was, he said, key to maintaining the UK's leading status in the asset management sector.

In order to help with this, the FCA will ensure that the UK fund authorisations process is speeded up, with 90% of UCITS schemes being authorised within 6 weeks from April 2014. The application process for non-UCITS schemes will be cut to 3 months from April 2014 and for Qualified Investor Schemes, it will fall to 2 months. From April 2015, both of these will fall by a further month.

The industry must also earn a reputation for being fair, transparent and competitive in the UK. With regard to fairness, firms must ensure that conflicts of interest do not hamper their obligations and decision making processes. Asset managers must look after client money as if it were their own and ensure that investment decisions are always in line with a client's stated aims and objectives. They must also always provide clear information on risks and costs to clients. He stated that the FCA is undertaking work on governance and charging structures within collective investment schemes. It is due in 2014.

Turning to transparency, he stated that clients must be able to access transparent information so that they may make informed investment decisions. With this in mind, Mr Adamson said the FCA would be focussing on bundled charging systems and conflicts of interest. However, it is also looking at banks' ancillary services and transitions management. On competition, he explained that the FCA is looking to assess whether a lack of it in a particular market will harm consumers. It is carrying out market studies to assess this and has launched two already.

He also touched on the importance the FCA places on culture in firms. The FCA believes that when things go wrong in a firm, it is due to flaws in the business model, the culture or business practices, not because of non-compliance with a narrow set of rules. The interests of the customer should be of paramount importance to a firm and it must put in place clear business practices and standards from the top down which should guide management judgements at all levels on what is acceptable practice and what is not.

3. MARTIN WHEATLEY SETS OUT THE FAIRNESS CHALLENGE

On 23 October, Martin Wheatley, CEO of the FCA, gave a speech at the Mansion House in London on the increasingly important concept of fairness within the financial services industry. He stated that accountability and fairness were central to the debate; how will the regulator get firms to do the right thing and how to make senior management accountable for this? The two key challenges the FCA faces in moving these issues forward are to ensure it always looks ahead to prevent crises, and also to promote cultural change within the industry, such as its continuing work on incentive structures.

He also discussed ethics, stating that the FCA will place more emphasis on good judgement and less on narrow compliance with rules. Doing what is right must triumph over doing what is allowed. Consumers expect regulators and firms to look beyond the literal interpretation of the law to questions of what is considered to be fair in the context of a contract.

He argued that, in the 21st Century, the FCA must encourage firms to pursue a more consumer-centric approach to business. Firms must grow their cultures at all levels, from CEO to frontline staff, and ensure that senior management are accountable. They must not compound unfairness by responding slowly to complaints and failing to provide redress where it is justified. He noted that this was improving, citing the example of certain banks to expedite redress in the PPI mis-selling scandal, but that more must be done.

4. THE FCA PREPARES TO FOCUS ON CONDUCT IN WHOLESALE MARKETS

On 19 November the FCA published a speech given by David Lawton, Director of Markets at the FCA, at the FCA Markets Conference 2013. In it, he set out the FCA's approach to markets supervision and in particular to wholesale markets.

He stated that, historically, the Financial Services Authority was less inclined to intervene in wholesale markets than retail markets, since professional counterparties were assumed to be sophisticated enough to look after their own interests. The LIBOR scandal has shown that market confidence can be quickly eroded by poor wholesale market conduct and that the effects of this can be far-reaching. Professional counterparties may well be able to look after themselves, but the FCA will not assume that this translates into appropriate wholesale conduct, and will therefore refocus on wholesale markets going forward. However, it will look to regulate wholesale markets as wholesale markets, and not as it does retail ones. It understands that there are differences between markets, though the line is not always clear.

The FCA will also look to build its concept of "early intervention" in relation to wholesale markets, which involves getting to the root of issues earlier and before risks and detriment may be transferred to more vulnerable consumers in the retail markets. It will make links more explicitly between market integrity, conduct and consumer protection.

In addition, Mr Lawton commented that the FCA will take a more holistic view to regulation going forward and will draw together its supervision and policy tools with its data and surveillance capabilities when looking at markets. He said that the FCA would shortly be consulting on changes to the use of dealing commissions (see below) and that it was considering the responses to its July consultation on client money and assets.

He explained that the FCA's new objective to promote competition in the interests of the consumer would help it to create fair, orderly and transparent markets. It will carry out a wide-ranging strategy review in early 2014 to assess competition in wholesale markets.

5. CLIVE ADAMSON DISCUSSES CONDUCT REGULATION FOR AUTHORISED FOREIGN BANKS

Clive Adamson, the FCA Director of Supervision, gave a speech at the Association of Foreign Banks on 13 November, on the meaning of conduct regulation for foreign banks in the United Kingdom ("UK") and the FCA's expectations.

He said that, in particular, the FCA would be scrutinising the business models of foreign owned banks in the UK and using a wide range of data to do so, including financial data across peer groups. In conjunction with the Prudential Regulation Authority ("PRA"), it would be considering the role of branches and subsidiaries, but since it was the conduct regulator its remit would include firms passporting into the UK, as well as those based in the UK. Therefore, non-UK firms need to be aware of FCA requirements, not just PRA ones, particularly in relation to preserving the integrity of the legal entity. In addition, the FCA is looking for greater clarity of responsibility and accountability in the supervision of international firms, so as to avoid firms exploiting opportunities for regulatory arbitrage.

The FCA is also looking to understand how senior management discharge their responsibilities, and how to operationalise the new Senior Persons and Licensing Regime recommended by the Parliamentary Commission on Banking Standards in relation to groups headquartered outside the UK. He said that the FCA would be looking for senior management to demonstrate integrity, "to role model the right behaviours" and to challenge itself where culture is not right.

He explained that the FCA has been in discussion with the Association of Foreign Banks about some of the more difficult issues arising from its July 2013 review of how financial crime risk in trade financing is being controlled. These include the assessment of whether goods are appropriately priced or could be dual use. However, he believed that banks should be doing more than they are currently in this area.

The FCA has begun a new piece of thematic work on how 20 small banks are managing the risks posed by politically exposed persons and correspondent banks. It is a follow up to a 2011 review and will test whether banks are taking heed of regulatory guidance. He warned that the FCA will take a dim view of firms that continue to run acceptable risks without adequate control. It will publish its report in the new year.

ENFORCEMENT

1. FCA FINES RABOBANK FOR LIBOR-RELATED MISCONDUCT

The FCA published its final notice on 29 October 2013 to Cooperative Centrale Raiffeisen-Boerenleenbank B.A. ("Rabobank"). The FCA has levied a fine against Rabobank of £105m for breaching Principles 2, 3 and 5 of the FCA's Principles for Businesses for significant failings relating to the London Interbank Offered Rate ("LIBOR").

The FCA found that, between May 2005 and August 2012, Rabobank breached Principle 2 (skill, care and diligence) and Principle 3 (management and controls), as well as breaching Principle 5 (market conduct) between May 2005 and January 2011. The misconduct found included:

- Manipulation of the bank's own rates that formed part of the calculation of the published Japanese Yen, US Dollar and Pounds Sterling LIBOR rates.
- Collusion with interdealer brokers in attempts to influence the Japanese Yen LIBOR submissions of other banks that were on the British Bankers Association ("BBA") panel for contributing LIBOR submissions in one or more currencies (known collectively as the "panel banks").
- Direct collusion with Japanese Yen and US Dollar LIBOR panel banks.

The FCA held that the misconduct meant the affected LIBOR submissions from Rabobank and some of the LIBOR submissions made by other panel banks did not fairly reflect the cost of interbank borrowing and therefore undermined the overall integrity of LIBOR.

The FCA viewed Rabobank's actions as extremely serious as they took place over a number of years and across a number of currencies. The FCA also found that there was a culture in the bank where the manipulation of the LIBOR setting process was pervasive.

The press release accompanying the final notice states that the fine is the third highest fine imposed by the FCA - or the FSA. Tracey McDermott, FCA Director of Enforcement and Financial Crime, stated that Rabobank's misconduct is amongst the most serious the FCA has identified relating to LIBOR. Tracey McDermott also warned firms that the spotlight will remain firmly on wholesale conduct.

2. FCA THEMATIC REVIEW OF AML AND ABC SYSTEMS AND CONTROLS

The FCA has published a report on 31 October 2013 of the findings from its thematic review of anti-money laundering ("AML") and anti-bribery and corruption ("ABC") systems and controls in the asset management and platform sector (TR13/9).

The FCA assessed 22 firms, including wealth management firms, fund administrators and platform firms to establish whether the sector is taking adequate steps to mitigate the money laundering, bribery and corruption risks it faces. The FCA states that there are some areas where the risk of money laundering, bribery and corruption is heightened in this sector, including the selling of investment products, particularly where third parties are employed to raise money and the dealings firms have with clients at both the point of take on and on an ongoing basis.

The FCA found some good examples of AML and ABC risk management. The majority of firms had relatively well-developed arrangements for the ownership of money laundering and bribery and corruption risks. However, the FCA also found a number of common weaknesses across the firms reviewed. It also found that AML controls varied across sector. There were areas where some firms understood and met their obligations and others where improvement was needed. Generally, there is still work for most firms to do to ensure bribery and corruption risks are appropriately mitigated. The FCA is particularly concerned about its findings where the firms were part of major financial groups, which should have been aware of regulatory expectations. In some cases, the firms visited were from groups that had been subject to previous regulatory attention. However, the FCA nevertheless found significant weaknesses. Given the number of communications that the regulator has issued on AML and ABC, the FCA expected the industry to have done more to ensure they had suitable systems and controls in place.

The report includes examples of good and poor practice identified. These examples are consistent with the FCA's existing guidance in its Financial Crime Guide.

The FCA has provided feedback to the firms that it reviewed. However, it expects all firms - and notably, not just those in the asset management and platform sector - to consider the findings and the examples of good and poor practice and use them to improve their AML and ABC frameworks, where necessary.

The FCA plans to follow up with some firms to discuss the actions they should take.

3. IFA FINED AND BANNED FOR RECORD KEEPING AND SYSTEMS AND CONTROLS FAILURES

On 4 November 2013, the FCA published the decision notices (dated 23 May 2013) that it had issued to Bayliss & Co (Financial Services) Limited and to Clive Rosier.

The decision notices relate to the period between 7 August 2004 and 24 September 2012, during which time, Clive Rosier was the only director and approved person at Bayliss & Co. The FCA has fined Clive Rosier £10,000 and has withdrawn his existing approvals, as well as prohibiting him from carrying out any significant influence functions in financial services firms. The FCA has cancelled the Part 4A permission of Bayliss & Co.

The FCA found that Clive Rosier:

- did not record sufficient customer information, including details of customers' attitude to risk;
- did not act with due skill, care and diligence when producing suitability reports;
- failed to take reasonable steps to ensure that Bayliss & Co only promoted unregulated collective investment schemes to customers to whom an exemption applied;
- did not have a written complaints policy and instead relied on the provisions in the Dispute Resolution: Complaints Sourcebook; and
- failed to ensure that Bayliss & Co could demonstrate that it had undertaken any monitoring of his own performance.

Accordingly, the FCA found that Clive Rosier had not complied with the FCA's Statements of Principle 2 and 7.

Clive Rosier and Bayliss & Co have both referred the decision notices to the Upper Tribunal (Tax and Chancery Chamber).

4. BROKER BANNED FOR MARKET ABUSE OFFENCES

The FCA has banned a former broker for encouraging market abuse. On the 14 November 2013, the FCA published the final notice that it issued to Rahul Shah, dated 13 November 2013.

The FCA stated that Mr Rahul Shah had encouraged another person to engage in behaviour which, if engaged in by Mr Shah, would amount to market abuse (insider dealing). The FCA also imposed an order on Mr Shah prohibiting him from performing any function in relation to any regulated activities carried on by any authorised or exempt persons, or exempt professional firm. The FCA decided not to impose a possible financial penalty of £125,000 on Shah, due to his financial circumstances.

The final notice follows a decision notice the FSA (the FCA's predecessor) issued to Mr Shah in February 2013. The decision notice was based on issues arising from the fact that Mr Shah, a former broker, had agreed to be made an insider by a financial adviser acting on behalf of Vyke Communications plc.

Mr Shah referred the decision makers to the Upper Tribunal, but withdrew his reference on 31 October 2013. Due to the fact that he withdrew this referral, the final notice is expressed as being drafted in the same terms as the decision notice.

5. ASSET AND WEALTH MANAGER FINED FOR CLIENT MONEY FAILINGS

SEI Investments (Europe) Limited ("SEI") has been fined by the FCA. On 26 November 2013, the FCA published a final notice (dated 25 November 2013) it had issued to SEI, the provider of asset management and wealth management services, for failing adequately to protect client money. The FCA has imposed a fine of £900,200.

The FCA found that SEI had breached a number of its client money rules relating to records, accounts and reconciliations (the rules in Chapter 7 of the Client Assets Sourcebook ("CASS 7"). It also found that SEI had breached Principle 10 of its Principles for Businesses. The FCA found failings throughout the firm's client money processes in the period between November 2007 and October 2012. These included the firm's failure to:

- perform its internal reconciliations;
- ensure that any shortfall or excess identified in its internal reconciliation of client money was paid into or withdrawn from the client bank account by close of business on the day of the internal reconciliation. The firm also failed to make the mandatory notifications of such shortfalls or excesses to the FCA;
- appreciate that it was using a non-standard method of internal reconciliation. As a result the firm failed to ensure that it maintained its records and accounts so as to ensure their accuracy;

- to submit accurate client money and assets returns ("CMARs"); and
- to adequately train employees with operational oversight and responsibility for client money.

The FCA also took into account various other relevant factors, including the fact that the firm had responded to a "Dear CEO" letter sent to firms by the FCA's predecessor, the FSA, in June 2013, stating that its asset management business was complying with the CASS rules. Although there was no actual loss of client money, the firm's failings could have placed the client money at risk and lead to complications in delay and distribution, had the firm become insolvent. SEI settled at an early stage in the proceedings. If it had not, it would have been fined £1,286,000.

In its related press release, the FCA warned firms holding client assets to ensure that they continue to strengthen their management, oversight and controls in this area, or else risk action being taken against them if they fall short of the client asset requirements.

6. INDEPENDENT ENQUIRY INTO EVENTS AT THE CO-OP BANK

HM Treasury has published a press release on the 22 November 2013 announcing that George Osborne, the Chancellor of the Exchequer, has ordered an investigation into the events at the co-op Bank.

The investigation has been agreed jointly with the PRA and the FCA, who both agree that there is public interest in a statutory investigation. The investigation will be led by an independent person appointed by the regulators, with HM Treasury's approval.

The detailed direction, that will order the independent investigation and which will set out its terms, will take into account any issues arising, including those issues arising from potential PRA and FCA enforcement investigations. It will be determined in consultation with the independent person appointed to lead the investigation. The direction will cover the actions of relevant authorities (regulators and the government) and the co-op Bank itself and will include prudential issues, governance, the appointment of senior staff and acquisitions. The investigation will cover the period from at least 2008 to the present time and will not commence until it is clear that it will not prejudice any actions the relevant authorities may take, including potential PRA and FCA enforcement investigations. The direction and the independent person's report both will be laid before parliament.

The PRA and the FCA has each issued a related statement, which are virtually identical. Both regulators welcome HM Treasury's announcement and look forward to supporting the independent person who is appointed to lead the investigation. They both state that the timing of the independent investigation must not prejudice any other criminal or regulatory proceedings, and explains that they are already carrying out work to establish whether they should launch formal enforcement investigations. Both the PRA and the FCA expect to reach a conclusion shortly.

In its press release, HM Treasury mentions the government's Financial Services (Banking Reform) Bill 2013-14. It explains that a key part of the government's work to create a stronger and safer banking system is its reform of the regulatory regime for senior managers. The Bill will introduce a new senior managers' regime that will subject banks decision-makers to higher standards, holding them to account if they fail in their duties.

If you have any questions concerning the material discussed in this bulletin, please contact the following members of our financial regulation practice group:

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