COVINGTON

COVINGTON & BURLING LLP

BULLETIN | Financial Services and Regulation

April 2014

Welcome to the April issue of our Bulletin on the financial services and regulatory sector. This month has once again been a busy one. Following the Financial Conduct Authority's ("FCA") takeover of responsibility for the regulation of consumer credit in the UK on 1 April, it has published its findings from its research into overdrafts and payday loans. Martin Wheatley has spoken about the FCA's plans for a review of the UK credit card market. The FCA has also published the latest results of its on-going thematic review of the implementation of the RDR. The PRA has issued guidance for affected institutions on how to raise the permitted remuneration ratio under CRD IV. It has also been business as usual with regard to enforcement matters, with the FCA fining Invesco Perpetual £18.6 million for fund management failings and barring two partners following non-compliance with suitability requirements.

For an update on developments in the European Union, please see this month's bulletin here.

CONTENTS

SPEECHES

1. MARTIN WHEATLEY DISCUSSES THE UK CREDIT CARD MARKET

On 3 April 2014, Martin Wheatley, the Chief Executive of the Financial Conduct Authority ("FCA"), gave a speech on the growth of the credit card market in the United Kingdom. He used the speech as a platform to announce that the FCA would be conducting a complete competition review of the credit card market in the UK. The fundamental question being asked within the review would be whether the credit card market works in the interests of its customers, and in particular how behavioural economic biases "rub up against the design, pricing and distribution" of cards. He explained that the FCA would like to understand more whether issues such as "consumer inertia, irrationality or lack of willpower" were significant factors in poor decision-making and resulting in debtedness.

The review would also look into whether the problems with the industry were the result of the product presentation and design, or a lack of self-control over expenditure or understanding of the product by the consumer. It would also scrutinise the business models of product providers, correct risk pricing, and the competition within the market place. It would consider products at the fringes of the market such as credit cards with low credit limits and very high Annual Percentage Rates and start up a debate on such practices. He explained that the FCA would also consider whether consumers who leave unpaid credit card balances each month subsidise those who pay off their balances. The FCA published further information on the review on its website.

During the speech Mr Wheatley also stressed that with the passing of responsibility for consumer credit from the Office of Fair Trading ("OFT") to the FCA, the FCA has a responsibility to ensure that all providers of consumer credit have sustainable and well-controlled business models, "supported by a culture that is based on doing the right thing for customers". He said that an immediate priority for the newly regulated consumer credit firms would be to understand FCA expectations of good conduct.

Mr Wheatley explained that the consumer credit industry would need to consider how it engages with consumers in vulnerable circumstances. Firms that engage in higher risk activities with more vulnerable consumers will receive greater regulatory interest from the FCA. He referenced the paper which the FCA published on consumer credit and vulnerable consumers. He explained that it provided a broad indicator of the future direction of regulation for consumer credit firms, including investigative analysis into areas such as interest rate caps and high-cost, short-term credit, overdrafts and lending, debt management and financial management.

2. ANDREW HALDANE SETS OUT THE RISKS POSED BY THE ASSET MANAGEMENT SECTOR

On 4 April 2014, the Bank of England ("BOE") published a speech given by Andrew Haldane, Executive Director of Financial Stability at the BOE and member of the Financial Policy Committee, on the risks posed by the asset management industry to financial stability. In the speech, he questioned whether the size of the asset management industry means that it could pose the same "too-big-to-fail" challenges as the banking industry. He explained that assets under management have grown rapidly in the UK from under 50 percent to over 200 percent of GDP since 1980. He also stated that trends in population, incomes and wealth mean that this is likely to increase markedly by 2050. Recent trends in the industry have seen growth into more illiquid assets and index-linked, passively managed funds and away from actively managed funds. In addition, he noted that contracts between managers and investors are leaning towards putting more risk back on to investors which in turn will increase their incentive to run.

In asking whether the asset management industry is "too-big-to-fail", he acknowledged that it was a different question to the one asked of the banking industry. Mr Haldane explained that asset managers do not bear credit, market and liquidity risk on their portfolios, but their size, should an asset manager fail, could aggravate frictions in financial markets in the form of asset fire-sales. Therefore, he explained that the "fail" element was a red-herring but the "big" was not.

He also highlighted the fact that asset management firms had the potential "to amplify pro-cyclical swings in the financial system and wider economy". He underlined the fact that this was likely to contribute to mis-pricing of risk. He stated that the asset management industry had the potential to provide long-term financing, in the form of equity, and long-term debt, to the economy. However, he claimed the industry was moving away from direct holdings of UK equities in order to de-risk as global equity prices fell during the financial crisis. Such behaviour, Mr Haldane stressed, was likely to amplify cycles within the financial system.

In response to these potential problems, Mr Haldane explained that there was a good deal of international work going on to help identify whether asset managers should be classified as globally systemic financial institutions. He also explained that he expects macro-prudential tools, which have so far been used in relation to capital and liquidity in the banking sector, to be used in the asset management industry. Finally, he mentioned a number of initiatives designed to encourage the financing of long-term investment. He explained that the BOE would look to support international work on considering a "high-quality securitisation product" which would be highly transparent. This, he hoped, would lead to more non-bank investors being capable of financing the wider economy.

UK PUBLICATIONS

1. PRA ISSUES GUIDANCE ON INCREASING THE PERMITTED RATIO OF FIXED TO VARIABLE REMUNERATION

The Prudential Regulation Authority ("PRA") published a letter on 11 April 2014, which provides guidance for firms which wish to increase the permitted ration of fixed to variable remuneration above the 1:1 basic limit as required under the Capital Requirements Directive ("CRD IV"). The letter states that it has been issued following the PRA's awareness of uncertainty regarding the precise procedure to be followed.

The letter explains that the rules on this reflect the corresponding provisions of CRD IV and are set out in the PRA's Senior Management Arrangements, Systems and Controls Sourcebook ("SYSC") Chapter 19A.3. It points out that the interpretation of CRD IV is ultimately a matter for the courts and may be the subject of communications by the European Commission or European Banking Authority ("EBA"). In the absence of any communications from such bodies, the PRA has clarified the following points:

- The 50 percent threshold, the 66 percent threshold and the 75 percent threshold should all be calculated by reference to the shares or other ownership rights within that firm. The particular thresholds relate to the required level of shareholder approval and quorum necessary to make changes to the remuneration ratio. Where 50 percent of shareholders are present, 66 percent of votes in favour would be required to change the ratio. If the quorum of 50 percent is not reached, 75 percent of votes would be needed. The PRA believes that the reference to shares or other ownership rights within that firm should be taken to mean the voting rights capable of being cast on the relevant resolution, those which attach to the shares of ownership rights. The percentages should be counted by reference to share or ownership voting rights, and not to the number of individual shareholders or owners.

- The 75 percent threshold and 66 percent threshold are percentages of the share or ownership voting rights represented, not of the firm's whole issued share capital or ownership rights.

- Staff who are "directly concerned" by the higher remuneration levels may not exercise any voting rights they have in relation to such issues. Their voting rights must be disregarded when calculating any percentages.

The PRA also sets out a clearer definition of what it believes CRD IV means by the concept of shares or ownership rights being "represented". It states that firms should set out their own rules as to which forms of conduct will constitute being represented for the purpose of a vote. They should make it clear to shareholders how each form of conduct will be treated for the purpose of being represented. The PRA also recommends that in order to determine what proportion of the share or ownership rights is "represented" a poll vote should actually take place at the relevant shareholder meeting.

2. FMLC RAISES QUESTIONS REGARDING PROPOSED EUROPEAN BENCHMARK REGULATION

The Financial Markets Law Committee ("FMLC") has issued a paper on benchmark reform, which points to specific uncertainties and ambiguities arising from the European Commission's proposed Regulation on indices used as benchmarks in financial instruments and financial contracts. The paper is dated March 2014, but was published on 2 April 2014.

The FMLC believes that the definitions set out in the proposed Regulation in relation to "index", "benchmark", "trading venue" and "investment fund" should be clarified and sharpened by the European Commission. In addition, the Regulation's provisions on governance requirements for administrators and contributors relies on concepts set out in the Principles for Financial Benchmarks adopted by the International Organisation of Securities Commissions ("IOSCO"). The FMLC is concerned that these requirements are ill-defined and "unsuited to the creation of legal obligations". It provides that "robust governance arrangements", "a clear organisational structure" and "consistent roles" are not clearly defined enough. The FMLC is concerned that the question as to whether any particular set of arrangements complies with the legal obligation may invite debate.

One of the key proposed articles in the Regulation specifies that a benchmark's use will be permitted only until such time as the benchmark refers to financial instruments and financial contracts worth no more than five percent by value of the financial instruments and financial contracts that referred to this benchmark at the time of the Regulation's entry into force. The FMLC believes that such a compulsory measure would raise "very considerable" legal risks associated with contractual discontinuity. It may also lead to legacy contracts being frustrated.

The proposed Regulation also allows that benchmarks issued by third country administrators may be used by supervised firms in the European Union provided that there is the appropriate level of regulatory equivalence between the jurisdictions. The FMLC believes that these sorts of equivalence decisions are likely to be informed by the IOSCO Principles, and that therefore these Principles should be referenced within the Regulation. It requests clarification as to whether the implementation of such principles would be sufficient for a third country to be considered equivalent.

3. FCA PUBLISHES RESULTS OF THEMATIC REVIEW ON RDR ADVISER CHARGES AND SERVICES

On 7 April 2014, the FCA issued its thematic review report on how clear the descriptions of adviser charges and services are for clients (TR14/6). The report forms part of the FCA's ongoing thematic review of the industry's implementation of aspects of the Retail Distribution Review ("RDR"). This report forms part of the second stage of the review work and follows the other thematic review report published on independence requirements on 20 March 2014. The FCA expects to begin its final set of reviews in relation to RDR implementation early in the second half of 2014. By this time, the FCA believes that firms should have had more than enough time to comply with the RDR rule requirements. It does not rule out referring firms to enforcement where it finds failure to meet such requirements.

TR14/6 found that a large number of the 113 firms polled are failing to disclose adequately to clients the cost of their advice and the type of service that they offer, as well as the nature of the ongoing service they are to provide to those clients. Indeed, 73 percent of firms failed to provide the required generic information on how they charge for advice and/or failed to confirm clearly the specific cost of advice to their clients within the required time frames.

Fewer than half of the firms surveyed provided clear upfront generic information on cost. The review also found that 31 percent of firms which operated a restricted advice model failed to make it clear that they were offering such a service, and/or failed to provide clients with a clear description of the nature of the restriction.

The FCA described this non-compliance as "unacceptable". In particular, the FCA was disappointed, since it views the disclosure requirements as extremely clear and relatively straightforward to implement. It states that firms have had sufficient time to understand the rules and prepare for and implement any required changes. It is concerned that firms are continuing to repeat failings highlighted during the first stage of the thematic review work, hence the warning about enforcement mentioned above.

The FCA states in TR14/6 that it is minded to refer two firms with what it calls "egregious" failings to enforcement now. The two firms highlighted were a financial adviser and wealth manager.

4. FSCS SETS OUT LEVY FOR THE COMING YEAR

The Financial Services Compensation Scheme ("FSCS") used the April 2014 issue of its monthly newsletter, Outlook, to provide details of its annual levy for 2014/15. The issue was published on 15 April 2014 and announced that the levy on financial services firms for the coming year will be £276 million. The FSCS explained in a separate press release on the levy that this figure would be £37 million lower than its initial projection from January 2014. The revised figure followed a thorough review by the FSCS of the latest claims data and trends. The FSCS mentioned specifically that it believes that payment protection insurance ("PPI") claims may have peaked during the previous year and will fall during the next financial year. However, it explained that the volume of PPI claims was always "fluid and unpredictable".

The press release acknowledge that whilst the levy would fall for most industry sectors, it would rise for investment intermediaries and home finance intermediation firms. Fund managers could expect to receive a rebate from the FSCS, following the successful recoveries in connection with the failure of Keydata. Furthermore, general insurance companies would have their final levy reduced by £1 million to £71 million as a result of higher than forecast recoveries.

5. FRC PUBLISHES CONSULTATION ON THE UK CORPORATE GOVERNANCE CODE

On 24 April 2014, the Financial Reporting Council ("FRC") published its consultation in connection with its ongoing two-yearly review of changes to the UK Corporate Governance Code. Should the changes be implemented, they will apply to reporting years beginning on or after 1 October 2014. The paper follows earlier consultations on directors' remuneration published in October 2013 and risk management, internal control and the going concern basis of accounting published in November 2013. In this consultation, the FRC is proposing:

- that remuneration policies are designed with the long-term success of the company in mind, and that greater emphasis be placed on ensuring this and the lead responsibility for doing so should rest with the remuneration committee;

- companies should set up suitable controls which will enable them to cover or withhold variable pay when appropriate to do so, and should consider appropriate vesting and holding periods for deferred remuneration;
- companies should be encouraged to give further consideration to the arrangements they have in place for deferred remuneration and the schedule to the UK Corporate Governance Code is amended to further this aim;
- the board should monitor a company's risk management and internal control systems on an ongoing basis;
- directors should be able to confirm that they have carried out robust assessments of the principle risks facing the company and explain how they are being managed and mitigated;
- directors should be able to explain how they have assessed the prospects of the company, over what period they have done so and whether they have a reasonable expectation that the company will be able to continue operating and meet its liabilities.

The FRC is also consulting on proposed guidance in relation to risk and going concern which is intended to help companies to apply the proposed revised UK Corporate Governance Code. The deadline for responding to this consultation paper is 27 June 2014.

CONSUMER CREDIT

1. WONGA ADVERTISEMENT FAILS TO COMPLY WITH ADVERTISING REGULATIONS

The Advertising Standards Authority ("ASA") published an adjudication on 9 April 2014 in relation to complaints regarding a television advertisement for WDFC UK Limited, trading as Wonga, which is a pay day loans company and regulated by the FCA. The ASA found that the advert had breached the Consumer Credit (Advertisements) Regulations 2010 as it did not accompany an actual representative example of the total cost of a loan with the words "representative example" which the 2010 Regulations expressly stipulate.

The ASA also adjudged that the advertisement created confusion as to which interest rates would apply to a loan. It was therefore misleading. The ASA did acknowledge that Wonga was attempting to explain the total cost of the loan in the clearest manner possible. However, it concluded that the advertisement breached various rules within the Broadcast Advertising Code, including those relating to responsible advertising and misleading advertising. As part of the decision, the ASA stated that the advertisement must not be broadcast in its current form.

2. FCA PUBLISHES ITS RESEARCH INSIGHTS INTO THE UK'S OVERDRAFT MARKET

The FCA has carried out extensive research into the UK overdraft market and on 10 April 2014, it published its findings as part of its Consumer Credit Insights series. The FCA found that customers do not choose their bank accounts based on the terms of the overdraft facility available. In fact, they pay little attention to overdrafts when choosing their bank accounts. There is, therefore, little incentive for facility providers to act competitively. In addition, customers often do not see overdrafts as debt, and are unaware of the costs involved. According to the research around 15 percent of consumers with an overdraft are permanently or usually overdrawn and providers still earn very high revenue from them. Indeed, the FCA believes that overdrafts are often a stepping stone to further debt. Once a customer's overdraft limit is reached, he or she is more likely to move to high-cost credit and other forms of credit product.

The FCA also found that there was wide spread confusion amongst customers in relation to overdrafts. Many wrongly assumed that overdrafts were simple or free and were generally confused about what happened when entering into an "unauthorised" overdraft (an overdraft is "unauthorised" where it is not agreed with the bank beforehand). Furthermore, many consumers were content to remain within their authorised overdraft limits rather than paying them off, since they felt that their finances were under control so long as they were within the limit. The FCA highlights the fact that customers often see authorised overdrafts as an extension of money rather than a debt, and that many banks have been encouraging this by presenting overdraft limits as "funds available".

The FCA argues that overdraft providers are able to earn revenue from consumers' lack of understanding, confusion and limited attention in relation to overdrafts. It concludes that, whilst providers appear to have made improvements in relation to disclosures, they are incentivised to raise revenue by increasing overdraft limits and by changing the charging structure from interest charges to daily charges in relation to some facilities. The FCA believes that providers continue to have very high, complex and opaque charges for "unauthorised" overdrafts, even though revenue from "unauthorised" overdrafts had fallen during the review period. The FCA is also concerned that any improvements which providers have made have been driven by regulatory pressures rather than from improvements in competition in the current account market.

The FCA intends to investigate how overdraft providers set and monitor overdraft limits, together with their governance and strategies for doing so by the Autumn. It will look to work alongside the UK Competition and Markets Authority to ensure its actions complement rather than duplicate work done to update the Office of Fair Trading's ("OFT") 2013 review of the personal current account market. The FCA will also look to make some of the voluntary measures which were agreed between the banking industry, OFT and the government mandatory.

3. FCA PUBLISHES COMMISSIONED RESEARCH INTO PAYDAY LOANS AND DEBT MANAGEMENT SERVICES

The FCA published research carried out by ESRO Limited on its behalf into pay day loans, log book loans and debt management services on 23 April 2014. The focus of the review was on consumer attitudes towards and their experience of pay day loans, log book loans and debt management services. The scope included both fee-charging and non-fee-charging models. The FCA wanted to obtain a detailed understanding of consumer behaviours and attitudes surrounding the use of such products and services. Another key element of the research was to identify trends and patterns in firms' interaction with customers, so as to be able to pinpoint the particular aspects of this which might lead to consumer over-indebtedness and detriment, or to a more positive experience for the consumer.

The research identified that, in many cases, consumers do not compare products available within the market and also lack basic knowledge of products which they purchase. Virtually no consumers read any product terms and conditions and were often overly optimistic about their ability to comply with such terms.

ESRO Limited recommended various issues to the FCA for consideration, including:

- looking into tools to help consumers compare firms and easily identify those which behave fairly and shape decision making processes positively;
- ensuring available credit is well structured and has debt repayment as a clear priority;
- improving eligibility checks, since consumers find these basic and easy to manipulate in many cases;
- products or services should contain clearly phrased warnings which explain worst case scenarios or what could go wrong at the point of advertising and purchase, so as to reduce the possibility of consumers being sold the wrong products or such products not performing as they might have been led to expect;
- improved training for staff, especially in clarifying the distinction between advice and sales.

INVESTIGATIONS AND ENFORCEMENT

1. FCA FINES INVESCO PERPETUAL £18.6 MILLION

The FCA issued a final notice, dated 24 April 2014, to Invesco Asset Management Limited and Invesco Fund Managers Limited (together "Invesco Perpetual") for failings leading to investors being exposed to greater levels of risk then they had been led to expect. The FCA fined Invesco Perpetual £18,643,000 for these failings, but it could have been £26,632,900 had Invesco Perpetual not agreed to settle at an early stage and qualify for the 30 percent discount to the fine.

According to the final notice, Invesco Perpetual failed to comply with investment limits, designed to protect consumers by limiting their exposure to risk. These breaches led to losses of nearly £5.3 million which have already been promptly compensated by Invesco Perpetual. The FCA stressed that such losses could have been much greater.

Further, Invesco Perpetual failed to inform investors or explain the associated risks of its use of derivatives which introduced leverage into the funds. The FCA noted that the firm was allowed to use derivatives in this way, but had failed to inform investors of this fact.

Invesco Perpetual also failed to record trades on time, which meant that the funds could have been wrongly priced, and failed to monitor whether trades were allocated fairly between funds which created a risk that some funds may have been disadvantaged. The FCA noted in the press release accompanying the final notice that Invesco Perpetual has acted quickly to improve its systems and controls and to remediate the issues identified by the FCA.

2. UPPER TRIBUNAL FINDS JP MORGAN TRADER WAS IDENTIFIED IN FCA DECISION NOTICE

On 11 April 2014, the Upper Tribunal (Tax and Chancery Chamber) published its decision dated 24 February 2014 in the case of Achilles Macris v FCA (FS/2013/0010). The decision was in connection with the Decision Notice provided to JP Morgan Chase Bank N.A. (the "Bank") by the FCA on 18 September 2013.

Mr Macris complained that the FCA included in the Decision Notice, which notified the Bank that the FCA had decided to impose a financial penalty of £137,610,000 as a result of trading losses incurred by the Bank's Synthetic Credit Portfolio, details which identify Mr Macris and which are clearly and obviously prejudicial to him. The Decision Notice had been preceded by a Warning Notice and followed by a Final Notice which also included the same reasoning. Mr Macris claimed that he had had no opportunity to contest this information and referred the matter to the Tribunal under Section 393(11) of the Financial Services and Markets Act 2000 ("FSMA"). He based his complaint on the Final Notice, which was materially the same as the Decision Notice, as he was not provided with a copy of the Decision Notice.

Section 393 of FSMA provides third parties with rights in relation to Warning and Decision Notices given to other persons in connection with FCA regulatory action. Any third party prejudicially identified in a Warning or Decision Notice must, under the terms of the section, be given a copy of the Notice by the FCA and given a reasonable period within which to make representations to the FCA. Mr Macris was not given a copy of the Warning Notice or the Decision Notice because the FCA believed that he was not identified within them.

Given that Mr Macris had a role in the management structure of the Synthetic Credit Portfolio and he was the International Chief Investment Officer at the Bank, the Tribunal concluded that the individual identified in the Notice as CIO London Management could not be anyone other than Mr Macris. Therefore, it concluded that Mr Macris had been identified in the relevant sense and manner required under Section 394(4) of FSMA. The FCA has issued a statement explaining that it wishes to appeal the decision, which was issued on 11 April 2014.

3. FCA BANS TWO PARTNERS FROM PERFORMING ANY SIGNIFICANT INFLUENCE FUNCTIONS FOLLOWING SUITABILITY FAILINGS

According to final notices published by the FCA on 17 April 2014, both Timothy Hughes and Andrew Rees, who were partners at 1 Stop Financial Services ("1 Stop") have been banned from performing any significant influence function ("SIF") in connection with any regulated activity. Their firm, 1 Stop, advised approximately 2,000 customers to switch their existing pensions into self-invested personal pensions ("SIPPs"), which enabled those customers to invest in unregulated investments such as diamonds and overseas properties. The firm did so without ascertaining whether such products were suitable for the customers. These activities took place for just over two years between October 2010 and November 2012. In doing so, the final notices state that both Mr Hughes and Mr Rees did not comply with Statement of Principle 7 of the Statements of Principle within the Statements of Principle and Codes of Practice for Approved Persons sourcebook ("APER") in the FCA Handbook. This Statement of Principle provides that a person performing a SIF must take reasonable steps to ensure that the business of the firm for which he is responsible complies with the relevant regulatory requirements.

The FCA found that both partners failed to take reasonable steps to ensure that 1 Stop assessed the suitability of the underlying investments for the customer. Both also failed to take reasonable steps to ensure that 1 Stop's customers understood fully the information provided to them, and therefore, understood fully the key features of their investment.

The final notices also state that both men failed to disclose the fact that they were directors and shareholders of EGI, a separate unregulated company which introduced customers to 1 Stop. Almost a quarter of 1 Stop's customers were introduced through EGI during the relevant period. This represented a clear conflict of interest, since EGI received commission from the underlying product provider for facilitation of the sale to the customer. Both Mr Hughes and Mr Rees were, therefore, benefitting from both the fees paid by customers for the advice and also from the commission received by EGI.

Both individuals have had approval to perform the CF4 controlled function (partner) and Mr Hughes has been stripped of his CF10 (compliance) and CF11 (money laundering reporting officer) responsibilities going forward. Mr Hughes and Mr Rees agreed to pay the full amount of their fines to the Financial Services Compensation Scheme to contribute towards the redress payable to 1 Stop's customers. Had they not agreed to do this, the FCA would have fined them a total of £490,100.

4. COURT OF APPEAL UPHOLDS FCA DECISION ON ILLEGAL COLLECTIVE INVESTMENT SCHEME

The FCA announced on 14 April 2014 that the Court of Appeal has dismissed, on all counts, an appeal by a collective investment scheme selling plots of land as investments, against the decision by the Financial Services Authority ("FSA") to close it down in 2013. The High Court had found in February 2013 that David Banner-Eve, Stuart Cohen and the companies Asset Land Investments plc and Asset LI Inc. were operating a collective investment scheme without the necessary authorisation from the FSA under the Financial Services and Markets Act 2000 ("FSMA").

Mr Banner-Eve and Asset Land LI Inc. appealed this decision and stated that they were not running an illegal collective investment scheme. In the press release, Tracey McDermot, director of enforcement and financial crime at the FCA made it clear that any attempt by parties to avoid authorisation on technical legal points in relation to collective investment schemes would be unlikely to succeed. She explained that, “firms trying to exploit loop holes to claim that they are not running collective investment schemes should be clear - it simply will not work”.

The FCA also stated in the press release that it is aiming to return as much money as possible to investors, but is unlikely to be able to return the full amount invested. It has not been able to identify any assets of the defendants which would enable more than a small proportion of these payments to be made.

The High Court had made an order in 2013 that the defendants should make a preliminary payment to the FSA of £21 million as part repayment to investors. The order was stayed, pending the Court of Appeal’s decision, and will remain so until any appeal is heard in the Supreme Court.

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

Charlotte Hill	+44.(0)20.7067.2190	chill@cov.com
William Maycock	+44.(0)20.7067.2191	wmaycock@cov.com
Agnieszka Polcyn	+44.(0)20 7067.2039	apolcyn@cov.com