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BULLETIN | Financial Services and Regulation

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This month has seen no let-up in the activities of the United Kingdom financial regulators, and has been a busy month in general throughout the financial services sector. The Financial Conduct Authority ("FCA") has delivered speeches on the infrastructure reforms in capital markets and what it expects with regard to good conduct from firms. It has also published various documents, including Finalised Guidance on post-RDR unit classes and a Policy Statement on the use of dealing commission. In addition, the Financial Markets Law Committee ("FMLC") has published letters providing its views on the European Commission's consultation on foreign exchange ("FX") financial instruments and the global reforms to the OTC derivatives markets. Yet again it has been a busy period for enforcement activity, with Barclays being fined £26 million in relation to the London Gold Fixing and Martin Brokers receiving a £630,000 for LIBOR misconduct. The Upper Tribunal has also upheld the Financial Services Authority's original finding of market abuse against Ian Charles Hannam. The FCA has remained active in its new role as regulator of the Consumer Credit sector, issuing a number of press releases setting out its uncompromising stance on the standards of conduct it expects from firms.

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

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SPEECHES

1. BANK OF ENGLAND DISCUSSES ITS PROGRESS ON ENDING TOO BIG TO FAIL

Sir Jon Cunliffe, Deputy Governor of Financial Stability and Member of the Monetary Policy Committee and Prudential Regulatory Authority ("PRA") Board, gave a speech at the Barclays European Bank Capital Summit in London on 13 May 2014 regarding the progress made by regulators in addressing the issue of "Too Big To Fail". He also set out some remaining issues facing regulators. He stated that regulators were taking a two-pronged approach to the issue, the first of which was to reduce, but not eliminate, the probability of failure by increasing the resilience of financial institutions; and the second, managing the impact of firm failure via the available resolution framework and by making investors bear any losses. Sir Jon also spoke about specific structural reform issues allied to this agenda.

With regard to the resilience of financial institutions, Sir Jon explained that two essential parts of the regime required to reduce the likelihood of failure were still being developed. An international standard on leverage has already been agreed, including a definition of the leverage ratio, but the calculation of a minimum standard is not expected to be decided until 2017. The Financial Policy Committee is currently reviewing whether a leverage ratio framework should be introduced in the United Kingdom prior to any international framework being implemented. A standard for the Net Stable Funding Ratio to address long-term liquidity risks within banks is also still outstanding and due to be agreed by the Basel Committee in September this year. Sir Jon explained that these measures could have a potentially serious and unwelcome effect on market liquidity and that the regulatory authorities are already looking at them in detail. He stated that though tighter regulation may lead to market liquidity falling away at an earlier stage, the catastrophic risk of dealers withdrawing from market-making altogether due to balance sheets becoming dangerously over-stretched, should be much reduced.

In relation to the resolution framework, Sir Jon explained that the legal framework was now in place, are that talks had moved on to the key design features of the regime, which requires banks to hold sufficient debt which could be quickly bailed in where necessary. This will be known as Gone Concern Loss Absorbing Capacity ("GLAC"). Others matters being discussed included the size of the GLAC requirement, the type of debt included and where it should be located, as well as which critical economic functions should be protected in the event of resolution.

On structural reform he mentioned that recent measures already put into place in the UK, EU and US complement the resolution agenda by making it easier for the resolution authority to protect continuity and critical economic functions. However, he noted that work was still required to ensure that the different reforms in different jurisdictions could form a coherent package for regulatory authorities across the globe.

2. THE FCA'S FIRST BIRTHDAY MESSAGE - GOOD CONDUCT IS ESSENTIAL FOR SUSTAINABLE BUSINESSES

On 12 May 2014, the Financial Conduct Authority ("FCA") published a speech given by Clive Adamson, the FCA's Director of Supervision, at the Building Societies Association. In it, he stated that the new regulatory structure has given both the PRA and FCA a freedom to focus more clearly on their respective conduct and prudential objectives. However, he did acknowledge that this had provided an additional burden for firms with different types of regulatory business.

He explained that the most important change since the break-up of the Financial Services Authority ("FSA") had been the focus on the conduct agenda. He stated that conduct had previously been seen as a compliance issue and delegated to compliance functions, but now it was very much on the agenda of executive management and firm boards.

He provided some observations as to how firms have been ensuring that they comply with the FCA's conduct requirements. The FCA's expectation is that firms will treat customers fairly whilst maintaining prudential strength and achieving an adequate return for their owners. The interests of customers should never be subjugated either to prudential strength or the interests of shareholders. He went on to identify specific areas of good practice, showing how firms have been tackling these issues. He explained that business models which have a lower cost base, which do not overly rely on profits from back book customers to subsidise new customers, which do not have high degrees of cross-subsidisation between products and do not rely on products which are highly profitable or which involve rapid growth rates, are demonstrably "safer" from a conduct perspective.

Another key area in ensuring good conduct performance which Mr. Adamson identified was culture. In his view, good culture requires a more hard-edged embedding of business practices which define how decisions will be made through the firm at critical points of engagement with customers or when dealing in markets. He stated that clear and ongoing leadership from the top of the organisation, constant re-enforcement, proper incentive structures, effective performance management and penalties for not doing the right thing were the most critical drivers for good culture.

In addition, he explained that product design is also key to ensuring good conduct compliance. Firms should work hard to understand the needs of particular customer groups, and work through what a fair outcome for such customers means for a particular product. Stress testing how the product performs in different scenarios and whether it constitutes good value to the customer should also be considered.

Firms should review whether consumers' behavioural biases are being exploited in the sales process. He stressed that product governance was equally as important as the design. The FCA does not expect boards to approve every product, but it does expect them to understand how and where the firm makes money. They need to be fully engaged to understand what the conduct implications could be and how customer outcomes are tracked across the product life-cycle. Mr. Adamson explained that boards must also have strong oversight over the firm's control functions.

3. DAVID LAWTON SETS OUT NEW INFRASTRUCTURE FOR CAPITAL MARKETS

On 16 May 2014, the FCA published a key note speech given by David Lawton, Director of Markets at the FCA, at the Economist Bellwether Conference. In the speech, he offered some reflection on what makes for successful capital markets and what all of the regulatory bodies across the globe have been trying to achieve since the financial crisis. He also mentioned some of the key challenges which firms would be facing shortly as a result of these changes.

He explained that capital markets firms face "a significant period of adjustment and change", following the implementation of the European Markets Infrastructure Regulation ("EMIR") over the course of last year, and the new Markets in Financial Instruments Directive II legislative package ("MiFID II). He explained that regulators had entered an intense period of implementation and firms will need to adapt their business models to meet regulators' and policy makers' expectations, and put customers at the heart of their businesses. He stressed that the implementation of MiFID II, which contains approximately 100 mandates to the European Securities and Markets Authority ("ESMA") to draft detailed and directly applicable rules would be a major project for the FCA during 2014 and 2015.

He stressed that one of the key challenges would be to ensure that there was the correct balance between consumer protection and market integrity, whilst at the same time looking at the practical issues. Mr. Lawton noted that firms would need to make changes to their structures, including the likely need to spin out proprietary trading from banks and investment banks to address concerns about complex and stability. He thought that banks would have to re-assess

business lines in the light of the new prudential and market regimes, which would change the way that they allocate their own working capital and, also, how significant amounts of money would be placed in the market in the future. By way of example, he mentioned that a number of major investment banks had already planned to scale back activities in the commodities markets significantly.

Mr. Lawton stated that in future, there would be greater standardisation of financial instruments and greater transparency in the markets for all parties concerned. However, he mentioned that these changes would bring operational risks with them. Therefore, changes would not be confined to firms but also to the markets themselves.

He stressed that ensuring market participants exhibited the right behaviours was as important as creating the right rules and regulations. For capital markets, ensuring that customers are put at the heart of business models means ensuring that firms are best addressing the needs of their customers for suitable and affordable funding and risk management services. He stated that there were still misaligned incentives in the market place and many instances of poor practice across the market. The FCA will be working with firms and boards in future to encourage adaptation, as well as the highest cultural and ethical values.

UK PUBLICATIONS

1. FCA PROVIDES UPDATE ON REVIEW OF MONEY LAUNDERING CONTROLS FOR SMALLER BANKS

As part of its Regulation Round-up for May 2014, which was published on 27 May 2014, the FCA provided an update on its thematic review of smaller banks' anti-money laundering ("AML") controls. The Financial Services Authority ("FSA") had previously visited some of these firms during its thematic review of 2011.

In the update, the FCA explained that it has continued to find significant weaknesses in many money-laundering risk assessment and management policies and procedures at these smaller banks. Weaknesses were particularly obvious in relation to those controls which help banks identify and manage high-risk customers and monitor transactions.

The FCA also used the Round-up as an opportunity to reiterate that firms which are subject to its AML rules must put in place and maintain the policies and procedures to identify, assess and manage money-laundering risk effectively. The FCA stated that its visits were on-going and that it will publish its findings in a report which is due out later this year.

2. FCA PUBLISHES POLICY STATEMENT ON DEALING COMMISSION RULES FOR INVESTMENT MANAGERS

On 8 May 2014, the FCA published a Policy Statement (PS14/7) on the changes it had previously proposed to the use of dealing commission rules for investment managers. The proposals had been set out in a Consultation Paper in November 2013 (CP13/17) and recommended changes to Chapter 11.6 of the FCA Conduct of Business Sourcebook ("COBS") in the FCA Handbook. The new changes to the rules are designed to ensure that investment managers make appropriate judgements and seek to control costs to clients when using dealing commissions to pay for research goods and services. The main proposals in the Consultation Paper included:

- clarifying the criteria for research goods and services which can be purchased by investment managers with dealing commission paid from customers' funds;
- defining "corporate access" and providing guidance on how investment managers should treat corporate access under the use of dealing commission rules; and

- guidance on making mixed-use assessments where investment managers purchase bundled brokerage services which contain both research and non-research elements, to ensure that only research is paid for with dealing commission.

In the Policy Statement, the FCA responded to the feedback it received on the Consultation Paper and explained that it has made some minor amendments to the final rules. However, the original proposals remain mostly untouched. The FCA also mentioned that issues relating to wider reform of the regime will be considered as part of a further update later in the year, which will report on the findings of the FCA's thematic supervisory work and discussions with both buy-side and sell-side firms. The supervisory work involved was carried out between November 2013 and February 2014.

3. FCA ISSUES GUIDANCE CONSULTATION ON TRANSACTION REPORTING USER PACK

On 8 May 2014, the FCA issued a Guidance Consultation on the latest version (version 3.1) of the transaction reporting user pack ("TRUP"), which relates to Chapter 17 of the Supervision Manual of the FCA Handbook. The TRUP offers guidance to firms on their transaction reporting obligations under the Markets in Financial Instruments Directive ("MiFID").

The latest version of the TRUP was published in March 2012, following a previous consultation. The FCA has decided to initiate this consultation in order to clarify further some of the guidance in the TRUP, as well as to propose changes to the text, and correct some minor errors.

Specifically, the FCA is looking to clarify:

- that the transaction reports a firm sends for its transactions must accurately reflect the change in position for the firm and its clients resulting from the transactions;
- that a firm hitting its own order on a trading venue should report the resultant transaction;
- how the unit price should be reported for different instruments;
- how to report the venue for a transaction; and
- transaction reporting arrangements within firms, so as to make it clearer which steps the firm should take to comply with its obligations under the FCA rules.

Minor errors and some out of date information will also be updated. The FCA has requested any comments on the Guidance Consultation by 4 July 2014.

4. FINALISED GUIDANCE ON POST-RDR UNIT CLASSES PUBLISHED

Following the consultation on changing customers to post-Retail Distribution Review ("RDR") unit classes back in October 2013 (GC13/7), the FCA published its Finalised Guidance on the topic on 6 May 2014 (FG14/4). Along with the Finalised Guidance, the FCA also published a summary of feedback to the Guidance Consultation, which set out the changes in the Finalised Guidance as a result of the comments made during the consultation.

The requirements of the RDR have resulted in firms having to adopt new unit classes, often referred to as "clean" unit classes in collective investment schemes, which bear a lower annual management charge and exclude the portion of the charge that was formally rebated to advisors in line with the ban on commission payments. The guidance sets out the FCA's expectations in relation to firms which are involved in the transfer of investors from pre-RDR unit classes to post RDR unit classes, and has been published as a result of a number of queries from stakeholders and some evidence of uncertainty in the procedure to adopt when converting customer to new unit classes.

The Finalised Guidance will be of most use and relevance to platforms and nominees, product providers and financial advisers. It provides guidance on the following points:

- The move to clean unit classes will be accomplished in most cases by converting units (replacing one unit with another of a different unit class) rather than switching (which involves cancelling one unit and issuing another). This right is established under rule 6.4.8R of the Collective Investment Schemes Sourcebook ("COLL").
- Authorised fund managers, platforms and nominees must consider a number of points before proceeding with conversion, including the client's best interests rule (as set out in the Conduct of Business Sourcebook ("COBS") at rule 2.1.1R), clear disclosure of any charge as required by COBS 6.1E.1R, prior notification of any proposed conversion and treatment of investments where the client objects to a conversion, and the approach to be adopted by nominees in relation to any conversion.

The guidance also discusses conversion procedures for direct unit holders and other specific matters in relation to the conversion process. The FCA has published a useful web page which sets out various FAQs in relation to changing customers to post-RDR unit classes and the accompanying Finalised Guidance.

5. FMLC PUBLISHES LETTERS ON THE DEFINITION OF FX CONTRACTS UNDER MIFID AND OTC DERIVATIVES REFORMS

On 30 May 2014, the Financial Markets Law Committee ("FMLC") published two letters dated 16 May 2014. The first was sent to the Financial Stability Board ("FSB"), in response to the FSB's seventh progress report reviewing how standard-setting bodies, national and regional authorities and market participants are meeting the G20 commitments for reforms to global OTC derivatives markets. The progress report was published in April 2014.

The FMLC notes that the implementation of regulatory requirements in a consistent and coordinated fashion across jurisdictions remains a primary concern for many authorities and market participants. It states that inadequate consistency and co-ordination in implementation is likely to give rise to issues of legal uncertainty, excessive compliance costs, inadvertent non-compliance, regulatory arbitrage and curtailment of business within specific jurisdictions. Therefore, it endorses the recommendations to address issues of cross-border implementation in the FSB's report. In particular, it agrees with the call for clarity on the criteria for equivalence and comparability.

The FMLC believes that significant political will among executives of the G20 jurisdictions, together with sufficient trust and confidence between national supervisors in relation to their respective approaches to supervision and enforcement, are the only ways to achieve cross-border consistency and co-operation. The letter notes the progress made by members of the OTC Derivatives Regulators Group to develop a joined-up approach to equivalence and substituted compliance, as set out in the FSB report, but it encourages the FSB to continue to work with national policy makers and regulators to develop more detailed methodologies in this area.

The FMLC also published a letter, which it sent to the European Commission, concerning the Commission's April 2014 consultation on foreign exchange ("FX") financial instruments and their definition within the Markets in Financial Instruments Directive ("MiFID"). The letter agrees with the Commission's proposal to harmonise the application of the definition of a financial instrument under MiFID, since this would make it easier to determine what constitutes an FX financial instrument and what does not.

However, the FMLC reserves its position with regard to future issues of legal uncertainty which may arise as a result of the adoption of any such harmonising measure. The FMLC invites the European Commission to discuss the issues raised in the letter further.

CONSUMER CREDIT

1. CONSUMER CREDIT FIRMS TOLD TO RAISE STANDARDS

The FCA published a press release on 16 May 2014, in which it stated that Consumer Credit firms must do more to ensure that their advertisements and promotions do not mislead potential customers. The FCA found that one in five advertisements from Consumer Credit firms, for products including payday loans, debt management and motor finance, fell short of the FCA's financial promotion expectations. However, many firms did make changes to their advertisements once they were informed of the issues. In order to obtain these statistics, the FCA had reviewed 554 Consumer Credit firm financial promotions and advertisements across a range of media including print, online, in-store and direct mail. The majority of advertisements which failed to meet the FCA financial promotions requirements came from the payday lending sector.

The FCA rules on financial promotions provide that any advertisement must be clear, fair and not misleading for consumers. During the review, the FCA found that in a number of cases, key information which should have been included prominently in the advertisement was either missing or difficult to find.

The FCA also found that consumers were being requested to hit the "apply" button for a product before being given the option to review important information. It also found that firms were targeting young audiences with promotions for products which consumers must be over the age of 18 to use, such as distributing branded colouring-in sheets with their pamphlets for high-cost, short-term credit. A number of firms also stated that their products would help repair credit ratings and, in some cases, that products would clear a customer's debt, when in fact use of the product would simply substitute one debt for another.

In the press release, Clive Adamson, FCA Director of Supervision stated that financial promotions in the consumer credit sector must enable customers to make informed decisions, and more must be done to ensure that advertisements are fair, clear and not misleading. The FCA stated that it will continue to monitor firms and work with them in this area to ensure that the rules are met.

2. TOUGHER FCA RULES FORCE FIRM TO WITHDRAW FROM LOANS MARKET

In a press release published on 13 May 2014, the FCA announced that Cheque Centres Limited, a major payday lender in the United Kingdom market with 451 branches nationwide, has agreed to stop selling single instalment payday loans voluntarily, and has agreed to change the way it offers loans and treats customers in future. It has also agreed with the FCA to suspend debt collection telephone calls to customers until it has reviewed and improved its processes, although it will continue to take payments from customers in line with the pre-agreed payment dates. It has also agreed to retrain its staff to instill a "customer-comes-first" culture and will rework its policies and procedures so that they are fully aligned with FCA rules and requirements.

The Office of Fair Trading ("OFT") discovered the unsatisfactory practices prior to the change of regulator to the FCA on 1 April 2014, and in late March Cheque Centres Limited was sent a letter setting out the OFT's serious concerns. Following receipt of the letter, the firm agreed with the FCA that it needed to make changes to its business model immediately. Martin Wheatley, CEO of the FCA, said that this was an early victory for the regulator and that it had made its tougher expectations clear to Cheque Centres Limited. He reiterated that firms would need to improve their operation and business practices dramatically or exit the market. It is very likely that other firms will follow in exiting the market.

Under the terms of the agreement with the FCA, Cheque Centres Limited will be required to appoint an independent Skilled Person under Section 166 of the Financial Services and Markets Act 2000 ("FSMA") in order to assess how effective its controls are in achieving fair outcomes for customers. The appointment of the Skilled Person is to be at a date determined by the FCA in the future.

INVESTIGATIONS AND ENFORCEMENT

1. LONDON GOLD FIXING FAILINGS LAND BARCLAYS WITH £26M FINE

On 23 May 2014, the FCA published Final Notices which it has issued to Barclays Bank plc and to Daniel James Plunkett for failings relating to the London Gold Fixing. The bank was fined £26,033,500 for failings during the period 7 June 2004 to 21 March 2013. Because Barclays agreed to settle at an early stage of the FCA investigation, it qualified for a 30% discount under the FCA settlement procedures, without which it would have been fined £37,190,800. Mr. Plunkett was fined £95,600 and banned from performing any function in relation to any regulated activities carried on by authorised or exempt persons, or exempt professional firms. He agreed to settle at an early stage as well, and was therefore able to qualify for the same 30% discount under the settlement procedures. Had he not done so, the fine would have been for £136,600.

The Bank was found to have breached Principle 3 (Management and Control) and Principle 8 (Conflicts of Interest) of the FCA's Principles for Businesses. Through inadequate systems and controls Barclays was unable to manage the way its traders' participated in Gold Fixing, and was unable to train staff adequately on the precious metals desk. The bank also failed to implement adequate systems for monitoring traders activity, and also failed to manage the obvious conflict of interest, which arose from Barclays participating in Gold Fixing, whilst at the same time selling customers options products which referenced, and were dependent on, the price of gold fixed.

Mr. Plunkett breached Statement of Principle 1 of the Statements of Principle for Approved Persons, set out in the FCA Handbook, since he was unable to act with integrity whilst carrying on his Controlled Function. He put his own interests ahead of customers and subsequently tried to hide his conduct. He breached Statement of Principle 3 by failing to observe the proper standards of market conduct.

The FCA believed that his actions were particularly serious since they had the potential to affect the Gold Fixing adversely, and the UK and international financial markets. A further consideration was that his actions occurred on the day following the FCA's publication on LIBOR and EURIBOR action against Barclays.

2. FCA FINES MARTINS BROKERS (UK) LIMITED FOR LIBOR MISCONDUCT

The FCA published a Final Notice, which imposed a fine of £630,000 for misconduct in connection with the London Interbank Offered Rate ("LIBOR") on Martins Brokers (UK) Limited, in accordance with Section 206 of the Financial Services and Markets Act 2000 ("FSMA"). In the notice, the FCA stated it would have fined Martins £3,600,000, but given the financial circumstances of the firm and the fact that it would be unable to pay a penalty of this amount, it reduced the fine by 75% and agreed to accept payment in instalments over three years.

Martins Brokers was found to have breached Principle 5 (Market Conduct) of the FCA's Principles for Businesses, as its brokers had colluded with a trader at UBS AG in an attempt to influence Japanese Yen ("JPY") LIBOR submissions made by banks, so that they could manipulate the JPY LIBOR rate. In addition, brokers at Martins Brokers knew that the levels requested by the UBS trader were incorrect or misleading. In particular, on or around the dates when the level of the

final published JPY LIBOR rate was of particular significance to the profitability of the UBS trader's trading positions, the brokers:

- requested that the panel banks make specific JPY LIBOR submissions at levels which would benefit the UBS trader.
- created false orders, with the aim of influencing the panel banks' views of the cash market, so as to make submissions which would benefit the trader; and
- provided misleading information to the banks which did not reflect independent assessment of the market but instead took into account the JPY LIBOR levels requested by the UBS trader.

The FCA also found that Martins Brokers breached Principle 3 (Management and Control), as it failed to have adequate risk management systems or effective controls in place to monitor and oversee its broking activity. It was found to have minimal policies and procedures to govern individual brokers' behaviour, no effective compliance function and culture, and very limited training for brokers. The FCA noted in a press release published at the same time as the Final Notices that Martins Brokers is the second inter-dealer broker and the sixth firm overall, to be fined by the FCA for LIBOR-related failures.

3. FCA BANS UBS TRADER FOR DISHONESTY

The FCA published a Final Notice relating to Mr. John Hughes (dated 29 April 2014) 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 stated that it had doubts about his fitness and propriety to carry out his role as a senior trader at UBS AG, due to concerns over his integrity.

During the period January 2011 to September 2011, Mr. Hughes worked as the most senior trader on the exchange traded funds desk of the Global Synthetic Equities division of the London branch of UBS. At this time, Kweku Adoboli, who was another trader on the desk, carried on unauthorised trading which led to losses amounting to $2.3 million. In November 2012 UBS itself was fined £29.7 million for systems and controls failings which led to the unauthorised trading mentioned.

Part of the unauthorised trading involved creating and using an undeclared fund of profits, termed the "Umbrella", which had the effect of manipulating reported profit and loss on the exchange traded funds desk. Mr. Hughes was aware of the existence of the Umbrella and made enquiries about its size and influenced decisions about how it would be funded and used. The FCA found that he did not consider the Umbrella to be honest and knew that UBS would not have authorised its use. Therefore, his conduct was deemed dishonest and demonstrated that he could be fit or proper to perform any functions in relation to regulated activities carried on by an authorised or exempt person.

Tracey McDermott, the Director of Enforcement and Financial Crime at the FCA, pointed to the fact that Mr. Hughes should have been acting as a role model to others, given that he was the most senior person on the desk. She reminded readers that Approved Persons should operate to the highest standards of integrity, which involves doing the right thing and challenging and/or blowing the whistle on those who do not.

4. UPPER TRIBUNAL UPHOLDS THE FSA'S HANNAM MARKET ABUSE DECISION

The Upper Tribunal (Tax and Chancery Chamber) issued its decision in the case of Ian Charles Hannam v FCA (FS/2012/0013) on 27 May 2014. The Financial Services Authority ("FSA") (the predecessor regulator to the FCA) issued a Decision Notice in April 2012, which set out its intention to fine Mr. Hannam £450,000 for engaging in two instances of improper disclosure in

breach of Section 118(3) of the Financial Services and Markets Act 2000 ("FSMA"). During the time Mr. Hannam was said to have engaged in these two instances of market abuse, he was the Chairman of Markets at JP Morgan and Global Co-Head of UK Capital Markets at JP Morgan Cazenove.

Mr. Hannam decided to challenge this Decision Notice and the Upper Tribunal upheld the FSA's original decision. It found that he had improperly disclosed inside information in emails sent by him or on his behalf and had, therefore, engaged in market abuse within the meaning of Section 118(3) of FSMA. The decision stated that he would not be able to use the defence under Section 123(2)(a) of FSMA, since this would only be open to him if it were his belief, on reasonable grounds, that his behaviour did not amount to market abuse and this was not so. However, the FSA had not claimed at any point in its original decision, that Mr. Hannam deliberately set out to commit market abuse or lacked honesty or integrity. The Decision Notice explained that, due to his level of experience, seniority and influence, it considered his actions to be serious. Mr. Hannam will find out the nature of the penalty to be imposed as a result of his actions at a later date, and the Tribunal has sought submissions from both Mr. Hannam and the FCA on this issue. Mr. Hannam has the right to appeal the decision.

In a FCA press release dated 28 May 2014, the FCA explained that the standard of proof applicable in market abuse cases is the civil standard, and drew readers' attention to the tribunal's comments on the standards of behaviour it expects of professional advisors when handling inside information.

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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