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July is usually the time where we see a marked increase in output from the United Kingdom ("UK") regulators prior to their summer break. This July has proved no exception, with both the Prudential Regulation Authority ("PRA") and the Financial Conduct Authority ("FCA") issuing their large joint consultation paper on the new Senior Persons and Certification Regime before the holidays. In line with this, both have also consulted on remuneration structures for dual-regulated firms and the PRA has grabbed further headlines on remuneration with its final Policy Statement on bonus "clawback" arrangements. The FCA has also launched various other discussion papers, guidance consultations and thematic reviews in many different areas. The enforcement side has barely been quieter, with the FCA handing a huge fine to Lloyds Banking Group for LIBOR-related failings, and using its suspension power for the first time.

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

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SPEECHES

1. Tracey McDermott sets out FCA enforcement priorities

On 22 July 2014, the Financial Conduct Authority ("FCA") published a speech delivered by Tracey McDermott, Director of Enforcement and Financial Crime at the FCA, at the Thomson Reuters Compliance and Risk Summit in London. The speech, which is the first given by Ms McDermott since October, provided a synopsis of the key actions and activities with which the Enforcement Division has been involved since April 2013. However, the main theme of the speech related to "sustainability", encompassing the areas of focus for the FCA with which firms need to get to grips to ensure that the financial services industry remains "truly sustainable".

She emphasised that there were five key lessons which firms should have learned from the FCA's enforcement work over the past year.

- **the FCA cares about consumer outcomes** - too often firms have not treated their customers fairly and misleading advertisements, mis-selling, poor complaints handling and clear examples of wholesale market misconduct have all featured in FCA enforcement cases recently;
- **the FCA cares about the integrity of markets** - the FCA continues to focus on insider dealing and proper control of inside information within the United Kingdom, but Ms McDermott also reiterated that the FCA will work with overseas regulators and law enforcement agencies to bring wrongdoers to account;
- **the FCA cares about firms' cultures** - the FCA will continue to scutinise firms' cultures, including whether the firm rewards what it says it values, whether it knows who is accountable for what and whether such people are actually held to account. She mentioned that there would be a particular focus on incentives schemes going forward;
- **the FCA has high expectations for Approved Persons** - the FCA continues to expect Approved Persons to act with integrity at all times and where this is not the case it will take enforcement action. It expects individuals to cooperate with any investigations openly and honestly and to take sanctions seriously;
- **the FCA expects firms to be open and do what they say they will** - the FCA must be able to rely on assurances given to it by firms, and it expects them to take note of previous enforcement actions and to learn lessons from these. She said that such cases provide stark examples of mistakes and that firms have the advantage of being able to review these and to fix similar issues before things go wrong for them.

Ms McDermott also mentioned a number of the FCA's priorities in the future, including:

- more accountability from people in senior positions within large institutions;
- remuneration schemes and incentivisation of staff;
- how well firms analyse consumer complaints connected with PPI; and
- assessment of anti-money laundering processes and controls in major banks and those staff responsible for them.

2. Andrew Bailey discusses Capital Adequacy

On 10 July 2014, Andrew Bailey, Deputy Governor of the Bank of England and Chief Executive Officer of the Prudential Regulation Authority ("PRA") delivered a speech at Bloomberg on capital adequacy within banks, which made reference to the previous failings, as well as the progress of reform over the last few years. The main purpose of the speech was for Mr Bailey to discuss the remaining design questions for the capital adequacy regime which have not yet been settled.

He mentioned that a number of major UK banks and building societies have taken actions which have put them on course to meet or already ahead of the Bank of England Financial Policy Committee's ("FPC") recommendation that the largest UK banks and building societies meet a minimum seven percent Common Equity Tier One ratio as required in the EU rules to implement Basel III. He also noted that Asset Quality Reviews ("AQRs") are an important element of the Basel III supervisory framework. These would be undertaken either by or at the request of supervisors like the PRA. Mr Bailey explained that AQRs are designed to assess the more structural features of loan books as well as their performance, including whether forbearance is being applied by the lender. These reviews should not reveal anything which isn't already known, but he believed that "experience shows that we are not there yet".

He also expressed a belief that resolution and gone-concern loss absorbency is the key outstanding issue on the current agenda for capital adequacy reform. In his view should the regulators not succeed in dealing convincingly with the "too big to fail" problem, the boundary between going and gone concerns would need to be re-set, and the former would need to be strengthened.

Mr Bailey explained that there is no single "right" approach to assessing capital adequacy. He made it clear that various approaches including: risk-based; stress tests; and leverage ratios, all have their strengths and weaknesses. Each one of the approaches would complement the other. He mentioned that the FPC would shortly be consulting on the scope and form of the leverage ratio's application.

Mr Bailey also said that a major lesson from the failure of Basel II is that using models and stress tests effectively requires intensive development and maintenance by firms, as well as a highly skilled body of supervisors and a regulatory regime where judgement can be used. Regulators must have the capacity to withdraw the permission given to firms using a particular model where the model is considered to be inadequate or the firm is unable to use it safely. He pondered whether regulators should supplement the use of firms' models by developing their own such models. He cited the example of the United States which has done so, whereas the UK regulator has pushed banks to improve their own models and to be more realistic about what they can and cannot do. He believes that there will be greater international convergence of approaches and use of models in the future.

3. FCA Director of Competition speaks at launch of competition review for wholesale sector

On 9 July 2014, the FCA published a speech delivered by Mary Starks, Director of Competition at the FCA. The speech was delivered at the Chartered Institute of Securities and focused on the announcement that the FCA has embarked upon a review of competition in the wholesale sector. She explained that the review was to be an "exploratory exercise" that will enable the FCA to determine where competition might not be working effectively in the sector, and to identify any areas which could merit further investigation in a full market study.

Ms Starks explained that wholesale financial markets were crucial to the UK economy and to international markets as well. She alluded to the fact that the FCA has recruited a large amount of competition expertise over the last few months and that wholesale markets in the UK had not yet been scrutinised from a competition standpoint. She emphasised that the review is also completely independent from the Fair and Effective Financial Markets Review announced by the UK Government last month, which will focus mainly on trading practices and conduct.

She stated that the review is to be wide ranging, covering activities relating to the markets and market infrastructure itself, asset management, corporate banking and investment banking. The broad scope is intended to provide the FCA with a better idea of where significant issues could lie throughout the entire investment chain. Ms Starks explained that the FCA's remit on competition involved it being proactive in routing out competition issues so that they could be addressed early on. However, she mentioned that certain areas would be excluded from the review, including credit rating agencies, payment systems and insurance. She emphasised that the FCA was looking to have an open approach in relation to the review and would not ignore evidence obtained from areas outside scope.

Ms Starks stated that the FCA would be looking at any feature or behaviour that could inhibit or distort the healthy functioning of competition in the market. She stressed that the FCA would not be looking at competition in isolation, but would also be looking for evidence and views on any associated consumer detriment. She mentioned that the issue which the FCA would be considering is the cross-selling and bundling of products and services. She said that the FCA would need to understand not simply how competition works, but also what impact it would have on consumers in this area. Another area to be explored was conflicts of interest and principle-agent issues, particularly in relation to incentives for investors versus their asset managers in terms of ancillary services.

Another area upon which Ms Starks touched was barriers to entry or expansion within the sector which could significantly impede the competition. She explained that the FCA aimed to commence work on a detailed market study in early 2015, once all responses have been received and analysed.

4. Martin Wheatley speech on dealing commission

On 10 July 2014, the FCA published a speech by Martin Wheatley, its CEO, given at the FCA conference on dealing commission in London. In the speech he made some broad observations regarding asset management in the UK and on the European context. Mr Wheatley stated his desire that the UK asset management industry should help to “shape the conversation” of reform in the industry, rather than being led by it. He expressed a desire that this should be done in tandem with the UK regulators.

With regard to the EU content, he mentioned that the European Securities and Markets Authority (“ESMA”) had now published its consultation on the Markets in Financial Instruments Directive II, which indicated a significant restriction on the inducements a portfolio manager may receive when providing MiFID investment management services. Indeed, the Consultation Paper prevents the receipt of most research in return for dealing commissions. He stressed that there has been broad support among EU regulators for the proposals and that the FCA will continue to work closely with firms to ensure that these new rules deliver the best outcomes for investors. He also urged asset managers to see this as an opportunity to deliver better transparency, as well as value for money for customers within the EU, rather than look to avoid any rules by relocating to a different jurisdiction. He also urged asset managers to discuss any issues with the FCA before the discussion period of the document closes on 10 October.

On the domestic front, he mentioned that the dealing commission payment mechanism and funding model for research does not work in the best interest of investors. He praised the fact that these issues were being raised by all players, including the FCA and firms - both buy and sell-side - and research companies. He said that the FCA would not be making a decision unilaterally, and would continue to be open and transparent with the industry on dealing commission. He ended by requesting that both the regulators and the industry maintain momentum in the search for a solution to the problem.

UK PUBLICATIONS

1. FCA publishes new Guidance Consultation on its approach to retail investment advice

On 11 July 2014, the FCA issued a new Guidance Consultation with the intention of clarifying the boundaries in relation to retail investment advice and reviewing the barriers to market development. The Guidance Consultation concentrates on setting out what is and what is not a personal recommendation with regard to retail investments and what scope there is for firms to provide a range of services in relation to those products. Specifically, the paper covers the following:

- Clarifying the current position on personal recommendations in relation to retail investment products and bringing together in one place the existing FCA guidance available to firms (particularly on simplified advice), as well as including guidance from the Committee of European Securities Regulators ("CESR") and ESMA.
- Setting out the results of the thematic work the FCA has carried out on examining the new distribution models which firms are using to sell investment products to customers, some of which offer personal recommendations, whereas others do not.
- Providing a synopsis of customer research carried out in relation to this project, in order to understand how customers use services without a personal recommendation, including their perception of the service they receive.
- Setting out detailed examples of business models, together with a view on whether the FCA believes the specific model to be regulated advice or not. The FCA is also looking to encourage innovative business models which are in the interest of consumers.

The FCA states that it wants to receive views on the boundary between sales models which provide personal recommendations on retail investments and those which do not. It stresses that a well-functioning retail investment market needs different delivery mechanisms to be fully effective for a broad range of potential investors. It recognises that firms require greater clarity as to how they can help customers to make informed decisions without stepping over the boundary into providing a personal recommendation.

In conjunction with the Guidance Consultation, the FCA has also published two further documents, a report on the thematic work mentioned above and the results of its consumer research. The FCA has requested responses to the consultation by 10 October 2014.

2. UK Regulators issue joint consultation on new Senior Persons and Certification Regime

The PRA and FCA jointly published a Consultation Paper on 30 July 2014, which outlines their proposed new regulatory framework for individuals (FCA CP14/13 and PRA CP14/14). The PRA, together with the FCA, strongly argue that holding individuals to account is crucial for effective regulation. The joint paper proposes a new framework to clarify the lines of responsibility at the top of UK banks, building societies, credit unions and PRA-designated investment firms, and to encourage individuals to take a greater responsibility for their actions. The new regime will make it much easier for both firms and regulators to hold individuals to account. The proposals will also cement significant changes to the way in which individuals working for these firms are assessed and held accountable for the roles that they perform. The new regime would replace the current Approved Persons regime for a specified set of individuals. The proposals include:

- The Senior Manager's Regime, which will apply to individuals, subject to regulatory approval, carrying on a range of senior management responsibilities known as significant management functions ("SMFs"). Firms will be required to vet these individuals' fitness and propriety on a regular basis, even following approval from the regulators. Firms must also prepare a statement of responsibilities setting out the areas which the SMF will be responsible for managing, and prepare, maintain and update a responsibilities map which describes the firm's management and governance arrangements. This regime will apply to a narrower range of individuals in a firm than the current Approved Persons regime.
- The Certification Regime, which will look to ensure that firms assess on a regular basis the fitness and propriety of specific employees in positions (known as significant-harm functions)

where decisions which they make could pose a risk of significant harm to the firm or any of its customers. The standard of fitness and propriety will remain similar to that of the current Approved Persons regime. The new regime will apply to specific members of staff who meet criteria set by each regulator, but who are not performing SMFs. Employees covered by this requirement will not be approved directly by the regulators, but via an internal assessment process at the firm, signed off by a senior manager.

- New Conduct Rules, which are high-level principles, setting out the standards of behaviour expected of employees. The new rules are not limited to conduct of business and attach to professional conduct in the widest possible sense. This new regime will replace the current Statements of Principle and Code of Practice for Approved Persons at firms affected by these proposals. The FCA has stated that it will apply these rules to the majority of employees within relevant firms based in the UK.

The regulators have requested comments on the proposals up to 31 October 2014. Following this, the PRA and FCA are expected to publish separate policy statements, including final rules and relevant guidance together with supervisory statements early in 2015.

3. FCA issues feedback paper on the use of dealing commission regime

On 10 July 2014, the FCA published a new Discussion Paper (DP14/3) on the use of dealing commission and the research market in relation to investment managers. The Discussion Paper is part of a wider review on whether further reform is required to the dealing commission regime in the medium term to deliver a more transparent and efficient asset management sector for the benefit of end investors. It reports on the recent supervisory findings of the FCA. It also provides feedback from a series of roundtable and bilateral discussions with stakeholders which have examined how the use of dealing commission, specifically for the purchase of research, functions at the moment.

The thematic supervisory review was conducted between November 2013 and February 2014 and covered both investment managers and brokers. The review found that:

- while some investment managers have improved their governance over the purchase research with dealing commissions, there are still too few firms applying sufficient rigour in assessing the value of the research services they use;
- there is a lack of price transparency in the market for research due to the way that the market has evolved, and the bundled supply of execution and research services by brokers make price discovery difficult.

The FCA concludes that the most effective option to address the continued impact of the conflicts of interest created for investment managers by the use of a transaction cost to fund external research would be to unbundle research from dealing commissions. The FCA argues that this would drive more efficient price formation and competition in the supply of research, removing the current opacity in the market. The FCA hopes that this reform can be achieved across the EU.

The Discussion Paper also sets out how both the FCA's current regulatory framework, together with market practices in this area, could be affected by the incoming MiFID II reforms which have to be implemented by January 2017. The FCA is of the view that these reforms will effectively mean the unbundling of research from dealing commission on an EU-wide basis, and it applauds this endeavour.

The FCA mentions that it is not consulting on detailed policy proposals at this time, since they would be closely linked with any EU proposals. However, it believes that the responses to this Discussion Paper will help whether and how further changes should be made to the existing regime currently in place, whilst it considers the implementation of MiFID II. The FCA has requested responses to the Discussion Paper by 10 October 2014.

4. PRA publishes final policy on bonus "clawback" arrangements

The PRA published its final Policy Statement on bonus clawback arrangements on 30 July 2014 (PS7/14). The document sets out the PRA response to feedback received from a Clawback Consultation Paper (CP6/14) as well as finalised rules on clawback arrangements. These proposals looked to extend the Remuneration Code, as set out in Chapter 19A of the Senior Management Arrangements, Systems and Controls Sourcebook in the PRA Rules, to require all firms with PRA permissions to amend employment contracts to ensure variable remuneration that had been vested may be clawed back from individuals where necessary. The PRA has admitted in the Policy Statement that it has revised its proposals in light of certain responses to CP6/14. The final rules on the clawback arrangements are set out in Appendix 1 of the Policy Statement and are due to come into force on 1 January 2015.

With regard to the grounds for applying clawback, many responses noted the potential difficulties of enforcing clawback with a higher burden of proof expected to be required in such cases. The PRA recognises that the mechanism is most appropriate where an individual has some responsibility or culpability for circumstances giving rise to the grounds for action. It has, therefore, narrowed the grounds to exclude a material downturn in financial performance. The final rules clarify that firms may take a proportionate approach to the enforcement of clawback based on the assessment of individual cases.

The final rules also require variable remuneration to be subject to clawback for an overall period of seven years from the date of any award. This will make the period of clawback marginally longer in relation to the un-deferred part of awards, but will reduce its application for most of the deferred portions. This will enable firms to adopt longer deferral periods, lengthening the period subject to malus, but reducing correspondingly the period for which clawback applies. The PRA expects that firms may wish to apply clawback only to the extent that the scope for malus is exhausted or deemed insufficient.

In relation to commencement, the PRA had wished to ensure that firms apply clawback to awards made prior to 1 January 2015, but which vest after that date. However, the final rules require the application of clawback only to awards made on or after 1 January 2015.

In line with the PRA's work on the new Senior Managers Regime it also proposes to introduce a requirement for possible extension of the clawback period for up to three years for senior managers in banks where there are outstanding investigations underway at the end of the seven years.

5. PRA and FCA publish joint consultation on new remuneration rules for the banking sector

On 30 July 2014, the PRA and FCA together issued a Consultation Paper on new remuneration rules to strengthen the alignment of risk and reward, discourage excessive risk-taking and encourage more effective risk management (PRA CP15/14 and FCA CP14/14).

The joint consultation looks to make changes to the Remuneration Code in Chapter 19A of the Senior Management Arrangements, Systems and Controls Sourcebook ("SYSC"). SYSC 19A is currently part of both regulators' rules and applies to banks and building societies, PRA - authorised investment firms and other specific investment firms caught by the recast Capital Requirements Directive ("CRD IV"). The changes proposed by both regulators mostly mirror each other with the aim of ensuring consistency so as to help firms to implement the proposed changes as efficiently as possible.

Some of the key proposals relate to:

- Deferral, where the PRA and FCA propose a two-level approach offering a specified minimum deferral and vesting period for senior managers and a separate specified minimum period for all other material risk-takers.
- Clawback under which the PRA has issued a separate policy statement on bonus clawback (PS7/14). The FCA is consulting on the rules set out in PS7/14 as part of this consultation.
- The PRA and FCA also propose to introduce a rule to make it explicit that non-executive directors should not receive variable remuneration in respect of activity carried out in their roles as non-executives which is already common practice in the UK.

The FCA also considers that sales-based incentives could lead to conduct failings and poor conduct outcomes for retail customers. It notes that applying the new Remuneration Code to individuals that individual or business unit level would be far in excess of agreed international standards on remuneration. However, it intends to revisit incentive schemes for sale staff whilst implementing MiFID II and MiFIR. The new rules are set out in the appendices attached to the Consultation Paper.

The new proposals suggest introducing a new Chapter 19D of SYSC in the FCA Handbook, which will apply to banks, building societies and specific investment firms. The SYSC 19A Remuneration Code will remain part of the FCA Handbook, but will only apply to certain investment firms. The PRA rules will introduce a new remuneration part which will apply to those firms caught by the Capital Requirements Regulation.

6. New note on financial incentives for whistleblowers

On 30 July 2014, the UK regulators jointly issued a note discussing financial incentives for whistleblowers. The note was produced for the Treasury Select Committee and states that both regulators agree strong measures are required to encourage and protect whistleblowers, who can play an important role in helping to protect the safety and soundness of firms and to prevent a detect wrongdoing. It voices its approval of the recommendations of the Parliamentary Committee on Banking Standards ("PCBS") on whistleblowing. Both regulators agree with the PCBS on the need for a better culture in financial services firms to help improve behaviour, and the opportunity to improve senior management accountability for whistleblowing.

The FCA and PRA had previously agreed to carry out research into the impact of financial incentives on encouraging whistleblowing in the United States, and this note sets out their conclusions, together with discussions with various bodies in both countries. Both the PRA and FCA made it clear that the government does not believe that financial incentives should form an integral part of the whistleblowing framework.

Key points which fell out of the research include:

- incentives in the US only benefit a small number of individuals whose information leads directly to successful enforcement action;
- there is no empirical evidence of incentives leading to an increase in the number or quality of disclosures received by regulators. Introducing incentives must go hand in hand with a complex and expensive governance structure;
- any incentive system also generates significant legal fees for both whistleblowers and firms, even though many whistleblowers are represented on a contingency fee arrangement; and
- any incentives which the UK regulators offer are likely to undermine the introduction and maintenance of effective internal whistleblowing mechanisms created by firms.

Therefore, the PRA and FCA do not believe that the introduction of financial incentives for whistleblowers should be implemented at this stage. Rather, they intend to implement necessary changes so as to improve whistleblowing procedures at firms and to make senior management accountable for delivering such procedures. Both regulators hope that any such changes should help to change cultures within the industry, so that speaking up becomes normal practice and staff are more prepared to report concerns. Any formal proposals in relation to whistleblowing are expected later this year.

CONSUMER CREDIT

1. FCA proposes price cap on high-cost short-term credit providers

The FCA published a Consultation Paper on its proposals for a price cap on high-cost short-term credit ("HCSTC") (CP14/10) on 15 July 2014. These types of lenders are more commonly known as "payday" lenders. The FCA states that it has carried out a huge amount of research in the area in order to understand the market and the consumers that use it, and this has helped it to prepare these detailed proposals.

The FCA proposes to put in place an initial cost cap of 0.8 per cent per day on interest and fees for the amount borrowed in relation to new loans or loans which have been rolled over. The FCA found that current revenue per loan ranges from 0.4 per cent to above 4 per cent per day which it found to be excessive. The proposal means that the charges and fees are calculated at a daily rate, meaning that the cost of the loan is directly proportionate to its duration.

The FCA has also proposed caps on default fee and default interest amounts. The FCA believes that it is reasonable not to prevent firms making a charge, since they incur costs when a borrower fails to repay on time. However, these charges must not be excessive and lenders must ensure they treat borrows in default or arrears difficulties with forbearance and due consideration. Therefore, the FCA proposes a £15 cap on default charges, which reflects the need to provide consumers with an incentive to pay back on time, whilst also providing the right incentive to firms by not rewarding failure to properly assess affordability.

The proposals include a total cost cap of 100 per cent of the amount borrowed to protect borrowers from escalating debts. The FCA believes that the 100 per cent cap balances protecting consumers and allowing firms to continue offering loans for different lengths of time. In addition, the 100 per cent total cost cap would be easy for consumers to understand and to help them identify any lenders which are tempted to charge more.

The research also makes it clear that certain customers will no longer be able to obtain such pay day loans. The FCA believes that such loans would not be suitable for these individuals in any case, particularly since they would be unable to pay them back on time. It believes that the effect of the cap will prompt more people in financial difficulty to seek other ways of handling the situation, such as seeking debt advice. It strongly believes that these customers will be better off for not pursuing such loans.

In addition, the Consultation Paper reviews the way in which market participants share information about consumers, so that firms lending on a short-term basis are able to be sure that the information being used as part of any affordability assessment is up-to-date and accurate. The FCA found that although there has been a marked improvement, more needs to be done. Should it deem there to be insufficient progress from firms by November 2014, it will consult on the introduction of data sharing requirements. The FCA plans to carry out a review of the price cap in two years' time and will also review on an ongoing basis whether it should impose a price cap on other products.

The FCA requests that comments should be made using an on-line response form by 1 September 2014. Final rules are then expected in November 2014 with the aim of giving firms time to prepare for the introduction of the price cap on 2 January 2015.

2. Dollar agrees to improve pay day lending practices and refund £700,000

On 14 July 2014, the FCA published a press release stating that the UK's second largest high-cost short-term credit provider, Dollar, has voluntarily agreed to refund £700,000 of interest and default charges to 6,247 customers who received a loan amount which exceeded Dollar's own lending criteria due to a system error.

The Office of Fair Trading had previously raised concerns about Dollar's lending decisions in February 2014, following a review of customer calls, which revealed that certain loans were being approved for amounts which the lending criteria would not usually allow. According to the press release, Dollar has committed to improving its approach to assessing affordability and it will contact all affected customers as soon as possible, expecting to provide refunds totaling £79,000. The remainder of customers will have their balance reduced. No refund will be provided until Dollar has confirmed customers' up to date contact and bank details.

Further, Dollar has agreed to appoint an independent Skilled Person under Section 166 of the Financial Services and Markets Act 2000 ("FSMA") to review its lending decisions. This review will focus on Dollar's loan products and the customer journey from the initial affordability assessment to loan collection. The press release mentions that it will also consider whether customers are being treated fairly and are now only being lent sums that they can afford to repay. In addition, the Skilled Person will ask customers to run through their borrowing experiences and it will report these back to the FCA. This development follows a thematic review by the FCA into methods used by payday lenders to collect debts and manage borrowers in arrears.

3. Ariste Holding Limited makes voluntary application for imposition of requirement

On 21 July 2014, Ariste Holding Limited ("Ariste"), a payday lender in the UK, made a voluntary application for imposition of requirement, following concerns from the FCA regarding its systems and controls.

In June 2014 the FCA raised serious concerns about three matters which Ariste had reported to it. In particular, the FCA was interested as to whether Ariste's customers had at all times been treated fairly, since it found systems weaknesses which may have allowed unauthorised charges to be applied to customers' accounts. The FCA also highlighted the potential misuse of banking information provided to affiliated websites to repay outstanding debts of existing Ariste customers already in arrears, and a number of issues relating to the rolling over of loans.

The voluntary application sets out the requirements which Ariste has applied to the FCA to impose on its permission, including being required to conduct a consumer redress scheme whereby it determines whether, as a result of the issues identified, Ariste has breached any contractual and/or regulatory obligations applicable at the relevant time, and whether consumers have suffered detriment as a result of any such breaches. Ariste has also applied to impose the requirement that it must determine what redress should be and pay any such redress to any affected consumers.

The FCA states that the consumer redress scheme imposed will be overseen by a Skilled Person appointed by the FCA under Section 166 of the FSMA. This redress scheme will be subject to a time scale to be approved by the regulator.

INVESTIGATIONS AND ENFORCEMENT

1. Large fine for Lloyds and Bank of Scotland over LIBOR and benchmark failings

On 28 July 2014, the FCA published a Final Notice issued to the Lloyds Banking Group, comprising Lloyds Bank plc and the Bank of Scotland plc, which hands out a fine of £105 million to the Group for misconduct relating to the Special Liquidity Scheme ("SLS"), the Repo Rate benchmark and the London Interbank Offer Rate ("LIBOR"). The firms agreed to settle at an early stage of the FCA investigation, therefore qualifying for a 30 per cent discount under the executive settlement procedures of the FCA. Without the discount, the FCA would have imposed a fine of £150 million on the firms.

The FCA stated that both firms had committed misconduct by breaching Principle 5 (Market Conduct) and Principle 3 (Management and Control) of the FCA's Principles for Businesses, set out in the FCA Handbook. The firms had failed to identify, manage or control the relevant risks or meet proper standards of conduct in relation to two benchmark reference rates, the Repo Rate and LIBOR.

Between 25 April and 15 September 2009 both firms failed to observe proper standards of market conduct in relation to their Repo Rate submissions. The firms routinely artificially inflated their three month submissions on days when the fees for drawing on the SLS were calculated in order to manipulate the SLS spread and thereby avoid paying the Bank of England the fees properly due to it. A total of four individuals colluded with each other in the manipulation of these submissions without any oversight or challenge. The press release which accompanies the Final Notice states that the manipulation of the Repo Rate was an extremely serious failing, with the potential to reduce fees to the Bank of England from all firms which participated in the SLS. The press release goes on to state that £70 million of the fine relates to this SLS manipulation.

In addition, between May 2006 and June 2009, both firms made LIBOR submissions which took into account profit and loss from their money markets trading books. Lloyds was found to have colluded with Rabobank to seek to influence the JPY LIBOR to benefit their respective trading positions. They also manipulated submissions as a result of at least two instructions from a manager to avoid negative media comments and market perception in respect of its financial stability during the financial crisis. The firms were found to have "forced" LIBOR to influence the GBP LIBOR submissions of other LIBOR panel banks to benefit their own trading positions.

All of these failings mean or meant that LIBOR submissions made by both firms, and some made by other panel banks, did not accurately reflect the cost of inter-bank borrowing.

2. FCA uses suspension power for the first time

On 23 July 2014, the FCA published on its website the Final Notices issued to Financial Limited and Investments Limited, which are subsidiaries of the Financial Group. The Final Notices state that the FCA have suspended both firms from recruiting new Appointed Representatives ("ARs") and individual advisors for 126 days. In addition, because of the firms' inadequate systems and controls relating to recruitment, training, monitoring and control of its ARs, as well as the firms' compliance and file checking processes which were unable to identify and assess risks properly, the FCA would have imposed a penalty of £12,589,134 on Financial Limited and £621,583 on Investments Limited were it not for both firms' poor financial positions. Further, because Financial Group agreed to settle the case at an early stage of the investigation, both firms qualified for a 30 per cent discount, which equated to one and a half months being knocked off the suspension for both firms.

The FCA found that the firms had breached Principle 3 of the FCA's Principles for Businesses by failing to ensure that their ARs and individual advisers were adequately supervised and controlled to minimise the risk of mis-selling and the provision of unsuitable advice to consumers. The systemic weaknesses were in operation between 20 August 2008 and 30 April 2013. In the press release which was issued at the same time as the Final Notices, the FCA has stated that it had found the failings to be directly attributable to the firms' cultural focus which viewed the ARs and individual advisors, rather than their customers, as the end consumer.

Tracey McDermott, Director of Enforcement and Financial Crime at the FCA said that it was the first time that the FCA has used its suspension or restriction powers to punish a firm for serious misconduct. Further, the sanction is intended to send a message of deterrence to the rest of the industry, and serve as a reminder that the FCA take systems and controls failings very seriously.

3. SFO opens investigation into FOREX market

On 21 July 2014, the Serious Fraud Office ("SFO") published a press release on its website announcing that it has begun a criminal investigation into allegations of fraudulent conduct in the foreign exchange ("FOREX") market. This is in addition to an FCA investigation which is being conducted into a number of firms which have traded on the FOREX market. The FCA explained in its new business plan for this year that it will be continuing these investigations.

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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