

# REGULATORY FOCUS

A synopsis of the Financial Conduct Authority's (FCA) latest news and publications issued in March 2016.

ISSUE 94

## Peer to Peer (P2P) Advising Permission

From 6 April 2016, firms that currently hold the permission for the regulated activity of 'advising on investments' automatically had their scope of permissions varied to add the new regulated activity of 'advising on P2P agreements.'

Firms will need to undertake an assessment to determine whether this permission is required for their business.

If it is required, firms will need to ensure that personal recommendations in relation to peer-to-peer agreements are suitable for its clients in accordance with the FCA rules in COBS 9. In addition, retaining this permission may affect a firm's capital resources and the requirement to hold professional indemnity insurance. Holding the P2P permission will not incur additional regulatory fees unless the firm is earning income from this business. There are also no additional reporting requirements attached to this permission at present.

If a firm deems that the new permission is not appropriate to its business it can apply, free of charge, to remove the permission by completing a [short form](#) and submitting it to FCA at the following address: [P2Padvice@fca.org.uk](mailto:P2Padvice@fca.org.uk). It is estimated that the timeframe for removal will be 15 working days.

The short form will be available until 6 October 2016. After this date, applications for removal of this permission will be conducted via Connect as a Variation of Permission, so will be subject to the usual process, which involve a fee and longer timeframes. We therefore recommend that firms submit this form to FCA as soon as possible.

Please note that if you apply to remove the permission and subsequently seek to have it re-instated it will be necessary to complete a Variation of Permission application via Connect which will incur a fee of £250 for most firms.

## OUR RECENT AWARDS\*

BEST OVERALL ADVISORY FIRM IN  
THE U.S. 2014  
*HFMWeek*

BEST ASIAN ADVISORY FIRM FOR  
REGULATION AND COMPLIANCE  
2014  
*HFMWeek*

BEST EUROPEAN ADVISORY  
FIRM FOR REGULATION AND  
COMPLIANCE 2014  
*HFMWeek*

BEST ADVISORY FIRM REGULATION  
AND COMPLIANCE 2014  
*HFMWeek*

BEST SEC REGISTRATION TEAM –  
HONG KONG 2014  
*Acquisition International*

UCITS FUND ADVISOR OF  
THE YEAR – IRELAND 2014  
*Acquisition International*

\*Awarded to Kinetic Partners, which was  
acquired by Duff & Phelps in January 2015

## Enforcement Actions

### **FCA bans former commercial bank trader, following LIBOR fraud**

2 March 2016

The FCA banned a former trader of a German commercial bank from the UK financial services industry for lacking honesty and integrity. The judgment came following a criminal conviction for fraud in the United States. In late 2015, the trader pleaded guilty to conspiring to manipulate his employer's US Dollar LIBOR submissions.

FCA director of enforcement and market oversight, Mark Steward, stated that the 'dishonesty must disqualify him from UK financial services'.

The trader was well aware of the need to reflect only the rate at which his employer perceived it could borrow USDs in the London interbank market when making LIBOR submissions.

The trader received submission alteration requests from colleagues, wishing him to alter the USD LIBOR submissions. The requests were made to benefit the trading position of the Bank and individual traders. The trader was also found to have solicited requests from colleagues, changing his USD LIBOR submissions accordingly.

Full details can be found on the FCA website, click [here](#) for details.

### **Former equities trader pleads guilty to insider dealing**

15 March 2016

A former equities trader has pleaded guilty to nine counts of insider trading. He will be sentenced on 13th June 2016. The individual admitted to dealing on the basis of inside information he obtained during his course of employment concerning anticipated public announcements of mergers and acquisitions. He used this information to place trades using accounts in his own name and in the names of family members. The total profits made from insider dealing amounted to £155,161.98.

Full details can be found on the FCA website, click [here](#) for details.

### **FCA takes High Court action against the unauthorised operation and promotion of collective investment schemes**

18 March 2016

The FCA has taken action against a number of companies and individuals over their involvement in the promotion and operation of collective investment schemes without FCA authorisation. The regulator reiterated the potential risks associated with collective investment schemes and has emphasised the requirement for them to be authorised in order to ensure consumer protection.

The FCA has focussed their investigation on two collective investment schemes, one which offered investments in rice farm harvests in Sierra Leone and another which invested in carbon credits related to land in Sierra Leone, Brazil and Australia.

In February 2014, the High Court ruled that the two schemes were collective investments and that the defendants could not legally operate these schemes. This decision was appealed by some of the defendants a year later, although the decision of the High Court was upheld and the Supreme Court has refused any further appeals from the defendants.

Since these collective investment schemes have been found to be operated unlawfully, the FCA is now seeking a High Court order for the defendants to pay compensation to investors.

Full details can be found on the FCA website, click [here](#)

For copies of judgements: click [here](#) and [here](#)

## Supervision Matters

### DP 16/2: CASS 7A and the Special Administration Regime Review

9 March 2016

The FCA's discussion paper seeks feedback on a number of aspects of the client assets regime, and in particular regarding the client money distribution rules (set out in CASS 7A) and their interaction with the Special Administration Regime (SAR).

It is relevant to all firms that hold custody assets and/or client money in relation to investment business. It is particularly relevant for Firms' clients, banks, custodians, administrators and advisers.

HM Treasury commissioned an independent review of the SAR, the findings of which were published in January 2014 and contained a number of recommendations concerning the SAR regulations, the CASS rules and the procedures which administrators follow in the event of a firm's failure.

The paper sets out the FCA's response to these recommendations and seeks industry comments by 9 May 2016.

Full details can be found on the FCA website, click [here](#) for details.

### FCA's Regulation round-up

17 March 2016

Hot topics discussed in the March 2016 regulation round up included the following.

- The FCA's Thematic Review on assessing suitability which was published in February 2016. Generally firms demonstrated some good practice when undertaking research and due diligence, but there is still room for improvement. Firms that demonstrated good practice made research and due diligence processes central to the provision of suitable advice. Also firms that encouraged internal challenge in relation to the provision of products, services or providers were more likely to act in the best interests of their clients and to manage their conflicts of interest. The FCA encourages advisory firms, particularly those with retail clients, to review the findings from this Thematic Review in order to determine whether improvements to current processes may be required.
- The Financial Advice Market Review, conducted by HM Treasury and the FCA, looked at the steps which the industry, the government and the regulator can take to develop a market that provides accessible and affordable financial advice and guidance to everyone. This review looks to build on improvements made by the Retail Distribution Review (RDR).

Other areas discussed in the regulation round-up which may be of interest include the PRA and FCA's notification to adopt the European Banking Authority's Guidelines on Sound Remuneration Policies (as applicable to all Capital Requirement Directive firms) and the FCA's publication on good practice in liquidity management, following a review of risks posed by open-ended investment funds with fixed income investments.

Firms to which RDR applies should be aware of updates to RDR templates, Professional Standards Data, Form G and RIA competence notification, which came into effect on 7 March 2016.

In addition, the FCA reminds firms that there are just over three months to go before the new EU Market Abuse Regulation (MAR) regime comes into force. MAR strengthens the existing market abuse framework by extending its scope to new instruments, new markets, new platforms and new behaviours. Attempted manipulation is a new offence; suspicious transactions and order reports (STORs) replace the current STR regime; more information will need to be provided on insider lists and there is a new soundings regime.

Full details can be found on the FCA website, click [here](#) for details.

## Other Developments

### Operation of the MoU with the Bank of England for market infrastructure - 2015 performance statement

4 March 2016

As required by the Financial Services Act 2012, the FCA and the Bank of England have reviewed their Memorandum of Understanding (MoU) 2015 which established how they should interact with each other regarding supervision and market infrastructure. The review has concluded arrangements remain effective, with appropriate coordination and no material duplication. In addition a continued commitment has been made towards effective cooperation between both entities and staff will work together to progress the suggestions made from industry.

Full details can be found on the FCA website, click [here](#) for details.

### How FCA are applying the principles of SMR to the FCA

7 March 2016

A recent press release confirmed that the Senior Managers Regime (SMR) came into force on Monday 7 March 2016 for PRA regulated firms. Its aim is to raise standards of governance, increase individual responsibility and help to restore confidence in the banking sector. As mentioned previously this regime will come into force for FCA regulated firms in January 2018.

As part of the press release it was confirmed that although Prudential Regulation Authority (PRA), FCA and the Payment Systems Regulator (PSR) are not formally subject to the SMR, in order to support the introduction of more stringent professional values being introduced for regulated firms, the regulators have decided to apply the fundamental principles of the Regime to its senior staff. This is intended to strengthen their "existing framework of accountability" and transparency. The press release includes links to documents which detail each of the regulator's approach to the Regime.

The application of the Regime has been tailored in order to reflect that the regulators do not have the same senior management structure as the firms they regulate.

A formal description of the core members of the Board, Executive Committee and individuals carrying out Senior Management Functions has been published.

Full details can be found on the FCA website, click [here](#) for details.

### Investment Funds, Markets Liquidity and the Investor

24 March 2016

David Lawton, Director of Markets Policy and International at FCA, delivered a speech addressing the systemic risks posed by investment funds to the financial system and the regulatory changes that might be proposed to limit those risks. In particular he advised that the Regulator's assessment of the impact of new post-crisis market conditions and the risks they may pose to funds was still continuing.

He mentioned the Financial Stability Board (FSB) has been the main international forum coordinating the regulatory analysis working closely with the International Organization Of Securities Commissions (IOSCO) in identifying potential vulnerabilities which might lead to systemic risks among firms. They have focused their attention on five potential structural vulnerabilities of funds:

- The possible mismatch between the liquidity of fund investments on the one hand and the terms and conditions for the redemption of fund units on the other
- The high levels of leverage within (certain) investment funds
- The operational risk challenges in transferring investment mandates from a fund manager in a stressed condition to another manager
- The securities lending activities of asset managers and funds
- The potential vulnerabilities of pension funds and sovereign wealth funds

Each of these vulnerabilities could lead to losses for investors in the fund and could potentially impact other firms in times of market stress or if idiosyncratic firm conditions materialise.

He stated the FSB is now working with IOSCO to conduct further analysis and will develop policy recommendations in the first half of 2016. The FCA is also involved in these discussions, and is seeking to understand the risks and propose proportionate and effective solutions.

Full details can be found on the FCA website, click [here](#) for details.

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