

Regulatory Focus

Issue 118

INSIDE

2 SUPERVISION MATTERS

The FCA's approach to overseas market operators seeking to apply to become a recognised overseas investment exchange

FCA to start regulating claims management companies.

4 ENFORCEMENT MATTERS

FCA prosecution of £2.8m investment fraud

The Financial Conduct Authority bans former trader of a large German investment bank

6 OTHER PUBLICATIONS

FCA appoints new Director of Competition

Andrew Bailey introductory speech on multilateralism and global coordination: A case for balancing autonomy and co-operation in the interests of financial markets

Andrew Bailey speech at the Annual Public Meeting 2018

Charles Randell speech at the Annual Public Meeting 2018

A synopsis of the Financial Conduct Authority's (FCA) latest news and publications issued in September 2018

At its Asset Management Conference in the summer, the FCA announced that it would be conducting a review of the MiFID II regulations on the unbundling of research. The FCA is concerned about the inconsistencies in the interpretation and application of these rules. Under MiFID II, asset managers who use research to make investment decisions are required to separate the costs of research from transaction costs and trading commissions. The rules describe how research must be either paid for by firms themselves, or through Research Payment Accounts if the cost is passed onto clients.

This survey was sent to around 30 firms in August and has now closed. The questions were open ended and asked for documents to be included, so involved some work. This survey followed the market abuse survey which was sent to a selection of firms in July and was a multiple-choice questionnaire and therefore easier to complete.

DUFF & PHELPS IN THE NEWS

Sumit Mittal, Vice President in the Compliance Consulting team at Duff & Phelps, commented in Investment Week on 10th October about the planned extension of the PRIIPs regulations to cover a wider range of investment products including UCITs, and the issues that the FCA is likely to focus on.

In addition, Duff & Phelps issued its [Global Enforcement Review](#) in October, which for the fifth year, provides commentary and insights on global enforcement trends within the financial services industry. Combining both our regulatory experience with in-depth analysis of enforcement penalties issued by key regulators around the globe, our aim is to assist firms in understanding the risks to inform their strategic, governance, risk and compliance programmes. This year's report also includes contributions from Kroll, the global leader in complex investigation, security and cyber solutions which Duff & Phelps acquired earlier this year. Our combined organisation now has nearly 3,500 employees located in 28 countries around the world, which has extended our market reach, insights and capabilities.

The FCA's approach to overseas market operators seeking to apply to become a recognised overseas investment exchange

14 September 2018

The FCA has published a direction clarifying its approach on overseas market operators seeking to apply to become a recognized overseas investment exchange. The current position is that EEA market operators who operate a regulated market, a multilateral trading facility or an organized trading facility can rely on MIFID II passport rights to enable members based in the UK to access their markets; but once the UK has left the EU these passport rights will no longer apply. Some EEA market operators may be able to rely on the overseas persons exclusion, if they do not maintain a permanent place of business in the UK. The FCA noted that those EEA market operators who cannot rely on this exclusion, should seek appropriate FCA permission to become a recognized overseas investment exchange. The direction sets out the way in which an application must be made and the FCA added that it had streamlined the application requirements where possible. Market operators are advised to contact the FCA as soon as possible to make it aware of any arrangements they intend to maintain in the UK.

To read the direction, please click [here](#).



FCA to start regulating claims management companies

20 September 2018

Since 2007 the Government has become increasingly concerned about misconduct in the claims management sector and in 2015 it commissioned the independent Brady Review. In line with the recommendations, The Financial Guidance and Claims Act 2018 (FGCA) was enacted and this transfers the regulation of claims management companies (“CMC”s) to the FCA and extension of regulation to Scotland. Some of the key areas that the FCA will bring changes in are: pre and post-sale disclosure, marketing by CMCs, telephone taping by CMCs, prudential requirements for CMCs and client money protection.

On 1 April 2019, the FCA will become the regulator of CMCs that are set up or serving customers in England, Wales and Scotland. These firms are currently regulated by the Claims Management Regulator. FCA will regulate CMCs operating inter alia in sectors covering personal injury, financial services and products, and housing disrepair.

Firms that are currently regulated by the Claims Management Regulator and want to continue to provide services beyond 01/01/2019 will need to complete a two-step process:

- Register with FCA for temporary permission between 1 January and 31 March 2019 via Connect.
- Apply for full FCA authorisation.

CMCs that are not currently regulated but will become regulated by FCA for the first time, will also have to register for a Temporary Permission if they want to carry on offering claims management services. Existing CMCs that do not send a completed registration form by 31 March 2019 to the FCA will not be able to carry on regulated activity after that date.

For full FCA authorisation, there will be two application periods - Window 1 (1 April – 31 May 2019), or Window 2 (1 June – 31 July 2019). When a CMC registers for Temporary Permission, FCA will tell them their application window depending on the permissions applied for and regulatory status.

Firms that don't carry out financial services and are already authorised to carry out activities by another authority, such as the Solicitors Regulation Authority will not need to apply for FCA authorisation. They will continue to be regulated by their current regulator.

To read the FCA's information page, please click [here](#).



FCA prosecution of £2.8m investment fraud

Six individuals have been sentenced to a collective 28.5 years imprisonment following the FCA's largest fraud prosecution. On 4 September 2018 the ringleader and main beneficiary was sentenced to 11 years imprisonment whilst the other 5 accomplices received a collective 17.5 years for their roles in a share fraud. This was carried out through several boiler room companies, which cheated over 170 investors out of more than £2.8m.

The six defendants were charged by the FCA with offences of conspiracy to defraud, fraud, money laundering and perverting the course of justice, as well as breaches of FSMA. Three of the defendants also received Serious Crime Prevention Orders and have been banned from involvement in financial services or the sale of any form of investment for a period of 5 years following their release from prison. The same three individuals have also been banned from being company directors for periods of between 7 and 14 years.

Summary of the facts

The offenders used cold-calling and high-pressure sales tactics, between July 2010 and April 2014, to persuade members of the

public, often vulnerable and elderly victims, to purchase shares in a company that owned land in Madeira. Investors were promised guaranteed returns of between 125% and 228%, once permission to build 20 villas was granted.

The defendants employed numerous lies to persuade the investors, quoting the involvement and backing of large, household named banks and hotel companies, none of which had any involvement in the scheme. The defendants succeeded in obtaining large amounts of money from investors, and in some cases, their life savings, which was used to maintain the fraud and fund the lifestyle of the leading defendant.

The Crown Prosecution Service and City of London Police also brought separate criminal actions against the main culprit, achieving a further 2 years sentence, bringing the total sentence to 13 years.

The FCA has published two articles on this case following each sentencing:

1. To read the article on the main instigator, please click [here](#)
2. To read the article of the other five individuals, please click [here](#)



The Financial Conduct Authority bans former trader of a large German investment bank

14 September 2018

A former trader was sentenced to 5 years and 4 months imprisonment and ordered to pay £2.5 million by way of confiscation order for conspiracy to defraud in July 2018. The FCA has since published its decision notice to ban the individual for benchmark manipulation which Mark Steward, director of enforcement and market oversight at the FCA, said “is a tale of gross misconduct and betrayal of the public interest in financial benchmarks”.

Summary of the facts

The individual made requests to EURIBOR submitters to make high or low EURIBOR submissions, both internally to the investment bank submitters and externally to traders at other EURIBOR panel banks. The purpose of doing so was to benefit from the profit of the trading positions for which the individual was responsible, as well as the profitability of the trading positions of other traders.

In April 2017, the FCA issued the individual with a Decision Notice which imposed a financial penalty of £6.5 million. These proceedings were stayed pending the final decision of the criminal proceedings which were founded on substantially the same matters as the FCA proceedings. Mark Steward commented that “If [the individual] had not been convicted and imprisoned for the same matters, the FCA would have sought a financial penalty of £6.5 million. As it is, we have prohibited him from performing any regulated function, reinforcing the message of the criminal court.”

To read the article in full, please click [here](#).



FCA appoints new Director of Competition

4 September 2018

Sheldon Mills has been appointed as Director of Competition by the Financial Conduct Authority (FCA). Sheldon is currently employed as senior director, mergers and state aid at the Competition and Markets Authority (CMA).

Mr Mills will take up his new position in November and will play an essential part in delivering the FCA objective of promoting competition in consumers' interest. His role will include carrying out market studies as well as maintaining responsibility for the FCA's work to enforce prohibitions on anti-competitive behaviour within the financial services industry.



Andrew Bailey introductory speech on multilateralism and global coordination: A case for balancing autonomy and co-operation in the interests of financial markets

6 September 2018

Mr Bailey began his speech by stating his belief that open financial markets, which support trade in goods and services, was an essential pre-requisite in delivering better outcomes for financial services users, particularly so in wholesale markets. Regulatory authorities around the world work together to develop and implement strong and flexible standards that enable competition and innovation. The industry did not turn its back on open markets as a consequence of the financial crisis. However Mr. Bailey said that this approach to open markets is regularly being challenged, which he believes is a mistake. In his view, even “where international standards do not exist, freedom for jurisdictions to set their own standards domestically can certainly co-exist with international co-operation” and can be done in such a way “that enables agreed equivalence of outcomes.”

Mr Bailey provided two important examples of where we have balanced these considerations:

1. On benchmark interest-rate reform, where “there is no constraint on domestic choices on the alternative and risk-free rate to be chosen for each currency.” Although for different currencies different choices have been made, this doesn’t mean there is no need for strong co-operation to co-ordinate the outcomes based on these choices.
2. On financial innovation and regulatory ‘sandboxes’, where “there is no constraint on any domestic choice on the model for sandboxes or what is accepted into them.” Once again, although different choices have been made appropriate for domestic circumstances and demand, co-operation should remain in order to enable suitable cross-border activity.

Moving forward next year, UK authorities will be aware of the need to closely coordinate with the EU, US and others, whilst continuing to manage the UK’s autonomy and respecting the autonomy of others. An example of this is how MiFID II has been calibrated on the UK and EU27 markets combined, and it may not be sensible to break that into different UK and EU transparency rules for the same products. Mr Bailey stated that having spoken to other regulators, there is a common interest in preserving the benefits of “collaboration, sharing of information, and to ensuring effective

supervision”, but this debate will continue as the regulators think about the post-Brexit situation.

One side of the debate focuses on the desire for access to the Single Market to remain open to third countries, including the UK, based on “open markets, equivalent standards and the rights of establishment.” Another viewpoint goes against the principle of open markets and free trade, suggesting that any financial activity concerning EU parties should be carried out as far as possible in the EU. Mr. Bailey said that “this seems to go against the principle of open markets and free trade and is unnecessary in view of all the post-crisis work on co-operation and broad alignments of standards”.

With more countries beginning to make progress towards removing unnecessary location policies and national treatments, Mr. Bailey strongly welcomed the proposal from Chris Giancarlo, Commissioner of the US Commodity Futures Trading Commission (CFTC), on “closer cross border cooperation and a greater use of deference – reliance on comparable overseas rules – where they deliver broadly equivalent outcomes.”

Mr Bailey also expressed his view that access to a global pool of capital was the real strength of deeper capital markets, with strong regulatory co-operation and co-ordination that produced consistent outcomes remaining vital. In Europe we will have identical frameworks, so it was important for the UK and the EU to collaborate to find each other equivalent on ‘day 1’.

Mr. Bailey has previously argued that there are four key elements of strong regulatory co-ordination: comparability of the rules, supervisory co-ordination, exchange of information and a mechanism to deal with differences.

In summing up, Mr Bailey referenced the consistent use of the word ‘mutual’ when Brexit had been debated. He expressed that ‘mutual’ did not involve constraining domestic autonomy, but rather focused on the approaches that “deliver broadly equivalent outcomes while respecting the autonomy of jurisdictions”. This is something that should facilitate the benefits of open markets.

To read the full speech, please click [here](#).

Andrew Bailey speech at the Annual Public Meeting 2018

11 September 2018

The FCA held its annual public meeting at which Andrew Bailey delivered a speech reviewing the past year and discussing objectives for the future.

Mr. Bailey gave a summary of the year from the FCA's perspective, touching on a wide range of topics such as the high-cost credit market review, the Asset Management Market Study, the looming deadline for PII claims and MiFID II. Brexit also featured heavily in Mr Bailey's speech, with the FCA chief stating that the regulator is coordinating with the Government to ensure continuity of the financial services legal and regulatory framework post-Brexit, and working with regulated firms to understand their preparations. Mr Bailey took the opportunity to emphasise the importance of maintaining open markets regardless of whether or not the UK is a member of the EU, stating: "Now is not the time to go back on the commitment to open markets, and I am pleased that there are many authorities around the world who share our position."

Mr Bailey also reiterated the principles that the FCA adheres to in its work on Brexit, namely:

1. Cross border market access;
2. Support for the principle of consistent global standards;
3. Cooperation between regulatory authorities;
4. Influence over standards – specifically that the FCA should continue to play a significant role in shaping international standards; and
5. Opportunity to recruit and maintain a skilled workforce.

Aside from Brexit, Mr Bailey stated that the regulator faces new sources of risk to their objectives, falling into the broad category of "operational risk", which he summarised into four themes:

- Technological change and innovation: Mr Bailey gave the example of cryptoassets and made clear that while the FCA is "keen to see the potential of their underlying technology", the risks should not be ignored. These risks are heightened as a result of the question mark around whether the consumers who use them understand the asset and price volatility they involve. The FCA is working closely with the Treasury and Bank of England to assess these issues and come up with appropriate responses.
- Financial crime: Mr. Bailey noted that this continues to be a priority for the regulator, and that last year the FCA received 1,064 requests for information and assistance with investigations from over 80 different regulatory and law enforcement authorities in 63 countries. During this year the Office for Professional Body Anti-Money Laundering Supervision (OPBAS) came into force. This body is housed within the FCA and facilitates better collaboration and information sharing between regulators and authorities.
- Data: This is a rapidly increasing risk, which includes the loss of personal data belonging to customers, as well as issues around how firms use personal data, and whether this is consistent with the FCA's rules and principles.
- Operational resilience: including both cyber-risk, which involves the threat from outside entities disrupting firms and systems, as well as additional risks arising from the increased complexity of operational platforms in firms.

Mr Bailey also discussed the regulator's recent investigation into a large bank's treatment of SME customers transferred to its Global Restructuring Group (GRG). Mr Bailey acknowledged that while the banks treatment of SME customers "fell well short of what we expect to see", the FCA has concluded that as the business of GRG was largely unregulated, the FCA's jurisdiction with regards disciplinary powers do not apply. In addition, while theoretically action could be taken against senior management, it is not thought that this would have a reasonable prospect of success. Mr Bailey emphasised that, owing to the importance of this judgement, it has been ratified by independent senior counsel. The FCA will nevertheless publish a more detailed account of its findings in due course.

Mr Bailey went on to discuss the ongoing work on longstanding news around another large bank, an investment manager and Interest Rate Hedging products (IRHPs), before concluding by highlighting the regulator's move to its new Stratford offices and its regional work programme.

To read the speech in full, please click [here](#).



Charles Randell speech at the Annual Public Meeting 2018

11 September 2018

Charles Randell, Chair of the FCA, delivered a speech at the Annual Public Meeting, reflecting on his personal observations of the FCA from his first 5 months as Chair. A key feature of the speech was the importance of adaptability in managing the developments seen in today's financial services. Mr Randell illustrated how the 10th anniversary of the Lehman's bankruptcy filing reminds us how the financial crisis showed the true problems facing financial firms and was keen to establish that, 10 years on from the crash, the new regulations were reasonably clear, but it must be understood that the FCA is regulating an ever-changing sector which "changes year-to-year, even month-to-month".

The FCA has to respond to factors that are often not under its control, such as international affairs and new technologies. The FCA will have to use a large part of its resources for Brexit and has identified that it needs an EU withdrawal budget of £30m.

Technological advancements

In recent years the advancement of technology has been rapid, especially in areas such as big data and machine learning. Mr Randall described the FCA's stance on technology as being "technology neutral" meaning it approaches the regulation of technology on merit.

Mr Randall reiterated a few of the advantages technology plays in delivering financial advice and services, such as ensuring that firms are protected against any money laundering risks as well as enhancing competition amongst all firms by reducing barriers to entry via reduction in market entry costs. However, the introduction of new technology also creates new types of risks that need to be mitigated. Examples include online fraud and misuse of data which can have a detrimental effect on the customer.

The FCA has been very supportive of recent developments within the Fin and RegTech industry over the last few years. Increased support has been provided via project innovations such as the FCA sandbox where firms can test their innovations in a controlled environment that allows them to monitor the development of their technology in a controlled way. This has allowed firms to reduce the time taken to then effectively introduce their innovations into the market.

Financial crime

Mr Randell repeated the FCA's position on taking a serious approach to financial crime by ensuring a solid partnership is built amongst international regulators and law enforcement agencies. The magnitude of such partnerships is evident via the European transaction reporting exchange mechanism which had routed near 3.1 billion transaction reports since January to other National Competent Authorities. The importance of managing any sort of financial crime risk in a successful way relies heavily on the collaboration of jurisdictions to share data in such a way. Allowing countries to share data using such methodology allows the UK and countries in the EU to reduce issues such as market abuse, insider dealing and cross-market manipulation.

The UK is known for providing an environment where financial crime cannot thrive and Mr Randall stressed the importance of continuing such a reputation especially if the human costs affiliated with issues such as fraud are to be reduced. The FCA ensures that this foundation is maintained by implementing an extensive programme of supervisory, educational and enforcement work.

Mr Randall concluded his speech by stating that the FCA's work demonstrates the seriousness of its approach to financial crime and other breaches. He also mentioned how encouraged he is on how the organisation is willing to adapt to and prioritise public value.

To read the speech in full, please click [here](#).

OUR RECENT AWARDS

BEST COMPLIANCE CONSULTANCY

CTA intelligence Awards 2018

ADVISORY AND CONSULTANCY: TAX

Drawdown Private Equity Services Awards 2018

BEST ADVISORY FIRM – REGULATON AND COMPLIANCE

HFM Week 2018

BEST GLOBAL CYBERSECURITY SERVICES PROVIDER

Hedgeweek Global Awards 2018

BEST COMPLIANCE CONSULTING TEAM

Women in Compliance Awards 2017

BEST GLOBAL REGULATORY ADVISORY FIRM

Hedgeweek Global Awards 2017

EUROPEAN SERVICES - BEST CONSULTANCY FIRM

CTA Intelligence 2016

BEST EUROPEAN OVERALL ADVISORY FIRM

HFM Week 2016

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