2015 Regulatory Bulletin Issue 5

"It is difficult to demand change in our world, when we demand no change in ourselves."
Terry Crouson

Westminster politicians have been a driving force in the PRAs/FCAs introduction of radical changes to the way in which senior management in Financial Services firms will be personally regulated going forward for the behaviours and responsibility of their firms.

The intrusive legislation may create a "fear" that the UK is not a good place to do business and whilst many understand the public lack of trust in the industry at present this seems at odds with life at Westminster… or perhaps ministers and Lords at Westminster have not heard of Terry Crouson…

FCA publishes final rules to make those in the banking sector more accountable

There has been a joint FCA-PRA press issue regarding the final rules on variable remuneration (e.g. bonuses) in banks, building societies, and PRA-designated investment firms, which were released in June.

Martin Wheatley, Financial Conduct Authority chief executive, commented "*Today we have given clarity on rules that will embed personal accountability into the culture of The City. New conduct rules will add further momentum to improving standards across the industry.*"

This follows on from June 2013, when the Parliamentary Commission for Banking Standards (PCBS) published its report "Changing Banking for Good", setting out recommendations for legislative and other action to improve professional standards and culture in the UK banking industry. This was followed by legislation in the Banking Reform Act 2013 to replace the Approved Persons Regime for banks, building societies, credit unions and PRA-designated investment firms with a new regulatory framework for individuals.

New EU anti-money laundering directive to come into force

The fourth Anti-Money Laundering (AML) Directive has taken effect. EU countries will have two years to implement the rules contained in the Directive into national laws.

The new regime will bring into force new customer due diligence checking requirements, together with new obligations to report suspicious transactions and maintain records of payments. Businesses subject to the rules will also have to install internal controls to combat money laundering and terrorist financing activities under the framework.

FCA Carry out Thematic review regarding Oversight and Controls

The review indicated that firms have made a number of positive changes to improve their governance and controls around benchmark activities, significant further work is needed to ensure that all of the risks are managed appropriately.

It is essential that firms' senior management pay heed to the findings and messages outlined here, and take the steps necessary to identify and resolve any outstanding issues.

All firms are expected to identify, manage and control the risks arising from their benchmark activities, put in place appropriate oversight and controls, and instil a culture in which market integrity and consumers interests are at the heart of how they run their businesses.

FCA finalises rules on complaints and call charges

Under the new rules, financial services firms will have longer to resolve complaints less formally. This is intended to allow firms to resolve more complaints first time rather than try to meet the current one day target. Firms will now have three days to address a complaint to a consumer's satisfaction.

The increased time will allow for better and easier resolution for a greater number of complaints, benefiting both consumers and firms. The FCA also expects this change to result in fewer consumers having to take their complaints further.

If a complaint is resolved during this three day period, firms will be required to send their customers a simpler, template message. This will inform the complainant of their right to take their complaint to the Financial Ombudsman Service.

Jonathan Davidson appointed new Director of Supervision – Retail and Authorisations

Jonathan is currently a senior advisor to private equity and financial services firms and is also a member of Jardine Lloyd Thompson's Strategic Advisory Group. He was previously the Chief Operating Officer for Direct Line.

Martin Wheatley, Chief Executive of the Financial Conduct Authority, said *"This appointment is another example of the FCA being able to attract the best talent from across the financial sector. Jonathan has experience of working across the globe as well as in the United Kingdom. Given the increase in our supervisory work in retail over the last two years, this is an incredibly important role and I look forward to working with Jonathan."*

Megan Butler appointed Director of Supervision - Investment, Wholesale and Specialist

Megan Butler will be joining the FCA on secondment from the Prudential Regulation Authority (PRA) to take the role of Director of Supervision – Investment, Wholesale and Specialist.

Megan is currently Executive Director of International Banks Directorate at the PRA. Megan starts on the 1 September and will be with the FCA for a year.

Megan takes over from Tracey McDermott who will step up to Acting CEO of the FCA on the 12 September following the departure of Martin Wheatley.

Commenting on the appointment Martin Wheatley said *"I am delighted that Megan has decided to join the FCA. She brings with her a wealth of experience and an excellent reputation in wholesale markets and will be a valuable addition to the executive team."*

FCA publishes new referral criteria for enforcement investigations

The FCA has updated the criteria and outlined the process it uses when deciding whether to refer a firm or individual to its enforcement division for a formal investigation.

Where misconduct is proved, an enforcement investigation can lead to fines, bans and suspensions. But enforcement is only one of a range of tools available to the FCA. The process published today will clarify how the FCA decides which regulatory tool is the most likely to fulfil its objectives in each individual case.

Georgina Philippou, acting director of enforcement and market oversight at the FCA, said *"Enforcement is not the only tool at our disposal where we see misconduct by firms or individuals, nor is it the most appropriate one to use in every case. Today's publication will make our decision making process more transparent. Firms and the public will now have a clearer understanding of the questions we* ask ourselves before we start a formal investigation."

When deciding whether to investigate, the FCA considers the following three overarching questions:

1. Is an enforcement investigation likely to further the FCA's aims and statutory objectives?
2. What is the strength of the evidence and is an enforcement investigation likely to be proportionate?
3. What purpose or goal would be served if the FCA were to take enforcement action in this case?

FCA Enforcement Cases

FCA bans former trader, following LIBOR fraud

This action follows the recent ban of another trader at the same bank. To date the FCA has issued 14 warning notices related to interest rate benchmarks, and continues wider investigations into individuals' conduct in relation to LIBOR misconduct.

Georgina Philippou, acting director of enforcement and market oversight at the FCA, said *"[the individual] was an experienced trader at [the bank in question] who, through his guilty plea, has admitted to participating in a criminal conspiracy to manipulate Libor over a prolonged period of time. His behaviour was inexcusable and very serious. This ban further reinforces our expectation that individuals and firms take responsibility for ensuring market integrity and reminds them of the consequences if they fall short of our standards."*

Payday lender to provide £20 million redress to over 92,000 customers

In June 2014, the firm voluntarily notified the FCA that it had engaged in unfair practices. In July 2014, the firm agreed to an independent review of its past business and to carry out a redress scheme. As a result of the review, it has agreed to provide £10 million in redress. The firm had already voluntarily written off £10.3m of fees and interest.

Irish News

The Central Bank has issued a Regulatory Transactions Service Standards Performance Report

- Authorisation of Funds,
- Regulated Financial Service Providers (FSPs)
- and theprocessing of Fitness and Probity Pre-Approval Control Functions (PCF)
- IndividualQuestionnaire ("IQ")

These applications are an important supervisory gateway and asignificant operational activity of the Central Bank of Ireland.

I. This document sets out the Bank's performance against Service Standards that it has committed to in respect of

II. Authorisation of Funds, (ii) Authorisation of FSPs and

III. processing of PCF "IQ" applications.

In addition the report also sets out how the Bank has delivered on the commitments made in the Consultation on Authorisation of Regulated Firms, Funds and Intermediaries: Process Improvements and Service Standards (CP67) and Feedback Statement published in 2013

Solvency II

The Bank have issued its latest version of *Solvency matters* for managers with a number of themes re-emerge including:

- Finalising capital plans;
- Closing out any remaining gaps in the governance Framework;
- The Forward Looking Assessment of Own Risk process;
- Internal Model Progress;
- Reporting - Feedback from the test environment and preparatory reporting accompanied by planning for reporting requirements in 2016 including data and IT challenges; and
- Ensuring board members and senior management have an appropriate understanding of the Solvency II regime.

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- Company authorisation services
- Fund authorisation services
- Outsourced MLRO services
- Outsourced compliance solutions
- Regulatory project assistance
  (e.g. Investment Restrictions, Money Laundering, Client Money, ICAAPs)
- Compliance 'Health' checks

UK and Ireland

- Consumer Credit Authorisation, whether you have an interim authorisation or not
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- ICAAP review and development
- ACD / Management Company structuring and governance review
- Fund and firm re-domiciliation advice
- AIFM Authorisation
- AIFM monitoring (including risk services)
- Dublin also provides Fund UCITS IV Reporting, MLRO and Company Secretarial Services

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