Regulatory Roundup

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FCA Developments

Extension of the Senior Managers & Certification Regime (SM&CR) implementation periods for solo-regulated firms

The deadline for solo-regulated firms to have undertaken the first assessment of the fitness and propriety of their Certified Persons has been delayed from 9 December 2020 until 31 March 2021.

The Treasury has agreed to delay, from 9 December 2020 until 31 March 2021, the deadline for solo-regulated firms to have undertaken the first assessment of the fitness and propriety of their Certified Persons. This will give firms significantly affected by the coronavirus pandemic time to make the changes they need.

To ensure SM&CR deadlines remain consistent, and to provide extra time for firms that need it, the Financial Conduct Authority (FCA) intends to consult on extending the deadline for the following requirements from 9 December 2020 to 31 March 2021:

- the date the Conduct Rules come into force
- the deadline for submission of information about Directory Persons to the Register
- references in the FCA rules to the deadline for assessing Certified Persons as fit and proper (which has been agreed by the Treasury)

In order to give regulated firms certainty, the FCA intends to consult alongside parliamentary process, to allow us to finalise their policy as soon as possible.

Senior Managers must ensure that Conduct Rules training is effective, so that staff are aware of the Conduct Rules and understand how they apply to them in their jobs. These programmes will require planning, time and effort to deliver effectively. The FCA will produce further communications about its expectations.

Firms should continue with their programmes of work in these areas and, if they are able to certify staff earlier than March 2021, they should do so. Firms should not wait to remove staff who are not fit and proper from certified roles.

The FCA will still publish details of certified employees of solo firms starting from 9 December 2020 on the Financial Services Register. Where firms are able to provide this information before March 2021, the

FCA encourages them to do so.

The Certification Regime and reporting of Directory Persons do not apply to benchmark administrators, so the FCA we do not intend to move the deadline for benchmark administrators.

Benchmark administrators have until December 2021 to train non-Senior Manager staff in the Conduct Rules. The FCA does not think that the coronavirus pandemic will prevent effective implementation of Conduct Rules training in these firms, and so it is not considering extending this deadline.

https://www.fca.org.uk/news/news-stories/extension-smcr-implementation-periods-solo-regulated-firms

High Court finds against illegal pension introducers, Avacade and others

The High Court ruled in favour of the FCA in a civil action against 2 firms and their directors who provided pension services to consumers without FCA authorisation.

The FCA's case concerned the activities of Avacade Limited (in liquidation) and Alexandra Associates (UK) Limited trading as Avacade Future Solutions (AA) and their directors, Craig Lummis, Lee Lummis and Raymond Fox. The FCA alleged the 2 companies provided a pension report service and made misleading statements which induced consumers to transfer their pensions into self-invested personal pensions (SIPPs) and then into alternative investments such as HotPods (office space available for rent), tree plantations and Brazilian property developments.

More than 2,000 consumers transferred in the region of £91.8m from their pensions into SIPPs. Approximately £68m of that amount was invested in products promoted by Avacade and approximately £905,000 was invested into a product promoted by AA – the Paraiba bond – a fixed rate bond relating to a Brazilian property development. From these investments Avacade and AA earned commissions in the region of £10.8m.

Many of the underlying investments have failed or are in liquidation.

The Court found that Avacade and AA's activities were unlawful as they had engaged in the regulated activities of arranging and advising on investments, made unapproved financial promotions through their websites, promotional material and in telephone calls to consumers and made false or misleading statements.

Avacade entered into creditor's voluntary liquidation on 6 November 2015.

The FCA is seeking orders from the High Court banning AA, the Lummises and Mr Fox from engaging in unauthorised activities in the UK. The FCA will also be asking the Court to determine the sums that AA and the individuals should be required to pay by way of restitution for their roles in the unlawful activity.

Any Avacade/AA customers who believe they may have lost money and have not previously been contacted by the FCA about this matter, should contact the FCA to provide their details.

https://www.fca.org.uk/news/press-releases/high-court-finds-against-illegal-pension-introducers-avacade-and-others

FCA sets out next steps to improve defined benefit pension transfer market

The FCA has set out a package of measures designed to address weaknesses across the defined benefit (DB) transfer market. It includes steps to reduce conflicts of interest by banning contingent charging, as well as help for advisers who want to do the right thing and provide good quality advice to their customers.

The package also includes further support for customers who are considering whether to transfer out of a DB scheme, or who have transferred out. The FCA has also published the results of its ongoing targeted work looking at the advice firms have given.

Contingent charging

The FCA will implement the ban on contingent charging in most circumstances. The ban will remove the conflicts of interest which arise where a financial adviser only gets paid if a transfer goes ahead. It will also help good advisers, who will often advise to stay put, to compete. To address ongoing conflicts, advisers must now consider an available workplace pension as a receiving scheme for a transfer and, if they recommend an alternative solution, demonstrate why that alternative is more suitable. This will help reduce the need and costs for ongoing advice.

The FCA will also implement proposals allowing advisers to provide an abridged advice process which will help consumers access initial advice at a more affordable cost. The abridged process can only result in a recommendation not to transfer or a statement that it is unclear whether a consumer would benefit from a pension transfer without giving full advice.

To assist financial advisers giving transfer advice, the FCA has issued a Guidance Consultation designed to help advisers put in place better processes to ensure consumers get suitable advice. The guidance identifies good and poor practice and will help firms identify weaknesses in their existing advice processes.

Suitability of advice

The FCA has also published an update to its ongoing targeted supervisory work, looking at the advice firms have given to those seeking to transfer out of a DB scheme. This has involved an industry-wide data collection from over 3,000 firms. The FCA provided detailed feedback to over 1,600 of these firms and as a result over 700 gave up their permission to provide pension transfer advice.

In addition to this, the FCA conducted in-depth reviews of the 85 most active firms in the market, who were responsible for 43% of transfers between April 2015 and September 2018. The aim of this was to identify those firms most likely to be providing unsuitable advice.

The FCA found that there has been an improvement in the suitability of advice given over time, with the suitability of advice rising from a low point of 47% in previous years to 60% in 2018. However, the FCA remains concerned at the number of files which either appeared to be unsuitable or where there were information gaps. The number of files where the advice appeared unsuitable was 17% and this remains unacceptably high.

Where firms have not met the required standards, the FCA expects firms to look at their past business and pay redress and where appropriate, the FCA will continue to ensure the removal of firms from the market.

The FCA is undertaking 30 enforcement investigations arising from concerns identified in the course of its programme of DB transfer work. Samples of advice for each firm under investigation have been reviewed and this will both inform its decision-making, and help to conclude those investigations.

While much of the advice reviewed by the FCA was suitable, the FCA recognises that consumers may have concerns about the advice they have received. In response, the FCA has produced an ['advice checker'] which will provide customers with information about the advice they should have received. The FCA has also produced consumer information, which will be useful for customers who are considering transferring but have not yet made the decision to do so.

The FCA will work with other organisations over the coming months to ensure consumers have easy access to this information.

British Steel Pension Scheme

Some of the files reviewed by the FCA included advice given to members of the British Steel Pension Scheme. The FCA found that the percentage of unsuitable files was higher than those in the rest of the sample. 192 instances of advice to former BSPS members were reviewed within these phases of its work. Of these, 21% appeared to be suitable, 47% appeared to be unsuitable and 32% appeared to contain information gaps.

The FCA has already undertaken a number of actions designed to help those who transferred out of the British Steel Scheme including writing to almost 4000 former scheme members advising them how to complain, and holding events in Port Talbot.

Given these latest findings, the FCA intends to write directly to all c.7,700 former members of BSPS for whom contact details are available, who transferred out. This will help them revisit the advice they received, and to complain if they have concerns.

The FCA will maintain its focus on firms providing transfer advice and work looking at this sector will continue.

https://www.fca.org.uk/news/press-releases/fca-sets-out-next-steps-improve-defined-benefit-pension-transfer-market

FCA fines Lloyds Bank, Bank of Scotland and The Mortgage Business £64,046,800 for failures in mortgage arrears handling

The FCA fined Lloyds Bank plc, Bank of Scotland plc and The Mortgage Business plc (the banks) £64,046,800 for failures in relation to their handling of mortgage customers in payment difficulties or arrears. The banks have estimated that they will have paid approximately £300 million in redress. The redress programme is nearly complete.

Between April 2011 and December 2015 the banks' systems and procedures for gathering information from mortgage customers in payment difficulties or arrears resulted in the banks' call handlers not consistently obtaining adequate information to assess customers' circumstances and affordability, creating a risk that customers were treated unfairly.

The banks also employed a system that set a minimum percentage of a customer's contractual monthly payment which a call handler was authorised to accept as a payment arrangement without obtaining further authority from a more senior colleague. However, in practice, the system created a risk of inflexibility in approach, with the result that call handlers may have failed to negotiate appropriate payment arrangements for customers.

These risks were exacerbated when, as part of a simplification programme, the banks lost a large number of personnel with mortgage collections and recoveries expertise, after which point nearly all of their mortgage arrears call handlers were new-to-role.

The FCA therefore found that the banks breached Principle 3 and Principle 6 of the FCA's Principles for Businesses between 7 April 2011 and 21 December 2015.

Some of the failings were identified by the banks as early as 2011 but the steps the banks took failed fully to rectify the issues. Failings were then identified as part of a thematic review conducted by the FCA in 2013. During 2014 and 2015 the banks took a number of further steps to address the concerns raised by the FCA and on several occasions informed the FCA they were on track to implement those improvements. However, a further review by the FCA in July 2015 found that the banks had failed to make sufficient progress in addressing the problems and the banks were required to undertake a Skilled Person's review.

The banks did not dispute the FCA's findings and exercised their right, under the FCA's partly contested case process, to ask the FCA's Regulatory Decisions Committee to assess the appropriate level of sanction. The banks' agreement to accept the FCA's findings meant they qualified for a 30% discount. Otherwise, the FCA would have imposed a financial penalty of £91,495,400.

In July 2017, the banks implemented a group-wide customer redress scheme which included refunding all broken payment arrangement fees, arrears management fees and interest accrued on the fees and the refund of litigation fees if applied unfairly or, in some circumstances, automatically. The banks have estimated that approximately 526,000 customers will have received redress payments totalling £300 million.

By November 2019 the banks had already made payments of approximately £259.9 million to customers. The banks have proactively contacted all the customers they believe are due for compensation however, any customer who has not been contacted and think they may have been affected should contact their bank.

The fair and appropriate treatment of customers experiencing financial difficulty remains a focus for the FCA and the FCA is working to ensure that firms raise their standards in this area. Firms should ensure there is appropriate investment in their staff who work in collections and recoveries, including in training and effective management information, to allow firms to monitor customer outcomes and take appropriate action where needed. The FCA recognises the challenges firms face in this area posed by coronavirus (Covid-19), which only heightens the importance of firms treating customers in financial difficulty fairly and appropriately.

https://www.fca.org.uk/news/press-releases/fca-fines-lloyds-bank-bank-scotland-mortgage-business-failures-mortgage-arrears

FCA bars Cypriot firms that used unauthorised celebrity endorsements

The FCA has taken action to stop four Cypriot investment firms from continuing to offer high risk contracts for difference (CFDs) to UK investors.

It appears that these firms used unauthorised celebrity endorsements on social media as part of their marketing. The orders require them to stop selling CFDs to UK customers, to close existing positions with UK customers, to return UK customers' money and to notify UK customers of the FCA's action.

The firms are entitled to seek a review of the FCA's action.

Hoch Capital Ltd (trading as iTrader and tradeATF), Magnum FX (Cyprus) Ltd (trading as ET Finance), Rodeler Ltd (trading as 24option) and F1Markets Ltd (trading as Investous, StrattonMarkets and Europrime) used social media and webpages carrying fake endorsements from celebrities to entice consumers into the scams involving CFDs.

The FCA estimates that UK investors have lost hundreds of thousands of pounds in these investments.

None of the firms and their operators have any actual presence in the UK and the firms have addresses in Cyprus.

The FCA took action because consumers were not provided with sufficient information as to the nature of the investments, some were pressured into making increasingly large investments in CFDs, which referenced bitcoin, foreign exchange, shares and indices, and some were even encouraged to take out credit to make the payments.

It also appears that the firms had failed to pay money owed to investors, charged customers undisclosed fees and failed to tell them about the risks of trading CFDs.

CFDs are complex financial investments which allow traders to speculate on the movement in prices of underlying assets and can cause heavy losses to unwary or inexperienced investors.

A number of customers are known to have lost more than £100,000 to the schemes.

The Cypriot-regulated firms – which were permitted to operate in the UK through a method known as passporting – must now cease all regulated activities with UK consumers.

It is the first time the FCA has used its power to remove passporting rights from a firm.

Following the FCA's action, and on the basis of information supplied by the FCA, the Cyprus Securities and Exchange Commission (CySEC) has fully suspended the regulatory authorisations of Rodeler Ltd and Hoch Capital Ltd and partially suspended the regulatory authorisations of Magnum FX (Cyprus) Ltd and F1 Markets Ltd.

The CySEC action means that Rodeler Ltd and Hoch Capital Ltd must cease all regulated activities entirely. Magnum FX (Cyprus) Ltd and F1 Markets Ltd, may only provide investment services to their existing non-UK-resident clients, and must not promote the provision of their investment services or take on new clients. They are also explicitly prohibited from providing investment services to existing or new UK resident clients.

https://www.fca.org.uk/news/press-releases/fca-bars-cypriot-firms-used-unauthorised-celebrity-endorsements

FCA proposes to make permanent its ban on mini-bond marketing

Following the temporary ban that was introduced in January 2020, the FCA released proposals to put a permanent ban on the mass-marketing of speculative mini-bonds and other products with similar features to retail investors.

The new consultation paper introduces a set of small changes and clarifications to the temporary ban, which came into force following the collapse of mini-bond issuer London Capital & Finance Plc. The FCA has confirmed that some firms have tried to get around the temporary ban, using listed bonds with similar features to speculative mini-bonds which are not regularly traded. As a result, the ban will be extended to include listed bonds with similar features to Speculative Illiquid Securities ("SIS").

The FCA's Interim Executive Director, Sheldon Mills, said that the permanent ban would serve as a protection to retail investors who neither understood the risks involved in investing in complex high-risk products nor could afford the possible financial losses. The FCA added that the ban will apply to the most 'complex and opaque arrangements' where the funds raised are used to lend to a third party, or to buy or acquire investments, or to buy or fund the construction of property.

Additionally, the FCA has proposed certain exemptions to the ban which include regularly traded listed bonds, companies that raise funds for their activities, and products that fund a single UK income-generating property investment. Consequently, such high-risk products can only be marketed to sophisticated or high net worth investors.

These enhanced rules suggest that the marketing materials and promotions of mini-bond firms will also have to include a specific risk warning and disclose any costs or payments to third parties which are deducted from the money raised from investors.

Moreover, the FCA expressed its concerns over misleading claims implying that the FCA or the HMRC may offer protection or endorsement over the mass marketing of SIS. Whilst the regulator has limited powers over unauthorised issuers of SIS, it can act when authorised firms approve or communicate a financial promotion, or directly advise or sell such products.

The FCA has now opened a consultation that will run until the 1st of October, with the final rules expected to be published before the end of the year.

Consultation Paper: High-risk investments: Marketing speculative illiquid securities (including speculative mini-bonds) to retail investors, https://www.fca.org.uk/publication/consultation/cp20-8.pdf

FCA Response to Covid-19

FCA confirms further support for consumer credit customers

The FCA confirmed the support users of certain consumer credit products will receive if they are still experiencing temporary payment difficulties due to coronavirus (Covid-19).

The measures outline the options firms will provide credit card and other revolving credit (store card and catalogue credit) and personal loan customers who are coming to the end of a payment freeze and for customers who have agreed an arranged interest-free overdraft of up to £500. Customers yet to request a payment freeze or an arranged interest-free overdraft of up to £500, will have until 31 October 2020 to apply for one.

The FCA has confirmed:

- If customers can afford to return to regular repayment, or make partial payments, it is in their best interest to do so.
- Firms should contact customers coming to the end of a first payment freeze to find out if they can resume payments – and if so, agree a plan on how the missed payments could be repaid.
- For customers still facing temporary payment difficulties as a result of coronavirus, firms will provide them with support, which could include freezing or reducing payments on their credit card and personal loans to a level they can afford for 3 months.
- Customers who are negatively impacted by coronavirus and who already have an arranged overdraft on their main personal current account can request up to £500 interest-free for a further 3 months. Firms will also provide these customers with further support where it is needed including reducing the cost of borrowing above the interest-free buffer, especially if this cost of borrowing would otherwise increase.
- Customers that have not yet had a payment freeze or an arranged interest-free overdraft of up to £500 and experience temporary financial difficulty, due to coronavirus, would be able to request one up until 31 October 2020.
- Any payment freezes or partial payment freezes offered under this guidance should not have a negative impact on credit files. However, consumers should remember that credit files are not the only source of information which lenders can use to assess creditworthiness.

When implementing this guidance, firms should be particularly aware of the needs of their vulnerable customers and should consider how they engage with them. Firms should also help customers understand the types of debt help and money guidance that are available and encourage them to access the resources that can help them.

The FCA has confirmed that it will not extend the temporary general expectation in relation to overdraft costs. In April, the FCA asked all firms to temporarily ensure all overdraft customers were no worse off on price when compared to the prices they were charged before the recent overdraft rule changes came into force (those changes benefitted most customers). As was previously the case, firms will be able to set their prices, but overdraft customers who are financially impacted by coronavirus will continue to be able to request support on any additional borrowing in excess of £500. Firms that do choose to increase their charges from this temporary level should give customers impacted by coronavirus an opportunity to seek extra support before any changes take effect.

The FCA will continue to monitor overdraft pricing. In addition to today's proposals, the FCA has published a statement providing an update following the letter that was sent to firms in January, requesting information on new overdraft pricing.

This guidance came into force on 3 July 2020 and only applies to credit cards (and other retail revolving credit, such as store cards and catalogue credit), personal loans and overdrafts.

It does not apply to other consumer credit products, such as motor finance, high-cost short-term credit, rent-to-own, pawnbroking and buy-now pay-later, which are covered by separate guidance which will be updated soon.

FCA confirms support for customers who are struggling to pay their mortgage due to coronavirus

The FCA confirmed the support firms should give to mortgage customers who are either coming to the end of a payment holiday or who are yet to request one. The FCA is also reminding customers that if they can afford to resume payments, they should.

For customers still experiencing temporary payment difficulties due to coronavirus (Covid-19), firms will offer support, with options including a full or part payment holiday for a further three months. Customers yet to apply for a payment holiday have until 31 October 2020 to do so.

The FCA has confirmed:

- Customers that have not yet had a payment holiday and who experience financial difficulty have until 31 October 2020 to request one.
- The current ban on lender repossessions of homes will be continued to 31 October 2020. This will ensure people are able to comply with the government's policy to self-isolate if they need to.
- Firms will communicate with customers regarding what happens when their payment holiday ends. They should offer a range of options for how the missed payments will be repaid, if they are able to resume payments.

- Lenders will continue to support customers who have already had a payment holiday where they need further help. Firms should contact their customers to find out what they can re-pay and, for those who remain in temporary financial difficulty, offer further support, which will include the option of a further three-month full or part payment holiday.
- Payment holidays offered under this guidance will not have a negative impact on credit files. However, consumers should remember that lenders may use information obtained from other sources, such as bank account information, in their lending decisions.

Depending on the customer's circumstances, firms may make them aware of self-help steps a customer may take or signpost customers towards sources of debt advice. This will be for anyone concerned about managing their money during coronavirus and wants to find out what steps to take to get back on track.

When implementing this guidance, firms should be particularly aware of the needs of their vulnerable customers and consider how they engage with them. For customers who are not able to use online services (such as digital channels), firms should make it easy for customers to access alternatives.

This guidance came into force on 4 June 2020 and only applies to mortgages. It does not apply to consumer credit products which are covered by separate guidance which will be updated in due course.

https://www.fca.org.uk/news/press-releases/fca-confirms-support-customers-who-are-struggling-pay-their-mortgage-due-coronavirus

FCA confirms guidance for insurance firms on assessing product value

The FCA confirms guidance for insurance firms to consider the impact of coronavirus (Covid-19) on the value of their insurance products.

The guidance sets out what the FCA considers firms should be doing to identify any material issues that affect the value of the general insurance and protection products they offer, and their ability to deliver good customer outcomes, during this unprecedented time.

The guidance sets out that firms should focus on reviewing products where benefits cannot be provided (e.g. boiler services due to lockdown measures) or where there has been a fundamental change in risk and products are now providing little or no utility to customers (e.g. public liability insurance for closed businesses).

The guidance is not intended to create an expectation that firms should reassess the value of insurance products where the likelihood of a customer making certain claims may have fallen, but the product continues to provide utility (e.g. motor insurance where, for example, theft or fire can still occur).

Firms should review their product lines and decide on any resulting actions within 6 months. This might include changing how benefits are delivered, refunding some premiums or suspending monthly payments for a certain period of time.

The FCA is publishing its finalised guidance, subject to a small number of changes. This includes changes to clarify that firms:

- should consider the value of products where, due to the impact of coronavirus, there has been a material reduction in risk so that they are providing little or no utility to customers, and not just where claims are no longer possible
- are not expected under this guidance to assess value on an individual customer level, but should consider the FCA's guidance on helping customers in temporary financial difficulty as a result of coronavirus
- can assess the longer-term impacts of coronavirus on their insurance products on an ongoing basis beyond the 6-month period the FCA has set out for product reviews resulting from this guidance.

The guidance came into effect on 3 June 2020 and will be reviewed in 6 months in light of developments regarding coronavirus and may be revised if appropriate.

Customers who are struggling to afford their insurance or premium finance payments because of the impact of coronavirus should contact their insurer or insurance broker to discuss options.

https://www.fca.org.uk/news/press-releases/fca-confirms-guidance-insurance-firms-assessing-product-value

Complyport is a regulatory compliance consulting firm supporting the UK financial services industry for around 20 years. We specialise in providing Governance, Risk and Compliance services to firms in the financial services industry in the UK and overseas. We advise and assist firms to become authorised and to comply with the rules and requirements of regulators on an ongoing basis and have successfully assisted over 300 firms to become authorised with the FCA and have been providing regulatory support to over 500 regulated firms on an ongoing basis at a Group level. With presence in the UK, EU and Hong Kong, Complyport can assist firms across multiple jurisdictions.

Complyport's multidisciplinary consultants possess deep expertise in their field, having acted in FCA skilled person reviews, as expert witnesses in legal cases and as expert investigators for firms or their legal advisers. The team assists firms on issues relating to corporate governance, risk management, business controls, compliance and business improvement. We conduct audits and reviews of a firm's products, processes, policies and procedures to identify scope for business, to determine the impact of regulatory developments and to verify compliance with local regulations. Complyport offers full support with financial reporting, capital adequacy assessments and compliance training as well as a suite of online RegTech applications to enable a firm to demonstrate continued compliance with the regulatory obligations.

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