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COMPLIANCE UPDATER

Regulatory and compliance news in brief   Issue: May 2019

LCF accused of misleading investors in the 'mini bonds' scandal.

After the collapse of London Capital and Finance (LCF) – the Financial Conduct Authority (FCA) authorised firm that inappropriately pushed mini-bonds onto consumers – the Financial Times has revealed that the Financial Services Compensation Scheme (FSCS) may have given misleading information over the level of protection for the retail bondholders. The FSCS has said it is not accepting claims relating to LCF as the company was issuing "its own mini bonds to investors on a non-advised basis". However, correspondence shows that the FSCS failed to spell out this fact to some bondholders stating that the company was protected by the FSCS guarantee scheme up to £50,000.

Hong Kong tycoon battling with Shaftesbury plc over non-pre-emptive placing.

A Hong Kong billionaire who owns 26% of London-listed Shaftesbury plc is taking legal action over a share placing that took place in 2017. Samuel Tak-Lee alleges that the placing that raised around £260m was done to dilute his interests in the company. The placing took advantage of a resolution allowing non-pre-emptive issues of up to 10%. It raised cash at a 4.9% discount to the prevailing share value at the time. Shaftesbury plc is a property company that owns substantial swathes of real estate in the west end of central London.

British company ownership secrecy still lingers.

Despite the requirement that 'people with significant control' (PSCs) in UK companies are registered at Companies House, anti-corruption campaign group Global Witness suggests more needs to be done. It believes that weak enforcement has resulted in around 336,000 companies misleadingly reporting no controlling shareholder. Global Witness also wants to see Companies House require proof of identity to ensure those that are reported as PSCs actually exist.

Jefferies helped hedge fund partner make side trades that brought about collapse.

US investment bank Jefferies helped a partner at Carbon Fund make huge speculative bets that breached the hedge fund's risk limits and contributed to its collapse. Jefferies facilitated side trades using the fund's assets as collateral including big bets on Netflix and Tesla. The Tesla trade was over 45 times the trading limit of the fund.

Ex-Goldman banker extradited to the US over 1MDB scandal.

A former Goldman Sachs banker has been extradited from Malaysia to the US to face charges relating to the $2.7bn 1MDB scandal. The scandal saw billions of dollars - from cash raised by Goldman Sachs-arranged bond sales for the Malaysian state fund – siphoned off to pay bribes.

UK law firms facing disciplinary action over lax AML compliance.

The UK's Solicitors Regulation Authority has referred 26 law firms for disciplinary action for falling short in their anti-money laundering (AML) compliance. A review found poor checks, procedures and risk assessments, including 4 firms with no written risk assessments at all.

Hong Kong grants banking licences to Tencent and Alibaba.

China's big tech companies have been given approval by Hong Kong's regulator to launch digital banks. In a major fintech advance, the Hong Kong Monetary Authority handed licences to Tencent, Alibaba, Xiaomi and Ping An.

Negative fee ruling from US SEC.

Salt Financial, a boutique ETF manager in New York, applied to the US Securities and Exchange Commission (SEC) to implement a negative fee model. In order to attract investors, the Salt Low truBeta US Market ETF will offer a fee waiver for the first $100m invested – the fee waiver is 34 basis points and the management fee is only 29 basis points, meaning the investor receives the difference of 5 basis points. The SEC has backed the model.

UK MPs demand ban for contingent pension charging.

The work and pensions select committee of the UK Members of Parliament is demanding that the FCA bans contingent charging for pension transfers. To address the 'glaringly obvious conflict of interest' the committee recommended contingent charging – only being paid if a transfer of pension actually happens – be banned. The issue has come to a head after widespread bad advice was provided to members of the British Steel Pension Scheme to transfer out of the defined benefit scheme and generate hefty fees on a contingent basis.

MiFID II facing criticism.

A number of commentators feel the EU's Markets in Financial Instruments Directive II (MiFID II) is contributing to the slow death of European investment banking. The argument is that the unbundling of research from trading has meant less coverage of small cap companies, fewer brokers focused on anything other than the very large listed companies and, consequently, weaker interest in small companies that represent the backbone of the European economy.

EU hits global banks with €1bn in fines for forex rigging.

The EU fined a number of banks for colluding and manipulating the spot currency markets between 2007 and 2013. Using chat rooms dubbed the 'Three Way Banana Split' and 'Essex Express', traders shared information on customers' orders to manipulate 11 currencies including the dollar, the euro and the pound. The biggest fine of €311m went to Citigroup, RBS faces a €249m fine, JPMorgan €229m, Barclays €210m and Japan's MUFG €70m. UBS also participated but avoided a €285m fine as it was the first to alert the EU to the cartels.

Regulators looking at UK universities pension scheme.

An experienced trustee and statistician claims she was obstructed in her efforts to discover whether the deficit on the UK universities pension scheme (the Universities Superannuation Scheme) was exaggerated. A reported deficit of £7.5bn prompted a recommendation to phase out the defined benefit plans. An independent panel subsequently concluded the position was not as bad as reported.

Ireland and Luxembourg to probe local entities for 'substance'.

The two countries that have benefitted most from Brexit-related transfers of domiciled funds from the UK – Ireland and Luxembourg – plan to review their local management companies to ensure they have sufficient 'substance'. EU rules only permit delegation if the management company can prove it is not a shell company taking orders from portfolio managers outside the EU, such as in the US or in the UK after Brexit.

Deutsche Bank reveals software glitch that prevented red flag suspicions from being reported.

Germany's Deutsche Bank revealed that a software glitch has prevented some suspicious transactions from being reported to the authorities for almost 10 years. The software was designed to retrospectively look for suspicious patterns of payments processed for clients. The potential fallout is yet to be fully assessed as the software is just one of a number of overlapping anti-financial crime systems at the bank.

ESMA drops no-deal block on biggest UK stocks.

The European Securities and Markets Authority (ESMA) dropped a rule that would have blocked EU banks and fund managers trading 14 large stocks (including Vodafone, BP and GlaxoSmithKline) in London in the event of a no-deal Brexit. The removal of the requirement recognises that most of the liquidity for these stocks is in London, and the restriction would adversely impact best execution. However, the ruling remains for over 6,000 stocks that must be traded in Europe, rather than London, by EU participants in a no-deal Brexit.

Second set of UWOs from the UK's NCA.

The UK's National Crime Agency (NCA) issued its second set of unexplained wealth orders (UWOs) targeting three London properties purchased around ten years ago for around £80m. The identity of the individual behind the three offshore companies that own the properties was not revealed, only that he/she is a politically exposed person believed to be involved in serious crime.

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