

Update

Weekly Financial Services Regulatory Update

Fortnight to 03.08.12

This weekly update from Clyde & Co's Financial Services Regulatory Team summarises new developments as reported by the FSA, the UKLA, the Upper Tribunal, the Financial Ombudsman Service and the London Stock Exchange over the past week, with links to the full documents where these are available.

We hope that you will find this update useful. If you have any queries about any of the information in this update or financial services regulatory matters generally, please contact one of the individuals listed in the 'Contacts' section of this publication.

If you have any comments on the content or format of the update or if you no longer wish to receive it, or have a colleague who would like to receive it, please email financial.services@clydeco.com.

Consultation papers:

No new developments this week.

Discussion papers:

2 August: CP12/18 – Data collection on remuneration practices. The FSA has published a Consultation Paper on remuneration data reporting requirements for BIPRU firms and third country BIPRU firms. The FSA is proposing amendments to the Remuneration Benchmarking Information Report and the High Earners Report. In relation to the Remuneration Benchmarking information Report, banks, building societies and investment firms with assets of £50 billion or greater will be required to submit information on the structure of remuneration for its

group. In relation to the High Earners Report, the FSA proposes that data on all employees earning £1 million or more will have to be provided by all banks, building societies and investment firms (excluding solo limited licence and limited activity firms). The deadline for comments is 30 September 2012 and the FSA expects firms in scope of one or both data requests to be in a position to submit data by 31 December 2012.

<http://www.fsa.gov.uk/library/policy/cp/2012/12-18.shtml>

27 July: CP12/17 – Packaged bank accounts. In October 2011, the FSA proposed new rules to regulate the selling of non-investment insurance policies within packaged bank accounts as one in five adults currently has one of these accounts. This Consultation Paper provides the feedback that was received in relation to those proposals and publishes the final rules that have been developed in response to that feedback. The deadline for responses is 29 October 2012. Final rules are expected in December 2012

<http://www.fsa.gov.uk/library/policy/cp/2012/12-17.shtml>

25 July: CP12/16 – Funding Model Review. The FSA has published a Consultation Paper setting out its proposals to the way in which the Financial Services Compensation Scheme (“FSCS”) is funded. Due to mass claims in certain areas (for example following PPI mis-selling) levies have been raised and industry concerns have led to this review. The main proposed changes are amendments to cross-subsidy and annual thresholds, and a proposed retail pool for FCA classes but the funding of the FSCS will fundamentally remain the same. The deadline for responses is 25 October 2012.

<http://www.fsa.gov.uk/library/policy/cp/2012/12-16.shtml>

25 July: CP12/15 – Client Assets Firm Classification, Oversight, Reporting and the Mandate Rules. The FSA has published a Consultation Paper covering two areas: CASS oversight and reporting, and the mandate rules (CASS 8). In relation to CASS oversight and reporting, the FSA has already introduced Client Asset and Money Return (“CMAR”) rules to self-classified CASS-medium and CASS-large firms and are therefore consulting in this paper on the proposal to introduce CMAR rules to CASS-small firms. It is also consulting on additional amendments to CASS 1A in order to address the issues that have been noticed in the CASS firm classification and operational oversight requirements. In relation to the mandate rules (CASS 8), it has been recognised that there is a degree of inconsistency in firms’ understanding of the scope of mandate rules where they have been reintroduced in the area of client money and assets auditing reporting. In response to this, the FSA is proposing to clarify the mandate rules in line with the FSA’s long-held policy intentions. The rules themselves, and the internal controls required by them, will not be altered. The deadline for responses is 30 September 2012.

<http://www.fsa.gov.uk/library/policy/cp/2012/12-15.shtml>

25 July: CP12/14 – Tracing employers’ liability insurers – historical policies. The FSA has published a Consultation Paper which sets out proposals that will assist former employees who have suffered work-related illnesses to trace their employers’ liability insurer. The proposals would mean that all firms would be required to conduct effective searches of their records, wherever such claims are or may be made against them, if the claimant or a third party requests them to do so. The deadline for responses is 17 October 2012.

<http://www.fsa.gov.uk/library/policy/cp/2012/12-14.shtml>

Discussion papers:

No new developments this week.

Policy statements:

27 July: PS12/14 – Mortality assumption for pension Key Feature Illustrations. The FSA has published a Policy Statement following on from the consultation paper it published on mortality assumptions for pensions KFI in May 2012. The publication reviews the feedback that was received to that consultation paper and sets out the final rules that have been adopted that will come into force on 21 December 2012.

<http://www.fsa.gov.uk/library/policy/policy/2012/12-14.shtml>

27 July: PS12/13 – Financial resources requirements for Recognised Bodies. The FSA has published a Policy Statement presenting the feedback it received and its final guidance in relation to its ‘Financial resources requirements for Recognised Bodies’ Consultation Paper.

<http://www.fsa.gov.uk/library/policy/policy/2012/12-13.shtml>

Press releases:

2 August: Turkish Bank (UK) Ltd fined £294,000 for money laundering failings. The FSA has fined Turkish Bank (UK) Ltd £294,000 for failings in its correspondent banking arrangements which led to a real risk that the bank may be used to facilitate money laundering. This is the first time that the FSA has taken enforcement action against a bank for correspondent banking anti-money laundering weaknesses. The Turkish Bank provides correspondent banking services to countries outside of the EEA which requires enhanced due diligence and ongoing monitoring of the relationships. The Turkish Bank failed to do either of these and failed to keep adequate records relating to each as well.

<http://www.fsa.gov.uk/library/communication/pr/2012/081.shtml>

27 July: FSA publishes new rules on packaged accounts. The FSA has published new rules relating to the selling of packaged bank accounts which require banks to first check whether consumers are eligible to claim on insurance policies before selling them. Consumers will have to be alerted if they are not able to claim on policies that are included in their packaged accounts and the consumers’ circumstances will be required to be reviewed annually to see that the consumer is aware of any changes to their eligibility.

<http://www.fsa.gov.uk/library/communication/pr/2012/079.shtml>

25 July: FSA consults on new funding model review for the FSCS. The FSA is proposing changes to the way in which the Financial Services Compensation Scheme ("FSCS") is funded. The current model, which has been in place since April 2008, is funded by contributions from regulated firms. The significant amounts that have been paid out, however, have led to some classes of firm experiencing sizeable levies. Whilst the consultation proposes no changes to the firm funding classes, it does propose to split the costs between activities that will be regulated by the PRA and FCA respectively. Furthermore, the FSCS will attempt to forecast its compensation costs over a 36 month period, rather than the current twelve months as it is hoped that this will help to spread levies and make them more predictable.

<http://www.fsa.gov.uk/library/communication/pr/2012/078.shtml>

24 July: FSA fines former insurance broker £471,846 for misappropriating insurance premiums. The FSA has banned and fined former commercial insurance broker, Stephen Goodwin, for the misappropriation of £303,846 worth of insurance premiums. Including a punitive penalty of £168,000, Mr Goodwin has been fined £471,846 which is the largest fine ever levied on an individual for insurance fraud. Mr Goodwin did co-operate at an early stage and was therefore entitled to have the punitive element of his fine reduced by 30% from £240,000.

<http://www.fsa.gov.uk/library/communication/pr/2012/077.shtml>

23 July: Six found guilty of operating insider dealing ring. Ali Mustafa, Pardip Saini, Paresh Shah, Neten Shah, Bijal Shah, and Truptesh Patel have all been convicted of insider dealing following the FSA's longest and most complex prosecution. Collectively, the insider dealing ring made a profit of £732,044.59 and took significant steps to disguise their involvement, denying any wrongdoing throughout. Mitesh Shah has been acquitted.

<http://www.fsa.gov.uk/library/communication/pr/2012/076.shtml>

23 July: Seven more banks agree to join FSA's review of sales of interest rate hedging products to SMEs. Allied Irish Bank, Bank of Ireland, Clydesdale and Yorkshire Banks, Co-operative Bank, Northern Bank and Santander UK have all volunteered to review their sales of interest rate hedging products to SMEs following the agreement signed by four larger banks on 29 June 2012. The co-operation of these smaller banks will ensure that customers who may have been mis-sold products will be dealt with consistently, regardless of who they bank with.

<http://www.fsa.gov.uk/library/communication/pr/2012/075.shtml>

Speeches:

24 July: Banking at the cross-roads. The FSA has published a speech given by Lord Turner, Chairman of the FSA, at Bloomberg. In his speech, he highlights the importance of trust in the banking system, first exploring why that trust is declining before explaining its importance and what the implications are for developing policy, conduct supervision and for the boards and management of banks.

<http://www.fsa.gov.uk/library/communication/speeches/2012/0724-at.shtml>

Bulletins and newsletters:

No new developments this week.

Final notices:

2 August: First Financial Advisers Ltd & Stephen Danner.

The FSA has issued a Final Notice, dated 2 August, refusing the application by First Financial Advisers Ltd for Stephen Danner to perform the Customer Function (CF30). Both parties were issued with a Warning Notice from the FSA that it intended to refuse the application and provided them with the opportunity to make representations as to why it should be approved. The subsequently issued Decision Notice was referred to the Upper Tribunal. The Tribunal found that the FSA had been right to conclude that it could not be satisfied that Mr Danner is a fit and proper person to perform the function applied for. There was a potential conflict of interest which the Tribunal held could not be distinguished from an actual conflict of interest and Mr Danner's failure to disclose this to the affected persons called into question whether he was a fit and proper person.

<http://www.fsa.gov.uk/static/pubs/final/stephen-danner.pdf>

31 July: Riaz Aslam Gul. The FSA has issued a Final Notice, dated 31 July, cancelling the registration of Mr Riaz Aslam Gul as a small payment institution. Mr Gul has failed to pay fees and levies owing to the FSA in the amount of £559.60 and therefore the FSA has concluded that Mr Gul has failed to demonstrate a readiness and willingness to comply with his regulatory obligations and to deal with the FSA in an open and co-operative way.

<http://www.fsa.gov.uk/static/pubs/final/riaz-gul.pdf>

26 July: Castle Grove Insurance Limited. The FSA has issued a Final Notice, dated 26 July 2012, cancelling the Part IV permission that has been granted to Castle Grove Insurance Limited ("Castle Grove"). Castle Grove had failed to conduct any activity which required this permission in the past 12 months and had failed to cancel the permission itself.

<http://www.fsa.gov.uk/static/pubs/final/cgisl.pdf>

25 July: Simon Wood trading as Wood Associates

Independent Financial Services. The FSA has issued a Final Notice, dated 25 July 2012, cancelling Mr Wood's Part IV permission. The FSA is no longer satisfied that Mr Wood is a fit and proper person on the basis that he failed to comply with the regulatory requirement to submit his Retail Mediation Activities Report for the period ended 31 December 2011 and has not been open and co-operative in his dealings with the FSA.

<http://www.fsa.gov.uk/static/pubs/final/simon-wood.pdf>

24 July: Stephen Goodwin. The FSA has issued a Final Notice, dated 24 July 2012, imposing a financial penalty of £471,846 on Stephen Goodwin and prohibiting him from performing any function in relation to any regulated activity. Mr Goodwin accepted insurance premiums from his clients but failed to pass them to the insurers in order to arrange the policies. Of the £471,846 Mr Goodwin has been fined, £303,846 reflects the amount Mr Goodwin misappropriated and £168,000 has been added as a punitive element. This punitive element has been reduced by 30% as Mr Goodwin qualified for this discount for agreeing to settle at an early stage.

<http://www.fsa.gov.uk/static/pubs/final/stephen-goodwin.pdf>

7 July: Adrian Mark Mosley (trading as Mosley & Company). The FSA has issued a Final Notice, dated 7 July 2012, withdrawing the approval that had previously been granted to Mr Mosley to perform the Compliance Oversight controlled function, cancelling Mr Mosley's Part IV Permission, making a Prohibition Order and imposing a fine of £10,500. Mr Mosley failed to pay due regard to the interests of his customers and treat them fairly in breach of Principle 6, and failed to take reasonable care to ensure the suitability of the advice that he provided to customers in breach of Principle 9.

<http://www.fsa.gov.uk/static/pubs/final/adrian-mosley.pdf>

Application refusals:

No new developments this week.

Approved person refusals:

No new developments this week.

Research publications:

No new developments this week.

Consumer research:

No new developments this week.

Other FSA publications:

3 August: Implementation Assumptions. The FSA has updated its implementation assumptions for the Solvency II Directive to reflect the new timetable in the short amending Directive adopted on 3 July 2012. This means that:

- 30 June 2013 is when the responsibilities of supervisors and EIOPA will be switched on (i.e. transposition)
- 1 January 2014 is when the Solvency II requirements will be switched on for firms

<http://www.fsa.gov.uk/about/what/international/solvency/implementation/implementation-assumptions>

3 August: 31 July 2012 List of Banks. The FSA has published an updated list of banks as of 31 July 2012. The changes that have occurred are as follows:

- JP Morgan Securities Ltd has changed its name to JP Morgan Securities plc
- Westdeutsche Landesbank Girozentrale has changed its name to Portigon AG

http://www.fsa.gov.uk/static/list_banks/2012/jul12.pdf

1 August: FSA statement regarding CRD IV

implementation. The FSA has published a statement in relation to the draft EU legislation to update the capital requirements framework (CRD IV). Given the delays that have occurred in the European Parliament's plenary vote, it no longer appears feasible that the legislation will enter into force by 1 January 2013 as originally cited. The FSA states that it will keep the situation under review as no alternative date has yet been provided and will continue to prepare in line with the existing timetable until more information is available. It also reminds affected investment firms to also continue to prepare for implementation.

<http://www.fsa.gov.uk/library/communication/statements/2012/crd-iv.shtml>

July 2012: FSCS Interest Levy Letter. The FSA has published a letter from the FSCS to deposit-taking firms. In 2008, the FSCS raised a loan of £20.4 billion from the Bank of England in order to cover compensation for those whose savings were lost by the major banking failures. The FSCS is now raising a levy from deposit-taking firms to cover the interest repayments on this loan. The total levy was originally forecasted to be £369.1 million but has now been calculated as being £362 million. This letter includes an invoice to the individual firm for their share of this payment and the calculation of the amount owed by each firm is based upon their respective share of the tariff measure with a set formula applied. The amount is payable by 1 September 2012.

<http://www.fsa.gov.uk/static/pages/doing/regulated/fees/pdf/letter-deposit-taker.pdf>

31 July: Journey to the FCA – Frequently Asked Questions.

The FSA has published questions and answers about the transition from the FSA to the FCA and reflects questions that have been raised in relation to the reforms.

http://www.fsa.gov.uk/about/what/reg_reform/fca-journey/faqs

31 July: Pillar 2-Systems of Governance. The FSA has updated its Pillar 2 webpage to include information about Solvency II's Own Risk and Solvency Assessment ("ORSA").

<http://www.fsa.gov.uk/about/what/international/solvency/policy/governance>

31 July: FG12/18 Sale and Rent Back Review. The FSA conducted a review in March 2011 into the sale and rent back market. The FSA has now published Finalised Guidance which sets out the findings from this review. Findings included:

- A failure to assess appropriateness and affordability
- Inadequate record-keeping, and
- Non-compliant financial promotions.

<http://www.fsa.gov.uk/static/pubs/guidance/fg12-18.pdf>

27 July: Handbook Notice 122. The FSA has published a Handbook Notice, outlining the changes that were made by the FSA Board at their meeting on 26 July 2012. The changes include the following:

- Setting out the regulatory requirements applicable to a firm 'bidding in emissions auctions'
- Changing the mortality basis that firms use for projections in personal pensions illustrations
- Introducing new rules for firms arranging insurance contracts as part of a packaged bank account
- Providing guidance to brokers on when they can pass inside information to buyers, regarding the sale of stock by persons discharging managerial responsibilities

<http://www.fsa.gov.uk/static/pubs/handbook/hb-notice122.pdf>

26 July: Thematic Overview on the Regulated Covered Bond Regime. The FSA has published a Guidance Consultation in relation to the Asset Pool Monitor ("APM") as, following the publication of the amended Regulated Covered Bond Regulations, clarification was requested regarding what the role of the APM was. This consultation therefore sets out the FSA's further guidance on the scope of the inspection and report of the APM and seeks feedback from market participants on it.

<http://www.fsa.gov.uk/static/pubs/guidance/gc12-09.pdf>

26 July: Proposed review of 'General Guidance on Proportionality' for Remuneration. The FSA has published proposed guidance as it proposes to amend the 'General Guidance on Proportionality' that currently sets out the FSA's proportionate approach to implementing the Remuneration Code. The proposed framework would replace the current four-tier structure (based on capital resources) with three new 'levels' (based on total assets). By dividing firms into these three levels (which will be by virtue of whether the firm is an individual or part of a group, and its relevant total assets on a relevant date) the FSA will be able to focus its resources primarily on those firms which pose the greater financial risk. The deadline for responses is 6 September 2012.

http://www.fsa.gov.uk/library/policy/guidance_consultations/2012/gc1210

25 July: FSA statement on the use on XBRL. The FSA has published a statement on the use of eXtensible Business Reporting Language (XBRL). XBRL has often been adopted because it helps to reduce errors when business information needs to be exchanged consistently. In relation to Solvency II and the Capital Requirements Directive, the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA) aim to introduce European-wide, harmonised XBRL and will mandate National Supervisory Authorities to adopt this XBRL for reporting on quantitative data. The FSA intends to only use XBRL to collect regulatory data at this stage but other views and opinions on this are welcomed.

Any further use of XBRL by the FSA will be explored and consulted on at the appropriate time.

<http://www.fsa.gov.uk/library/communication/statements/2012/xbrl.shtml>

25 July: Assessing the affordability and thresholds of FSCS levies. The FSA commissioned Deloitte LLP to prepare a report assessing the affordability and thresholds of Financial Services Compensation Scheme ("FSCS") levies. The FSA sought this report as part of their comprehensive review of the funding model of the FSCS. The intention was that this report would form one of the inputs that would assist the FSA in making its policy decision, which is why it focuses on affordability, economic scenarios, regulatory scenarios, the potential for cost 'pass-through', and, where applicable, the impact of pre-funding.

<http://www.fsa.gov.uk/static/pubs/other/deloitte-29mar12.pdf>

24 July: Solvency II update for IMAP firms. The FSA has published a letter from Julian Adams providing an update on Solvency II and giving feedback to firms on IMAP. This letter explains how the implementation timetable has been updated, what progress has so far been made (with firms already starting to submit pre-applications), that the areas of expert judgment and data risk have been identified for additional feedback across the board, and what the next stages will be towards implementation.

<http://www.fsa.gov.uk/static/pubs/international/sol2-imap-letter-24-07-12.pdf>

23 July: Interest Rate Hedging Products: Role of the Independent Reviewer. The FSA has published a factsheet on interest rate hedging products and the role of the independent reviewer in light of the agreement reached between the FSA and some of the larger banks on 29 June 2012 relating to the sale of these products to SMEs. This factsheet provides information to customers about what they can reasonably expect from the review and why an independent reviewer is important.

<http://www.fsa.gov.uk/static/pubs/other/factsheet-interest-rate-hedging-products.pdf>

UKLA publications:

July: Consultation on the UKLA's Primary Market Bulletin No.2 – July 2012. The UKLA has published a consultation paper presenting the Procedural Notes and the Technical Notes that it proposes to publish in the UKLA Knowledge Database. The UKLA Knowledge Database will be launched when feedback has been considered. The deadline for comments is 24 August 2012.

http://www.fsa.gov.uk/library/policy/guidance_consultations/2012/ukla-bulletin

Upper Tribunal (Tax and Chancery Chamber) (formerly Financial Services and Markets Tribunal (FSMT)):

No new developments this week.

Financial Ombudsman Service (FOS):

No new developments this week.

London Stock Exchange (LSE):

No new developments this week.

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