

Update

Weekly Financial Services Regulatory Update

Week to 14.09.12

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:

12 September: (CP12/24) Regulatory Reform: PRA and FCA regimes relating to aspects of authorisation and supervision. The FSA has published Consultation Paper CP12/24 proposing changes to the FSA Handbook which will align it with the new rulebooks that will be created with the introduction of the PRA and FCA. A key element of the regulatory reform is the division of the FSA into the PRA and the FCA, and simultaneously the FSA Handbook will be divided also. Prior to this, the existing Handbook must be substantively changed so that it aligns with the future objectives and functions of the new bodies. Subsequent papers over the coming

months will cover further changes to the Handbook, together with new policies resulting from regulatory reforms proposed in the Financial Services Bill 2012. The deadline for comments is the 12 December 2012.

<http://www.fsa.gov.uk/library/policy/cp/2012/12-24.shtml>

11 September: Addressing the implications of non-EEA national depositor preference regimes (CP12/23). The FSA has published Consultation Paper CP12/23, proposing to address the current system of dealing with the claims of UK branch depositors against those of home country depositors in the situation where a firm from a non-EEA country becomes insolvent. Currently the claims of home country depositors can be preferred and this paper proposes to redress this by introducing rules requiring non-EEA firms to accept deposits in the UK using a UK-incorporated subsidiary or by alternative arrangement which ensures that UK depositors are no worse off than home country depositors in the event that the firm fails. The deadline for comments is 11 December 2012.

<http://www.fsa.gov.uk/library/policy/cp/2012/12-23.shtml>

Discussion papers:

No new developments this week.

Policy statements:

No new developments this week.

Press releases:

12 September: FSA issues ban and fine of £500,000 against former HBOS executive, Peter Cummings. The FSA has fined Peter Cummings £500,000 and banned him from holding any further senior position in a UK authorised firm. This constitutes the highest fine that the FSA has ever imposed on a senior executive for management failings. Mr Cummings failed to put adequate safety controls in place whilst pursuing an aggressive expansion strategy within the Corporate Division of HBOS between January 2006 and March 2008, and failed to take reasonable care to ensure that the Corporate Division adequately and prudently managed high value transactions which showed signs of stress between April and December 2008.

For the related Final Notice, please see the relevant section of this update.

<http://www.fsa.gov.uk/library/communication/pr/2012/087.shtml>

11 September: FSA fines BlackRock Investment Management (UK) Limited £9.5 million for client money breaches. The FSA has fined BlackRock Investment Management (UK) Limited ("BlackRock") for failing to protect client money adequately by not putting trust letters in place for specific money market deposits. Firms must have trust letters from banks holding their client money and BlackRock failed to have these in place in relation to some of the money market deposits it placed with third party banks. This put client money at risk of being lost in circumstances where the third party bank may have become insolvent. The average daily balance affected was £1.36 billion. The FSA determined that this conduct was worthy of a £13,618,800 fine but BlackRock qualified for a 30% discount on this due to its agreement to settle at an early stage.

For the related Final Notice, please see the relevant section of this update.

<http://www.fsa.gov.uk/library/communication/pr/2012/086.shtml>

Speeches:

No new developments this week.

Bulletins and newsletters:

No new developments this week.

Final notices:

12 September: Peter Cummings. The FSA has issued a Final Notice, dated 12 September 2012, fining Peter Cummings, the former executive director of HBOS and chief executive of its Corporate Division, £500,000 and prohibiting him from performing any significant influence function in any authorised firm. Mr Cummings was aware

that the Corporate Division's portfolio was high risk and vulnerable to a downturn in the economic cycle and, under his direction, the Division pursued an aggressive growth strategy. This approach meant that the Division then required a high level of control and oversight but Mr Cummings failed to take reasonable steps to assess, manage or mitigate the risks, or to provide the control and oversight required. This conduct constitutes a failure by Mr Cummings to exercise due skill, care, and diligence. Bank of Scotland further failed to take reasonable care to organise and control its affairs responsibly and effectively, and Mr Cummings was knowingly concerned in this failure.

For the relevant press release, please see the relevant section of this update.

<http://www.fsa.gov.uk/static/pubs/final/peter-cummings.pdf>

12 September: Ian Orbart. The FSA has issued a Final Notice, dated 12 September 2012, prohibiting Mr Ian Orbart from performing any function in relation to any regulated activity. The FSA has held that Mr Orbart is not a fit and proper person on the basis that he was dismissed from an FSA authorised firm for dishonesty, obtained a false reference in order to gain employment with another FSA authorised firm, and failed to disclose his dismissal to his new employer or to the FSA. The FSA has therefore made a Prohibition Order against Mr Orbart and this has not been appealed to the Upper Tribunal.

<http://www.fsa.gov.uk/static/pubs/final/ian-orbart.pdf>

11 September: BlackRock Investment Management (UK) Limited. The FSA has issued a Final Notice, dated 11 September 2012, imposing a financial penalty of £9,533,100 on BlackRock Investment Management (UK) Limited ("BlackRock") for its failure to arrange adequate protection for certain client money and for its failure to comply with the requirement to provide appropriate notification and obtain acknowledgement of the trust status of client money placed on money market deposits in the period between 1 October 2006 and 31 March 2010. These failures were due to certain organisational and systems changes that occurred following BlackRock Group's acquisition of BlackRock (previously known as Merrill Lynch Investment Managers Limited) on 29 September 2006 which weakened its client money oversight and compliance arrangements.

For the related press release, please see the relevant section of this update.

<http://www.fsa.gov.uk/static/pubs/final/blackrock.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:

14 September: Solvency II: internal model approval process data review findings. The FSA has published feedback for firms which are part of the internal model approval process on the findings of its review of the firms' compliance with the Solvency II Directive. This is interim feedback as the review is not expected to be completed until Q3 2013, as per the current Solvency II implementation plan.

<http://www.fsa.gov.uk/static/pubs/international/sii-imap-data-review-09-12.pdf>

12 September: Update on FSA report into the failure of HBOS. The FSA has published a statement confirming that, now all enforcement action connected to the failure of HBOS has been taken and there is no further risk of prejudicing those proceedings, it intends to start work on a report on the causes of the failure of HBOS in 2008. It is intended that this report will be published during the remaining 'lifetime' of the FSA.

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

12 September: Make sure you're on track for the RDR.

The FSA has published a guide to help firms prepare for the RDR. The guide directs firms with questions to the best sources of information and gives real life examples of the ways that firms have so far overcome some specific problems. The guide covers adviser charging, independent and restricted advice, and professionalism.

<http://www.fsa.gov.uk/static/pubs/other/rdr-make-sure-youre-on-track.pdf>

11 September: Handbook Release 129. The FSA has published Handbook Release 129 which covers changes that came into force between 7 August 2012 and 6 September 2012. The affected modules are the Prudential sourcebook for Banks, Building Societies and Investment Firms, Supervision, Compensation and the Credit Unions New Sourcebook.

<http://www.fsa.gov.uk/library/policy/handbook/releases/2012/129>

11 September: FSA factsheet for credit unions. The FSA has published a factsheet for credit unions as a result of the changes to the credit union rules that came into effect on 1 September 2012. The factsheet is divided into changes affecting credit unions in Great Britain and those affecting credit unions in both Great Britain and Northern Ireland.

<http://www.fsa.gov.uk/smallfirms/resources/factsheets/pdfs/changes-to-credit-unions-rules.pdf>

UKLA publications:

No new developments this week.

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

No new developments this week.

Financial Ombudsman Service (FOS):

11 September: Ombudsman releases latest complaints data on individual financial businesses. The FOS has published its latest set of six-monthly complaints data relating to individual financial businesses. The data shows the number of complaints made and the percentage upheld in favour of consumers. It shows that complaints about PPI made up 63 per cent of all complaints received during the first half of 2012.

<http://www.financial-ombudsman.org.uk/news/updates/complaints-data-1Jan-30Jun-2012.html>

London Stock Exchange (LSE):

No new developments this week.

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