

Update

Weekly Financial Services Regulatory Update

Week to 27.09.13

This weekly update from Clyde & Co's Financial Services Regulatory Team summarises new developments as reported by the FCA, the PRA, 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 publications@clydeco.com.

Consultation papers:

No new developments this week.

Discussion papers:

No new developments this week.

Policy statements:

No new developments this week.

Speeches:

No new developments this week.

Bulletins and newsletters:

No new developments this week.

Final notices:

26 September 2013: FCA Final Notice 2013: Clydesdale Bank Plc.

The FCA has fined Clydesdale Bank Plc (Clydesdale) because it found that between April 2009 and April 2012, Clydesdale breached Principle

6 (customers' interests) of the FCA's Principles for Businesses. The FCA found that Clydesdale failed to pay due regard to the interests of its customers and treat them fairly after it discovered an error in April 2009 in how it had calculated some of its customers' mortgage repayments. As a result of the error, incorrect repayments were made on over 42,500 customer accounts. Of these, approximately 22,000 accounts were left with shortfalls. These 22,000 customers then faced unexpected increases in their monthly repayments both to correct the error and to make up for their shortfalls. In total there was a GBP 21.2 million shortfall in Clydesdale mortgages. After discovering the error, Clydesdale contacted customers and set up a dedicated call centre to deal with any queries. However, in seeking repayment from customers as a priority, it wrongly sought to balance its own commercial interests against the requirement to treat customers fairly. Clydesdale has agreed to compensate all those who underpaid on their mortgages as a result and write to other affected customers.

Clydesdale agreed to settle at an early stage of the FCA's investigation and therefore qualified for a 30% discount; without the discount the fine would have been GBP 12,720,000.

Final Notice: <http://www.fca.org.uk/your-fca/documents/final-notices/2013/clydesdale-bank-plc>

Press release: <http://www.fca.org.uk/news/clydesdale-bank-fined-89-million>

25 September 2013: FCA Final Notice: ICAP Europe Ltd.

The FCA has fined ICAP Europe Limited (IEL) £14 million for misconduct relating to LIBOR. The FCA found that between October 2006 and November 2010 IEL breached Principle 3 (management and control) and Principle 5 (market conduct) of the FCA's Principles for Businesses. The misconduct involved a significant number of brokers (including two managers) and included:

- IEL brokers colluding with traders at UBS to manipulate the Japanese Yen LIBOR rates for the benefit of the traders. This involved brokers deliberately disseminating incorrect or misleading LIBOR submission levels by:
 - Emailing skewed suggestions to some Panel Banks as to where they believed the published JPY LIBOR rate would set for a particular day (known as "run-throughs")
 - Requesting certain Panel Banks to make specific JPY LIBOR submissions
- A broker receiving corrupt bonus payments (at the instigation of one manager) as a reward for his assistance in manipulating the JPY LIBOR rates

IEL's inadequate systems, controls, supervision and monitoring meant that the brokers' misconduct went undetected and continued for several years.

IEL agreed to settle at an early stage of the FCA's investigation and therefore qualified for a 30% discount, without the discount the fine would have been £20 million. IEL is the first broking firm to be fined for failings relating to the benchmark.

Final Notice: <http://www.fca.org.uk/your-fca/documents/final-notices/2013/icap-europe-ltd>

Press release: <http://www.fca.org.uk/news/icap-europe-limited-fined>

Application refusals:

No new developments this week.

Approved person refusals:

No new developments this week.

Research publications:

No new developments this week.

Other FCA and PRA publications:

27 September 2013: FCA Handbook Notice 5. The FCA has published Handbook Notice 5, setting out changes made to the FCA Handbook under instruments made by the FCA Board on 1 August 2013 and on 26 September 2013. Handbook Notice 5:

- Contains feedback on the FCA's July 2013 CP13/5 consultation paper on amendments to the Client Assets sourcebook (CASS) required by regulatory technical standards (RTS) relating to EMIR (Regulation 648/2012) on indirect clearing arrangements
- Confirms that the FCA is deferring the introduction of the new capital resource requirements for personal investment firms (PIFs) from 31 December 2013 to 31 December 2015. The FCA has said that it will conduct a fundamental review of its approach to determine whether it remains appropriate

<http://www.fca.org.uk/static/documents/handbook-notices/fca-handbook-notice-005.pdf>

25 September 2013: FCA TR13/7 - Payment protection insurance complaints: report on the fairness of medium-sized firms' decisions and redress. The FCA has published the findings of a complaints handling review of 18 medium and small sized firms currently handling payment protection insurance (PPI) complaints. The review found that while some firms are handling complaints in line with the FCA's expectations, two thirds of the firms reviewed had serious problems with complaint handling decisions and communications to customers. In particular the review highlights five main shortcomings in the firms' processes:

1. Overlooking the inadequate demands and needs assessment that took place at the time of sale in an advised sale
2. Overlooking the inadequate assessment in an advised sale of whether a single premium policy would meet the customer's demands and needs
3. Paying insufficient regard to poor disclosure of the limitations and exclusions of a policy at the time of sale
4. Not identifying poor disclosure of the cost of a policy at the time of sale
5. Providing inadequate explanations of complaint decisions and redress offers

The FCA is working closely with firms to help improve their complaint handling processes to a level that consumers would expect and to remediate any detriment that may have occurred.

Thematic review: <http://www.fca.org.uk/news/tr137-payment-protection-insurance-complaints-report>

Press release: <http://www.fca.org.uk/news/fca-review-of-medium-sized-firms-ppi-complaints-handling>

24 September 2013: FCA published undertaking by 'esure' regarding unfair contract terms. The FCA has published an undertaking given by esure Insurance Ltd (esure) under the Unfair Terms in Consumer Contracts Regulations 1999 (SI 1999/2083) (UTCCRs), relating to the fairness of two of its cancellation terms in its home insurance and car insurance policies.

esure's policy documents contained cancellation terms that allowed it to cancel a customer's home or car insurance policy at any time, with seven days' notice in writing, without the firm having to explain why it had done this. esure has agreed to change the cancellation terms to:

- Restrict the firm's discretion to cancel policies for "valid" reasons
- Clarify the process the firm follows in practice when cancelling policies

The changes will be in place for new policies from 1 November 2013.

In addition to the undertaking, esure has acknowledged that its automatic renewal terms were unclear as they suggested that esure could renew a customer's home or car insurance policy with a different insurer. For car insurance policies entered into on or after 27 January 2013 and home insurance policies entered into on or after 14 April 2013, esure has deleted the term relating to automatic renewal with different insurers.

For both the cancellation terms and automatic renewal terms, esure will treat all customers as being subject to the new terms set out in the undertaking.

<http://www.fca.org.uk/static/undertakings/esure.pdf>

24 September 2013: PRA updates webpage on remuneration code. The PRA has published an annex on its webpage relating to the remuneration code, which sets out the information that firms must send to the PRA separately to their remuneration policy statement (RPS). The annex forms part of the PRA's RPS templates that allow firms to record remuneration policies, practices and procedures and assess compliance with its remuneration code. Among other things, the annex requests information relating to whether a firm has experienced any significant events in the previous performance year that may lead it to consider if an ex-post risk adjustment should be applied to either in-year bonus pools, or individual unvested deferred awards. If it has, a firm needs to provide further details.

<http://www.bankofengland.co.uk/pradocuments/remuneration/rpsannex1malus.DOCX>

23 September 2013: FCA updates AIFMD webpage with information for depositaries. The FCA has updated its "latest news" webpage on the Alternative Investment Fund Managers Directive (2011/61/EU) (AIFMD), with information for firms currently preparing applications for authorisation, or variation of permission, to carry out the function of acting as depositary or trustee of an alternative investment fund (AIF). The webpage:

- Draws the attention of applicants to the rules on delegation by a depositary, in particular referring to rule 3.11.26 in the FCA's Investment Funds sourcebook (FUND)
- Advises firms that are intending to outsource any administrative or technical functions, to consider the provisions in Chapter 8 of the Senior Management Systems and Controls sourcebook (SYSC)

<http://www.fca.org.uk/firms/markets/international-markets/aifmd/latest-news>

UKLA publications:

No new developments this week.

Upper Tribunal (Tax and Chancery Chamber):

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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