

Update

Weekly Financial Services Regulatory Update

Week to 10.02.12

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 **James Cooper** (020 7876 6388) or **Abigail Potts** (020 7876 6544).

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:

No new developments this week.

Policy statements:

No new developments this week.

Press releases:

6 February: Delivering a twin peaks regulatory model within the FSA.

Hector Sants, chief executive at the FSA, has delivered a speech to the British Bankers' Association on the progress of the regulatory reform programme. He announced that the new "twin peaks" model will be operating within the FSA from

2 April 2012. This will mean that banks, building societies, insurers and major investment firms will have two groups of supervisors – one focusing on prudential and one focusing on conduct. All other firms will be solely supervised by the conduct supervisors.

The key characteristics of the twin peaks model include:

- Two independent groups of supervisors for banks, building societies, insurers and major investment firms, covering prudential and conduct
- Supervisors making their own, separate, set of regulatory judgements against different objectives
- Independent, yet coordinated, regulation designed to allow internal coordination between both conduct and prudential supervisors to maximise the exchange of information relevant to their individual objectives, but with supervisors still acting separately when engaging with firms

- Retaining the principle of seeking to ensure that regulatory data is only collected once

The speech can be found in the relevant section of this update.

<http://www.fsa.gov.uk/library/communication/pr/2012/012.shtml>

Speeches:

6 February: Delivering ‘twin peaks’ within the FSA. The FSA has published a speech by Hector Sants, chief executive at the FSA, on the progress of the UK government’s regulatory reform programme. Sants focuses on the following four issues:

- The general principles underlying twin peaks, as explained above.
- The principal operational changes to the supervisory model. The two supervisory units will run their own risk mitigation programmes and the existing ARROW risk mitigation programme will be split between those actions which are relevant to the conduct supervisory groups’ objectives and the prudential supervisory groups’ objectives. On the allocation of supervisory resource, Sants said that the prudential supervisory group will continue with the FSA’s approach of having dedicated firm supervision for those firms which may have systemic impact. As this is a fairly small number when it comes to conduct supervision, conduct supervisors will reduce the level of resources dedicated to proactive firm-specific work overall and increase its thematic resource, whilst ensuring sufficient resources are available to be deployed for unexpected events.
- The behavioural changes necessary. Supervisors will need to have the ability to identify big risks to the statutory objectives, and the decisiveness to make the right judgements. Firms will need to align their goals with those of supervisors and proactively comply with supervisory judgments. It is also important for firms to recognise that the new approach will require greater resources and expertise, thus increased costs.
- Further changes to be made by the future supervisory organisations. The Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA) need to commence work on designing a new operating platform to support their new approaches to supervision. Both also need to complete the detailed design work on their supervisory risk framework which will replace ARROW. Another major issue which needs to be resolved is ensuring that there is a general understanding of the risk tolerance against which they will be judged.

The press release can be found in the relevant section of this update.

<http://www.fsa.gov.uk/portal/site/fsa/>

Bulletins and newsletters:

8 February: FSA Insurance newsletters. The FSA has published its general insurance and its life insurance newsletters. As well as providing firms with an update of its work in relation to a range of insurance initiatives, including on Solvency II, they also provide clarification as to when the FSA expects to publish a range of anticipated policy documents, including its plans to:

- Consult on a ban of all marketing of traded life policy investments to mass market retail investors;
- Publish its policy statement on insurance policies in packaged bank accounts; and
- Publish a response to comments made on its November 2011 guidance consultation on structured products.

http://www.fsa.gov.uk/static/pubs/newsletters/gi_feb12.pdf

http://www.fsa.gov.uk/static/pubs/newsletters/life_feb12.pdf

Final notices:

No new developments this week.

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:

10 February: FSA extends expiry date of confirmed industry guidance on transparency, disclosure and conflicts of interest in the commercial insurance market.

The FSA has extended the expiry date of the British Insurance Brokers’ Association’s (BIBA) industry guidance on transparency, disclosure and conflicts of interest in the commercial insurance market. The guidance had been due to expire on 23 March 2012 but will now not expire until 23 March 2015.

http://www.fsa.gov.uk/pages/Library/Other_publications/industry_guidance/index.shtml

10 February: FSA guide to RDR implementation. The FSA has published a guide to assist firms with implementation of the requirements of the Retail Distribution Review (RDR) which comes into force on 31 December 2012. The guide raises questions for firms to ask themselves so that they can check their own progress and identify any gaps. The guide highlights the three areas where new requirements have been introduced to help firms prepare: professionalism (including appropriate qualifications, gap fill templates and statements of professional standing), independent and/or restricted advice (choosing and implementing service models) and fees and business models (moving to a new fee-based adviser charging model).

<http://www.fsa.gov.uk/pubs/other/rdr-guide.pdf>

8 February: Financial Services Bill: date announced for House of Commons committee stage. The Financial Services Bill passed its second reading in the House of Commons on 6 February and Parliament has now published the provisional date of 21 February 2012 for the House of Commons committee stage. The House of Commons, on conclusion of its second reading, also passed a carry-over motion allowing that if the Financial Services Bill has not concluded its process in the 2011-12 session, the Bill will be allowed to continue into the next session without starting its legislative process afresh.

<http://services.parliament.uk/bills/2010-11/financialservices.html>

<http://www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120206/debtext/120206-0004.htm#1202074000006>

6 February: FSA MOU with Institute and Faculty of Actuaries. The FSA has published a Memorandum of Understanding (MOU) that it has entered into with The Institute and Faculty of Actuaries (Institute). The MOU states that its purpose is to “provide a framework for the ongoing working relationship between the FSA and the Institute”, in particular by promoting an open and consultative relationship between them. The MOU is not designed to create any additional legal liability or obligation arising solely from non-compliance with the MOU but will act as a guideline for the responsibilities conferred upon each body by existing legislation in relation to Institute members carrying on exempt regulated activities and authorised professional firms. This MOU supersedes previous MOUs between the parties and will be regularly reviewed.

http://www.fsa.gov.uk/static/pubs/mou/fsa_actuaries.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):

9 February: FOS issues provisional decision about AIG fund investment advice. The Financial Ombudsman Service (FOS) has provisionally found in favour of consumers who complained about the advice provided to them by a bank to invest in the AIG Life Premier Access Bond Enhanced Variable Rate Fund (EVRF). In 2008, AIG

Life suspended withdrawals from the EVRF for a period of 3 months and subsequently closed the fund. The consumers in this case received less overall than their original investment had been. The consumers complained that the fund had been recommended to them by their bank and that this recommendation had been unsuitable in relation to the specific requirements they had provided, ie, no risk and immediately access to their money.

This provisional decision in favour of the investors was decided on the basis that the recommendation to invest in the fund was unsuitable for them in relation to their requirements and that the recommendation to invest in this particular fund was relied upon to the extent that “but for” the recommendation the consumers would not have invested in that way.

Compensation was calculated by comparing what the investors would have received had they invested in a traditional “no risk” deposit account. The bank’s submission that the risk of the Lehman Brothers’ collapse (which subsequently caused the suspension and closure of the EVRF by AIG Life) was unforeseeable was dismissed as “extreme market conditions are a feature of financial markets” – though the precise form of these events was not predicted, this does not make them unforeseeable.

http://www.financial-ombudsman.org.uk/publications/technical_notes/AIG-prov-decision-feb12.pdf

6 February: FOS technical resource on GAP insurance.

The FOS has published an online technical resource in relation to Guaranteed Asset Protection (GAP) insurance. The resource outlines the way in which the FOS approaches complaints about GAP insurance policies and how it assesses potential compensation.

http://www.financial-ombudsman.org.uk/publications/technical_notes/GAP-insurance.html

London Stock Exchange (LSE):

10 February: LSE announces RNS customer consultation process.

The LSE has announced that it has begun a detailed customer consultation process in relation to its Regulatory News Services (RNS). The consultation will evaluate user information and access as well as fee structures, innovation and product development. The consultation is expected to conclude in the early summer.

<http://www.londonstockexchange.com/about-the-exchange/media-relations/press-releases/2012/mscustomerconsultation.htm>

Further information

If you would like further information on any issue raised in this update please contact:

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