

Update

Weekly Financial Services Regulatory Update

Week to 04.05.12

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:

30 April: Consumer redress scheme in respect of unsuitable advice to invest in Arch cru funds. The FSA has released a consultation paper (CP12/9) entitled 'Consumer redress scheme in respect of unsuitable advice to invest in Arch cru funds'. The consultation paper will be relevant to all firms who sold Arch cru funds, investors in Arch cru funds, as well as trade bodies and consumer groups. The FSA has released CP12/9 on the basis of its concern that Arch cru funds have been mis-sold to consumers and that redress should be available to put those investors back into the position they were in prior to investing. The onus will be on the firms who sold the

funds to identify the unsuitable sales and to tell the investors how much they are entitled to recoup.

The deadline for comments is 31 July 2012.

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

<http://www.fsa.gov.uk/library/policy/cp/2012/12-09.shtml>

Discussion papers:

No new developments this week.

Policy statements:

27 April: Regulatory Prudent

Valuation Return. The FSA has issued a policy statement (PS12/7) following on from its earlier consultation paper (CP11/30 – Proposed Regulatory Prudent Valuation Return) outlining the feedback that was received during that consultation and the changes that have been made to the rules in this area. The aim of the changes is to make it easier for the FSA to review firms' prudent valuation returns and to compare data between firms. Firms will need to produce the new return on or after 30 June 2012 when it comes into force.

<http://www.fsa.gov.uk/library/policy/policy/2012/12-07.shtml>

27 April: Pension transfer value analysis assumptions.

The FSA has issued a policy statement (PS12/8) following on from its earlier consultation paper (CP12/04) outlining the feedback that was received during that consultation and the changes that have now been made in this area. The main changes introduced, that aim to clarify and update the assumptions and guidance that a firm must use in comparing the benefits of different pension schemes, include:

- Aligning the rules for calculating mortality with those used by the Board for Actuarial Standards
- Mortality rates will be gender neutral
- A Consumer Price Index (CPI) assumption will be used when valuing pensions in deferment
- Growth rates that take into account the likely returns of the pension fund assets will be provided to the member to enable comparison between schemes

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

<http://www.fsa.gov.uk/library/policy/cp/2012/12-09.shtml>

Press releases:

4 May: Rebuilding trust and confidence. The FSA has published a speech by Martin Wheatley in which he explains why resolving the issues surrounding treatment of customers in the past is key to rebuilding trust and confidence. He gives the example of PPI and champions the role of the FCA in assisting with future improvements.

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

<http://www.fsa.gov.uk/library/communication/pr/2012/048.shtml>

3 May: FSA fines car supermarket for PPI sales monitoring failings.

The FSA has fined UK Car Group Limited ("UKCG") £91,000 for failing to ensure that its appointed representative, CC Automotive Limited (trading as Carcraft) provided advice that was suitable for its customers whilst selling PPI. Carcraft's internal audits did raise clear concerns about the way in which PPI was being sold and, whilst UKCG did take some steps to address these concerns, Carcraft continued to inadequately record the advice being given to customers. Further concerns were raised in relation to the competency of Carcraft staff, levels of supervision over advisers and sufficiency of documentation given to consumers. UKCG did co-operate by settling at an early stage so was entitled a 30 per cent discount on its fine which would otherwise have been £130,000.

For the related final notice, please see the relevant section of this update.

<http://www.fsa.gov.uk/library/communication/pr/2012/047.shtml>

1 May: FSA fines Christchurch Investment Management Limited and compliance officer for client money breaches.

The FSA has fined Christchurch Investment Management Limited £26,600, and David Thornberry (its compliance officer) £11,550 for failing to protect clients' money and

thereby breaching the FSA's client money rules (CASS). The firm failed to put in place adequate trust documentation to ensure that, in the event of insolvency, client money would be duly segregated from money belonging to the firm. Thornberry specifically did not receive any formal training for his role and because of this was unaware of the CASS rules and failed to test and review the firm's existing systems and controls. In addition to his fine, Thornberry has also been banned from acting as a compliance officer or having responsibility for client assets.

<http://www.fsa.gov.uk/library/communication/pr/2012/046.shtml>

30 April: FSA secures four and a half year jail sentence for man convicted of laundering boiler room funds.

Michael McInerney has been sentenced to four and a half years in prison having been convicted of three counts of money laundering. He has also been disqualified from directing a company for seven years. McInerney acted as a banker for the Wilmots who defrauded 1,700 people out of £27.5 million through their boiler room scam. On behalf of the Wilmots, McInerney set up three companies designed to receive the proceeds of the boiler room fraud. He also arranged accounts for cheques to be paid into from various different company names and transferred funds to offshore accounts in Malta and Jersey.

<http://www.fsa.gov.uk/library/communication/pr/2012/045.shtml>

30 April: FSA launches redress scheme consultation for Arch cru investors.

The FSA has launched a consultation on establishing a new consumer redress scheme to compensate investors who were mis-sold the CF Arch cru Investment and Diversified funds. The way in which the scheme is designed will ensure that customers who were mis-sold this product are put back into the position they were in prior to investment. This would be in addition to the £54 million payment scheme announced last year and would require all firms who sold Arch cru funds to contact their customers to inform them of whether their case falls within the scope of the scheme, and inform their investors of how much redress they are entitled to within six months of the start of the scheme.

For the related consultation paper, please see the relevant section of this update.

<http://www.fsa.gov.uk/library/communication/pr/2012/044.shtml>

27 April: FSA publishes new rules to ensure pension transfers are suitable for scheme members.

The FSA has published new rules and guidance designed to deal with the FSA's concern that in most cases a pension transfer is not in the best interest of pension scheme members. Responses to the consultation indicated that the changes would be welcomed.

For the related policy statement, please see the relevant section of this update.

<http://www.fsa.gov.uk/library/communication/pr/2012/043.shtml>

26 April: Exillon Energy Plc fined £292,950 for Listing Rules breach. The FSA has fined Exillon Energy Plc ("Exillon") £292,950 for failing to inform the FSA that it was engaging in a related party transaction and for failing to adequately train senior officers to ensure that the policies and procedures that were in place to ensure its compliance with the Listing Rules were carried out correctly. The related party rules are designed to protect minority shareholders, according to David Lawton, by preventing directors and majority shareholders from unfairly benefiting from their positions. Exillon's early co-operation in settlement has reduced its fine by 30 per cent from what would otherwise have been a fine of £418,500.

For the related final notice, please see the relevant section of this update.

<http://www.fsa.gov.uk/library/communication/pr/2012/042.shtml>

25 April: FSA confirms traded life policy investments should not generally be promoted to UK investors. The FSA has published guidance arguing that traded life policy investments (TLPIs) are high risk products that should not be promoted to retail investors in the UK. The FSA has established evidence to prove that there are significant problems with the way that TLPIs are structured, marketed and sold to UK retail investors.

<http://www.fsa.gov.uk/library/communication/pr/2012/041.shtml>

24 April: Delivering effective corporate governance - the financial regulator's role. Hector Sants, chief executive of the FSA, has delivered a speech reviewing the progress of reforms since the financial crisis and highlighting what more is needed to deliver effective corporate governance.

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

<http://www.fsa.gov.uk/library/communication/pr/2012/040.shtml>

24 April: FSA contacts more than 75,000 people to warn them they are being targeted by financial crime. The FSA is contacting 76,732 people to warn them that they have become the targets of fraudsters. The list of people targeted was recovered from companies believed to be fraudulently selling shares and land. The FSA is sending a standardised letter to these people which should help them to identify scams, avoid becoming a victim in the future and assist them if they have already invested.

<http://www.fsa.gov.uk/library/communication/pr/2012/039.shtml>

Speeches:

4 May: Rebuilding trust and confidence in banks and bankers. The FSA has published a speech given by Martin Wheatley, the Managing Director of the FSA's Conduct Business Unit, at the Chartered Institute of Bankers. In his speech, Wheatley comments that earlier in his career, a subject like this would have been unthinkable but that since the financial crisis, distrust of banks is commonplace worldwide. He looks at the relationship between consumers and firms, and goes on to outline how the introduction of

the twin peaks model, with particular focus on the role of the Financial Conduct Authority, will seek to improve this relationship.

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

<http://www.fsa.gov.uk/library/communication/speeches/2012/0504-mw.shtml>

27 April: Basel III – the big issues. The FSA has published a speech by Andrew Bailey, Director of UK Banks & Building Societies, at the Seventh City of London Swiss Financial Roundtable, that he delivered at Mansion House, London, on 27 April 2012. In his speech, Bailey outlines a number of principles that form the basis of the Basel reforms, including that:

- Returning the financial system to stability will enhance competition and strengthen financial centres
- The key objective of removing both implicit and explicit dependence upon public funds will return the focus of banking towards resolution and prevent the interventionist approach from being adopted by government and supervisors
- The objectives of supervision need to be clearer and minimise uncertainty, i.e. by being judgemental and forward-looking

<http://www.fsa.gov.uk/library/communication/speeches/2012/ab-0427>

27 April: Financial risk and regulation – more or less Europe? The FSA has published a speech given by Adair Turner, the Chairman of the FSA, at the Central Bank of Ireland Conference on 'Financial Regulation: The Response to the Crisis' on 27 April 2012. In answer to the question posed (i.e. whether more or less Europe is the answer to the economic crisis), Turner claims that his answer would be a mixture. He begins by considering the importance of countries' current account balances within the single-currency system and how that has tended to be of greater importance than was anticipated by countries entering the Eurozone. He also acknowledges, however, that for some countries, the difficulties stemmed instead from private capital flows and private credit creation issues which made them structurally vulnerable. Turner then addresses the policy mix that is now needed to resolve the problems encountered by suggesting that greater fiscal integration is needed (if only by initially providing the European Financial Stability Facility (EFSF) and the European Stability Mechanism (ESM) with the power to recapitalise periphery national banks), that policy needs to progress towards a pan-European banking supervision and resolution model, and that national autonomy and control needs to be maintained in terms of macro-prudential powers.

<http://www.fsa.gov.uk/library/communication/speeches/2012/0427-at.shtml>

26 April: Liquidity and the Regulation of Markets. The FSA has published a speech given by David Lawton, Acting Director of Markets at the FSA, at the TradeTech Liquidity Conference in London on 26 April 2012. In his speech,

Lawton outlines why liquidity is important to regulators and how it is approached by them. He then goes on to discuss the difficult decisions faced by policymakers when they attempt to increase confidence in the trading environment. Lawton concludes by looking at some of the recent and anticipated regulatory developments that will have an impact upon the liquidity of financial instruments including the introduction of the Markets in Financial Instruments Regulation (MiFIR) and proposed creation of the organised trading facility (OTF).

<http://www.fsa.gov.uk/library/communication/speeches/2012/0426-ja.shtml>

24 April: Delivery effective corporate governance – the financial regulator’s role. Hector Sants, chief executive of the FSA, has delivered his last speech as CEO at Merchant Taylors’ Hall. Sants focuses on his belief that inadequate progress has been made since the financial crisis, in the area of corporate governance. He begins by outlining the changes that have so far been made in response to the crisis, including the improvements made by the FSA in the area of supervisory effectiveness with its introduction of a more intensive approach. Sants then explains what is meant by wanting firms to have “effective boards”, what this means for the FSA’s SIF process and what the regulator’s role is in changing attitudes and behaviour within firms. He concludes by sharing his opinion that the FSA should be feared, that most people who work in financial services are honest, that good regulatory judgements should be aligned with good business judgements and that supervisors should not be afraid to make and act upon their own judgements to prevent supervision from becoming a negotiation with firms.

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

<http://www.fsa.gov.uk/library/communication/speeches/2012/0424-hs.shtml>

Bulletins and newsletters:

30 April: Retail Distribution Review (RDR) Newsletter – Issue Five. The FSA has published the fifth issue of the Retail Distribution Review Newsletter (RDR) which includes research on firms’ readiness for the RDR and reminders for firms on the key aspects and deadlines. It also includes policy updates in the areas of the treatment of legacy assets, simplified advice and RDR adviser charging and Solvency II disclosures.

<http://www.fsa.gov.uk/static/pubs/newsletters/rdr5.pdf>

27 April: Policy Development Update No.146. The FSA has published a handbook development newsletter detailing the publications that have been issued since the previous update, providing information about recent developments to the Handbook, other publications and an updated timetable for forthcoming publications.

<http://www.fsa.gov.uk/static/pubs/newsletters/pdu-newsletter-apr12.pdf>

27 April: Smaller Wholesale Insurance Intermediaries Newsletter – Issue Eight. The FSA has published the eighth issue of the Smaller Wholesale Insurance Intermediaries Newsletter which includes:

- An EU gender directive update
- A breakdown of regulatory fees and levies
- An explanatory article relating to how the FSA handles gender diversity in the provision of its supervisory services
- The FSA’s Retail Conduct Risk Outlook 2012, which provides an overview of what the FSA considers to be the top 15 retail conduct risk areas that it believes will require a regulatory focus over the coming year
- An explanation of Tracing Employers’ Liability Insurance (TELI)
- Improving standards in consumer contracts
- Regulatory Reporting guidance

http://www.fsa.gov.uk/static/pubs/newsletters/wholesaleii-newsletter_8.pdf

Final notices:

3 May: UK Car Group Ltd. The FSA has published a final notice, dated 26 January 2012, fining UK Car Group Ltd (UKCG) £91,000 for its failure to monitor the sale of payment protection insurance policies (PPI). Specifically, UKCG failed to deal adequately with the concerns raised by its internal auditors and failed to properly document the recommendations it made to consumers in relation to PPI. UKCG was entitled to a 30 per cent discount on its fine due to its early cooperation; the fine would otherwise have been £130,000.

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

<http://www.fsa.gov.uk/static/pubs/final/uk-car-group.pdf>

3 May: Stephen Toole. The FSA has issued a final notice, dated 3 May 2012, cancelling Mr Stephen Toole’s Part IV Permission on the basis that he is no longer a fit and proper person and is not conducting his business in a sound and prudent manner. This finding derives from his failure to submit a Retail Mediation Activities Return for the period that ended 5 October 2011 despite repeated requests by the FSA that he did so.

<http://www.fsa.gov.uk/static/pubs/final/steven-toole.pdf>

3 May: Rajendra Patel trading as R.J. Insurance Brokers. The FSA has issued a final notice, dated 3 May 2012, cancelling Mr Rajendra Patel’s Part IV Permission on the basis that he is no longer a fit and proper person and is not conducting his business in a sound and prudent manner. This finding derives from his failure to submit a Retail Mediation Activities Return for the period that ended 30 September 2011 despite repeated requests by the FSA that he did so.

<http://www.fsa.gov.uk/static/pubs/final/rajendra-patel.pdf>

3 May: Clive Herbert Danby Heaps trading as Danby-Heaps Insurance Brokers. The FSA has issued a final notice, dated 3 May 2012, cancelling Mr Clive Heap's Part IV Permission on the basis that he is no longer a fit and proper person and is not conducting his business in a sound and prudent manner. This finding derives from his failure to submit a Retail Mediation Activities Return for the period that ended 6 October 2011 despite repeated requests by the FSA that he did so.

<http://www.fsa.gov.uk/static/pubs/final/danby-heaps.pdf>

26 April: Exillon Energy Plc. The FSA has issued a final notice, dated 26 April 2012, fining Exillon Energy Plc ("Exillon") £292,950. This figure includes the 30 per cent discount that Exillon was entitled to for agreeing to settle early. The fine would otherwise have been £418,500. Exillon failed to inform the FSA, as it was required to do by the Listing Rules, that it made payments to its former Chairman and beneficiary of its major shareholder (Mr Arip) totalling approximately £930,000. The payments constituted a "related party transaction" and, according to the Listing Rules, Exillon was required to inform the FSA in writing, confirm with the FSA that the transaction was fair and reasonable and undertake to the FSA to include details of the transaction in its next annual account. Mr Arip was not held to have acted improperly and there was no evidence that he or Exillon benefited from payments or that Exillon's shareholders suffered any losses.

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

<http://www.fsa.gov.uk/static/pubs/final/exillon-energy.pdf>

23 April: Equifund Limited. The FSA has issued a final notice, dated 23 April 2012, cancelling the Part IV permission that had previously been granted to Equifund Limited ("Equifund"). Equifund had previously been subject to a Supervisory Notice, dated 9 February 2012 which had varied its Part IV permission by removing all of its regulated activities. The FSA has since determined that it is no longer necessary to keep Equifund's Part IV permission in force and that the FSA must, therefore, cancel it. In any event, the FSA suspects that Equifund is also failing to fulfil its Schedule 6 obligations for its failure to pay fees and levies of £1,891.22 owed to the FSA and its failure to submit its Retail Mediation Activities Returns for the periods ending 31 October 2010, 30 April 2011 and 31 October 2011.

<http://www.fsa.gov.uk/static/pubs/final/equifund-ltd.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 May: Solicitors Regulation Authority enters into information-sharing MoU with FSA and MoJ. The Solicitors Regulation Authority has announced that it has entered into a memorandum of understanding (MoU) with the FSA and Ministry of Justice (MoJ). The MoU is intended to increase the sharing of information between the parties where it is in the public interest to do so. The MoU is non-binding and takes effect immediately.

<http://www.sra.org.uk/documents/SRA/news/framework-memorandum-understanding-regulators.pdf>

2 May: FSA publishes progress report on delivering its 2011/12 Business Plan milestones. The FSA has published a table reporting on the progress it has made in delivering its 2011/12 Business Plan milestones. Whilst a number of milestones have already been delivered, the FSA has changed a large number of its milestones with some, such as the Mortgage Market Review Policy Statement and Consultation Paper, being delayed more than one quarter. The FSA's next update will be published in July 2012.

http://www.fsa.gov.uk/static/pubs/plan/fsa_milestones11_12.pdf

2 May: Financial Services Compensation Scheme levies for specified deposit-taker defaults. The FSA has published an update note on the Financial Services Compensation Scheme (FSCS) levies, including how the levy is calculated and an overview of the levies for each year.

http://www.fsa.gov.uk/static/pages/doing/regulated/fees/pdf/fsc_levies.pdf

1 May: FSA publishes guidance on super-complaints.

The FSA has published guidance on the making of super-complaints to the FCA. The document outlines guidance for designated consumer groups which will have the power to make super-complaints and the procedure that the FCA will follow in handling them.

<http://www.fsa.gov.uk/static/pubs/other/super-complaints.pdf>

1 May: FSA publishes statement of policy on the FCA's product intervention powers. The FSA has published a statement of policy on the FCA's ability to make temporary product intervention rules. This policy would give the FCA the power to make temporary product intervention rules where to wait for consultation would prejudice consumers. When making such rules, the FCA will publish both the rule and the reason for making the rule on a temporary basis.

<http://www.fsa.gov.uk/static/pubs/other/draft-statement-policy-temporary-pi-rules.pdf>

27 April: Handbook Notice 119. The FSA has published Handbook Notice 119 which sets out the changes it has made to the FSA Handbook.

<http://www.fsa.gov.uk/static/pubs/handbook/hb-notice119.pdf>

25 April: Traded Life Policy Investments (FG12/12). The FSA has published final guidance, dated 25 April, following its consultation on Traded Life Policy Investments (TLPis) in November 2011, which strongly advises that TLPis should not be sold to retail clients in the UK. This guidance addresses what TLPis are, why the FSA is concerned, what it expects of firms, measures that the FSA will take where there is evidence of poor practice, and the key risks associated with TLPis.

<http://www.fsa.gov.uk/static/pubs/guidance/fg12-12.pdf>

23 April: FSA Factsheet for Investment Advisers – Exchange-Traded Products (ETPs). The FSA has published a factsheet for investment advisers which provides information on the key issues and risks that the FSA considers to be important. These include:

- The key features and difference between ETPs
- How ETPs employ certain investment methods to generate a return and the risks these create
- The role of third parties in improving the investment return
- How ETPs are traded and the risks involved when doing so
- The potential for conflicts of interest in ETP structures

<http://www.fsa.gov.uk/static/pubs/other/etp-factsheet.pdf>

UKLA publications:

No new developments this week.

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

23 April 2012: Mr John Pottage. The Upper Tribunal (Tax and Chancery Chamber) issued its decision in relation to the decision notice referral made by John Pottage, on 20 April 2012. It determined that Mr Pottage was not liable for misconduct in his role as CEO at UBS Wealth Management (UK) Ltd and UBS AG. Following this finding, the Tribunal has directed the FSA to take no further action against Mr Pottage.

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

Financial Ombudsman Service (FOS):

1 May: Online technical resource on compensation for distress, inconvenience or other non-financial loss.

The FOS has published an updated version of its online technical resource on compensation for distress, inconvenience or other non-financial loss. The resource outlines the situations in which the FOS will be likely to tell a business to compensate a consumer for these non-financial losses as well as when consumers may be entitled to costs and/or damages for pain and suffering, damage to reputation, distress or inconvenience.

http://www.financial-ombudsman.org.uk/publications/technical_notes/distress-and-inconvenience.htm

30 April: ombudsman news issue 102. The FOS has published ombudsman news issue 102 which includes a section on money transfers. This section highlights the potential difficulties for customers engaging in money transfers and presents some money transfer examples of real cases referred to the FOS in order to demonstrate the complications that can arise. This issue also contains an article about how businesses handle complaints, an article about section 75 of the Consumer Credit Act 1974 with some case studies of complaints received by the FOS in connection to it, and some frequently asked questions about the FOS's technical advice desk.

<http://www.financial-ombudsman.org.uk/publications/ombudsman-news/102/102.pdf>

London Stock Exchange (LSE):

4 May: Monthly Market Report - April 2012. The LSE has published its monthly market report which provides figures and analysis on trades made during the month of April. 31.1 million trades were carried out which was an increase of 42 per cent on April 2011, however, the combined value was down 4 per cent on the previous year to £154.3 billion from £161.1 billion. A breakdown of figures is provided in relation to the UK Equities Order Book, Italian Equities Order Book, Turquoise Cash Equities, Derivatives, Exchange Traded Products and Fixed Income.

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

2 May: LSE Group welcomes first RMB-denominated retail bond to ORB. The LSE has added its first Renminbi-denominated bond to the Order book for Retail Bonds (ORB). The bond raised RMB 2 billion at issue and is the first non-Sterling denominated bond that has been made available for on-exchange trading by private investors. The event was marked by HSBC's CEO joining the CFO of the LSE Group to open trading.

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

Further information

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

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