

## Update

# Weekly Financial Services Regulatory Update

Week to 14.12.12

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 [publications@clydeco.com](mailto:publications@clydeco.com)

### Consultation papers:

**7 December: FSA extends deadline for responses to consultation on non-EEA national depositor preference regimes.** The FSA has extended the deadline for responses to its Consultation Paper on addressing the implications of non-EEA national depositor preference regimes (CP12/23) from 11 December 2012 to 31 January 2013.

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

### Discussion papers:

No new developments this week.

### Policy statements:

**14 December: FSA policy statement on proposals to change client money rules in response to EMIR.** The FSA has published a Policy Statement

on changes to its client money rules as set out in the Client Assets Sourcebook (CASS). The changes are designed to bring the rules in line with the segregation and portability regime under EMIR. The document sets out the FSA's feedback received to Part I of CP12/22, however the FSA is still considering the feedback received to Parts II and III, and will publish a response to these parts in the first half of 2013. Key responses include:

- Amending the rules so that they extend to situations where a clearing member is a member of a third-country central counterparty (CCP) recognised under EMIR
- Clarifying its position relating to title transfer collateral arrangements
- Discussing the treatment of margin that has been "pre-funded" on a client's behalf to meet CCP variation margin call

Appendix 1 to PS12/23 contains the Client Assets Sourcebook (European Markets Infrastructure Regulation) Instrument 2012, which will come into force on 1 January 2013.

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

**14 December: Packaged bank accounts.** The FSA has published a Policy Statement reporting on the main issues arising out of 'Consultation Paper 12/17: Packaged bank accounts – New ICOBS rules for the sale of non-investment insurance contracts' and publishes final rules. The consultation related to the FSA's proposed new rules for eligibility and suitability of insurance as part of a packaged bank account. The rule changes include:

- The Annual Eligibility Statement (AES) must be provided 'in writing'. This would include distribution by email. The AES amendment applies to the 'customer', which in the case of a packaged bank account will be the account holder(s). (With effect from 31 March 2013.)
- To switch off ICOBS 6.1.13R in relation to separate premium disclosure for connected contracts, for insurance sold as part of a packaged bank account. (With effect from 1 January 2013.)

<http://www.fsa.gov.uk/library/policy/policy/2012/12-22.shtml>

#### **Press releases:**

**13 December: Investment banker sentenced for insider dealing.** The FSA has published a press release on the case brought by the FSA against Thomas Ammann, an investment banker and former FSA approved person. Mr Ammann has been sentenced to 2 years and 8 months' imprisonment for two counts of insider dealing and two counts of encouraging insider dealing. But for an early guilty plea, the sentence would have been one of 4 years. Mr Ammann was an investment banker at Mizuho International Plc and was advising Canon, the technology company, in its acquisition of Océ, and as such, had access to price-sensitive information relating to the takeover. Mr Ammann then encouraged two women to buy shares in Océ prior to the acquisition, following which they sold their shares and shared the profits with Mr Ammann. In November of this year, a jury found that both women were not jointly involved with Mr Ammann and his insider trading. Confiscation and cost orders will be dealt with at a later date.

<http://www.fsa.gov.uk/library/communication/pr/2012/113.shtml>

**12 December: Directors of Black and White Group Limited fined and banned for widespread mortgage and PPI failings.** The FSA has issued a press release following the Upper Tribunal's ruling in the case of *Christopher Ollerenshaw and Thomas Reeh v FSA*. Mr Ollerenshaw, the former chairman, and Mr Reeh, the former chief executive officer, of Black & White Group Ltd, a mortgage broker, referred to the tribunal two decision notices made in August 2010 making prohibition orders and imposing financial penalties against them both. The applications failed on liability, but the tribunal ordered the decision notices to be varied as to penalty. A prohibition order will be made against Mr Ollerenshaw but not against Mr Reeh, and the financial penalty imposed on Mr Ollerenshaw will be reduced from £70,000 to £50,000, and that of Mr Reeh from £50,000 to £10,000. The FSA has censured the firm for operating in a

way that created a very high risk of unsuitable sales and customers not being treated fairly. Had the firm not been liquidated in 2008, the FSA would have fined it £2.2 million.

<http://www.fsa.gov.uk/library/communication/pr/2012/112.shtml>

**11 December: FSA requires action of HSBC group in relation to compliance with AML and sanctions requirements.** The FSA has published a press release announcing that it is taking action to address issues relating to HSBC's compliance with AML rules and US sanction requirements. The FSA is requiring HSBC Holdings to:

- Establish a committee of the HSBC board with a mandate to oversee matters relating to AML, sanctions, terrorist financing and proliferation financing
- Review relevant policies and procedures to ensure that all parts of the HSBC group are subject to standards equivalent to those required under UK requirements
- Appoint a group money laundering reporting officer (MLRO), who will be an FSA approved person, to ensure the group complies with all relevant legal and regulatory requirements
- Employ an independent monitor to oversee the group's compliance with UK AML, sanctions, terrorist financing and proliferation financing requirements and to provide independent reporting to the Board committee and regulators

<http://www.fsa.gov.uk/library/communication/pr/2012/111.shtml>

**10 December: FSA fines Cheshire Mortgage Corporation Limited and two directors for mortgage sales and arrears failings and requires over 2,000 customers to be compensated.** The FSA has published a press release relating to the Final Notices published last week for Cheshire Mortgage Corporation Limited (CMCL) and two of its directors, CEO Henry Moser and Compliance director, Andrew Lawton. The FSA found that CMCL failed to treat some of its customers fairly when they fell into arrears, was unable to always demonstrate that mortgages it sold were affordable, and did not always communicate regularly or fully with its customers. CMCL has been fined £1.225 million by the FSA for mortgage sales and arrears failings and has been required to compensate over 2,000 customers. Mr Moser has been fined £70,000 and agreed to step down from his role in three to six months' time. Mr Lawton was fined £13,500 and has been banned from holding a significant influence function. The FSA has required CMCL to carry out a redress exercise which could see it pay out approximately £2 million to 2,000 customers.

<http://www.fsa.gov.uk/library/communication/pr/2012/110.shtml>

### Speeches:

No new developments this week.

### Bulletins and newsletters:

No new developments this week.

### Final notices:

#### 11 December: Final Notice: Mohammed Monuwar Ibrahim.

The FSA has published a Final Notice cancelling Mohammed Monuwar Ibrahim's registration as a small payment institution under the Payment Services Regulations 2009 (PSRs). The FSA concluded that Mr Ibrahim failed to submit the Payment Services Directive Transactions return for the period ending 31 December 2011 and failed to respond adequately to FSA requests that he do so. The FSA therefore concluded that Mr Ibrahim has failed to demonstrate a readiness and willingness to comply with his ongoing regulatory obligations which include dealing with the FSA in an open and co-operative way.

<http://www.fsa.gov.uk/static/pubs/final/mohammed-ibrahim.pdf>

**11 December: Final Notice: Afriexchange Limited.** The FSA has published a Final Notice issued to Afriexchange Limited cancelling the authorisation granted to it as an authorised payment institution under the PSRs. The FSA found that Afriexchange failed to submit the Authorised Payment Institution Capital Adequacy Return and failed to respond to the FSA's requests that it do so.

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

**10 December: Final Notice: Euro Mortgages Ltd.** The FSA has published a Final Notice issued to Euro Mortgages Ltd (EML) cancelling the permissions granted to EML under Part IV of FSMA. The FSA found that EML had failed to comply with its requirement to submit a Retail Mediation Activities Return (RMAR) and has not been open and co-operative in all of its dealings with the FSA, in that it has failed to respond to the FSA's repeated requests for it to do so, and has thereby failed to comply with Principle 11 of the FSA's Principles for Businesses.

<http://www.fsa.gov.uk/static/pubs/final/euro-mortgages.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 December: Handbook Notice 125.** The FSA has published Handbook Notice 125 which makes changes to the Handbook, including:

- Amending the rules on voiding and recovery to make them consistent with the general guidance on proportionality
- Making changes to the appropriate qualifications lists in the Training and Competence sourcebook

- Amending the Insurance Conduct of Business sourcebook (ICOBS) to specify the requirements for the content and distribution of the annual eligibility statement and to switch off the separate premium disclosure rule, for packaged bank accounts

<http://www.fsa.gov.uk/static/pubs/handbook/hb-notice125.pdf>

**13 December: FSA finalised guidance on the regulated covered bond regime.** The FSA has published Finalised Guidance on the role of the asset pool monitor (APM) under the regulated covered bond regime (FG 12/23). It sets out FSA guidance on the scope of the annual inspection and report by the APM relating to an issuer's compliance with regulations 16 and 17 of the Regulated Covered Bond Regulations. The FSA has also published a summary of feedback it received on GC12/9. As a result of the feedback, it has made a number of changes to appendix 1 of the guidance. The appendix sets out what the FSA expects in terms of tolerance levels and content of the tests to be carried out as part of the APM's inspection of the issuer's records. The changes are intended to make the tests more compatible with issuers' underwriting policies and practices.

Final Guidance: <http://www.fsa.gov.uk/static/pubs/guidance/fg12-33.pdf>

Summary of feedback: <http://www.fsa.gov.uk/static/pubs/guidance/fg12-33-summary.pdf>

**11 December: FSA 'Dear CEO' letter on outsourcing by asset managers.** The FSA has published a 'Dear CEO' letter outlining its concerns about asset managers' outsourcing arrangements. The FSA raises concerns about the effectiveness of firms' recovery and resolution plans, and highlights the following issues with firms' contingency planning:

- Reliance on an outsource service provider being a large financial institution that regulators might look to rescue using public funds is inconsistent with the FSA's policy of allowing such organisations to fail
- Taking activities back in-house would take many months and firms would not immediately have the capacity and expertise required
- The FSA is concerned about the operational challenges arising from transferring outsourced activities to another provider and fears that it could not be implemented swiftly enough
- The FSA believes that "step in" rights in a stressed scenario might prove difficult to enforce, and that there could be undue delay and/or operational risks

It requests CEOs to review their firms' contingency plans, taking into account the FSA's observations in the letter and firms' obligations under chapter 8 of the FSA's Senior Management Arrangements, Systems and Controls sourcebook. The FSA intends to host an industry event in early 2013 to facilitate an exchange of views in order to help achieve its outcome.

[http://www.fsa.gov.uk/static/pubs/ceo/review\\_outsourcing\\_asset\\_management.pdf](http://www.fsa.gov.uk/static/pubs/ceo/review_outsourcing_asset_management.pdf)

### **11 December: Statistics on Mortgage Lending: December**

**2012 Edition.** The FSA has published its latest mortgage lending data for the UK covering the period from Q2 2011 to Q3 2012. Firms are required to submit Mortgage Lending & Administration Returns (MLARs) each quarter which are used to create the statistics. Key statistics include the following:

- The total value of outstanding loans at the end of Q3 was £1,227bn, an increase of 0.3% on last quarter
- New advances in the quarter amounted to £40bn, a 7% increase on Q2 but 9% below Q3 last year
- The overall average interest rate on new advances increased from 3.78% last quarter to 3.89% in Q3
- New commitments totalled £36bn in the quarter, down 10% from last quarter and 14% lower than in the same quarter of last year
- Lending for house purchase accounted for the highest proportion of new advances seen in this series, at 66%
- Although the total number of accounts in arrears at the end of the quarter rose in Q3, up 2% to 303,200, this was 7% less than the 324,300 accounts in Q3 2011
- The proportion of the residential loan book that is in arrears, was little changed from last quarter, at 2.46%

[http://www.fsa.gov.uk/library/other\\_publications/statistics](http://www.fsa.gov.uk/library/other_publications/statistics)

### **UKLA publications:**

No new developments this week.

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

**10 December: Upper Tribunal upholds FSA decision on liability but reduces financial penalties imposed on mortgage brokers.** The Upper Tribunal has published its decision in the case of *Christopher Ollerenshaw and Thomas Reeh v FSA*. Mr Ollerenshaw, the former chairman, and Mr Reeh, the former chief executive officer, of Black & White Group Ltd, a mortgage broker, referred to the tribunal two decision notices made in August 2010 making prohibition orders and imposing financial penalties against them both.

The FSA alleged that the applicants:

- Pressurised advisers to sell PPI products without regard for their suitability
- Failed to maintain adequate compliance systems and created a culture focused on sales rather than treating customers fairly
- Failed to disclose to the FSA the company's position as regards capital adequacy and misled the FSA as to the company's true financial position

The tribunal found that while the applicants' conduct may not have been dishonest, it was reckless in their failings of Principles 1 and 7 of the FSA's Statements of Principle for Approved Persons, and were knowingly concerned in the company's breach of Principle 6 of the FSA's Principles for Businesses. The applications failed on liability, but the tribunal ordered the decision notices to be varied as to penalty. A prohibition order will be made against Mr Ollerenshaw but not against Mr Reeh, and the financial penalty imposed on Mr Ollerenshaw will be reduced from £70,000 to £50,000, and that of Mr Reeh from £50,000 to £10,000.

<http://www.tribunals.gov.uk/financeandtax/Documents/decisions/christopher-ollerenshaw-thomas-reeh-v-fsa.pdf>

### **Financial Ombudsman Service (FOS):**

**10 December: FOS online technical resource on buildings and contents insurance: flooding.** The FOS has published a new online technical resource setting out its approach to cases where a consumer has flood damage to their property and in particular, whether they have a valid insurance claim.

[http://www.financial-ombudsman.org.uk/publications/technical\\_notes/flooding.html](http://www.financial-ombudsman.org.uk/publications/technical_notes/flooding.html)

### **London Stock Exchange (LSE):**

**14 December: LSE Group Plc – LCH.Clearnet Group Limited: clearance from OFT.** The London Stock Exchange has published a press release relating to the announcement by the Office of Fair Trading, stating that the proposed acquisition by London Stock Exchange Group Plc of a majority stake in LCH.Clearnet Group Limited (LCH) has been cleared unconditionally. The transaction remains subject to further provisions including approval from the FSA.

<http://www.londonstockexchange.com/newsroom/2012pressreleases/clearancefromoft.htm>

**11 December: Boost ETP launches on the London Stock Exchange.** The London Stock Exchange welcomed Boost ETP as a new issuer of Exchange Traded Products (ETPs) on its Main Market. Boost ETP plans to introduce 20 new products throughout December, offering leveraged exposure to a range of indices. Benchmarks created and managed by FTSE, the London Stock Exchange Group's leading index provider, have been licensed to underlie a number of the new products. GETCO will act as dedicated market maker for Boost ETP's products, making it an ETP market maker on the London Stock Exchange for the first time. It brings the total number of firms market making ETFs and ETPs on the UK markets to 26.

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



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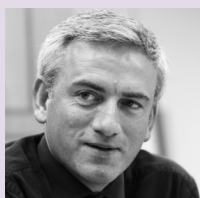
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