

Update

Weekly Financial Services Regulatory Update

Week to 22.03.13

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 week to 22.03.13, 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:

19 March: CP13/9: Implementation of the Alternative Investment Fund Managers Directive Part 2. The FSA has published its second consultation paper on transposing the Alternative Investment Fund Managers Directive (AIFMD) in the UK. Due to continuing European transposition work on the AIFMD, and FSA operational change resulting from UK regulatory reform, the paper does not cover all the issues set out in Annex 6 of the first paper, as originally intended. However, the FSA and the Treasury are still working towards full transposition of AIFMD by 22 July 2013. A further consultation paper will be issued by the FCA after

1 April 2013 which will cover:

- Consequential changes to bring the rest of what will be the FCA Handbook into line with the rules consulted in CP1 and CP2
- Amendments to the FCA Handbook necessary to transpose articles 35 and 37 to 41 of the Directive

Responses to this consultation paper must be submitted by 10 May 2013.

<http://www.fsa.gov.uk/library/policy/cp/2013/13-09.shtml>

18 March: CP13/8: Publishing information about warning notices. The FSA has published a consultation paper which sets out proposals on the FCA's use of the new power under s.391(1)(c) of FSMA to publish such information about the matter to which a warning notice relates as it considers appropriate. The principal purpose of the new power is to promote early transparency of enforcement proceedings, enabling the financial services industry and consumers to be able to understand the types of behaviour that the FCA considers unacceptable at an earlier stage. The FCA proposes to publish a

statement where it has issued a warning notice to which the power applies. However, it will not publish a statement if publication would be unfair to the person to whom the notice relates, prejudicial to the interests of consumers or detrimental to the stability of the UK financial system. The published statement will also make clear that the warning notice is not a final decision.

<http://www.fsa.gov.uk/static/pubs/cp/cp13-08.pdf>

Discussion papers:

No new developments this week.

Policy statements:

No new developments this week.

Press releases:

20 March: Fyshe Horton Finney Stockbrokers enters Special Administration Regime. The FSA has confirmed that Fyshe Horton Finney Stockbrokers (FHF) has entered the Special Administration Regime on 20 March 2013. Paul Boyle and David Clements at Harrison's Business Recovery & Insolvency (London) Limited have been appointed joint special administrators. FHF is a small investment firm offering discretionary, advisory and execution only business. There are 15 regional offices.

<http://www.fsa.gov.uk/library/communication/pr/2013/026.shtml>

19 March: New appointments for governance of Financial Conduct Authority. Three new chairmen have been appointed to the independent panels which lead the process for constructive challenge on the FCA's policies from the point of view of regulated firms. The new appointments are as follows:

- FCA Practitioner Panel Chairman – Graham Beale, Chief Executive of Nationwide Building Society.
- FCA Smaller Business Practitioner Panel Chairman – Andrew Turberville Smith, Finance Director and Chief Operating Officer of Weatherbys Bank.
- FCA Markets Practitioner Panel Chairman – Paul Swann, President and Managing Director, ICE Clear Europe.

The Government took the decision to create the three Practitioner Panels for the FCA on the basis of the valuable input of the previous FSA Practitioner Panels.

<http://www.fsa.gov.uk/library/communication/pr/2013/025.shtml>

Speeches:

No new developments this week.

Bulletins and newsletters:

No new developments this week.

Final notices:

18 March: Lamprell Plc fined £2,428,300 for systems and controls failings. Lamprell Plc ("Lamprell") has concluded an early settlement with the FSA following an investigation which found deficiencies in Lamprell's systems and controls which meant Lamprell could not adequately assess its financial performance against market expectations as accurately as it ought to have been able

to. The FSA has fined Lamprell £2,428,300 in accordance with section 91(1) of FSMA. The penalty is the first imposed for breaches of this kind under the FSA's new penalty policy. The penalty calculation was linked to Lamprell's market capitalisation and therefore this new penalty policy is expected to lead to significantly higher penalties than in the past. In determining the penalty imposed, the FSA took into account that there was no deliberate or reckless behaviour by Lamprell and that Lamprell provided significant and extensive cooperation throughout the course of the investigation. Lamprell agreed to settle at an early stage of the FSA's investigation and therefore qualified for a 30% discount under the FSA's executive settlement procedures. Were it not for this discount, the FSA would have imposed a financial penalty of £3,469,125.

Final Notice: <http://www.fsa.gov.uk/static/pubs/final/lamprell.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:

21 March: Final rules for inflation-adjusted illustrations for personal pensions and new guidance in preparing product information. The FSA has published a policy statement providing feedback on the responses received to its consultation on draft rules to move inflation-adjusted illustrations for personal pensions and also new guidance for the preparation of product information. The policy statement also explains minor changes that have been made to the rules consulted on. The new rules and guidance come into force on 6 April 2013.

<http://www.fsa.gov.uk/static/pubs/policy/ps13-02.pdf>

20 March: FSCS' 2012/13 interim levy. The FSA has published a letter sent by the FSCS to firms in the investment intermediation or general insurance intermediation sub-classes relating to the 2012/13 interim levy. The final amount to be levied on firms in the investment intermediation sub-class has been set at £20 million. This additional levy is to meet the costs of the claims for the failures of Pritchard Stockbrokers Ltd and Woldspreads Ltd, as well as the ongoing costs of MF Global and Arch-cru. The final amount to be levied on firms in the general insurance intermediation sub-class is £16 million, which is required to meet the escalating costs of PPI.

<http://www.fsa.gov.uk/static/pubs/other/fscs-interim-levy-letter2.pdf>

19 March: Code of Practice for the relationship between the external auditor and the supervisor. The FSA has published its proposed revisions to the Code of Practice for the relationship between the external auditor and the supervisor (the Code), comprising of general guidance

made under section 157(1) of FSMA. The guidance is intended to ensure that the terms and scope of this relationship are clearly defined and understood by both the supervisor and auditor, as well as regulated firms. Changes to the Code serve mainly to align it with the FCA's statutory objectives, rather than significantly changing the nature of interactions with auditors. However, the Code also includes a new principle on the auditor's duty to report (Principle 1), and re-orders the remaining principles. Any comments regarding the proposed guidance should be made by 16 April 2013.

http://www.fsa.gov.uk/static/pubs/guidance/gc13_3.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):

20 March: FOS plans and budget. The FOS has published its finalised and FSA approved plans and budget for the next year. The budget will be £283.6 million, which will be funded by a combination of levies and case fees. Key parts of the finalised plan include a rise in the standard case fee from £500 to £550, although the PPI case fee will remain at £350.

http://www.financial-ombudsman.org.uk/news/updates/plan_and_budget_13-14.html

20 March: Publishing Ombudsman Decisions. The FOS has published a policy statement on its approach to publishing ombudsman decisions. The FOS plans to publish ombudsman decisions in full, subject only to removing all reference to the identity of the consumer and certain other sensitive information. The decisions will be available in a searchable database on the FOS website. Due to the practical arrangements involved in publishing the decisions, there will be a short delay between an ombudsman sending out their decision to the parties involved, and it being made available on the website. Therefore, after the process begins in April, decisions will start appearing on the FOS website in early summer.

<http://www.financial-ombudsman.org.uk/publications/technical.htm#decisions>

London Stock Exchange (LSE):

No new developments this week.

Legislative updates:

No new developments this week.

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