CLYDE&CO

Update

Weekly Financial Services Regulatory Update

Week to 05.10.12

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 financial.services@clydeco.com.

Consultation papers:

5 October 2012: CP12/27: FSA Quarterly Consultation (no.34)

The FSA has published its quarterly Consultation Paper inviting comments on proposed amendments to the Handbook including: payments under the retail distribution review (RDR); rules on voiding and recovery in the remuneration code; changes to the Collective Investment Schemes sourcebook (COLL); and, changes to the FSA Handbook relating to EMIR.

The deadline for responses to the proposals in CP12/27 is 5 November 2012, with the exception of responses to the proposals in chapters 4, 7, 8 and 10 for which the deadline is 5 December 2012.

http://www.fsa.gov.uk/static/pubs/cp/cp12-27.pdf

3 October 2012: CP12/26: Regulatory reform: the PRA and FCA regimes for Approved Persons

The FSA has published a new Consultation Paper on proposals to amend the existing regime for approved persons that the PRA and FCA will use. The paper contains proposed changes to the rules relating to approved persons that will be necessary to implement to accommodate the splitting of the regime between the PRA and FCA. The paper includes how responsibilities will be split for existing controlled functions and in which circumstances dual-regulated firms will need to seek approval from both regulators for controlled functions. The paper also consults on changes to the existing FSA handbook required to align the new rulebook with the objectives of the FCA/PRA.

The deadline for responses is 7 December 2012.

http://www.fsa.gov.uk/library/policy/cp/2012/12-26.shtml

2 October 2012: CP12/25: Enhancing the effectiveness of the Listing Regime and feedback to CP12/2

The FSA has published a Consultation Paper setting out proposals for changes to the listing regime. The first part of the publication covers feedback relating to CP12/2 and includes final rules in relation to changes to the Listing Rules, Prospectus Rules and Disclosure Rules and Transparency Rules. The paper also focuses on issues relating to the premium listing standard and areas which the FSA considers key to ensure better aligned behaviour, as well as proposals relating to the implementation of the Alternative Investment Fund Managers Directive (AIFMD).

The deadline for responses is 2 January 2013.

http://www.fsa.gov.uk/library/policy/cp/2012/12-25.shtml

Discussion papers:
No new developments this week.

Policy statements:
1 October 2012: Policy Development Update 151

The FSA has published Policy Development Update (PDU) 151 summarising upcoming publications the FSA intends to publish along with changes to the FSA's publishing schedule as set out in PDU 150.

http://www.fsa.gov.uk/static/pubs/newsletters/pdu-newsletter-sep12.pdf

Press releases:
1 October 2012: FSA charges four people with insider dealing

The FSA has published a press release announcing that it has charged four men with conspiracy to insider deal between 1 November 2006 and 23 March 2010. Martyn Dodgson, Andrew Hind, Benjamin Anderson and Iraj Parvizi have been bailed to attend Westminster Magistrates' Court on 19 October 2012. The charges arise out of a long running joint investigation between the FSA and the Serious Organised Crime Agency. A number of individuals remain under investigation.

http://www.fsa.gov.uk/library/communication/pr/2012/090.shtml

Speeches:
4 October 2012: Prudential regulation: Challenges for the Future

The FSA has published a speech by Andrew Bailey, Managing Director, Prudential Business Unit delivered at the Edinburgh Business School, on the progress and reform of financial regulation. He focuses on the failings of integrated regulation (i.e. the combination of prudential and conduct of business regulation in the same institution) and the inability of one institution to effectively regulate the two arms of business. Mr Bailey highlights that the new 'twin peaks' model should create clarity for regulatory institutions and assist in avoiding internal conflicts between prudential and conduct businesses which can happen in an integrated system. He points out that it is not the duty of the PRA to ensure that no firm fails but that if a firm does fail it does so without causing significant disruption to the financial services industry. Finally, Mr Bailey endorses the proposals made by Sir John Vickers which suggest separating commercial and investment banking. These reforms, he suggests, should create more security within the financial system as a whole and create a system that is at once competitive but also serves the public interest.

http://www.fsa.gov.uk/library/communication/speeches/2012/ab-1004

Bulletins and newsletters:
5 October 2012: FSA Market Watch Newsletter Issue 43

The FSA has published the 43rd issue of its Market Watch Newsletter focusing on conduct and transaction issues. Topics covered include: finalised guidance on strategy trades, and ex-dividend trades and the market abuse regime.

http://www.fsa.gov.uk/static/pubs/newsletters/mw_newsletter43.pdf

2 October 2012: Financial Crime Newsletter: Issue 16

The FSA has published issue 16 of its Financial Crime Newsletter. Topics covered include: anti-bribery and corruption systems and controls in investment banks, enforcement cases, speeches, and developments in financial crime supervision.

http://www.fsa.gov.uk/static/pubs/newsletters/fc-newsletter16.pdf

Final notices:
4 October 2012: Gulam Mohmed Suleman Jiva

The FSA has issued a Final Notice against Gulam Mohmed Suleman Jiva and cancelled Mr Jiva's registration as a small payment institution. Mr Jiva has failed to submit the Payment Services Directive Transactions return for the period ended 31 December 2011, and failed to respond adequately to repeated FSA requests that he submit the return. As such, Mr Jiva has failed to demonstrate a readiness and willingness to comply with his ongoing regulatory obligations and to deal with the FSA in an open and co-operative way.

http://www.fsa.gov.uk/static/pubs/final/gulam-jiva.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:
5 October 2012: Information for Re-Give customers

In August 2012, the FSA ordered Re-Give, an industrial and provident society, to unwind its 5% AER 1 year bond and refund customers with their original investments. As part of that action, the FSA told Re-Give not to dispose of, or deal with any of its assets until this action had been completed. The FSA has expressed concerns about Re-Gives's status as a registered society and has instructed the firm to take down its website, since it has learned that a number of investors have not yet received their refund. It has asked customers to contact them if they have not already done so.

http://www.fsa.gov.uk/consumerinformation/firmnews/2012/information-for-re-give-customers

5 October 2012: Modification by consent for Authorised Fund Managers

The FSA has published a webpage announcing modification by consent available to authorised fund managers of FSA-authorised funds. The modification will allow firms to make transfers between capital and income accounts of funds. The modification will be valid until 5 October 2013 unless withdrawn, superseded or amended.

http://www.fsa.gov.uk/doing/regulated/notify/waiver/consent/coll6.shtml

4 October 2012: FSA Insurance Group Standing Meeting

The FSA has published the minutes of the 54th FSA Insurance Group Standing Meeting which was held on 18 September 2012. Discussions included the current implementation timetable for Solvency II and what else is on the horizon for the insurance sector in Europe and the UK.

http://www.fsa.gov.uk/static/pubs/international/isg_minutes54.pdf

3 October 2012: FSA Memorandum of Understanding with Nordic Supervisors on the Supervision of clearing service providers

The FSA has published a Memorandum of Understanding (dated 2 July 2012) with authorities in Denmark, Finland, and Sweden intended to establish a formal basis for co-operation with the FSA for the supervision of clearing service providers that are principally regulated in the UK but also provide clearing services in these countries.

http://www.fsa.gov.uk/static/pubs/mou/mou-2jul12.pdf

2 October 2012: FSA revises webpages for small payment institutions.

The FSA has published new webpages for firms wishing to become small payment institutions and has updated several forms relating to the registration of applications for small payment institutions. (Registration form, PSD individual form, PSD qualifying holding- individual, PSD qualifying holding – corporate, PSD qualifying holding – partnership.)

http://www.fsa.gov.uk/Pages/Doing/Regulated/banking/psd/applying/small/index.shtml

2 October 2012: OFT, FSA and other agencies agree guidelines on investigation of mortgage cases

The OFT has published guidelines following the investigation of mortgage cases of interest or concern to the FSA and other prosecuting and investigating agencies. The guidelines have been agreed by the FSA, the OFT, the Local Authorities Co-ordinating Body on Food and Trading Standards (LACOTS), and the Trading Standards Service of the Department of Enterprise, Trade and Investment for Northern Ireland (DETINI).

The guidelines are intended to assist agencies when considering suspected criminal breaches and/or regulatory misconduct relating to mortgages that may be of interest to more than one agency or where there are overlapping responsibilities.

http://www.oft.gov.uk/shared_oft/MoUs/FSA-MOU.pdf

1 October 2012: FSA warns firms must not 'try' to work around the commission ban

The FSA has written to the CEOs of 24 life insurers and network/IFA firms regarding its concern that firms are trying to work around the RDR Advisor Charging Rules. The FSA expressed concern that some firms are making payments which do not look like a traditional commission but are intended to have a similar effect and circumvent the rules of the RDR. Firms have been asked to confirm to the FSA that any agreements in place, in negotiation and/or continuing after 31 December 2012 are compliant with the current and prospective inducements rules. The letter included annexes (not published by the FSA) which require specific information to be returned by the firms to the FSA by 15 October 2012.

http://www.fsa.gov.uk/static/pubs/guidance/rdr-inducements-rules.pdf

1 October 2012: Update on use of early warning indicators under Solvency II

The FSA has published a letter (dated 28 September 2012) updating firms on the use of early warning indicators under Solvency II. The letter states that the use of early warning indicators will form part of the review process for internal model firms and will supplement information collected from firms as part of the supervisory review process. Additional comments on early warning indicators are requested by 26 October 2012.

http://www.fsa.gov.uk/static/pubs/international/letter-imap-firms-28-sept-2012.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):

No new developments this week.

London Stock Exchange (LSE):

2 October 2012: John Menzies celebrates 50 years on the LSE

John Menzies plc, one of the UK's oldest and most widely known business brands, celebrated the fiftieth anniversary of its listing on London Stock Exchange by opening the UK markets.

http://www.londonstockexchange.com/about-the-exchange/media-relations/press-releases/2012/johnmenzies50anniversary.htm

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Further advice should be taken before relying on the contents of this summary.