CLYDE&CO

Update

Weekly Financial Services Regulatory Update

Week to 16.12.11

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:

16 December: GC11/31: Thematic Overview: Regulated Covered Bond Regime. The FSA is consulting on proposed guidance on certain areas of the Regulated Covered Bond regime to set out minimum expectations and highlight current good market practice. The key areas the guidance will cover are the scope and depth of engagement that the signatory of the annual confirmation of compliance has with the programme, the content of management information and the appropriateness of systems and controls.

The deadline for comments is 27 January 2012.

http://www.fsa.gov.uk/pages/Library/Policy/guidance_consultations/2011/11_31.shtml

14 December: CP11/30: Proposed Regulatory Prudent Valuation Return. The FSA is proposing to introduce a uniform return for firms required to produce quarterly reports that show the differences between prudent valuation and the fair valuation of assets used in their financial statements. These reports are currently produced in a free format and are therefore difficult to compare between firms and over time. The major properties of the proposed return are to show the net and gross balance sheets for a defined list of asset classes, together with the potential downside and upside that could exist through the inherent uncertainty in the valuation process.

The deadline for comments is 14 February 2012.

http://www.fsa.gov.uk/pages/Library/Policy/CP/2011/11_30.shtml

14 December: CP11/29: Deposit protection: raising consumer awareness. The FSA has proposed that deposit takers prominently display deposit protection arrangements in their branches and on their websites. FSA-authorised firms will be required to display standard stickers and posters produced by the Financial Services Compensation Scheme (FSCS), while EEA deposit takers with branches in the UK will be required to produce equivalent material, naming their country's deposit protection scheme and making clear that they do not participate in the FSCS.

These proposals are part of a commitment to raise consumer awareness of the FSCS. The FSA also wants to ensure that consumers are aware of two key changes that were made this year to strengthen the deposit protection scheme: an increase to the compensation limit for deposits to £85,000; and, the introduction of faster payout mechanisms. Research has shown that consumer awareness is low, with the risk that this can contribute to increasing the likelihood of a run on a deposit-taker, as was seen with Northern Rock in 2007 when consumers rushed to withdraw their deposits.

Comments should reach the FSA by 9 March 2012.

http://www.fsa.gov.uk/pages/Library/Policy/CP/2011/11_29.shtml

13 December: CP11/28: UK implementation of Amending Directive 2010/73/EU - simplifying the EU Prospectus and Transparency Directives. The FSA and HM Treasury have published a joint consultation on implementing changes to the Prospectus Directive and the Transparency Directive, as required by the Amending Directive 2010/73/EU. The Amending Directive introduces changes as a result of issues highlighted following a 2009 review conducted by the European Commission on the effectiveness of the Prospectus Directive. This identified a need to increase legal clarity and the overall efficiency of the prospectus framework, as well as an opportunity to simplify the regime for the benefit of issuers, without compromising investor protection. It also examined the issue of duplication, and the Amending Directive ensures that issuers are not required to duplicate their disclosures under the two regimes and that the two regimes are aligned.

Member states have until 1 July 2012 to implement the Amending Directive on a national level. For the UK, this will require changes to the Financial Services and Markets Act 2000 and the FSA's Prospectus Rules, Listing Rules and Disclosure and Transparency Rules.

The deadline for comments is 13 March 2012.

http://www.fsa.gov.uk/pages/Library/Policy/CP/2011/11_28.shtml

Discussion papers:

No new developments this week.

Policy statements:

No new developments this week.

Press releases:

16 December: FSA bans and fines former UBS adviser £150,000 for not being fit and proper. The FSA has banned and fined Jaspreet Singh Ahuja, a former client adviser at UBS AG (UBS), £150,000 for breaches of Principle 1 (Integrity) of its Statements of Principles and Code of Conduct for Approved Persons and for not being a fit and proper person. Ahuja has also been prohibited from performing any function in relation to any regulated activity in the financial services industry.

Under Indian law, Indian investors are not permitted to invest in Indian securities through a vehicle known as a "foreign institutional investor" except in particular circumstances. Ahuja used a pre-existing investment structure to enable an Indian resident customer (via an investment fund incorporated in Mauritius) to breach this law in clear contravention of UBS guidelines. Ultimately, the customer invested over US$250 million in the fund. Ahuja then took steps to conceal the true nature of the customer's investment by providing false and/or misleading information to the UBS Legal and Compliance department and other parts of UBS. He also assisted in making unauthorised redemption payments out of the fund despite knowing that the redemptions were not properly authorised by the customer and breached UBS internal compliance rules.

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

http://www.fsa.gov.uk/pages/Library/Communication/PR/2011/115.shtml

15 December: Management consultant found guilty of insider dealing and sentenced to two years. Rupinder Sidhu, a management consultant, has been found guilty of 22 counts of insider dealing at Southwark Crown Court and sentenced to two years' imprisonment. Sidhu was found not guilty on one other count of insider dealing.

Sidhu and Anjam Ahmad, an ex-hedge fund trader and risk manager with AKO Capital LLP (AKO), were involved in insider dealing in 18 different UK and European listed shares. The pair used inside information obtained by Ahmad in his role as a trader at AKO about forthcoming transactions by AKO in those securities. Sidhu placed spread bets in relation to those securities and made approximately £524,000 profit. On 22 June 2010, Anjam Ahmad was sentenced to ten months' imprisonment, suspended for two years, 300 hours of unpaid work in the community and fined £50,000 for insider dealing.

http://www.fsa.gov.uk/pages/Library/Communication/PR/2011/114.shtml

15 December: FSA obtains another High Court decision to protect consumers from unauthorised land banking firms. On 9 December 2011, the FSA secured summary judgment in the High Court against Cityshore Commodities Limited (Cityshore) and its director, Aaron Walker. Cityshore and Walker were ordered to make an interim repayment of £200,000 to their victims of an illegal land banking scheme. They have also been banned for life from selling land by way of business in the UK.

Cityshore sold plots of land in Grantham, Lincolnshire, to UK investors on the promise they would make a significant profit when the land ultimately obtained planning permission and was sold on. The firm's sales staff told its customers that they had already applied for planning permission or that they had purchasers lined up for the plots. In reality, the land was in an area which meant it was unlikely to gain planning permission and Cityshore had no intention of applying for the planning permission itself or helping purchasers to sell their land.

Whilst the FSA does not regulate the sale of land, land banking amounts to collective investment, which requires FSA authorisation. As Cityshore was not authorised by the FSA, its sales were illegal.

http://www.fsa.gov.uk/pages/Library/Communication/PR/2011/113.shtml

14 December: FSA moves to raise consumer awareness of deposit protection. The FSA has published proposals to make it obligatory for all banks, building societies and credit unions in the UK to prominently display how much compensation savers could claim in the event of an institution failing and where from. FSA-authorised banks and building societies based in the UK will be required to state in every branch and on all websites the wording: "Your deposits are protected up to £85,000 by the Financial Services Compensation Scheme, the UK deposit protection scheme. Any deposits you hold above this amount are not covered."

Banks with branches in the UK, but headquartered and authorised in the European Economic Area (EEA), will have to state that deposits held with them "are not protected by the UK Financial Services Compensation Scheme" and identify which other national scheme is providing protection.

These proposals form part of a continuing effort by the FSA and the Financial Services Compensation Scheme (FSCS) to improve confidence around compensation by increasing awareness of deposit protection.

http://www.fsa.gov.uk/pages/Library/Communication/PR/2011/112.shtml

13 December: FSA appoints John Spence as non-executive director of the Money Advice Service. The FSA has announced the appointment of John Spence to the Board of the Money Advice Service as a non-executive director. Spence has significant experience within the banking sector: he is currently finance chair for Business in the Community and holds non-executive directorships at Capital for Enterprise as chair of the audit committee, HM Revenue & Customs, chair of Harlow Renaissance Limited and Spicer Haart Limited. Previously John was the Chair for the British Bankers' Association Retail Banking Committee, and has held a variety of executive positions at Lloyds TSB.

The appointment takes effect from 2 January 2012.

http://www.fsa.gov.uk/pages/Library/Communication/PR/2011/111.shtml

12 December: FSA Board publishes report into the failure of the Royal Bank of Scotland. The FSA has published a report by the FSA Board into the failure of the Royal Bank of Scotland (RBS) during the financial crisis. The report concludes that RBS's failure was ultimately the result of poor decision-making by the RBS Management and Board, however deficiencies in the global capital regime and liquidity regulations made the crisis much more likely to happen. In addition, flaws in the FSA's supervisory approach provided insufficient challenge to RBS.

The report identified the following six factors that contributed to the failure of RBS:

– significant weaknesses in RBS's capital position, as a result of management decisions and permitted by an inadequate global regulatory capital framework;
– over-reliance on risky short-term wholesale funding, which was permitted by an inadequate approach to the regulation of liquidity;
– concerns and uncertainties about RBS's underlying asset quality, which in turn was subject to little fundamental analysis by the FSA;
– substantial losses in credit trading activities, which eroded market confidence. Both RBS's strategy and the FSA's supervisory approach underestimated how bad losses associated with structured credit might be;
– the acquisition of ABN AMRO, on which RBS proceeded without appropriate heed to the risks involved and with inadequate due diligence; and
– an overall systemic crisis in which the banks in worse relative positions (such as RBS) were extremely vulnerable to failure.

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

http://www.fsa.gov.uk/pages/Library/Communication/PR/2011/110.shtml

Speeches:
No new developments this week.

Bulletins and newsletters:
16 December: Handbook Development Newsletter – Issue 142. The FSA has published the latest issue of its Handbook Development newsletter which summarises publications that the FSA proposes to publish, as well as updates on Handbook-related developments. This issue includes summaries on:

CP11/28 – Simplifying the Prospectus and Transparency Directive;CP11/27 – Quarterly Consultation Paper No. 31;

PS11/18 – FSA regulation of credit unions in Northern Ireland;

PS11/17 – Authorised professional firms and legal services reform: Feedback to CP11/13 and final rules;

PS11/16 – Regulated Covered Bonds: Feedback on the review of the UK regulated Covered Bonds Regulatory Framework and final Sourcebook Instrument; and

PS11/15 – Financial crime: a guide for firms.

http://www.fsa.gov.uk/pubs/newsletters/pdu_newsletter_dec11.pdf

Final notices:

16 December: Jaspreet Singh Ahuja. The FSA has issued a final notice, dated 14 December 2011, prohibiting Jaspreet Singh Ahuja from working in financial services and fining him £150,000. Whilst employed as a client adviser with UBS's international wealth management business, Ahuja breached Principle 1 of the FSA's Statements of Principle for Approved Persons. Specifically, Ahuja:

- utilised a pre-existing investment structure to enable an Indian resident customer, via an investment fund incorporated in Mauritius, to breach Indian law in clear contravention of UBS guidelines;
- wrongfully took steps to conceal the true nature of the customer's investment, mainly by the deliberate and repeated provision of false and/or misleading information to UBS Legal and Compliance and other parts of UBS; and
- assisted in unauthorised redemption payments out of the fund knowing, among other things, that the redemptions were not properly authorised by the customer and breached UBS internal compliance rules.

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

http://www.fsa.gov.uk/pubs/final/jaspreet_singh_ahuja.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: Notice of undertaking by Legal & General Insurance. The FSA has published an undertaking from Legal & General Insurance (L&G) under the Unfair Terms in Consumer Contracts Regulations 1999 (SI 1999/2083) (UTCCRs). The FSA considers that exclusion clauses relating to the firms' home insurance policies were unfair under Regulation 5 of the UTCCRs.

The clauses state that buildings are insured against loss or damage resulting from subsidence or heave of the site on which the buildings stand or landslip, but that L&G will not pay for loss or damage caused by settlement, shrinkage or expansion. None of the terms "subsidence", "heave", "landslip" or "settlement" were defined in the policy. As such, the FSA feels that the term does not clearly define the insurer's liability and is not drafted in plain and intelligible language.

L&G has agreed to delete the clauses in question and to replace them with new terms that do give it wide scope to determine what constitutes "damage caused by settlement, shrinkage or expansion" and therefore which claims to exclude. It will also introduce new definitions for the terms used in the clause. These new terms are set out in the undertaking.

http://www.fsa.gov.uk/pubs/other/lg-insurance-undertaking.pdf

14 December: Analysis of activity in the energy markets 2011. The FSA has, for the tenth consecutive year, written to UK energy market brokers to ask for information about volumes and values in the gas, power, coal and emissions traded markets in which they operate. It has now published a report analysing the 12 months of trading to 31 July 2011.

http://www.fsa.gov.uk/pubs/other/energy_2011.pdf

13 December: Letter from FSA Chair to Treasury Select Committee. The FSA has published a letter (dated 11 December 2011) from Lord Adair Turner, FSA Chair, to Andrew Tyrie, Chair of the Treasury Select Committee. The letter was sent with a copy of the FSA's report into the failure of the Royal Bank of Scotland, which it published on 12 December 2011.

Lord Turner notes that the report is lengthy, at 450 pages, and has taken 12 months to produce as it became apparent that a brief summary report would not cover the issues in sufficient detail and would fail to satisfy legitimate public interest. He states that the role of the external reviewers, Bill Knight and Sir David Walker, has been extremely valuable and, combined with the internal review process, has "enabled [the FSA] to produce a report which … should stand as an exemplar of high quality, dispassionate and, when necessary, self-critical analysis."

However, Lord Turner raises the issue of whether any such future reports should be published by the regulator itself or whether an external body would be more appropriate. The FSA submitted a memorandum to the Treasury Committee dated 10 October 2011 which considered this and other issues regarding the appropriate future arrangements for public reports, such as the timing of public reports and the appropriate authority to determine whether a public report is necessary. He believes that these issues, and those raised in the report regarding individual liability for failure, merit careful debate by Parliament during the passage of the forthcoming Financial Services Bill.

http://www.fsa.gov.uk/pubs/other/tyrie_11dec11.pdf

13 December: FSA removes Credit Rating Agency Regulatory Guide from Handbook website. The FSA has updated a webpage to announce it has removed the Credit Rating Agencies Regulatory Guide from the FSA Handbook website. This follows the transfer of responsibility for the regulation and supervision of credit rating agencies from the FSA to the European Securities and Markets Authority.

http://fsahandbook.info/FSA/select-handbook/focus-on

12 December: The failure of the Royal Bank of Scotland: FSA Board Report. The FSA Board has published a report into the failure of the Royal Bank of Scotland (RBS) in October 2008. The report looks at the causes of the failure of RBS and deficiencies in, and lessons for, the regulatory framework, supervision and the management of firms. It also explains the decisions reached by the FSA's enforcement and financial crime division on whether there were grounds for bringing enforcement action for breaches of FSA rules.

The report identified that RBS's failure was the culmination of poor management decisions, deficient regulation and a flawed supervisory approach. The multiple poor decisions that RBS made suggest that there are likely to have been underlying deficiencies in RBS management, governance and culture which made it prone to make poor decisions. In addition, the key prudential regulations being applied by the FSA were dangerously inadequate and its supervisory approach to high impact firms and, in particular, major banks resulted in insufficient challenge to poor decisions.

The FSA's enforcement division concluded that it was not appropriate to bring an enforcement case against the bank as disciplinary action against the individuals responsible for any misconduct would serve as a greater deterrent than a sanction against a bank that had already failed and was now in public ownership. The FSA's investigations therefore focused on individuals. It found that there were insufficient grounds to bring enforcement cases against individuals which had a reasonable chance of success before a tribunal; there is no concept of strict liability in FSA rules or the relevant law, and errors of commercial judgment are not in themselves sanctionable unless processes and controls are clearly deficient or the judgements are clearly unreasonable. Public debate is necessary to determine whether new rules should be put in place to ensure bank executives and Boards place greater weight on avoiding downside risks and are held personally accountable for bad decision-making.

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

http://www.fsa.gov.uk/pages/Library/Other_publications/Miscellaneous/2011/rbs.shtml

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):
16 December: LSE plc completes acquisition of outstanding 50 per cent of FTSE International Limited.
The LSE has completed the acquisition of the 50 per cent stake in FTSE International Limited that it does not already own, from Pearson plc. The share in FTSE was purchased for £450 million.

Separately, the LSE also confirmed that the documentation for its new £350 million bank facilities has been completed.

http://www.londonstockexchange.com/about-the-exchange/media-relations/press-releases/2011/lsegftseacquisitioncompletion.htm

16 December: Tesco Bank Launches Second Retail Bond on ORB. The LSE has welcomed the latest new bond listing to its Order book for Retail Bonds (ORB). Tesco Bank, the personal finance arm of the international retail group, has raised £60 million on the market from private investors. The eight-year bond is available in £100 denominations with a minimum initial investment of £2,000.

http://www.londonstockexchange.com/about-the-exchange/media-relations/press-releases/2011/tescoorb.htm

12 December: LSE Group plc to acquire outstanding 50 per cent of FTSE International Limited. The LSE has signed an agreement to acquire the 50 per cent stake that it does not already own in FTSE International Limited from Pearson plc for £450 million, giving the LSE 100 per cent ownership and strategic control. FTSE is a leading, high growth global index business with a powerful international brand and reach. It will significantly diversify the LSE's business into indices, data and analytics and, in particular, creates new growth opportunities for LSE's listed derivatives trading business.

http://www.londonstockexchange.com/about-the-exchange/media-relations/press-releases/2011/lsegftseacquisition.htm

Further information
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