

Update

Weekly Financial Services Regulatory Update

Week to 09.03.12

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:

6 March: FSA's 32nd Quarterly Consultation Paper. The FSA has published its 32nd Quarterly Consultation Paper (CP12/5) which invites comment on proposed amendments to the FSA Handbook including amendments to:

- The qualification standards that advisers have to meet as part of the Retail Distribution Review (RDR)
- Clarify the liquidity rules in the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU) and the liquidity reporting rules in the Supervision manual (SUP)

- Implement the Significant Risk Transfer (SRT) into the trading book
- Modify pension scheme disclosures in the Conduct of Business sourcebook (COBS) in order to increase consumer protection
- Make minor amendments to the Credit Unions New sourcebook (CREDS) in order to achieve a single regulatory regime for UK credit unions

The deadline for submitting responses is 6 May 2012 but responses in relation to the RDR qualification standards must be received by 6 April 2012.

<http://www.fsa.gov.uk/static/pubs/cp/cp12-05.pdf>

Click here for the newsletter:

<http://www.fsa.gov.uk/static/pubs/cp/cp12-05-newsletter.pdf>

Discussion papers:

No new developments this week.

Policy statements:

7 March: Protecting with-profits policyholders. The FSA has published a policy statement, PS12/4 following on from the Consultation Paper, CP11/5 published in February 2011, that outlines the changes made to the Conduct of Business sourcebook Chapter 20 (COBS 20) and the Supervision manual (SUP). Areas of change include, but are not limited to:

- More clearly defining the interests of policyholders in with-profits funds
- Converting elements of COBS into mandatory requirements in a rule and clarifying the types of conflicts that may arise
- Strengthening the rules and guidance on the terms of new business written into a with-profits fund
- Addressing firms' contingency plans and treatment of policyholders in the event of a fall in the volume of business

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

<http://www.fsa.gov.uk/static/pubs/policy/ps12-04.pdf>

Press releases:

9 March: Pritchard Stockbrokers Ltd enters Special Administration Regime. The FSA has confirmed that Pritchard Stockbrokers Ltd ('Pritchard') has entered the Special Administration Regime ('SAR'). WH Ireland announced, on 29 February 2012, that it had taken charge of assets belonging to Pritchard's customers (except money). In the near future, therefore, Pritchard will be able to start dealing again through WH Ireland. In the meantime, the special administrators are returning as much cash as possible to each of Pritchard's clients.

<http://www.fsa.gov.uk/library/communication/pr/2012/023.shtml>

9 March: FSA published censure against Bank of Scotland plc in respect of failings within its Corporate Division between January 2006 and December 2008. The FSA has found the Bank of Scotland plc ('Bank of Scotland'), a subsidiary of the HBOS Group, guilty of very serious misconduct which contributed to the circumstances that led the UK government having to inject taxpayer's money into HBOS.

The final notice issued outlines the facts and failings of the Bank of Scotland's Corporate Division during 2006-2008 at the beginning of the economic downturn. It finds that, despite clear signs of risk in the property market, the Bank of Scotland continued to pursue an aggressive strategy to increase its market share whilst other lenders pulled out in 2007. The strategy adopted, and particularly the lack of safeguards and risk management in place, has been held to have contributed to the UK Government being required to inject taxpayer's money into the HBOS Group in 2009 and to have amounted to serious misconduct.

This announcement concludes the enforcement action against the firm, although proceedings in connection with the failure of HBOS are ongoing. At the conclusion of enforcement proceedings, the FSA has also pledged to produce a public interest report which will outline the causes of the failure of HBOS.

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

<http://www.fsa.gov.uk/library/communication/pr/2012/024.shtml>

8 March: FSA bans and fines former Royal Liver Assurance FD George McGregor.

The FSA has published a press release in relation to the fining and banning of the former Financial Director of Royal Liver Assurance Ltd, George McGregor, who, between May and November 2009, entered into contracts on behalf of Royal Liver Assurance Ltd with a former employee. McGregor privately negotiated the former employee's bonus but, as he considered that the amount was unlikely to be approved, sought to conceal the sum agreed from RLA's Board, and falsified the CEO's signature in order to process the required monies. The FSA has fined McGregor £109,000 although has deemed that his conduct merited a fine of £1 million. The figure was reduced in order to prevent causing serious financial hardship and to reflect McGregor's cooperation in settling early.

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

<http://www.fsa.gov.uk/library/communication/pr/2012/022.shtml>

6 March: FSA publishes guidance consultation to help firms provide redress to victims of PPI mis-selling.

The FSA has published proposed guidance aimed at firms which sold payment protection insurance (PPI) and are beginning to contact customers who have not yet made a complaint, but who may be entitled to do so. The guidance outlines the information that customers should be given when contacted, including a clear explanation of the claim they may be entitled to make and the importance of making that claim within the relevant limitation period.

For the related guidance consultation, please see the "Other FSA Publications" section of this update.

<http://www.fsa.gov.uk/library/communication/pr/2012/021.shtml>

Speeches:

9 March: FSA publishes materials relating to Solvency II industry briefing. The FSA has published a speech on Solvency II and the Omnibus II Directive originally delivered by Martin Etheridge, FSA acting head of Insurance Policy at an industry briefing on 27 February 2012. Presentations on making a submission for approval to use an internal model were also published.

<http://www.fsa.gov.uk/library/communication/speeches/2012/0227-me.shtml>

<http://www.fsa.gov.uk/static/pubs/international/making-a-submission-slides-and-notes.pdf>

Bulletins and newsletters:

7 March: Protecting with-profits policyholders – How our with-profits proposals affect your firms. The FSA has published a newsletter to accompany the “Protecting with-profits policyholders” Policy Statement. The newsletter outlines who is likely to be affected by the Policy Statement, why it is important, future plans that the FSA has in relation to this area and an explanation of the background to the changes.

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

<http://www.fsa.gov.uk/static/pubs/policy/ps12-04-newsletter.pdf>

Final notices:

9 March: Bank of Scotland Plc. The FSA has issued a final notice, dated 9 March 2012, publishing a statement to the effect that the Bank of Scotland Plc (‘Bank of Scotland’) has contravened regulatory requirements. In the notice, the FSA has stated that a very substantial financial penalty would be warranted for the high level, and seriousness, of the firm’s misconduct. It has, however, decided not to impose such a penalty due to the fact that, as a subsidiary of the HBOS Group (now taken over by Lloyd’s Banking Group Plc), the Bank of Scotland received taxpayer’s money as a direct result of its misconduct, and to impose a financial penalty would, therefore, be to penalise taxpayers twice.

The FSA has held that the Bank of Scotland failed to comply with Principle 3 of the FSA’s Principles for Businesses by failing to “take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems”. Specifically, the Bank of Scotland:

- Pursued an aggressive growth strategy, with a high-risk portfolio that was focused on exposures to property and to significant large borrowers, from 2006-2008, despite the clear economic downturn beginning in 2007, which was causing other lenders to pull out of the market
- Was deficient in ensuring that its control framework sufficiently challenged the strategy of the Corporate Division
- Had an inadequate framework for managing credit risk across the portfolio
- Had an inadequate process for identifying and managing transactions that showed signs of stress

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

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

8 March: Mr George McGregor. The FSA has published a final notice, dated 9 September 2011, imposing a financial penalty of £109,000 on Mr George McGregor and prohibiting him from performing any function in relation to any regulated activities. The FSA has stated that McGregor’s conduct warranted a fine of £1 million but has reduced the penalty to £109,000 to save from causing serious financial hardship and also to reflect McGregor’s agreement to settle at an early stage. From May – November 2009 McGregor was the Finance Director of Royal Liver Assurance Limited (‘RLA’) and, during this period, he failed to act with honesty and integrity in the performance of his controlled function in that he:

- Failed to follow RLA’s internal procedures for entering investment services contracts with two companies
- Failed to inform RLA’s Capital Management Group of the two contracts in advance, despite being aware that he should have done
- Knowingly withheld the fact that he was making bonus payments to a former employee through these two contracts
- Falsified the signature of RLA’s CEO in order to authorise two payments by the firm of approximately £1.8 million each under these contracts, causing the firm to pay £3.6 million and creating a potential contractual liability for it of up to £18 million

McGregor has therefore been held to have seriously abused his position of trust and acted dishonestly.

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

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

6 March: Basharat Hussain. The FSA has issued a final notice, dated 6 March 2012, cancelling the registration granted to Mr Basharat Hussain as a small payment institution under the Payment Services Regulations 2009. Mr Hussain failed to notify the FSA of the change of address of his business’s head office, thereby preventing the FSA from being able to regulate his business effectively.

<http://www.fsa.gov.uk/static/pubs/final/basharat-hussain.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:

6 March: Payment Protection Insurance Customer Contact Letters. The FSA has published a guidance consultation advising firms which may have mis-sold PPI policies on how to go about contacting customers and the advice that should be given to them. The guidance advises that all customers to whom PPI may have been mis-sold should be written to asking if they would like their case to be reviewed. They should also be advised to do this in a timely fashion to avoid their claim from falling outside of the applicable limitation period. The information given should explain the nature of the claim that the customer may have in a clear, fair and non-misleading way. The proposed guidance also sets out how existing FSA rules on complaints handling are relevant to this process.

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

<http://www.fsa.gov.uk/static/pubs/guidance/gc12-04.pdf>

http://www.fsa.gov.uk/library/policy/guidance_consultations/2012/gc1204

6 March: Thematic Overview: Regulated Covered Bond Regime. The FSA has decided to issue further guidance on certain areas of the Regulated Covered Bond ('RCB') regime following on from the guidance published on the role of the compliance function in November 2011. The areas that this guidance focuses on are:

- The scope and depth of engagement with the programme by the person who signs the annual confirmation of compliance
- The content of Management Information
- The appropriateness of systems and controls

The aim of the guidance is to promote transparency and to improve investor understanding of the RCB regime.

<http://www.fsa.gov.uk/static/pubs/guidance/fg12-08.pdf>

http://www.fsa.gov.uk/library/policy/final_guides/2012/fg1208

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):

6 March: FOS online technical resource on personal accident insurance. The FOS has published an online technical resource to give a clear overview of the types of complaints which the FOS commonly sees in this area and the approach it takes to the following issues:

- The definition of "accident" and the situations in which death and bodily injury are classed as "accidental"
- Whether there were contributory causes including the impact of external factors and existing disabilities
- Whether an exclusion clause was applied reasonably
 - mostly considered in situations where drugs and/or alcohol contributed to the accident or where the injury or accident were intended or occurred because of reckless behaviour
- Whether the consumer is sufficiently disabled to be entitled to permanent total disability benefit
- The compensatory powers available to the FOS
- Whether the policy was mis-sold, and the compensation potentially available in these cases

http://www.financial-ombudsman.org.uk/publications/technical_notes/personal-accident.htm

London Stock Exchange (LSE):

8 March: Deputy Prime Minister, Nick Clegg, joins 50 leading business women to open London Stock Exchange, celebrating the WIE50 and International Women's Day.

Nick Clegg, together with 50 top business women, opened trading at the London Stock Exchange on 8 March 2012, in a Market Open Ceremony celebrating International Women's Day. The ceremony was part of the Women Inspiration and Enterprise ('WIE') 'Power Breakfast' event and the women were honoured to host it in recognition of their achievements. Other events throughout the day hosted by WIE included a full day symposium and an evening event where inspirational women from all sectors could share ideas, successes, insight and expertise.

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

6 March: Monthly Market Report – February 2012. The London Stock Exchange Group has published its Monthly Market Report for February 2012 which reports that a total of 30.8 million trades occurred during the month with a combined value of £171 billion; 11 per cent less than in February 2011. The report also provides a breakdown and analysis of figures for the UK Equities Order Book, the 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-february.htm>

Further information

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

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