

FSA Update

At the FSA last week:

- **Product intervention: FSA issues first guidance on product design and development**

The FSA has, for the first time, as part of its more proactive product intervention strategy, issued draft guidance on how it considers products should be designed and developed.

Having never previously issued such guidance, separate consultation documents in relation to guidance on payment protection products and structured investment products were issued on successive days.

- **Draft guidance on payment protection products (GC11/26)**

Having identified new forms of payment protection products as an emerging risk in its *Retail Conduct Risk Outlook* (<http://www.fsa.gov.uk/pubs/other/rcro.pdf>) earlier this year, the FSA has, together with the OFT, issued guidance on the areas of particular concern to which it considers providers should pay particular attention when designing and developing new products in this area.

Particular emphasis is placed on the need to:-

- clearly identify target markets and ensure that claim events referred to in products are aligned with the needs of those target markets;
- ensure that the benefit following successful claims meets the needs of customers in those target markets; and
- avoid product features or pricing structures creating undue barriers to comparing, exiting or switching cover.

Whilst the guidance is not prescriptive, some direction is provided as to particular areas of product wording, such as the events to which protection products respond and exclusions which, in the FSA's view, may lead to products not meeting the needs of consumers falling within the target market. The guidance also suggests steps which firms may take to stress-test products, and measures relating to pricing, marketing and distribution, which it considers will enable the risk to consumers to be managed throughout the lifetime of products.

Firms now have until 13 January 2013 to provide their comments on the guidance to the FSA.

http://www.fsa.gov.uk/pages/Library/Policy/guidance_consultations/2011/11_26.shtml

Key Issues

Product intervention: FSA issues first guidance on product design and development

Draft guidance on payment protection products (GC11/26)

Review of structured product design processes and new guidance on retail product development (GC11/27)

MF Global enters Special Administration Regime

Final Notices

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- **Review of structured product design processes and new guidance on retail product development (GC11/27)**

Following a review of seven major providers of structured products between November 2010 and May 2011, the FSA has issued guidance in relation to the processes which it considers firms should adopt when designing and developing structured products, and the features which it considers should and should not feature in those products.

The review found that growing demand for structured products (i.e. structured investment products and structured deposits) from consumers seeking higher returns than traditional savings products are currently able to offer, coupled with the increasing complexity of such products, was placing a strain on firms' systems and controls.

Expressing concern that firms were continuing to focus excessively on commercial concerns such as pricing and market pressures, to the detriment of consumer outcomes, the FSA has issued detailed guidance on the steps which it considers firms should take in areas including: -

- identification of appropriate target markets and distribution channels;
- stress-testing of products;
- ensuring a robust product approval process for new products and avoiding "product creep"; and
- monitoring the progress of products throughout their life cycle.

The publication of this guidance follows the action taken this year against a number of institutions in relation to the sale of Structured Capital at Risk products ("**SCARPs**").

Firms now have until 11 January 2012 to provide their comments on the guidance to the FSA.

http://www.fsa.gov.uk/pages/Library/Policy/guidance_consultations/index.shtml

- **MF Global enters Special Administration Regime**

MF Global has become the first firm to enter the FSA's Special Administration Regime ("**SAR**"). The SAR, which came into effect in February 2011, is similar in form to a normal corporate administration, but requires the special administrators appointed to ensure the return of client assets as soon as practicable and engage with market infrastructure bodies and regulatory authorities.

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2011/089.shtml>

- **Final Notices**

David Bedford – Following a reference to the Upper Tribunal, whose decision was published on 3 October 2011, the FSA has issued a prohibition order to Mr Bedford, and imposed a financial penalty of £10,000 (reduced for financial hardship). The Tribunal found that Mr Bedford, together with others, whilst a director of ESR, a now dissolved insurance company, had been involved in the forgery of reinsurance documents.

http://www.fsa.gov.uk/pubs/final/david_bedford.pdf

And finally...

Lord Turner, Hector Sants, Margaret Cole and Martin Wheatley appeared before the Treasury Select Committee last week, where they were grilled on a variety of subjects including the gender (im)balance at the top of the financial services industry and whether there should be a criminal offence of recklessly mismanaging a financial services firm. To much relief, the latter suggestion was given short-shrift by the regulators, who made it clear that they favour greater powers to take regulatory rather than criminal action to deal with competence issues.

Although the transcript of the session has not yet been published, see more detail at:

<http://www.ftadviser.com/2011/11/01/regulation/regulators/fsa-pushes-for-disciplinary-not-criminality-powers-GIVsLhbfbQPGccm308NZkO/article.html>.

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