

Last week at the FSA:-

FSA imposes £2.8 million fine for failing to ensure customers treated fairly

The FSA has imposed a financial penalty of £2.8 million (reduced from £4 million under the FSA's executive settlement procedures) on Combined Insurance Company of America ("CICA") in respect of breaches of Principles 3 (management and control) and 6 (treating customers fairly) of the FSA's Principles for Businesses. The breaches related to sales of accident and sickness policies via self-employed sales agents between April 2008 and October 2010.

Amongst the problems with CICA's sales process identified by the FSA were: -

- failure to ensure the quality of individuals recruited as sales agents or to ensure that agents had the necessary skills and knowledge to provide suitable advice or that those agents recorded all relevant information when advising customers on the suitability of insurance products;
- inappropriate remuneration arrangements, which were based only on volume of sales and which did not focus sufficiently on the quality of sales;

- failure to take consistent or effective action against agents who were the subject of complaints or who had breached CICA's company rules;
- failure to put in place adequate controls to monitor the claims handling process; and
- inadequate complaints handling processes.

This enforcement action follows a "skilled person" report under section 166 FSMA and action in respect of similar issues taken by the Irish financial regulatory authorities. The level of the fine (which would otherwise have been higher) reflects CICA's agreement to voluntarily vary its Part IV permission to cease writing business from 26 October 2010 and to undertaking a past business review to identify any consumer detriment and provide appropriate redress to any customers who have suffered loss.

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2011/117.shtml>

FSA imposes £150,000 fine on former wealth management client adviser for APER breach

The FSA has imposed a financial penalty of £150,000 on Jaspreet Singh Ahuja, and has made an order banning him from performing any function in relation to a regulated activity. The decision follows the withdrawal by Mr Ahuja of his reference to the Upper Tribunal, where he had been seeking to

challenge the fine and ban imposed. Mr Ahuja had sought to suggest that the level of the fine should be reduced due to the serious financial hardship it would cause him, but the FSA rejected such arguments and declined to reduce the level of the fine.

The FSA found that Mr Ahuja, whilst employed as a client adviser within the international wealth management function of UBS in London, breached Principle 1 (Integrity) of the FSA's Code of Conduct for Approved Persons ("APER") by using an

Key issues

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- FSA imposes £150,000 fine on former wealth management client adviser for APER breach
- Management consultant convicted of insider dealing and sentenced to two years' imprisonment
- FSA secures summary judgment in land banking case
- Joint Select Committee publishes report on Financial Services Bill
- FSA proposes rule changes to boost consumer awareness of deposit protection scheme
- FSA publishes Mortgage Market Review
- FSA and HM Treasury consult on changes to Prospectus Directive and Transparency Directive
- FSA proposes guidance on regulated covered bond regime

existing (Mauritius based) investment structure to enable an Indian resident customer to invest in Indian securities, thus contravening Indian law which prohibits the use of such structures by Indian residents to invest in Indian securities. The FSA also found that, having taken this action in breach of UBS' internal compliance rules, Mr Ahuja also then took steps to mislead UBS' Legal and Compliance department and made unauthorised redemption payments out of the fund concerned. The FSA found that this conduct, in addition to breaching Principle 1 of APER, also means that Mr Ahuja lacks fitness and propriety to perform functions in relation to regulated activities.

Although the action is connected with previous action taken against UBS, the Final Notice makes no criticism of UBS and makes it clear that Mr Ahuja was acting in deliberate breach of UBS' relevant policies and procedures.

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

Management consultant convicted of insider dealing and sentenced to two years' imprisonment

Former management consultant Rupinder Sidhu has been convicted of 22 counts of insider dealing and sentenced to two years' imprisonment.

As reported several weeks ago, the prosecution (and now the conviction) of Mr Sidhu has been based upon the first use by the FSA of powers to enter into plea agreements under Serious Organised Crime and Police Act 2005 with co-operating defendants. In this case, Anjam Ahmad, from whom Mr Sidhu received inside information upon which he based spread bets (leading to his making profits of approximately £524,000) provided the FSA with information assisting the prosecution of Mr Sidhu in return for a (more lenient) negotiated sentence.

Mr Sidhu is the eleventh individual to be successfully prosecuted by the FSA for insider dealing offences. Further criminal proceedings in respect of alleged insider dealing are currently ongoing against fifteen other individuals.

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

FSA secures summary judgment in land banking case

The High Court has awarded summary judgment to the FSA and ordered Cityshore Commodities Limited ("Cityshore"), a firm found to have been involved in unauthorised land banking to make an interim repayment of £200,000 to customers who purchased land from it.

The order follows an interim injunction obtained by the FSA against Cityshore and its director Aaron Walker in January 2011.

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

Other Final Notices: -

In a Final Notice dated 13 December 2011 but released this week, the FSA has refused an application made by On the Move Mortgages (UK) Limited for Part IV permission to perform regulated activities relating to advising on and arranging mortgage and insurance contracts. The application was refused on the basis that the necessary criteria required to satisfy the FSA that it the Threshold Conditions ("COND") (in particular adequacy of resources) are not made out and that it is not a fit and proper person to perform such functions are not made out.

Joint Select Committee publishes report on Financial Services Bill

The long-awaited report of the Parliamentary Joint Select Committee considering the draft Financial Services Bill, which will govern the break-up of the FSA and the establishment of the new "twin peaks" regulatory structure, has been published.

The report draws not only on the evidence submitted by a wide range of parties, which runs to over 1,000 pages, but also (both explicitly and implicitly) on events during the time when the committee has been meeting over the past few months, such as the collapse of MF Global and the recent publication of the

FSA's report on the failure of Royal Bank of Scotland.

The committee, whilst broadly agreeing with the text of the bill, also suggests a number of ways in which the scope and scale of proposed change to the regulatory architecture and approach could be refined, and in a number of cases, significantly extended beyond that currently envisaged by the bill.

In particular, the report suggests:-

- changes to the oversight of the Bank of England, including the replacement of the Court of Governors with a new Supervisory Board;
- the expansion of the perimeter of the remit of the Prudential Regulatory Authority to take in regulation of market infrastructure (in response to the collapse of MF Global);
- the formation of a high level committee composed of representatives of the Financial Conduct Authority ("FCA"), Prudential Regulatory Authority ("PRA"), Bank of England and HM Treasury reporting to the Chancellor to ensure co-ordination of objectives and maximise influence in EU and international negotiations on financial regulation issues;
- the clarification of the objectives of the FCA to focus on the promotion of fair, efficient and transparent financial services markets that work well for users;
- that the FCA should inherit responsibility for consumer credit regulation and other significant competition regulation powers from the Office of Fair Trading;
- that the obligation for firms to treat customers "honestly, fairly

and professionally" should be placed on a statutory footing;

- that the change to "judgment led" supervision is emphasised by including this wording in the statute;
- that the proposed requirement for the FCA to consult with the individual or firm concerned prior to the publication of a Warning Notice be removed; and
- that, in order to encourage the correct balance between risk and return, the government considers increasing the proportion of executive remuneration required to be deferred, or introduces a concept of "strict liability" for executives and board members whose poor decisions lead to adverse consequences (a suggestion which chimes with that made by Lord Turner in his letter to Andrew Tyrie, Chairman of the Treasury Select Committee, following the publication last week of the report into the collapse of Royal Bank of Scotland).

Firms will also be concerned about some other matters not mentioned in the report. For example, the report is silent as to the body or bodies which will replace the Regulatory Decisions Committee ("RDC") when the FSA is disbanded. Similarly, despite lengthy submissions to the committee by firms and professional advisers emphasising the importance of some clarification in the bill of the circumstances in which the FCA may exercise its proposed wide powers in relation to product intervention and financial promotions, the report contains relatively little discussion of these points, and no recommendation that the bill as currently drafted be amended.

The debate around the precise wording of the provisions of the bill, and how it should bolster and re-assign the FSA's powers and responsibilities, is still at an early stage. The bill will progress to the first stages of parliamentary debate early next year.

<http://www.publications.parliament.uk/pa/jt201012/jtselect/jtdraftfin/236/23602.htm>

FSA proposes rule changes to boost consumer awareness of deposit protection scheme

In a consultation paper (CP 11/29) issued last week, the FSA has proposed changes to its Compensation sourcebook ("COMP") which would require deposit takers to clearly display in their branches whether they participate in the Financial Services Compensation Scheme ("FSCS"). Firms authorised by the FSA will be required to display standard FSCS produced stickers and posters in branches and to incorporate similar material on websites. EEA deposit takers with branches in the UK will be required to display equivalent material making it clear that they do not participate in the FSCS.

These moves follow concerns on the part of HM Treasury and the FSA, arising largely from failures of UK institutions and foreign banks with branches in the UK during the financial crisis, at relatively low levels

of consumer awareness of the protection provided by the FSCS.

The FSA intends for the new rules to be in place by May 2012. Firms are invited to respond to the consultation paper by 9 March 2012.

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

FSA publishes Mortgage Market Review

In the latest stage of its Mortgage Market Review (previous consultations have been issued throughout 2010), the FSA has sought to prepare for the eventual upturn in the economy by proposing tougher rules on the process which lenders should adopt to ensure that mortgages offered to prospective borrowers are affordable.

The consultation paper (CP 11/31) proposes significant changes and additions to the Conduct of Business Sourcebook ("**COBS**"), Mortgage and Home Finance Conduct of Business Sourcebook ("**MCOB**"), Prudential Sourcebook for Banks, Building Societies and Investment Firms ("**BIPRU**") and Prudential Sourcebook for Mortgage and Home Finance Firms and Insurance Intermediaries ("**MIPRU**"), and more minor amendments to the Perimeter Guidance ("**PERG**"), Professional Firms Sourcebook ("**PROF**") and the rules on Training and Competence ("**TC**").

The changes are centred on ensuring that lenders consider all of customers' outgoings, verify income in every case and take into account the potential impact of interest rate rises.

Firms are invited to respond to the consultation paper by 30 March 2012, after which the FSA expects to produce a final draft of the final form of rules by summer 2012, with a view to implementation in 2013.

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2011/116.shtml>

FSA and HM Treasury consult on changes to Prospectus Directive and Transparency Directive

HM Treasury and the FSA have jointly published a consultation paper (CP 11/28) setting out how they intend to implement into UK law the EU directive (2010/73/EU) amending the Prospectus Directive (2003/71/EC) and Transparency Directive (2004/109/EC). The changes will result in minor changes to the text of FSMA and to the FSA's Prospectus Rules ("PR") and Disclosure and Transparency Rules ("DTR").

Firms are invited to respond to the consultation paper by 13 March 2012, and the FSA expects to issue a policy statement in the second quarter of 2012.

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

FSA proposes guidance on regulated covered bond regime

The FSA has issued a guidance consultation paper (GC11/31) in relation to the regulated covered bond regime under Regulated Covered Bond Regulations 2008. The guidance, issued in the form of a thematic review, sets out the FSA's expectations of the systems and controls which firms should have in place, and sets out detail in relation to firms' annual confirmation of compliance and the content of management information.

Firms are invited to respond to the guidance consultation by 27 January 2012.

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

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