

Last week at the FSA

FSA issues public censure for risk management failings during the financial crisis

In the first instance of concluded enforcement action taken against a firm in connection with actions during the financial crisis, the FSA has (on 9 March) publicly censured **Bank of Scotland plc ("BoS")**. The action relates to breaches of Principle 3 (management and control) of the FSA's Principles for Businesses ("**the Principles**") through risk management failings in the BoS' Corporate Banking Division between January 2006 and December 2008.

In particular, the FSA found that BoS breached Principle 3 by: -

- Continuing to pursue a high-risk strategy based on sub-investment grade lending during worsening economic conditions;
- Failing to have in place systems and controls commensurate with the risks involved in the strategy of its Corporate Banking Division;
- Not moving transactions showing signs of stress to its high risk area sufficiently quickly; and
- Making provisions "*at the optimistic rather than the prudent end of the range*" in relation to its Corporate Banking Division despite warnings from its divisional risk function and auditors.

The FSA did not impose a financial penalty as it considered that any such penalty would be paid from public funds already invested in the bank in 2009.

The FSA has indicated that separate enforcement action connected with the HBOS Group is ongoing, and that it proposes to produce a public interest report in relation to the circumstances leading to the requirement for investment of public funds in HBOS after the conclusion of that action.

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

FSA fines and bans former Financial Director for fraudulent contracts

The FSA has (on 8 March) banned **George McGregor**, the former Financial Director of Royal Liver Assurance Limited ("**RLA**") from performing any function in relation to any regulated activity, and has imposed a financial penalty of £109,000 upon him. The action relates to breaches of Principle 1 (integrity) of the FSA's Statements of Principles for Approved Persons ("**APER**").

The FSA found that Mr McGregor breaches this principle by: -

- Fraudulently entering into contracts to pay sums to companies controlled by a former employee of RLA;
- Failing to inform RLA's Capital Management Group and others of the contracts or of the fact that they had the effect of making

bonus payments to the former employee; and

- Falsifying the signatures of RLA's CEO in order to process payments connected with the contracts.

The financial penalty imposed was reduced from £1 million to £109,000 as Mr McGregor settled at stage one of the FSA's executive settlement procedure and demonstrated that a higher fine would cause him serious financial hardship.

The Final Notice, which makes no criticism of RLA, does not detail whether any associated action (whether regulatory or criminal in nature) is contemplated against any other person in connection with the matter.

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

Key issues

- FSA issues public censure for risk management failings during the financial crisis
- FSA fines and bans former Financial Director for fraudulent contracts
- Other Final Notices
- FSA issues guidance on PPI customer contact letters
- Pritchard Stockbrokers Limited enters Special Administration Regime
- FSA issues guidance on regulated covered bond compliance requirements
- FSA issues Policy Statement on with-profits business

Other Final Notices: -

- The FSA has (on 6 March) cancelled the registration of **Basharat Hussain** as a Small Payment Institution under Payment Services Regulations 2009 following a failure to notify the FSA of a change of head office.
<http://www.fsa.gov.uk/static/pubs/final/basharat-hussain.pdf>
- The FSA has (on 9 March) cancelled the Part IV permission of **Lawford Finance UK Limited** following non-payment of fees and levies.
<http://www.fsa.gov.uk/static/pubs/final/lawford-finance-uk-limited.pdf>

FSA issues guidance on PPI customer contact letters

The FSA has (on 6 March) issued a guidance consultation paper (FG 12/4) giving details of the features which it considers should be contained in customer contact letters ("CCLs") to be sent to customers who may have been mis-sold payment protection insurance.

The guidance sets out eight key points which the FSA considers will assist firms with ensuring that their CCLs in relation to historic PPI mis-selling comply with Principles 6 (treating customers fairly) and 7 (communications with clients) and other rules and guidance contained in the Senior Management Arrangements, Systems and Controls ("SYSC") and Dispute Resolution:

Complaints ("DISP") sections of the Handbook.

In addition, the draft guidance clarifies arrangements in areas including the time limits within which complaints should be made by customers and record keeping in relation to CCLs sent to customers.

Firms are invited to respond to the FSA in relation to the guidance consultation by 3 April 2012.

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

Pritchard Stockbrokers Limited enters Special Administration Regime

The FSA has (on 9 March) confirmed that **Pritchard Stockbrokers Limited** ("Pritchard") has entered the Special Administration Regime. The majority of non-cash assets had already been transferred to another stockbroker on 29 February. Client cash holdings will be returned to clients by the joint special administrators. This development follows the supervisory notice issued to Pritchard by the FSA on 10 February, which had the effect of preventing Pritchard from carrying on business.

Pritchard becomes the second firm to enter the Special Administration Regime, the first having been **MF Global UK Limited** ("MF Global") in October 2011. The special administrators in that case have indicated that, particularly given the complex tracing analysis in relation to unsegregated assets which is likely to

be required following the UK Supreme Court's decision in *Re Lehman Brothers International (Europe)(in administration)* announced several weeks ago, returns are unlikely to be forthcoming for some time.

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

<http://www.cliffordchance.com/publicationviews/publications/2012/03/supreme-court-decision-on-lehman-client-money.html>

FSA issues guidance on regulated covered bond compliance requirements

Further to a guidance consultation paper (GC11/30) issued in December 2011, and earlier guidance (FG 11/20) on the role of the compliance function in relation to regulated covered bonds published in November 2011, the FSA has (on 6 March), issued finalised guidance detailing its expectations of firms engaged in the provision of regulated covered bonds. The guidance focuses in particular on the levels of understanding expected of, and the responsibilities of, individuals who sign the annual confirmation of compliance on behalf of firms, and on minimum levels of management information to be produced by firms.

http://www.fsa.gov.uk/library/policy/guidance_consultations/2011/11_31.shtml

http://www.fsa.gov.uk/static/pubs/guidance/fg11_20.pdf

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

FSA issues Policy Statement on with-profits business

Following consultation in February 2011 (through Consultation Paper 11/5), the FSA has (on 7 March) issued a Policy Statement (PS12/4), setting out proposed changes to provisions of its Conduct of Business Sourcebook ("**COBS**"). Areas covered include the fair treatment of policyholders, particularly in relation to mutually-owned long-term insurance funds, conflicts of interest, the terms on which new business should be written, the effect of material reductions in new business and Market Value Reductions.

http://www.fsa.gov.uk/library/policy/cp/2011/11_05.shtml

<http://www.fsa.gov.uk/library/policy/policy/2012/12-04.shtml>

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