

FSA Update

31 May 2011

At the FSA last week:

- **Fine for complaints mishandling**

The FSA has fined Bank of Scotland plc £3.5 million for the mishandling of complaints about retail investment products. The FSA found that the firm had breached Principles 3 (management and control) and Principle 6 (customers' interests) of the FSA's Principles for Businesses (the Principles) and associated rules between 30 July 2007 and 31 October 2009 (the Relevant Period) in relation to the Firm's complaint handling arrangements. During the Relevant Period, the firm received 2,592 advice related complaints (the Complaints) about its sales of Collective Investment Plan, Personal Investment Plan, the Guaranteed Growth Bond, ISA Investor and Guaranteed Investment Plan (together, the Investments) in the Relevant Period. The FSA found that the firm's complaint handling arrangements for the Investments breached the FSA's Principles and rules because it failed to:

- ensure its complaint handlers investigated the Complaints properly by taking account of all relevant information. For example, the guidance provided to complaint handlers did not require complaint handlers to contact customers when this was necessary to resolve the Complaints, to obtain all relevant information from sales advisers and to consider information which was readily available on the firm's systems but not documented in its sales files;
- ensure the Complaints were assessed competently and fairly. Complaint handlers did not always adopt a balanced and impartial approach when assessing the available evidence. This resulted in some poor decisions on whether the Investments were suitable for customers who complained. As a result, the firm rejected some of the Complaints when it should have upheld them and did not appropriately compensate affected customers;
- have an adequate process in place to feed back to its complaint handlers analysis of trends in complaints decisions. Lessons learned from past complaints, including those determined by the Financial Ombudsman Service, were not reflected promptly in the firm's complaint handling guidance. As a result, complaint handlers were not always aware of and did not always have appropriate regard to emerging issues when deciding the Complaints; and
- carry out timely and effective root cause analysis of the Complaints it received to enable it to identify and remedy issues in its processes which could have been highlighted by those complaints.

The firm received a 30% discount for early settlement. The fine would otherwise have been £5 million.

http://www.fsa.gov.uk/pubs/final/bos_23may11.pdf

Key Issues

Fine for complaints mishandling

Fine and High Court injunction for market abuse

Consultation Paper issued on consumer complaints

Policy Statement issued on CMAR: Operational Implementation

Policy Statement issued on fee-raising arrangements

Policy Statement issued on pension reform

FSA consults on the Supervisory Formula Method and Significant Risk Transfer

Guidance issued on co-operation between insolvency practitioners and clearing houses in default situations

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- **Fine and High Court injunction for market abuse**

The FSA has fined Samuel Kahn £1,094,900 and obtained a High Court injunction restraining him from committing market abuse. The FSA found that between 24 March 2010 and 30 April 2010, Mr Kahn co-ordinated a scheme to deliberately inflate the share price of Global Brands Licensing plc (GBL), a company quoted on PLUS Stock Exchange ("PLUS") a Recognised Investment Exchange. He orchestrated and controlled the vast majority of the trading in GBL's shares in March and April 2010, disguising his involvement in the scheme by repeatedly impersonating other people when placing orders to trade in GBL's shares and co-ordinating trading conducted by third parties. The trading moved GBL's share price from 2p on 24 March 2010 to 5.25p at its height on 20 April 2010. The profits from this trading were withdrawn from a third party's bank account at his instruction and delivered to him in cash. The scheme also involved a significant proportion of GBL's shares being donated to charities. These donations were co-ordinated by Mr Kahn and aimed at illegitimately taking advantage of GBL's artificially inflated share price for tax relief purposes and for the purpose of facilitating boiler room activities. This aspect of the scheme was not fully implemented due to the suspension of GBL's shares by PLUS on 30 April 2010. In light of previous misconduct and his more recent actions in GBL, the FSA obtained an injunction at the High Court restraining Mr Kahn from committing market abuse in future. This is the first occasion on which the FSA has exercised its powers under the Financial Services and Markets Act 2000 to obtain a final injunction against an individual to restrain market abuse.
http://www.fsa.gov.uk/pubs/final/samuel_nathan_kahn.pdf

- **Consultation Paper issued on consumer complaints**

The FSA has issued Consultation Paper CP11/10: "Consumer complaints: The ombudsman award limit and changes to complaints-handling rules - Feedback to CP10/21, final rules and further consultation". The new rules include:

- Abolition of the 'two-stage' complaints handling rule to make sure firms resolve complaints fairly and do not dismiss them the first time, requiring persistence from the customer to pursue the complaint;
- Requiring firms to identify a senior individual responsible for complaints handling;
- Additional guidance to help firms understand the processes they might need in place to meet FSA requirements on root cause analysis; and

- Further guidance requiring firms to take account of ombudsman decisions and previous customer complaints.

The Consultation Paper also confirms an increase to the limit on awards made by the Financial Ombudsman Service from £100,000 to £150,000.

The dates for the implementation of the final rules are as follows:

- New guidance relating to taking account of ombudsman decisions and root cause analysis and new rule requiring firms to nominate an individual with responsibility for complaints handling - 1 September 2011
- Increase to the amount the Financial Ombudsman Service can award consumers - 1 January 2012
- Abolishing the two-stage complaints handling process - 1 July 2012

Comments on Chapter 6 of the Consultation Paper, which looks at identity theft and mistaken identity and a change to the definition of 'eligible complainant', are invited by 31 August 2011.
http://www.fsa.gov.uk/pubs/cp/cp11_10.pdf

- **Policy Statement issued on CMAR: Operational Implementation**

The FSA has issued Policy Statement PS11/06 "The Client Money and Asset Return (CMAR): Operational Implementation". It reports on the main issues arising from the FSA's proposals on implementing CMAR on GABRIEL for CASS medium and large firms in Consultation Paper 11/4 (The Client Money and Asset Return (CMAR): Operational Implementation) and publishes final rules. The FSA has postponed the start date for the monthly CMAR from 1 June to 1 October 2011. The first deadline for submitting a return is now 21 November 2011 – 15 working days after the end of the first reporting period (1 to 31 October 2011).
http://www.fsa.gov.uk/pubs/policy/ps11_06.pdf

- **Policy Statement issued on fee-raising arrangements**

The FSA has issued Policy Statement PS11/07: "Consolidated Policy Statement on our fee-raising arrangements and regulatory fees and levies 2011/12 - Including feedback on CP11/2, part of CP10/24 and CP11/7 and 'made rules'". The Policy Statement summarises the FSA's policy with regard to its fee-raising powers under the Financial Services and Markets Act 2000 and gives a broad overview of the fees rules.
http://www.fsa.gov.uk/pubs/policy/ps11_07.pdf

- **Policy Statement issued on pension reform**

The FSA has issued Policy Statement PS11/08: "Pension reform – Conduct of business changes".

It discusses the responses received to CP10/26 and includes new rules. The new rules and guidance come into force from 1 October 2012. http://www.fsa.gov.uk/pubs/policy/ps11_08.pdf

- **FSA consults on the Supervisory Formula Method and Significant Risk Transfer**

The FSA has published proposed guidance setting out its expectations for firms using the supervisory formula method to calculate risk-weighted exposure amounts for unrated securitisation positions. The FSA has concerns that firms' use of the supervisory formula method undermines the significant risk transfer requirement with the reduction in risk-weighted exposure amounts due to the use of the supervisory formula method being disproportionate to the credit risk transferred. The FSA has indicated that, for firms to comply with the significant risk transfer test, it will generally expect them to obtain a public rating on retained tranches to apply the ratings based approach instead of using the supervisory formula method. Comments

are requested by 22 June 2011.

http://www.fsa.gov.uk/pages/Library/Policy/guidance_consultations/2011/11_12_shtml

- **Guidance issued on co-operation between insolvency practitioners and clearing houses in default situations**

The FSA has published non-binding guidance on the cooperation between recognised bodies providing central counterparty services and insolvency practitioners to assist in the management of member defaults by recognised bodies. The guidance is intended to facilitate a closer understanding of the regime in Part VII of the Companies Act 1989 and the management of the respective responsibilities of recognised bodies and insolvency practitioners in a default situation. http://www.fsa.gov.uk/pubs/other/cooperation_guidance.pdf

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