

FSA Update

Last week at the FSA:-

FSA fines and bans IFA for UCIS advice failings

The FSA has (in a final notice dated 2 October released on 29 October) imposed a financial penalty of £117,330 and imposed a prohibition order on **Martin Rigney** for failings connected with his involvement in the promotion of unregulated collective investment schemes ("UCIS"). These failings occurred whilst he was a partner in the firm **Topps Rogers Financial Management** ("Topps Rogers") between May 2004 and June 2010.

The FSA found that he breached Principle 1 (integrity) of its Statements of Principle for Approved Persons ("APER") by arranging a UCIS transaction despite a variation to Topps Rogers' business in May 2009 preventing it from doing so.

It also found that he breached Principle 2 (due skill, care and diligence) of APER by failing to take adequate steps to establish that an applicable exemption from the promotion of UCIS applied, obtain and record adequate information from customers to assess their attitude to risk and support recommendations that they invest in UCIS.

Finally, it found that he breached Principle 7 (compliance by firm with requirements of regulatory system) of APER by failing to implement adequate compliance arrangements to ensure that Topps Rogers could

identify and manage risks and ensure the suitability of advice.

The action follows a decision notice issued to Mr Rigney in November 2011. He had referred the matter to the Upper Tribunal, but agreed to withdraw his reference. The action follows separate action against Topps Rogers which led to the imposition of a fine of £97,600 and the withdrawal of its permission in February 2012. The firm is now in liquidation and Mr Rigney has been declared bankrupt.

Comment

The action is the latest in a long line of financial penalties, withdrawals of permission and prohibition orders imposed on firms and individuals since 2010. It has been concluded as the deadline for responses to the FSA's consultation on proposed rules which would restrict the retail distribution of UCIS on 14 November approaches.

Both the rules proposed in its consultation paper and the extensive action it has taken against firms and individuals involved in the promotion of UCIS are illustrative of its increasingly interventionist approach to supervision and enforcement where it considers that consumers interests are at risk.

The significant penalty imposed on Mr Rigney is clearly designed to support the FSA's credible deterrence agenda. The final notice acknowledges that he is unlikely to be able to pay the penalty imposed.

The breaches of Principle 1 occurred largely after the introduction of the FSA's amended penalty regime under chapter 6.5B of its Decision

Procedure and Penalties Guide ("DEPP") in March 2010. The breaches of Principles 2 and 7 occurred prior to its introduction. The penalties imposed on Mr Rigney for these breaches have therefore been calculated separately. A penalty of £70,000, calculated under the FSA's old penalty regime under chapter 6.5.2 of DEPP has been imposed for his breaches of Principles 2 and 7 through systemic failures over a period of six years, whilst he has been fined £47,330 for breaching Principle 1 in connection with several discrete transactions. The breakdown of the penalty illustrates both the seriousness with which the FSA views integrity breaches and the significant flexibility which it retains when calculating fines under the post March 2010 penalties regime.

<http://www.fsa.gov.uk/static/pubs/final/martin-rigney.pdf>

<http://www.fsa.gov.uk/static/pubs/final/topps-rogers-financial-management.pdf>

http://www.fsa.gov.uk/smallfirms/your_firm_type/financial/investment/ucis-enforcement-notice.shtml

<http://www.fsa.gov.uk/static/pubs/cp/cp12-19.pdf>

Arch Cru payment scheme deadline extended

On 29 October, the three institutions responsible for administering funds belonging to Arch Cru investors agreed with the FSA to extend the deadline for investors to accept offers of compensation to 31 December 2013. Previously, the deadline was 31 December 2012.

For more details of the Arch Cru payment scheme, see FSA Update - 8 May 2012.

<http://www.fsa.gov.uk/consumerinformation/firmnews/2012/arch-cru-proposed-redress-scheme>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbFgNhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGgLnALTlyZe%2FxbFDMK7o1LDb24p%2Bkv1xrp%0D%0A5mt12P8Wnx03DzsaBGwslB3EVF8XihbSpJa3xHNE7tFeHpEbaeIf&attachmentsize=116757>

Finalised guidance

Guidance proposed in March 2012 in relation to firms' anti-bribery and corruption systems and controls (GC12/5) and firms' defences against investment fraud (GC12/7) has (on 1 November) been incorporated into the FSA's **Financial Crime Guide** (through finalised guidance papers FG 12/20 and FG12/21 respectively). The guidance has been included with some minor changes to reflect feedback provided during the consultation process on the anti-bribery and corruption and anti-investment fraud provisions.

<http://fsahandbook.info/FSA/html/handbook/FC/link/PDF>

<http://www.fsa.gov.uk/static/pubs/guidance/fg12-20.pdf>

<http://www.fsa.gov.uk/static/pubs/guidance/fg12-21.pdf>

http://www.fsa.gov.uk/library/policy/guidance_consultations/2012/qc1205

http://www.fsa.gov.uk/library/policy/guidance_consultations/2012/1207

Policy statements

- The FSA has (on 1 November) published a policy statement (PS12/19) summarising

amendments to the Handbook relating to the **EU regulation on short selling**. The changes, which came into effect immediately on 1 November, do not differ significantly from those proposed in its consultation paper (CP12/21) in August 2012.

<http://www.fsa.gov.uk/static/pubs/policy/ps12-19.pdf>

<http://www.fsa.gov.uk/static/pubs/cp/cp12-21.pdf>

- The FSA has (on 1 November) published a policy statement (PS12/17) providing feedback on responses it received to its proposals in its May 2012 consultation paper (CP12/10) on **product projections and transfer value analysis**. The changes involve the introduction of a separate consumer prices index assumption for transfer value analysis when benefits under a defined benefit pension scheme are compared with possible benefits under a personal pension scheme and amendments to the investment return assumptions contained in the FSA's Conduct of Business Sourcebook ("COBS").
<http://www.fsa.gov.uk/static/pubs/policy/ps12-17.pdf>,
<http://www.fsa.gov.uk/static/pubs/cp/cp12-10.pdf>
- The FSA has (on 1 November) published a policy statement (PS12/20) setting out changes to its policy on the interpretation of rules contained in the Client Assets Sourcebook ("CASS") on **client assets firm classification**. It reports on issues arising from its consultation paper published in July 2012 (CP12/15) and sets out final rules in relation to oversight and reporting and mandate rules.

<http://www.fsa.gov.uk/static/pubs/policy/ps12-20.pdf>

<http://www.fsa.gov.uk/static/pubs/cp/cp12-15.pdf>

- In a policy statement published on 1 November (PS12/18), the FSA has set out its approach to **data collection on remuneration practices and firms' reporting obligations**. This follows consultation paper CP12/18, published in August 2012, which set out proposed changes to rules in the Remuneration Code (at chapter 19A of the Senior Management Arrangements Systems and Controls sourcebook ("SYSC")) and chapter 16 of the Supervision manual ("SUP").
<http://www.fsa.gov.uk/static/pubs/policy/ps12-18.pdf>
<http://www.fsa.gov.uk/static/pubs/cp/cp12-18.pdf>
- In a policy statement issued on 2 November (PS12/21), the FSA has reported on the main issues arising from its January 2012 consultation paper (CP12/1) on the **large exposures regime**. It sets out changes including amendments to the handbook definition of connected counterparties and additional guidance on the treatment of large exposures to structured finance vehicles.
<http://www.fsa.gov.uk/static/pubs/policy/ps12-21.pdf>
<http://www.fsa.gov.uk/static/pubs/cp/cp12-01.pdf>

Consultation papers

- In a consultation paper issued on 29 October (CP12/28), the FSA has set out details of its proposed **regulatory fees and levies**.

It has invited firms to respond to the proposals by 7 January 2013.

<http://www.fsa.gov.uk/static/pubs/cp/cp12-28.pdf>

- In a consultation paper published on 1 November (CP12/29), the FSA has set out proposed amendments to **disclosure rules for self-invested personal pensions (SIPPs)**. The paper reports feedback received to consultation paper CP12/5 published earlier this year on proposed disclosure rules and sets out (at chapters 3 and 4) proposals for introducing inflation-adjusted key features illustrations for personal and stakeholder pension schemes and improving and simplifying information provided to customers. The consultation paper closely follows the report released last week by the FSA setting out the FSA's continuing concerns at levels of compliance by SIPP operators and administrators (see FSA Update – 29 October 2012).

The FSA has invited responses to chapters 3 and 4 of the consultation paper by 1 February 2013.

<http://www.fsa.gov.uk/static/pubs/cp/cp12-29.pdf>

<https://onlineservices.cliffordchanace.com/online/freeDownload.action?key=OBWlbFgNhLNmwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALTlyZe2c6Jjh2hRNsJ3UEhV0Y3HDp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=134023>

- The FSA and Bank of England have (on 26 October) issued a joint consultation paper on a **draft policy statement on the designation of investment**

firms for prudential supervision by the Prudential Regulation Authority ("PRA").

The draft statement sets out the factors which the PRA proposes to use to designate which firms (in addition to deposit-takers and insurers) it will regulate.

Firms have been invited to respond to the draft policy statement by 4 January 2013.

<http://www.bankofengland.co.uk/publications/Documents/other/prapolicy1210.pdf>

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