

# REGULATION NEWSLETTER FOR INTERMEDIARIES

Monday 7th to Friday 11th September 2009

Welcome to the weekly regulation newsletter designed specifically for intermediaries. This newsletter is compiled by IFact Services and includes regulatory and topical information relating to Independent Financial Advisers, General Insurance and Mortgage and Home Finance Advisers.



## Final Notice - FSA fines firm £14,000 for financial advice failings

Financial Services Authority

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/118.shtml>

The Financial Services Authority (FSA) has fined a Kent financial advice firm £14,000 for failing to demonstrate that its advice on investment products was suitable. The most serious failings related to Henry Neil Ltd's (HNL) advice that customers give up segments of existing offshore investment bonds and reinvest the proceeds in new bonds, putting 13 customers at risk of buying unsuitable investment bonds. The problems at HNL were identified following visits by the FSA.

Margaret Cole, FSA director of enforcement, said: "This fine puts investment advisory firms on clear notice that they must have the right arrangements in place to ensure that suitable advice is given and recorded. When making an investment recommendation, firms must ensure that customers have all the necessary information to decide whether the recommendation is right for them. This includes information about relevant costs and charges. Where firms cannot demonstrate this, we will take action which will include imposing disciplinary sanctions where appropriate." The FSA found that HNL had breached Principle 9 of the FSA's Principles for businesses, which included failing to:

- adequately determine its customers' attitude to risk and ensure that customers' attitude to risk was consistent with the risk rating of the underlying funds held in the bond;
- undertake adequate or independent product research to support its recommendations;
- adequately explain to its customers the reason for, or suitability of, its recommendations, particularly for investment bonds; and
- explicitly link each recommendation to surrender segments of an existing bond with its advice to reinvest the proceeds in a new bond and adequately explain the consequences, costs and charges of the transaction as a whole.

HNL must also appoint an external compliance consultant to conduct a review of investment products sold between 10 June 2005 and 31 December 2007 and compensate any customers who may have suffered loss. HNL agreed to settle at an early stage of the FSA's investigation and therefore qualified for a 30 per cent discount under the FSA's executive settlement procedures. Had HNL not settled at this stage the FSA would have imposed a financial penalty of £20,000.

## Final Notice - Financial Advantage Limited

Financial Services Authority

[http://www.fsa.gov.uk/pubs/final/fin\\_adv.pdf](http://www.fsa.gov.uk/pubs/final/fin_adv.pdf)

The FSA has issued a Final Notice to the above cancelling their permissions specifically for failing to pay fees and levies of £1,692.57 owed to the FSA, despite repeated requests that it does so.

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## Final Notice - FSA fines Barclays £2.45m for failures in transaction reporting

Financial Services Authority

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/117.shtml>

The Financial Services Authority (FSA) has fined Barclays Capital Securities Ltd and Barclays Bank PLC (Barclays) £2.45m for failing to provide accurate transaction reports to the FSA and for serious weaknesses in systems and controls in relation to transaction reporting. Firms are required to submit data for reportable transactions by close of business the day after a trade is executed. The FSA uses this data to detect and investigate suspected market abuse: insider trading and market manipulation.

The FSA discovered discrepancies in Barclays' data while reviewing a suspected incident of market abuse by a third party. A subsequent review of Barclays' transaction reporting arrangements revealed that it did not have adequate systems and controls in place to meet the transaction reporting requirements as well as a substantial number of errors in the data submitted to the FSA.

Alexander Justham, FSA director of markets, said: "Complete and accurate transaction reports are an essential component of the FSA's market monitoring work. Barclays' reporting failures could have a damaging impact on our ability to detect and investigate suspected market abuse. The penalty imposed on Barclays is significantly higher than previous penalties imposed for transaction reporting errors. This reflects the serious nature of Barclays' breaches and is a warning to other firms that the FSA will not tolerate inadequate systems and controls. Barclays' breaches occurred despite repeated reminders to firms of their obligations to provide accurate data and the importance of compliance with the FSA rules on transaction reporting during the course of 2007 and 2008. The firm has taken a number of steps to address the concerns raised including commissioning a review of its transaction reporting process and committing extensive resources to improve its processes and resolve the errors."

Barclays co-operated fully with the FSA in the course of its investigation and agreed to settle at an early stage. In doing so it qualified for a 30% discount. Without the discount the fine would have been £3.5m.

## Final Notice - Porchester Finance Ltd

Financial Services Authority

[http://www.fsa.gov.uk/pubs/final/porchester\\_07sep09.pdf](http://www.fsa.gov.uk/pubs/final/porchester_07sep09.pdf)

The FSA has issued a Final Notice to the above cancelling their permissions specifically for failure in notifying the FSA of a change in the address of its principal place of business. The FSA has no current, valid contact information for Porchester, therefore the FSA has no means of communicating with it.

## Final Notice - Skyline Insurance Brokers Ltd

Financial Services Authority

[http://www.fsa.gov.uk/pubs/final/skyline\\_090907.pdf](http://www.fsa.gov.uk/pubs/final/skyline_090907.pdf)

The FSA has issued a final notice to the above cancelling their permissions specifically for failing to pay fees and levies of £761.48 owed to the FSA, despite repeated requests that it do so, and has thereby failed to comply with Principle 11 (Relations with Regulator) of the Principles for Businesses.

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## Press Release - Mortgage broker fined £6,000 by court

Financial Services Authority

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/120.shtml>

Vijay Kumar Sharma, sole director of mortgage broker Exetra (UK) Limited, pleaded guilty yesterday at City of Westminster Magistrates Court to charges of acquiring a controlling interest in the firm without giving the Financial Services Authority (FSA) prior notice of the acquisition and of making false or misleading statements to the FSA. This is the first criminal prosecution brought by the FSA for failing to notify the regulator about a change in control at a regulated firm. Judgement - Sharma was fined £3,000 for acquiring a controlling interest in a regulated firm without giving the FSA prior notice. He was also fined £3,000 for making false and misleading statements to the FSA and ordered to make a contribution towards the FSA's costs.

District Judge Purdy, delivering the verdict, said: "You chose to circumvent the process by not notifying the FSA because you must have known that it would mean your application would be refused. These provisions are designed to protect the public from those individuals who are not fit and proper. This sentence will act as deterrence to others." Margaret Cole, FSA director of enforcement, said: "The FSA must be notified of any changes in control at a firm so we can assess the suitability of the individuals taking over. Being able to check the identity and integrity of a controller is central to proper regulation of the financial services industry and to our statutory duty to protect consumers. "Sharma's failure to notify us of his acquisition of control at the firm was serious enough in itself. This was made worse by the false and misleading statements he made in his applications to the FSA about the control change and his former employment in the financial services industry. This case sends out a strong warning that the FSA will use all its powers, including criminal, against people who act in this way."

Evidence from the FSA's director of permissions, reporting and decisions, Graeme Ashley-Fenn, about the importance of our rules on change in control at regulated firms was also heard at court.

## FSA's On the Grapevine

Financial Services Authority

<http://www.fsa.gov.uk/smallfirms/grapevine/sept09.shtml>

Each month the FSA gives an answer to something you've asked them or what you've told them is being said. This month they provide an answer to the question: 'We've heard that the FSA has a list of approved consultants who we can use to check our compliance.' The FSA say:

"We don't have a list of approved consultants. The firms that we regulate take final responsibility for applying our rules to their business. We authorise and regulate firms and we include these firms on our Register. If you are a regulated firm it is important to consider what support, if any, your firm needs. This will help you if you do decide to get some compliance support. There is no requirement in our rules to use a consultant. Many firms do not use compliance consultants at all.

There are lots of different levels of service available. It is for you to make sure that any service you choose will meet your objectives and help ensure you are compliant. Once you have clearly identified and established your needs, there are some questions you might like to ask potential consultants to help you assess their service. You will also want to regularly monitor their work to see whether you are getting the benefits you expect from it. Questions about your consultants

- Do they have the necessary experience and qualifications to help you and your type of firm?
- How do they keep up to date with regulatory and product changes?
- Have you asked for a selection of clients and taken references?
- Have you compared them to any other consultants?"

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## Financial Crime Newsletter - Issue 13

Financial Services Authority

[http://www.fsa.gov.uk/pubs/newsletters/fc\\_newsletter13.pdf](http://www.fsa.gov.uk/pubs/newsletters/fc_newsletter13.pdf)

The FSA has published the above which includes the following:

### News articles:

- FSA Annual Financial Crime Conference
- Thematic projects: sanctions and offshoring
- Illegal Money lending
- National Fraud Authority: National Fraud Strategy
- Measuring the scale and impact of financial crime

### News in brief:

- Changes to FSA Handbook
- Anti-bribery and corruption in commercial insurance brokers: interim findings
- First criminal prosecution for insider dealing
- Morgan Stanley trader mismarking
- Share sale scam clampdown
- HSBC information security failings
- CIFAS fraud trends
- Draft Bribery Bill

## Interim findings: anti-bribery and corruption in commercial insurance brokers

Financial Services Authority

[http://www.fsa.gov.uk/pages/About/What/financial\\_crime/library/interim.shtml](http://www.fsa.gov.uk/pages/About/What/financial_crime/library/interim.shtml)

In late 2008 the FSA began a review of anti-bribery and corruption systems and controls in commercial insurance broker firms. They have taken the step of publishing their interim findings as there will be a short delay to the final report, following a secondment of a small number of their Financial Crime Operations team to support the work of the FSA's Major Retail Groups Division. The FSA has identified some significant weaknesses which firms should be aware of and the FSA hope that the findings will help firms assess their own controls, and strengthen them where necessary.

Key Findings - Although there are some examples of good practice at the firms the FSA has visited, they have identified a number of concerns that seem to be common across the commercial insurance broker industry. These and other common issues are set out on the above web page.

## New Web Page - The proposed transfers of the life insurance business of Commercial Union Life Assurance

Financial Services Authority

[http://www.fsa.gov.uk/pages/Library/Other\\_publications/Miscellaneous/2009/aviva.shtml](http://www.fsa.gov.uk/pages/Library/Other_publications/Miscellaneous/2009/aviva.shtml)

The documents available to view on these new web pages comprise the FSA's Report to the Court in relation to the proposed transfers of life insurance business from Commercial Union Life Assurance Company Limited, CGNU Life Assurance Limited and Norwich Union Life (RBS) Limited to Aviva Life & Pensions (UK) Limited pursuant to section 107 of the Financial Services and Markets Act 2000. The Report also covers the reattribution of the inherited estates of Commercial Union Life Assurance Company Limited and CGNU Life Assurance Limited. This Report is made in order to provide the Court with information on the position of the Financial Services Authority on the proposed transfers and reattribution.

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## Press Release - FSA update on Lehmans-backed structured products

Financial Services Authority

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/121.shtml>

Following the collapse of Lehman Brothers, the Financial Services Authority (FSA) and Financial Ombudsman Service (Ombudsman) have been looking at the potential detriment this has caused for investors in the UK structured products market. In May, the FSA and Ombudsman agreed that the issues relating to Lehmans-backed structured products should be considered under the "Wider Implications" process, in order to allow the FSA to explore all options to achieve the best outcome for consumers. The FSA has now gained enough information from its review to enable it to move forward and believes it is now appropriate to lift the hold on individual adjudications of complaints on an immediate basis. The FSA will report back on the outcomes of its review in more detail in October but confirms that it will be taking action against firms as a result of the findings of the review.

## FSA & ABI launch pension calculator to help people plan for retirement

Financial Services Authority

[http://www.moneymadeclear.fsa.gov.uk/tools/pension\\_calculator.html](http://www.moneymadeclear.fsa.gov.uk/tools/pension_calculator.html)

Almost one third of people may face financial difficulties when they retire, according to new research, and the Financial Services Authority (FSA) and Association of British Insurers (ABI) are launching a tool to help. The online pension calculator is designed to help people gauge how much they will have to live on in retirement. The calculator's launch comes as new figures published by the FSA reveal 31% of people may suffer an increase in financial problems when they enter retirement.

The research examines how life events such as unemployment, bereavement and household status affect levels of financial capability. Planning for financial security in retirement is especially important in the current economic climate, as more people than ever are facing difficult financial situations and finding their financial capability skills to be insufficient.

The pension calculator, on the Moneymadeclear website, enables anyone with a pension fund from a previous employer, those paying into a new pension scheme, or people without any existing pension at all, to calculate their potential retirement income based upon regular payments. Further functionality will be added to the calculator in the future. With personal circumstances frequently changing, users are also able to adapt the criteria to suit changing circumstances - for example, to see how their potential future income can be affected by retiring earlier or contributing more.

Chris Pond, FSA director of financial capability, said: "For many people, pensions are not something they want to think about until retirement is imminent and by then they may find their pension falls far short of the lifestyle they had hoped for. So it's important to do as much as possible to make the most of your money by considering all the choices available. The pension calculator can help you identify the implications of your pension choices and impact on later income to determine if you are on the right track."

Maggie Craig, ABI director of life and savings, said: "The pension calculator is an invaluable tool for anyone who wants to engage with planning for retirement, and you can't be too young to start that process. As 'defined contribution' pensions, particularly those available through the workplace, become increasingly popular, the pension calculator will help people to plan for how much they need to save in order to be financially comfortable in retirement."

Moneymadeclear is an impartial service from the FSA that can help with everything from mortgages to savings, pensions and budgeting. When it comes to pensions and managing money in retirement, the website contains a range of impartial information, resources and tools including the pension calculator, comparative tables for pensions and annuities, as well as a checklist to help those thinking of retiring soon.

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## From PADA - PADA Closes its Investment Discussion Paper

### Other Items of Interest

<http://www.padeliveryauthority.org.uk/documents/press-release-10-09-2009.pdf>

The Personal Accounts Delivery Authority (PADA) has now closed its investment discussion paper: Building Personal Accounts: Designing an investment approach to formal responses. The purpose of the paper was to draw on good practice and expertise from across the pension and investment industries, unions, consumer groups and trade bodies, to inform PADA's approach to devising recommendations on the most appropriate investment approach for the trustee corporation of the personal accounts scheme.

PADA received more than sixty responses to the discussion paper from a broad range of respondents. The views expressed and the quality of the responses submitted is helping develop PADA's thinking. Complementing the discussion paper, PADA held a series of roundtable events with a variety of stakeholders, including consumer groups, academics and investment professionals, to discuss key issues in more depth. Speakers and attendees from the UK and overseas featured in these events. Issues such as the design of the default fund, the value of alternative investments and what fund choices, other than the default fund, should be offered were discussed and these inputs have contributed to PADA's thinking on how to invest future members' contributions.

Themes emerging from written responses to the discussion paper and the roundtable events include recognition that the membership of personal accounts will require an approach to investment that is tightly focused on their characteristics, and that a target date fund approach could be an effective mechanism for ensuring that individual's investments are managed appropriately throughout their working lives.

PADA will publish a summary of the responses and outputs from the roundtables in November 2009. Responses to the investment discussion paper will help form key elements of PADA's recommendations to the trustee corporation on the investment strategy. The trustee corporation will be responsible for setting the statement of investment principles.

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## Complimentary Helpdesk

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IFACT can be contacted at:

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