

REGULATION NEWSLETTER FOR INTERMEDIARIES

Monday 5th to Friday 9th October 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.



Press Release - FSA and firms reach agreement on MPPI

Financial Services Authority

<http://www.fsa.gov.uk/pubs/other/mppi.pdf>

The Financial Services Authority (FSA) and Mortgage Payment Protection Insurance (MPPI) firms have agreed an industry-wide package of measures for consumers, including refunds of around £60 million. The industry has acted in response to FSA concerns over recent increases in premiums and reductions in what customers are covered for under their policy. The FSA's concerns centred on the terms permitting these changes, and how clearly they were disclosed. The FSA expects its concerns to be addressed by the agreement reached. Following discussions initiated by the FSA with relevant trade bodies and some firms, the industry has responded positively by agreeing to:

- proactively refund increases in premiums, and reverse any reductions in cover, for customers who have experienced these changes to their policy in 2009;
- offer to reinstate policies where a customer had cancelled it within two months of an increase in premium or reduction in cover made during 2009;
- freeze premiums and cover for existing customers for at least the remainder of this year; and
- amend MPPI contracts to ensure that all customers are made aware of the circumstances in which firms have the right to vary premiums and cover.

Jon Pain, managing director of supervision at the FSA, said: "The FSA welcomes this positive move by MPPI firms to reverse recent changes in premiums or cover which will put affected customers back in the position they were in before the policy was changed. It will also give all MPPI customers clarity about when and why firms will be able to vary these in future. This clarity will provide the basis for MPPI to remain a valuable option for many mortgage customers who wish to take out protection, alongside the mortgage commitment they are taking on."

Firms will contact customers if their policy is affected, and will make all refunds by the end of June 2010.

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NEW - The FSA's Online Notifications and Applications (ONA)

Financial Services Authority

<http://www.fsa.gov.uk/Pages/Doing/Regulated/ona/index.shtml>

ONA is a web-based system that will allow firms to submit the following regulatory applications / notifications online:

- Approved Persons;
- Appointed Representatives;
- Variations of permissions;
- Passports;
- Cancellations;
- Waivers; and
- Standing data.

It will replace existing paper-based processes and systems such as Firms Online (the RT element)

What does ONA mean for me? - Once the system is launched, you have to use it for any of the activities listed above. This will involve logging on and submitting your application online. ONA has been designed to improve the application process. Applications will be tailored to your permissions and the questions you answer when you complete the online forms. Once you've applied, the system will send your firm an email confirming the FSA has received the application. You will also be able to save draft applications.

When is the ONA system going live? - The FSA are presently testing the new system and plan to launch it this winter. They will issue further communications confirming the exact date over the coming weeks. These communications will also contain details on how to register and use the new system as well as what help resource will be available.

Will there be any training on how to use the system? - There will be no dedicated training session for the ONA system. However, the FSA will provide comprehensive help and Quick Reference Guides to ensure firms have the information they require to apply. These will be available on the ONA website before the system goes live.

What does my firm need to do next? - When ONA goes live you will need to register to use the system; the FSA will send you details about how to do this. You will need to identify a Principal User who will be the person in your firm responsible for using the system. They will be able to set up new users, amend permissions etc.

Speech - The Continuing Obligations Regime - current issues and challenges

Financial Services Authority

http://www.fsa.gov.uk/pages/Library/Communication/Speeches/2009/1009_mk.shtml

Speech by Mike Knight, Manager, Company Monitoring, the FSA at the Institute of Directors. This speech which sets out some thoughts across a number of distinct themes which will be of interest to directors, specifically:

- Ongoing impact of market conditions
- Applying the Continuing Obligations to live market situations
- Further on the UKLA's approach to interacting with issuers and advisers in live market situations
- Key issues arising from our routine enquiries and public disciplinary cases
- The UKLA's role in the oversight of director's dealings in the securities of their company

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Speech - FSA chairman outlines factors for successful European regulation

Financial Services Authority

http://www.fsa.gov.uk/pages/Library/Communication/Speeches/2009/1006_at.shtml

Lord Turner, chairman of the Financial Services Authority (FSA), set out the factors that will determine the success of plans to change the structure of regulation in Europe. He was speaking at the City of London Corporation's Annual Reception for the City Office in Brussels. The EU has agreed major changes to the structure of regulatory and supervisory cooperation in Europe to introduce greater integration and coordination between regulators. Lord Turner said that the success of these proposals will depend upon:

- The ability of the proposed European Systemic Risk Board to develop good quality risk analysis and the "willingness of politicians to take its warning seriously and to countenance potentially unpopular responses";
- Achieving a commonly agreed and enforced rule book. This needs a balance between political oversight and delegation to technical experts. It will require "technicians devoted to good regulation and supervision". "Independent of apparent national interests (such as influencing the location of activities)"; and
- A robust process of peer review between different regulators that would include resourcing and supervisory processes.

Lord Turner also warned about the risks that remain for host countries from cross-border banking business. The structures for cross-border business need to recognise the national interests of the host country. Host states should have the right to receive prudential information about entire groups and should be given powers to restrict the activities of branches where prudential weaknesses are not being adequately addressed by the firm or its home supervisor. The full text of the speech can be found by clicking on the link above.

Speech - Liquidity Conference Keynote address

Financial Services Authority

http://www.fsa.gov.uk/pages/Library/Communication/Speeches/2009/1009_sd.shtml

Speech by Sally Dewar: FSA Managing Director, Risk at the Liquidity Conference.

Consultation Paper CP09/25: Quarterly consultation (No.22)

Financial Services Authority

http://www.fsa.gov.uk/pubs/cp/cp09_25.pdf

This paper is relevant to banks, building societies and certain investment firms affected by the Capital Requirements Directive. In this paper the FSA invite comments on miscellaneous amendments to the Handbook. It proposes amendments to:

- the Fees manual (FEES) for application fees for guidance or permission to use one the advanced prudential calculation approaches under the Capital Requirements Directive (CRD);
- the Perimeter Guidance manual (PERG) for the introduction of legislation for the regulation of 'alternative finance investment bonds' (sukuk); and
- various modules of the Handbook, due to the implementation of BIPRU 12 (liquidity standards).

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Final Notices - Dresdner traders censured for abuse in debt market

Financial Services Authority

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/134.shtml>

The Financial Services Authority (FSA) has censured Darren Morton, a director and Christopher Parry, a vice president at Dresdner Kleinwort (now part of Commerzbank) for committing market abuse in relation to a new issue of Barclays' bonds. Morton and Parry were portfolio managers with Dresdner's Structured Investment Vehicle, K2 which had \$65 million of a Barclays' floating rate note issue (FRNs) - bonds with a variable coupon - in its portfolio.

At 10:02 on 15 March 2007, Morton was given inside information about a potential new issue of Barclays FRNs, on more favourable terms than the previous issue, which he shared with Parry. Acting on this inside information, Morton and Parry then agreed to sell K2's entire holding of the previous issue to two separate counterparties. Both counterparties to the trades were unaware of the proposed new issue of FRNs. At 15.16 on that day, a new issue of FRNs was announced and the counterparties made mark to market losses of \$66,000 and independently complained to K2 about the circumstances of the trades.

Morton and Parry committed market abuse because they sold the FRNs based on inside information about the new issue. The FSA found that Morton and Parry believed they were acting in accordance with market practice when selling the FRNs. The FSA does not accept that such a belief is reasonable. In determining the right action to take, the FSA took into account that Morton and Parry did not make a personal profit from the trades. For the full press release, click on the link above.

Final Notice - FSA fines Seymour Pierce £154,000 for failing to prevent employee fraud

Financial Services Authority

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/136.shtml>

The Financial Services Authority (FSA) has fined London-based investment bank and stockbroker Seymour Pierce Limited £154,000 for failing to establish effective controls to guard against employee fraud. As a result of Seymour Pierce's failings, an employee was able to steal approximately £150,000 completely undetected from the firm's internal and private client accounts in 36 separate transactions over a three year period. A number of the illicit transactions involved making unauthorised changes to static data (such as the client's name, address, bank account and payment instructions) on existing client accounts or taking advantage of dormant accounts. In one instance the employee transferred a personal trading loss into one of Seymour Pierce's internal accounts. The employee was dismissed prior to the discovery of the misdemeanours which only came to light when his replacement noticed serious accounting discrepancies.

Margaret Cole, the FSA's director of enforcement and financial crime, comments: "This is a serious failure on Seymour Pierce's part. The frauds were not sophisticated and could have been detected at a much earlier stage if the proper procedures had been in place. Fraud seriously undermines the integrity of our markets, so this fine is a timely reminder of the consequences for firms that fail to have in place robust systems and controls to prevent unlawful transactions of this sort."

Seymour Pierce agreed to settle at an early stage of the investigation meaning it qualified for a 30% discount. Without the discount, the fine would have been £220,000. In deciding the scale of the fine, the FSA took into account a number of mitigating factors: Seymour Pierce co-operated fully with the authorities once the frauds had been discovered and instigated internal reviews into the failings and implemented new systems to protect against future failings. The firm also took steps to ensure that its affected clients were fully reimbursed.

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NEW - Unfair Contract Terms - Examples of good & poor practice

Financial Services Authority

<http://www.fsa.gov.uk/Pages/Doing/Regulated/uct/index.shtml>

The FSA has revamped its unfair contract terms web pages. A link to the section is above. However, firms are reminded of the following examples of good and poor practice:

Examples of good practice:

- frequent reviews of all consumer contracts for fairness;
- reviewing standard consumer contracts to ensure they comply with the Regulations;
- assessing contracts as part of regular reviews of all product documentation;
- assessing contracts as part of regular product reviews throughout the product lifecycle to ensure the firm can demonstrate it is Treating Customers Fairly;
- reviewing contracts after having received complaints, cancellations or evidence that terms may be unfair;
- monitoring updates and emails from the FSA;
- reviewing undertakings obtained by the FSA about terms in consumer contracts;
- reviewing other FSA publications on unfair terms, e.g. thematic work and speeches;
- monitoring updates about the TCF initiative;
- monitoring the OFT website for updates on the fairness of terms in consumer contracts;
- reviewing undertakings obtained by the OFT against terms in own consumer contracts;
- using management information on complaints received about unfair terms to identify potentially unfair or unclear contract terms and making appropriate changes;
- monitoring alerts and industry guidance from trade bodies;
- checking for new legislation and guidance and reviewing it as soon as it comes out;
- improving staff training to ensure staff meet the standards set out in product literature, including contracts; and
- checking the work conducted by contracted external compliance consultants.

Examples of poor practice:

- internally-focused reviews of consumer contracts of "what looks fair", without consideration of external legal or regulatory information;
- being passive and relying on external publications through monthly emails;
- reviewing external publications and updates only during the annual review of consumer contracts;
- not assessing contracts for fairness, frequently resulting in contracts containing out-of-date material, and
- relying on external compliance firms without checking or questioning their work.

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Policy Statement PS09/16: Strengthening liquidity standards including feedback on CP08/22 & CP09/13

Financial Services Authority

http://www.fsa.gov.uk/pubs/policy/ps09_16.pdf

This paper affects UK-regulated deposit-takers (banks and building societies), including branches of European Economic Area (EEA) and other overseas firms operating in the UK. It is also relevant to non-bank securities firms and small investment firms (including limited licence/limited activity BIPRU investment firms).

The Financial Services Authority (FSA) has published its final rules on the liquidity requirements expected of firms. The far-reaching overhaul, designed to enhance firms' liquidity risk management practices, is based on the lessons learned since the start of the credit crisis in 2007. The new rules will require changes to firms' business models and will bring about substantial long-term benefits to the competitiveness of the UK financial services sector. London's competitive position depends on counterparties' perception of the financial soundness of the firms that operate in the UK. Low-levels of financial soundness cannot provide sustainable long-term competitive advantage. The FSA's new requirements are designed to protect customers, counterparties and other participants in financial services markets from the potentially serious consequences of imprudent liquidity risk management practices. Specifically, the rules include:

- An updated quantitative regime coupled with a narrow definition of liquid assets;
- Over-arching principles of self-sufficiency and adequacy of liquid resources;
- Enhanced systems and controls requirements;
- Granular and more frequent reporting requirements; and,
- A new regime for foreign branches that operate in the UK.

Paul Sharma, FSA director of prudential policy, said: "The FSA is the first major regulator to introduce tighter liquidity requirements for firms. We must learn the lessons of the financial crisis and we believe that implementing tougher liquidity rules is essential to ensure we are in a better position to face future crises. In the current crisis some firms weathered the storm better than others. These firms tended to be those that had policies that were similar to those that we are introducing - including holding assets that were truly liquid, such as government bonds. Phasing the period in which firms will build up their liquidity buffers should mitigate the knock-on effects to bank lending."

The FSA will not tighten quantitative standards before economic recovery is assured. It plans to phase in the quantitative aspects of the regime in several stages, over an adjustment period of several years. This is to take into account the fact that all firms at present are experiencing a market-wide stress. The precise amount of liquidity that each firm will need to hold will be refined over time to ensure that the combined impact of higher capital and liquidity standards is proportionate. The qualitative aspects of the regime will be put into place by December 2009.

The FSA strongly supports the liquidity workstreams that are underway internationally although recognises that it may be some time before there is international agreement on specific proposals. Therefore, the structure of the new regime is sufficiently flexible to allow the FSA to amend it through time to reflect any new international standards.

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Consumer Research - Consumer awareness of the FSA and financial regulation

Financial Services Authority

<http://www.fsa.gov.uk/pubs/consumer-research/crpr80.pdf>

The research presented in this paper is based primarily on results from an omnibus survey TNS carried out during February 2009. It interviewed a representative sample of 1,997 adults face to face in their own home throughout Great Britain. The sample is based on 149 sampling points. A summary of the findings as per the paper, are below:

- No change in awareness of the FSA since 2008 - 32% of consumers are aware of the FSA, the same as the 2008 figure. This is less than the awareness level shown in 2006 (34%). The results show the highest level of spontaneous awareness. Respondents could name the FSA without prompting - (21%) since the survey began, an increase from 18% the previous year.
- Significant drop, among those aware of the FSA, in consumer confidence that firms follow FSA rules. Only 40% of consumers, who are aware of the FSA, are very or fairly confident that firms follow FSA rules - a drop from 67% in 2008. Over a third (34%) of consumers who are aware of the FSA are unconfident that firms follow FSA rules.
- Consumers are significantly more risk averse. 67% of consumers are not willing to take any risk with investments compared with 56% in 2008.
- Mixed messages reported that firms treat customers fairly. In general, consumers are less confident that firms treat their customers fairly. 50% are confident that firms treat their customers fairly, compared with 56% in 2008. 20% of consumers believe that firms have become worse at treating them fairly, up from 9% in 2008. However, consumer confidence that they are treated fairly in their own experience has remained stable, falling from 62% to 58%.
- Exposure to financial fraud greater through use of the internet. Overall, 31% of adults have been exposed to some sort of financial fraud over the past 12 months. Interestingly, it is those with internet access who are most exposed - 36% of adults with access to the internet have been exposed to financial fraud, as opposed to only 18% of people who do not have internet access.
- Types of fraud most commonly committed over the internet include a request from a bank to confirm personal details or password, requests to transfer money from a foreign country, or notification of winning a lottery or prize draw which the respondent did not recall entering.

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CIFAS - The Anonymous Attacker: a Special Report into identity & account takeover fraud

Other Items of Interest

http://www.cifas.org.uk/download/The_Anonymous_Attacker_CIFAS_Special_Report.pdf

CIFAS - the UK's Fraud Prevention Service, in collaboration with a number of private and public sector bodies has released a report entitled The Anonymous Attacker at the beginning of National Identity Fraud Prevention Week. The Anonymous Attacker combines research, statistics, maps, prevention tips, case studies, and opinion pieces on how consumers and businesses are affected by the twin threats of identity fraud and account takeover fraud. A copy of the report can be found by clicking on the link above.

Statistics prove the worrying scale of fraud in the UK today. In times of economic trouble, the worrying news is that identity fraud (the use of a stolen or false identity to obtain goods or services by deception) and account takeover (when a third party hijacks a victim's existing accounts) are increasing at a shocking rate. Key findings outlined in the report include:

- Over 59,000 victims of impersonation have been recorded in the first 9 months of 2009 - an alarming 36% increase from the same period in 2008
- The overall number of identity frauds has increased by 33% in the first 9 months of 2009 from 2008
- Account takeovers have risen by 23% in 2009 when compared with the same period in 2008 - and by a staggering 238% in the last 24 months
- More than 1 in 2 account takeovers have targeted victims' plastic card (i.e. credit card) accounts
- Mobile phone account takeovers have already more than doubled in 2009, from 2008 levels
- The South East London (SE) and Birmingham (B) postcode areas are the fraud hotspots for both identity fraud and account takeover - while, more surprisingly, Guildford (GU) and Reading (RG) both appear in the top ten fraud hotspots for both types of fraud.

ABI - Q3 2009 ABI Savings and Protection survey

Association of British Insurers

<http://www.abi.org.uk/content/contentfilemanager.aspx?contentid=44520>

This research brief presents the results of the Q3 2009 Association of British Insurers (ABI) Savings and Protection survey. The aim of this research is to track how the economic environment impacts on consumer behaviour and, more specifically, on consumer attitudes towards savings and protection products.

ABI - Defined Benefit Pensions and Insurance: Data Requirements

Association of British Insurers

<http://www.abi.org.uk/content/contentfilemanager.aspx?contentid=44551>

This ABI publication:

- describes when and why an insurer will ask for certain scheme information
- provides a simple timeline of the likely buyout process
- provides a checklist of the data items required at scheme and member level.

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Treasury - HM Treasury announces call for evidence, to inform Review of Money Laundering Regulations 2007

Treasury

http://www.hm-treasury.gov.uk/fin_crime_review.htm

HM Treasury has published a call for evidence on the Money Laundering Regulations 2007 and of the UK's anti-money laundering policies and procedures under them. The Call is designed to help inform a review of the Regulations, and look at how effective and proportionate the UK's anti-money laundering rules are. The Call for Evidence is in two parts. Part A of the call for evidence is aimed at money-laundering experts and practitioners, such as businesses supervised under the Regulations and money laundering supervisors. Part B is focused on private individuals and business customers. The Call for Evidence will run until 11th December 2009. The HM Treasury website will carry further news of the Review during the autumn, including stakeholder events to be held in Belfast, Birmingham, Edinburgh and London. The Treasury is working with the Better Regulation Executive on the Review and expects to report back on the evidence received and provide a response to it in 2010.

FOS - Technical Note on Motor Insurance : Keys Left in Cars

Financial Ombudsman Service

http://www.financial-ombudsman.org/publications/technical_notes/motor-insurance-keys-in-car.html

This note describes the FOS current approach to cases where a consumer complains to them that an insurer has refused to pay a claim for the theft of a vehicle, when the ignition keys were left in or on the car. The law requires the FOS to decide each case on the basis of their existing powers and what is fair in the circumstances of that particular case. To do this, the FOS take into account the law, regulators' rules and guidance, relevant codes and good industry practice at the relevant time. The FOS do not have power to make rules for financial businesses. The FOS current approach may develop in the light of circumstances they see and future cases they may receive. The FOS may decide that fairness requires a different approach in a particular case.

FSCS - Postal Strike - Impact on Fixed Term Bond holders

Financial Services Compensation Scheme

http://www.fscs.org.uk/consumer/latest_news/2009/oct/Postal_Strike_Impact_on_Fixed_Term_Bond_holders/

The FSCS is trying to reduce the impact on claimants of the current postal strikes (for details of the likely disruption please visit the Royal Mail website). If you had a fixed term bond with Icesave or London Scottish Bank that is due to mature during the planned strike, and you are concerned about delays in receiving your compensation cheque from the FSCS, please contact their customer service team by phone on one of the following numbers 0207 892 7300 or 0800 678 1100 or by email enquiries@fscs.org.uk.

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