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Client briefing
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FSA Update

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Key Issues

Fine for anti-bribery and corruption systems and controls failings

Bans and a fine for recommending unsuitable investments

Proposed guidance published on liquidity swaps

RDR news

FSA speaks about AIMFD

At the FSA last week:

- **Fine for anti-bribery and corruption systems and controls failings**

  The FSA has fined Willis Limited £6.895 million for failings in its anti-bribery and corruption systems and controls. The FSA found that, between January 2005 and December 2009, the firm made payments to overseas third parties who assisted it in winning and retaining business from overseas clients, particularly in high risk jurisdictions. These payments totalled £27 million. The FSA found that, up until August 2008, the firm failed to:

  - ensure that it established and recorded an adequate commercial rationale to support its payments to overseas third parties;
  - ensure that adequate due diligence was carried out on overseas third parties to evaluate the risk involved in doing business with them; and
  - adequately review its relationships on a regular basis to confirm whether it was still necessary and appropriate for the firm to continue with the relationship.

  The FSA also found that, between January 2005 and May 2009, the firm failed adequately to monitor its staff to ensure that each time it engaged an overseas third party, an adequate commercial rationale had been recorded and that sufficient due diligence had been carried out. Although the firm improved its policies in August 2008, it failed to ensure that its staff were adequately implementing them. Additionally, throughout the period, the firm's senior management did not receive sufficient information about the performance of the firm's relevant policies to allow them to assess whether bribery and corruption risks were being mitigated effectively. http://www.fsa.gov.uk/pubs/final/willis_ltd.pdf

- **Bans and a fine for recommending unsuitable investments**

  The FSA has imposed prohibitions on Paul Banfield and Anthony Moss, former directors of Best Advice Financial Planning Limited, a small independent financial advice firm which was based in Surrey. The firm was dissolved on 18 July 2011. The FSA found that weaknesses in the firm's systems and controls had resulted in customers being exposed to the risk of receiving unsuitable advice. Both Mr Banfield and Mr Moss have been prohibited from holding any significant influence function, while Mr Banfield has also been prohibited from being an investment advisor and fined £15,000. Mr Moss would have been fined £20,000 but provided evidence of financial hardship. As they were directors at the firm it was their responsibility to ensure systems and controls met FSA standards. However, the FSA found that at least 22 customers were advised to invest in unregulated collective investment schemes but found no evidence that the firm either understood the regulatory requirements relating to the promotion of these investments or took reasonable care to ensure customers received suitable advice.

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http://www.fsa.gov.uk/pubs/final/paul%20_lawrence_banfield.pdf

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

- **Proposed guidance published on liquidity swaps**

  The FSA has published proposed guidance on liquidity swaps, looking in particular at:

  - Wrong-way risk - use of own-issued or own-originated securities as collateral
  - Limit structures – interdependencies between micro-prudential and macro-prudential risks
  - Intra-group transactions – conflicts of interest
  - Pillar 2 considerations and capital http://www.fsa.gov.uk/pages/Library/Policy/guidance_consultations/2011/11_18.shtml

- **RDR news**

  On 16 July 2011 the Treasury Committee published its report into the FSA's Retail Distribution Review and called on the FSA to delay implementing the new rules on the provision of financial advice for 12 months to allow advisers more time to comply. The report noted that some elements of the FSA's evidence appeared weak to the Committee, and that the FSA itself had conceded that its proposals would cause large numbers of independent financial advisers to leave the market. The Committee expressed concern that this would reduce competition and choice for consumers, and argued that a delay of 12 months in the implementation of the RDR would be likely to increase the number of firms and advisers making the transition to the new system, while recognising the fact that many advisers have already complied with the RDR's requirements.

  The report also backed plans to ban commission on advised sales and impose higher professional standards on independent financial advisers, subject to flexibility on a case-by-case basis. http://www.publications.parliament.uk/pa/cm201012/cmselect/cmtreasy/857/857.pdf

  On Thursday, the FSA published a letter from CEO Hector Sants to Andrew Wylie, Chair of the Committee, stating that the FSA was considering the recommendations made in the report and that it would respond by the end of September. http://www.fsa.gov.uk/pubs/other/tsc_21jul11.pdf

- **FSA speaks about AIMFD**

  Sheila Nicoll, the FSA's Director of Conduct Policy, has spoken at the PwC Global Alternative Investments Seminar on the subject of 'The Alternative Investment Fund Managers Directive – ESMA's draft technical advice to the European Commission'. http://www.fsa.gov.uk/pages/Library/Communication/Speeches/2011/0721_sn.shtml