

# FSA Update

## 12 September 2011

### At the FSA last week:

- **Fine for mortgage arrears failings**

The FSA has fined Swift 1st Limited £630,000 for unfair treatment of some customers facing mortgage arrears. The firm has also agreed to carry out a programme to provide redress to customers who were in arrears, and who were charged certain arrears fees and charges that were excessive. Swift will also provide redress to customers who redeemed their mortgages early where it miscalculated the interest on the redemption balance. It is estimated that the total cost of the redress to customers will be approximately £2.35 million. The FSA found that the firm applied certain charges to its customers' accounts that were in arrears which were excessive in that they did not reflect a reasonable estimate of the cost of administering an account in arrears. In addition, the firm:

- applied excessive early repayment charges to the redemption figures of customers who were, or had been, in arrears;
- failed to send all its customers in arrears certain prescribed documents, providing information on the options available to them;
- focussed on the collection of arrears without always proactively engaging with customers to establish an appropriate "Arrangement To Pay" based on their individual circumstances; and
- failed to have adequate systems and controls in place to deal with early redemptions which resulted in some customers who redeemed their mortgages overpaying.

[http://www.fsa.gov.uk/pubs/final/swift\\_1st.pdf](http://www.fsa.gov.uk/pubs/final/swift_1st.pdf)

- **Public censure for market abuse**

The Upper Tribunal (Tax and Chancery Chamber) has issued its decision in the case of Jason Geddis, who referred a Decision Notice issued by the FSA on 11 June 2010. The Tribunal determined that Mr Geddis committed market abuse by securing the price of Lead contracts on the London Metal Exchange (LME) at an abnormal and artificial level, and directed the FSA to impose a public censure on Mr Geddis. The FSA had proposed to prohibit and fine Mr Geddis but the Tribunal felt that a public censure was a more appropriate penalty. Mr Geddis was a trader at Dresdner Kleinwort Limited with responsibility for LME trading on behalf of his firm and its clients. On 21 November 2008, he rapidly built up a position in a particular Lead contract in the course of the morning. He then unwound this position in the course of the LME's open outcry session, at rapidly increasing prices. The FSA in its Decision Notice stated that Mr Geddis deliberately squeezed the market in the contract in question in order to secure substantial profits for his firm; on that basis it proposed to fine Mr Geddis and impose a prohibition order on him. The Tribunal determined that Mr Geddis' conduct in creating a disorderly market fell below the proper standard of care, but it was not a failure of integrity. The breach was committed through a lack of care in an

### Key Issues

Fine for mortgage arrears failings

Public censure for market abuse

Three jailed for boiler-room scam

Fine for Disclosure and Transparency Rules failings

Fines and bans for deceiving investors and market abuse

FSA publishes details of PPI redress

FSA issues Police Statement on UCITS V

FSA and HMT consult on credit unions

FSA issues Quarterly Consultation

FSA consults on RDR proposed guidance

Policy Development Update published

New issue of Market Watch published

FOS releases complaints data on individual financial businesses

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exceptional situation, not through a premeditated plan to act improperly.

[http://www.tribunals.gov.uk/financeandtax/Documents/decisions/JasonGeddis\\_v\\_FSA.pdf](http://www.tribunals.gov.uk/financeandtax/Documents/decisions/JasonGeddis_v_FSA.pdf)

- **Three jailed for boiler-room scam**

Three men have been sentenced at Southwark Crown Court to a total of 19 years in jail for boiler room fraud, following a long running investigation by the FSA, City of London Police and Eurojust. The CPS conducted the prosecution. Tomas Wilmot, the ringleader of the operation, has been sentenced to nine years imprisonment, while his sons Kevin and Christopher were given five years imprisonment each. The sentences were passed following the individuals' convictions on four offences of conspiracy to defraud which resulted in £14 million of losses. The Wilmots controlled a syndicate of boiler rooms that defrauded an estimated 1,700 investors of £27.5 million in total. Many of the victims were elderly and, in some cases, suffering from serious illnesses. Today the court found that the three Wilmots conspired to acquire, transfer and sell millions of low value, worthless and sometimes non-existent shares to victims in the UK.

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2011/073.shtml>

- **Fine for Disclosure and Transparency Rules failings**

The FSA has fined Sir Ken Morrison £210,000 for breaching the Disclosure and Transparency Rules (DTR) by failing to disclose his reduced shareholding and voting rights in Wm Morrison Supermarkets Plc. Shortly after his retirement as Chairman of Wm Morrison, the company announced on 28 March 2008 that Sir Ken had a notifiable holding of voting rights of 6.38%. After the announcement on 28 March 2008 there were no further shareholding notifications made concerning Sir Ken's holdings until 1 March 2011 – just under three years later – despite the fact that he had reduced his holdings during that period to 0.9%. Between 2009 and 2010 Sir Ken had substantially cut his shareholding reducing his voting rights of over 6% (a holding worth over £450m) to 0.9%. Sir Ken failed to notify Wm Morrison on four separate occasions when his voting rights fell below 6%, 5%, 4% and 3% which he should have done. While Sir Ken did not financially benefit from these breaches, his failure to notify Wm Morrison of the changes to his shareholding resulted in Wm Morrison not being in a position to update the market in accordance with the DTR rules. This resulted in the market being misled as to the ownership of voting rights in Wm Morrison and Sir Ken's shareholding being stated incorrectly in Wm Morrison's annual report of 31 January 2010. Sir Ken received a 30 discount for early settlement. The fine would otherwise have

been £300,000.

[http://www.fsa.gov.uk/pubs/final/sir\\_ken\\_morrison.pdf](http://www.fsa.gov.uk/pubs/final/sir_ken_morrison.pdf)

- **Fines and bans for deceiving investors and market abuse**

The Upper Tribunal (Tax and Chancery Chamber) has directed the FSA to fine Michiel Weiger Visser £2 million and Oluwole Modupe Fagbulu £100,000 and ban them both from performing any role in regulated financial services for breaching Principle 1 of the FSA's Statements of Principle for Approved Persons and for engaging in market abuse. The Tribunal determined that Mr Fagbulu's behaviour merited a fine of £350,000 but reduced the amount payable because this level of fine would cause serious financial hardship. Mr Visser has applied to have the Tribunal's decision set aside. Mr Visser was the CEO and Mr Fagbulu CFO and compliance officer of Mercurius Capital Management Limited (Mercurius). Mercurius managed the hedge fund Mercurius International Fund (the Fund) which during the relevant period of July 2006 to January 2008 had approximately 20 investors and €35 million under management. The Fund collapsed and was placed in voluntary liquidation on 11 January 2008. Investors have, so far, recovered nothing. Mr Visser's investment decisions, in breach of the restrictions under which he was supposed to operate, placed the Fund in a precarious position. Mr Visser and Mr Fagbulu's various deceptions concealed this from investors for over a year and enabled the Fund to raise €8 million of new capital in the three months prior to its collapse.

[http://www.tribunals.gov.uk/financeandtax/Documents/decisions/VisserandFagbulu\\_v\\_FSA.pdf](http://www.tribunals.gov.uk/financeandtax/Documents/decisions/VisserandFagbulu_v_FSA.pdf)

- **FSA publishes details of PPI redress**

The FSA has published details of the amount of redress paid by firms during the first six months of 2011 to consumers who have complained about the way they were sold payment protection insurance (PPI). The data shows that 16 firms, representing 92 per cent of PPI complaints received in the first half of 2011, have paid a total of £215 million in redress between January and June 2011 inclusive. In May and June alone, following the dismissal of the industry's legal challenge to the FSA and the Financial Ombudsman Service (the Ombudsman), £102 million was paid out. The monthly totals, with cumulative totals in brackets, are: January - £29 million (£29 million); February - £31 million (£60 million); March - £28 million (£88 million); April - £25 million (£113 million); May - £37 million (£150 million); June - £65 million (£215 million). The figures include the value of ex-gratia payments made to complainants and cases settled by the Ombudsman.

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2011/074.shtml>

• **FSA issues Police Statement on UCITS V**

The FSA has issued Policy Statement PS11/10: "Transposition of the revised UCITS Directive", which reports on the main issues arising from the December 2010 HM Treasury/FSA consultation paper on the transposition of the revised Undertakings for Collective Investment in Transferable Securities Directive (UCITS IV) and publishes final rules. PS11/10 summarises the feedback received from the consultation on the matters that are the FSA's responsibility and sets out its responses, including where Handbook changes differ significantly from the version consulted on. The Handbook Instrument implementing the FSA's rules and guidance came into effect on 1 July 2011, and firms have until 30 June 2012 to introduce the key investor information document for their UCITS funds.

[http://www.fsa.gov.uk/pubs/policy/ps11\\_10.pdf](http://www.fsa.gov.uk/pubs/policy/ps11_10.pdf)

• **FSA and HMT consult on credit unions**

The Financial Services Authority (FSA) and HM Treasury have published a joint consultation paper CP11/17: "FSA regulation of credit unions in Northern Ireland", setting out proposals for the transfer of the regulation of Northern Ireland credit unions from the Northern Ireland Department of Enterprise, Trade and Investment (DETI) to the FSA. The transfer is due to take place on 31 March 2012. CP11/17 outlines proposed legislative amendments and FSA rules that will apply to all Northern Ireland credit unions. In particular, under the proposals:

- Northern Ireland credit unions will come within the UK Financial Services Compensation Scheme (FSCS) and within the compulsory jurisdiction of the Financial Ombudsman Service; and
- prudential standards for Northern Ireland credit unions will be aligned to those of other credit unions in Great Britain, with a focus particularly on capital, liquidity and financial reporting.

The consultation paper is open for feedback until 31 October 2011.

[http://www.fsa.gov.uk/pubs/cp/cp11\\_17.pdf](http://www.fsa.gov.uk/pubs/cp/cp11_17.pdf)

• **FSA issues Quarterly Consultation**

The FSA has issued its 'Quarterly consultation No.30' (CP11/18). The consultation includes proposed changes to:

- implementing Omnibus 1 changes for financial conglomerates (the Senior Management Arrangements, Systems and Controls sourcebook (SYSC));

- the Training and Competence sourcebook (TC);
- the liquidity regime (the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU) and guidance on liquidity reporting in the Supervision manual (SUP));
- the identity of settlement decision makers (the Glossary, the Decision Procedure and Penalties manual (DEPP) and the Enforcement Guide (EG));
- the Collective Investment Schemes sourcebook (COLL);
- the Disclosure and Transparency Rules (DTR);
- the Perimeter Guidance manual (PERG); and
- the Remuneration Code – proposals to amend the transitional provisions on voiding and recovery (Senior Management Systems and Controls sourcebook (SYSC)).

Comments on Chapters 3 and 9 are due by 6 October 2011 and comments on Chapter 2 by 20 October 2011. Comments on all other chapters are due by 6 November 2011.

[http://www.fsa.gov.uk/pubs/cp/cp11\\_18.pdf](http://www.fsa.gov.uk/pubs/cp/cp11_18.pdf)

• **FSA consults on RDR proposed guidance**

The FSA has published proposed guidance setting out the answers to the most commonly asked questions at its recent Retail Distribution Review (RDR) roadshows. Amongst other things, the guidance addresses:

- whether, post 2012, someone who does not have an appropriate RDR qualification can carry out a fact-find or other client-related activities;
- what structured continual professional development is;
- whether a firm can hold itself out as independent if it has three restricted advisers who, as a team, can advise on all retail investment products;
- whether a limited company which has 'independent' in its registered name but will not offer an independent service in the future will need to apply for authorisation again; and
- what is meant by relevant market in the context of independent advice.

The FSA has invited comments on the proposed guidance by 22 September 2011.

[http://www.fsa.gov.uk/pages/Library/Policy/guidance\\_consultations/2011/11\\_20.shtml](http://www.fsa.gov.uk/pages/Library/Policy/guidance_consultations/2011/11_20.shtml)

• **Policy Development Update published**

The FSA has published its latest update on changes and prospective amendments to its

Handbook of Rules and Guidance. The 2011 edition contains:

- information about publications the FSA has issued since the last edition of the update, in particular:
  - CP11/15 Client Assets Sourcebook;
  - CP11/16 Recovery and Resolution Plans; and
  - PS11/9 Platforms – Retail Distribution Review;
- information about recent Handbook-related and other developments;
- information about other publications – consumer publications, guidance consultations and finalised guidance; and
- an updated timetable for forthcoming publications.  
[http://www.fsa.gov.uk/pubs/newsletters/pdu\\_newsletter\\_aug11.pdf](http://www.fsa.gov.uk/pubs/newsletters/pdu_newsletter_aug11.pdf)
- **New issue of Market Watch published**

The FSA has published the 40th edition of its Market Watch newsletter on market conduct and transaction reporting issues. Market Watch 40 contains articles on, amongst other things:

- Turquoise Derivatives operates as a Multilateral Trading Facility (MTF) – consequences for transaction reporting;
- finalised guidance for reporting transactions in derivatives conducted through clearing platforms of derivative markets (ISIN or Aii);
- proposed new guidance for firms reporting derivative transactions conducted through clearing platforms of derivative markets where the reference data for those transactions is not made available to the FSA and ARMs
- finalised guidance for transaction reporting of transactions in Chi-X centrally cleared contracts for difference

- strike price – reminder to use major rather than minor currencies or changes to data extracts; and
- change in validation of the instrument type field – reminder and notification of effective date  
[http://www.fsa.gov.uk/pubs/newsletters/mw\\_newsletter40.pdf](http://www.fsa.gov.uk/pubs/newsletters/mw_newsletter40.pdf)

And you may be interested to know:

- **FOS releases complaints data on individual financial businesses**

The Financial Ombudsman Service (FOS) has released its latest set of six-monthly complaints data relating to individual financial businesses, including banks, insurance companies and investment firms. The data covers consumer complaints handled by the ombudsman service between 1 January and 30 June 2011, and includes both the number of complaints received about individual businesses and the percentage of complaints upheld by the ombudsman service in favour of consumers. The FOS has indicated that, during this six-month period, it received a total of 149,925 new complaints, which represents an increase of 54% on the 97,237 cases received in the second half 2010. The FOS upheld an average of 47% of complaints in favour of consumers, compared to 53% in the second half of 2010. The FOS has noted that the decrease in the uphold rate reflects the impact of the Payment Protection Insurance legal challenge brought on behalf of some high street banks against the ombudsman service and the Financial Services Authority (FSA) earlier in the year. The FOS has also indicated that, across the 157 individual businesses included in the complaints data, the uphold rates varied substantially between 2% and 98% upheld in favour of consumers.

<http://www.ombudsman-complaints-data.org.uk/>

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