

12 December 2011

At the FSA last week

FSA fines wrap platform £3.5 million for client money failings

The FSA has imposed a financial penalty of £3.5 million on Integrated Financial Arrangements plc ("**IFA**"), a wrap platform provider which enables independent financial advisers to consolidate clients' portfolios.

The penalty, which was reduced from £5 million under the FSA's executive settlement procedures, was imposed in respect of breaches of Principles 3 (management and control) and 10

Key issues

- FSA fines wrap platform £3.5 million for client money failings
- FSA publishes finalised Financial Crime Guide
- FSA consults on guidance for non-executive directors
- FSA proposes updates to distributor influenced funds factsheets
- FSA publishes policy statement on changes to regulated covered bonds sourcebook
- Stop Press: FSA publishes report on failure of Royal Bank of Scotland

(clients' assets) of the FSA's Principles for Businesses and associated rules set out in the Client Asset Sourcebook ("**CASS**") and the Conduct of Business Sourcebook ("**COB**") over a period between December 2001 and June 2010.

The penalty is consistent with others imposed in respect of client money breaches in recent years in that it represents one per cent of the average client money balance held over the relevant period.

No client losses occurred and IFA has agreed to comply with the recommendations of a skilled person appointed under section 166 FSMA as part of the FSA's investigation.

<http://www.fsa.gov.uk/pubs/final/ifa.pdf>

FSA publishes finalised Financial Crime Guide

Following the consultation document issued in June 2011, the FSA has issued its finalised Financial Crime Guide ("**the Guide**").

The Guide is organised into broad sections dealing with general systems and controls, anti-money laundering/terrorist financing, fraud, data security, bribery and corruption and sanctions compliance, and includes examples of good and bad practice, largely drawn from the FSA's thematic reviews conducted in recent years.

The Guide is intended to act as a "signpost" to the relevant provisions in the FSA's Handbook, rather than adding to its already voluminous provisions, and to identify issues

which the FSA expects firms to consider and plan for.

Although the Guide does not constitute binding guidance, it is still an important document, particularly in the light of recent FSA enforcement activity. Maintenance of effective systems and controls to deal with financial crime issues is a key enforcement priority as the FSA seeks to take action in respect of issues uncovered during the course of thematic reviews. Significant penalties have already been imposed in respect of both institutional and individual non-compliance with obligations to maintain adequate systems and controls, and further substantial penalties in respect of pending action are likely to follow.

Many of the Final Notices detailing the action taken by the FSA in this area (and indeed more widely) to date refer to non-adherence to published FSA guidance (even where it does not form part of the Handbook) as an aggravating feature leading it to regard breaches as particularly serious and/or which it has taken into account when calculating penalties.

http://www.fsa.gov.uk/pubs/policy/ps1_1_15_fcguide_markedup.pdf

http://www.fsa.gov.uk/pubs/policy/ps1_1_15.pdf

FSA consults on guidance for non-executive directors

The FSA has embarked upon a programme to remind non-executive directors ("**NEDs**") of their regulatory responsibilities under its Treating Customers Fairly ("**TCF**") agenda. Launched at a conference last week, the guidance consultation (GC 11/30)

sets out in some detail the FSA's expectations of NEDs under its Principles for Businesses and a wide range of other more specific provisions set out throughout the Handbook.

Key areas of focus include encouraging and embedding a culture of consumer protection, ensuring appropriate flows of information in relation to retail consumer risk and responding appropriately to identified risks.

Firms are invited to respond to the guidance consultation by 18 January 2012.

http://www.fsa.gov.uk/pubs/guidance/gc11_30.pdf

FSA proposes updates to distributor influenced funds factsheets

As part of changes anticipated to be made under the Retail Distribution Review ("**RDR**"), the FSA has issued a guidance consultation paper (GC 11/29) on amendments it proposes to make to factsheets issued in 2008 in relation to distributor influenced funds (i.e. funds tailored or created for particular distributors).

The FSA proposes in particular to update sections in relation to adviser charging and independence to reflect the changes to be brought about by the RDR from 31 December 2012. Firms are invited to respond to the guidance consultation by 30 January 2012.

http://www.fsa.gov.uk/pubs/guidance/gc11_29.pdf

FSA publishes policy statement on changes to regulated covered bonds sourcebook

Further to a consultation paper issued in April 2011, the FSA has published policy statement PS11/16, which amends its Regulated Covered Bonds sourcebook ("**RCB**") in the light of changes to be made by HM Treasury to the Regulated Covered Bond Regulations 2008. The changes to RCB, which will have effect from 1 January 2013, are aimed at introducing consistent standards of investor reporting, clarifying the role of "Asset Pool Monitor" and refining and clarifying regulatory reporting processes.

http://www.fsa.gov.uk/pubs/policy/ps11_16.pdf

Further afield: ESMA issues first investor warning

In a step mirroring the increasingly interventionist approach adopted by the FSA in the UK and underlining its intention to proactively protect consumers' interests (see last week's FSA Update for details of the indications given by its Chairman Steven Maijoor of his readiness to support prohibitions of "faulty" products), ESMA has, for the first time, issued a warning to investors. Specifically, the warning advises retail

investors against dealing with unauthorised firms offering foreign exchange investments and alerts them to the risks involved in forex trading.

http://www.esma.europa.eu/system/files/2011_412.pdf

Stop Press: FSA publishes report on failure of Royal Bank of Scotland

The FSA Board has published its long awaited report on the failure of Royal Bank of Scotland ("**RBS**").

The report follows the decisions announced in December 2010 not to pursue enforcement action against any individual in relation to the circumstances of the bank's failure. It concludes that the failure of RBS in 2008 is attributable to a combination of:-

- failures by the FSA to challenge decisions, subject the quality of assets held by RBS to sufficiently robust scrutiny, or to accurately estimate the scale of potential losses associated with structured credit;
- failures by the FSA and other regulators globally to adequately monitor and ensure adequacy of capital and liquidity;
- decisions of RBS and its senior management at the time in relation to, for example, the quality of assets acquired, and especially in relation to the acquisition of ABN AMRO without adequate due diligence or consideration of risks involved;
- the overall systemic crisis, which affected RBS much worse than

other institutions due to the factors set out above.

The report looks in detail at the factors above and others, and states that many changes addressing the deficiencies identified have already been implemented. It suggests though that there may still be changes to law and policy required to increase accountability of senior bank executives for serious failings by their organisations, and to encourage an appropriate balance between risk and reward.

Specifically, in his foreword to the report, Lord Turner suggests that there should be public debate around the issues of whether there should be a presumption of breach of rules by senior bank executives in the event of bank failures (a "strict liability" approach), whether such executives should be automatically banned from future positions of responsibility and/or whether substantial proportions of their remuneration should be deferred and forfeited in the event of failure.

The report also recommends that consideration be given to making it a formal requirement for banks to obtain regulatory approval for major acquisitions and questions whether firms considering a major acquisition should obtain independent advice from an adviser whose remuneration is linked to successful completion of the transaction.

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2011/110.shtml>

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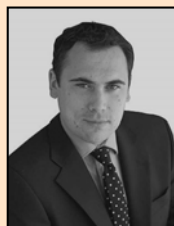
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