

At the FSA last week:-

FSA imposes £1.5 million fine for FSCS structured product literature shortcomings

The FSA has (on 16 February) imposed a financial penalty of £1.5 million on Santander in relation to communications with customers as to the circumstances in which particular structured products would be covered by the Financial Services Compensation Scheme ("**FSCS**"). The action has been taken in respect of breaches of Principles 2 (skill, care and diligence) and 7 (communications with clients) of the FSA's Principles for Businesses ("**the Principles**") and rule 6.1.16R of its Conduct of Business Sourcebook ("**COBS**") through failures to inform customers of the limitations in FSCS cover in respect of those products in 2008 and 2009.

The FSA has made it clear that it has not made any findings that the products concerned were sold to any customers for whom they were not suitable, and has publicly noted that investors have not suffered any loss as the result of the breaches. Santander has contacted all customers affected by the action.

<http://www.fsa.gov.uk/library/communication/pr/2012/017.shtml>

FSA obtains interim injunction in respect of unauthorised deposit-taking

The FSA has (on 21 February) obtained an interim injunction freezing the assets of two individuals connected with **Churchgate Trading Syndicate** ("**Churchgate**"), and preventing them from making any new trades on behalf of Churchgate using investors' funds.

The FSA has taken action during the course of an ongoing investigation as it is concerned that Stuart Mudge and Anthony Lewis may have been acting in breach of the general prohibition under section 19 of the Financial Services and Markets Act 2000 ("**FSMA**") by accepting deposits from consumers promising a guaranteed return generated by trading in spread betting.

<http://www.fsa.gov.uk/library/communication/pr/2012/018.shtml>

Other Final Notices

- The FSA has (on 20 February) cancelled the Part IV permissions of **Duncan Brown & Co LLP** and **Stone Futures Limited** following non payment of fees.
<http://www.fsa.gov.uk/static/pubs/final/duncan-brown.pdf>
<http://www.fsa.gov.uk/static/pubs/final/stone-futures.pdf>
- The FSA has (on 24 February) cancelled the registration of **Khuram Ayub** pursuant to

Payment Services Regulations 2009 following a failure to submit regulatory returns.

<http://www.fsa.gov.uk/static/pubs/final/khuram-ayub.pdf>

Further afield IOSCO consults on suitability requirements for complex financial products

In a response to mis-selling, and associated enforcement action by regulators, during the financial crisis, the International Organization of Securities Commissions ("**IOSCO**"), has (on 21 February 2012) issued a consultation paper on proposed suitability requirements for complex financial products.

The requirements as drafted are general in nature. They set out high-level principles requiring intermediaries to:-

- Adopt and apply policies and procedures to distinguish

Key issues

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between retail and non-retail customers;

- Act honestly, fairly and professionally and take reasonable steps to manage conflicts of interest;
- Provide investors with access to material information, and ensure that such information is communicated in a fair, comprehensible and balanced manner;
- Take reasonable steps to ensure that recommendations, advice or decisions to trade are based upon sufficient information and a reasonable assessment that the structure and risk-reward profile of the financial product is consistent with the customer's experience, knowledge, investment objectives, risk appetite and capacity for loss;
- Establish a compliance function and develop appropriate internal policies and procedures supporting compliance with suitability obligations;
- Develop and apply proper policies that seek to eliminate any incentives for staff to recommend unsuitable complex financial products.

In addition, the consultation paper sets out proposed requirements on regulators and self-regulatory organisations to put in place appropriate protections for customers, to actively supervise and examine intermediaries, and to take (and publicise) enforcement actions in appropriate cases.

As will be the case in many IOSCO member jurisdictions, the requirements set out in the consultation paper are already largely integrated into the UK regulatory framework, specifically through the

Principles, COBS and the Senior Management Arrangements, Systems and Controls ("**SYSC**") section of the FSA's Handbook. However, the recommendations may lead to changes to applicable rules in some jurisdictions where UK firms operate.

The timing of the release of the recommendations coincides with the FSA's and other regulators' well-publicised more interventionist approach to the regulation of the distribution of complex financial products, which has included the imposition of a string of significant financial penalties on large institutions.

IOSCO has invited responses to the consultation paper by 21 May 2012.

<http://www.iosco.org/library/pubdocs/pdf/IOSCOPD373.pdf>

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