

FSA Update

Last week at the FSA:-

FSA takes further action for UCIS suitability failings

The FSA has (on 18 September) imposed a financial penalty of £58,300 on **Pi Financial Limited** for breaches of Principles 3 (management and control) and 9 (customers: relationships of trust) of its Principles for Businesses ("the Principles"). The breaches relate to the sale, between January 2009 and February 2012, of unregulated collective investment scheme ("UCIS") products to retail customers.

Specifically, the FSA found that the firm failed to implement adequate internal sales monitoring procedures, to adequately train or supervise advisers or to establish or maintain adequate compliance and file checking arrangements. It found that this led to failures to ensure the suitability of products for the customers to which they were recommended.

Comment

The fine imposed, reduced from £83,363 for settlement at stage one of the FSA's executive settlement procedures, is amongst the highest imposed on firms and individuals for UCIS related failings (although some cases involving higher proposed fines await determination by the Upper Tribunal).

Under the Financial Services Bill, the FSA's successor organisations are

expected to be provided with enhanced powers to intervene to restrict the promotion of products which they deem to be unsuitable for retail investors. In the meantime, the FSA is seeking to achieve deterrence through enforcement action in parallel with prevention through amendments to its existing rules. This action is the latest in a line of over twenty UCIS related cases concluded since 2010. It has been concluded at a time when the FSA is consulting on banning the promotion of UCIS and similar products to retail investors by amending its existing rules in its Conduct of Business Sourcebook (see FSA Update – 28 August).

<http://www.fsa.gov.uk/static/pubs/final/pi-financial-limited.pdf>

<http://www.fsa.gov.uk/library/policy/cp/2012/12-19.shtml>

http://www.fsa.gov.uk/smallfirms/your_firm_type/financial/investment/ucis-enforcement-notice.shtml

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbFgNhLNomwBl%2B33QzdFhRQAhp8D%2BxrlGRel2crGgLnALtlyZe%2F1IHUM9aDgwiHEo8lRQKH%2Fp%0D%0A5mt12P8Wnx03DzsaBGwslB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=127112>

Other Final Notices

The FSA has (on 20 September) cancelled the Part IV permission of **Nasreen Begum Hussain trading as My Insurance Solutions** for concerns relating to fitness and propriety. The action follows a first supervisory notice issued to Mrs Hussain in July, which set out the FSA's specific concerns that she was

not in day to day control of the business for which she held authorisation.

<http://www.fsa.gov.uk/static/pubs/final/my-insurance-solutions.pdf>

<http://www.fsa.gov.uk/static/pubs/final/nasreen-hussain.pdf>

Senior FSA figures restate FCA's commitment to early intervention to protect consumers' interests

On 18 September, Martin Wheatley, in a speech given to the Association of British Insurers, has set out the approach which the Financial Conduct Authority ("FCA") proposes to take to conduct regulation.

He set out the new regulator's expectations of insurance firms and the approach it proposes to take to ensuring that consumers receive a fair deal, which, he stated, will include earlier and more proactive interventions to "identify and head off issues before they turn into big problems for consumers". He reiterated the message already

Key issues

- FSA takes further action for UCIS suitability failings
- Senior FSA figures restate FCA's commitment to early intervention to protect consumers' interests
- ESMA consults on guidance on remuneration policies and practices

articulated by other senior FSA figures that neither the FSA nor the FCA will become a product approval regulator, but rather is changing its approach to become "more confident and challenging".

He indicated that the detail of how this approach will be applied in practice will be released in an approach document to be released in October.

The message was echoed by a speech given by Clive Gordon, Head of the FSA's Conduct Risk Department on the same day, where he set out how it is proposed that the FCA uses the powers it expects to receive to ban misleading financial promotions.

<http://www.fsa.gov.uk/library/communication/speeches/2012/0918-mw.shtml>

<http://www.fsa.gov.uk/library/communication/speeches/2012/0918-cg>

Further afield

ESMA consults on guidance on remuneration policies and practices

The European Securities and Markets Authority ("ESMA") has (on 17 September) issued a consultation paper on guidelines relating to remuneration policies and practices. The guidelines set out ESMA's view on firms' obligations under the conduct of business and conflict of interest requirements of the Markets in Financial Instruments Directive (MiFID).

The guidance is similar to that offered by the FSA in its report on the risks posed to consumers from incentive schemes, issued several weeks ago (see FSA Update – 10 September).

ESMA's proposed guidance (at Annex V of the consultation paper) sets out its expectations in relation to the design and operation of remuneration policies and practices and includes indicative examples of good and poor practice.

ESMA has invited firms to comment on the proposed guidelines by 7 December 2012.

<http://www.esma.europa.eu/news/ESMA-proposes-remuneration-guidelines-firms-providing-investment-services?t=326&o=home>

http://www.fsa.gov.uk/library/policy/guidance_consultations/2012/1211

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbfGnhLNomwBl%2B33QzdFhRQAhp8D%2BxrIGRel2crGqLnALtlyZe6w6dcZNMymf0khXMULlq4%2Fp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=114487>

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