



September 2008

InVest

This month's roundup of developments affecting the wealth management industry sees the FSA announcing its approach to TCF assessment for stockbrokers / investment managers, a change to the RDR timetable, IMA publishing the annual asset management survey, the European Commission updating its Q&A on MiFID...

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Market Round Up

IMA Publishes 2007 Annual Survey Of Industry

The Investment Management Association (**IMA**) published its 6th Asset Management in the UK Survey, the most comprehensive study of the UK asset management industry. This year's Survey includes a section on the credit crisis based on interviews with senior figures from IMA member firms.

Key Findings as at December 2007:

- £3.4 trillion (2006: £3.1 trillion) = total assets managed in the UK by IMA member firms, of which:
- £1 trillion is managed on behalf of overseas clients
- £468 billion is in UK domiciled funds (OEICS, unit trusts)
- £570 billion is in offshore funds
- 44% = proportion of UK stock market held by IMA member firms
- £10.2 billion = revenue earned by UK-based asset management firms in 2007

Please click [here](#) for a copy of the survey. (Source: *IMA press release, 8 August 2008*) - [Back](#)

Arrests Made In Major FSA Insider Dealing Investigation

On 29 July 2008 the FSA announced that it had arrested eight individuals and executed search warrants in connection with a major ongoing investigation into insider dealing rings. No further details have been revealed by the FSA.

Pursuing insider dealing cases is challenging for regulators and prosecutors. As the FSA concedes, there is rarely a 'smoking gun' and transactions are often 'complex and not jury friendly'.



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The latest figures from the FSA's statistics on Informed Price Movements seem to back this perception. During 2007, there was evidence of some sort of insider activity prior to 28% of all significant announcements relating to public takeover deals. However, during the same period the FSA failed to resolve a single case. Most recently, the dramatic collapse in HBOS's share price in March surrounding its rights issue caused the FSA to publish a warning to market participants not to engage in market abuse. Now five months later - after intense investigation into share dealings in the bank - the FSA had to admit that whilst market abuse had occurred no further action will (could) be taken. Please click [here](#) for a copy of the FSA announcement.

Against this background, Margaret Cole, Director of Enforcement, FSA, recognised last October that more needs to be done and announced its intention to clamp down on market abuse by putting larger financial penalties through administrative processes and more frequently by instigation of criminal proceedings.

So far in 2008 the FSA has brought two prosecutions and fined one IT professional for insider dealing.

Please click [here](#) for a copy of the FSA press release. (Source: *FSA/PN/082/2008*) - [Back](#)

FSA Issues Alert About Recovery Firms

On 19 August 2008 the FSA warned that at least ten so-called "recovery firms" are targeting a scam at investors who bought shares through Pacific Continental Securities (UK) Ltd.

Recovery firms, typically calling from outside the UK, are not authorised by the FSA and are not permitted to approach UK consumers to promote financial services. Commonly known as 'recovery rooms', these firms offer to buy the shares at an attractive price but demand an advance fee.

This is a scam - as soon as the fee is paid, the firm disappears with the money and without purchasing the shares.

The FSA is currently looking into complaints it had received by many investors who originally bought shares through Pacific Continental. Investors are being 'cold-called' by firms offering to buy the shares, or to put them in touch with a buyer - for a fee.

Please click [here](#) for a copy of the FSA alert. (Source: *FSA press release, FSA/PN/094/2008, 19 August 2008*) - [Back](#)

Financial Adviser Banned For Pension Transfers Failings

The FSA [announced](#) that it has banned Barnsley-based sole trader Darrell Mark Eaden from being a senior manager for failing to monitor effectively his pension transfer specialist. This exposed customers to the risk of receiving unsuitable advice.

The FSA found that, between May 2004 and March 2005, Mr Eaden:

- did not exercise due skill, care and diligence in managing the business of Liberty. In particular, Mr Eaden failed to maintain an appropriate level of understanding of pension transfers and to adequately supervise and monitor the firm's pension transfer specialist;
- did not take reasonable steps to ensure that Liberty's pension transfer business was organised so that it could be controlled effectively; and
- failed to take reasonable steps to ensure that Liberty's pension transfer business, for which he was responsible, complied with the relevant requirements and standards of the regulatory system.

Please click [here](#) for a copy of the Final Notice. (Source: *FSA press release, FSA/PN/095/2008, 20 August 2008*) - [Back](#)

General Legal Issues

AIC Publishes Corporate Governance Update

On 6 August the Association of Investment Companies (**AIC**) published Corporate Governance Update for its members. The update is a summary of the new version of the Combined Code and the new FSA Corporate Governance Rules.

An updated version of the Combined Code on Corporate Governance has been published by the Financial Reporting Council. The new version follows a review of the impact and effectiveness of the Code last year.

The key points to note are as follows:



- The preamble has been changed and now says that the AIC Code of Corporate Governance and its accompanying guide can be used to assist boards in meeting their Listing Rules obligations in relation to the Combined Code. More information on reporting against the AIC Code can be found in the code itself which is on the AIC's website at <http://www.theaic.co.uk/files/technical/AICCode.pdf>
- Requirements for reporting against the Combined Code have also changed. Listing Rule 9.8.6(5) now only requires a company to report on how it has applied the 'main principles' set out in Section 1 of the Combined Code, as opposed to reporting against all the elements of the supporting principles as well.
- Listing Rule 9.8.6(6) requires a company to state whether it has complied with the provisions set out in Section 1 of the Combined Code and provide reasons where it has not. Where a company chooses not to comply, the revised preamble of the Combined Code now obliges the board to give shareholders a "careful and clear explanation" which aims to "illustrate how its practices are consistent with the principle to which the particular provision relates and contribute to good governance".
- The 2008 Combined Code also contains two changes to the detailed provisions:
 - i. The Code now allows an individual to chair more than one FTSE 100 company.
 - ii. The Code gives more flexibility to smaller listed companies (i.e. those outside the FTSE 350) and allows the company chairman to sit on, but not chair, the audit committee providing he or she was considered independent on appointment.

The new edition of the Code applies to accounting periods beginning on or after 29 June 2008. The next review is scheduled to take place in 2010.

Please click [here](#) for a copy of the Corporate Governance Update. (Source: AIC, Corporate Governance Update, 6 August 2008) - [Back](#)

IMA Model Terms Of Business

The Investment Management Association (IMA) updated its model terms of business with brokers. The terms are intended for use as a template to be adapted and used to reflect specific circumstances and needs. Members of the IMA are granted a licence to use, copy and adapt the Terms for their own business purposes. - [Back](#)

Consultations

European Commission's Expert Group Publishes Feedback On Its Report On Open Ended Real Estate Funds

On 31 July 2008 the European Commission published on its website feedback it had received to the Commission's expert group report analysing the EU market for Open Ended Real Estate Funds (OEREF).

According to the feedback statement all responses support the expert group's recommendation to create an EU regime for OEREFs and ask the Commission to prepare a legislative proposal. There is, however, disagreement among the respondents on how the proposal should be put in place. Possible options range from OEREFs being part of the UCITS Directive, a stand alone Directive to a transformation of the UCITS Directive in to an Investment Fund Directive with general provisions for all types of funds.

Please click [here](#) for a copy of the Feedback statement and click [here](#) for a copy of the Expert Group report. - [Back](#)

CESR Launches A Consultation On Risk Management Principles For UCITS

On 19 August 2008 CESR published a [consultation paper](#) proposing a framework for guidelines concerning risk management, providing principles and an outline of the key elements for a standard in the risk management process.

The principles set out in the consultation paper should apply to both asset management companies and



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investment companies that have not designated a management company (self-managed UCITS).

The principles will be complemented by a paper on the aforesaid technical and quantitative issues related to risk management, which is expected to be published for consultation by the end of 2008.

CESR asks readers to consider the questions in this consultation paper and submit their response via [CESR's website](http://www.cesr.eu) (www.cesr.eu) under the section "Consultations", by 17 October 2008. (Source: *CESR press release 19 August 2008*) - [Back](#)

Regulatory Developments

FSA Announces Approach To TCF Assessment

On 1 September 2008 the FSA published on its website an article on how the FSA's Small Firms & Contact Division, (**SF&CD**), will approach its review of small stockbrokers and asset managers.

SF&CD has started a three-year program to assess how managers in small firms approach Treating Customers Fairly (**TCF**) and how they are implementing TCF in their businesses. This program is mainly directed at retail intermediaries supervised within SF&CD (i.e. personal investment firms, general insurance intermediaries and mortgage intermediaries) and therefore certain other types of firms will be reviewed separately.

As part of this work, SF&CD will be conducting a brief survey to collate additional data which will help in their assessment process.

The FSA also announced that it will add a section focusing on TCF to the [investment managers and stockbrokers](#) section of the small firms web pages.

Please click [here](#) to access the article. (Source: *FSA, Compulsory survey in relation to treating customers fairly initiative, 1 September 2008*) - [Back](#)

FSA Publishes Financial Advice Factsheet

On 29 August 2008 the FSA published a factsheet on financial advice to retail clients. The factsheet "*Improving the quality of your advice process – Impartiality of Advisers*" forms part of a series of FSA factsheets focused on the different areas of the advice

process it has reviewed in the firms visited and mystery shopped during the Investment Quality of Advice Process II project.

The publications highlights various areas of good and poor practice, including:

- When recommending that its customers paid off debt before starting a savings plan, Firm A supported its recommendation by using a spreadsheet to give the customer a clear timeline as to when the debt would be paid off if the customer focused on this rather than saving; or
- Firm E tended to rely heavily on product providers that had provided the firm with a good service in the past, without carrying out regular research to ensure that those providers were the most appropriate for their customers.

Over the coming months the FSA announced that it will publish further examples of good and poor practice on subjects including; assessment of customer needs and management information.

Please click [here](#) for a copy of the factsheet. Source: *FSA Improving the quality of your advice process – Impartiality of Advisers, 29 August 2008* - [Back](#)

Changes To The Use Of The FSA Logo

On 20 August, the FSA made changes to the Handbook amending the arrangements under which the FSA permits the use of its logo (FSA 2008/39).

The amendment relates to the circumstances in which firms are permitted to reproduce the FSA logo. These changes mean that only a UK domestic firm will be permitted to use this logo in connection with a regulated activity for which the firm has received authorisation from the FSA.

The effect of these changes is that incoming EEA and Treaty firms as well as branches of third country firms will not be able to use the FSA logo in a regulatory statement in connection with a regulated activity for which they have received authorisation from a competent authority in another jurisdiction.

This restriction will apply in respect of all incoming EEA and Treaty firms and branches of third country firms from **1 October 2009**, but will apply additionally from **31 October 2008** in respect of incoming EEA and Treaty



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firms in connection with the regulated activity of accepting deposits.

Please click [here](#) for a copy of the Handbook Notice. (Source: *FSA Handbook Notice, 20 August 2008*) - [Back](#)

FAQ's - How Does the RDC Work

The FSA made available a [website](#) which aims at helping firms and individuals who receive formal notices. The website supplements the formal procedural provisions set out in the Decision Procedure and Penalties (DEPP) module of the FSA Handbook of rules and guidance.

The formal notices will be either 'warning notices' or 'supervisory notices':

- The FSA gives warning notices when it proposes taking action, but that action is not yet effective. It uses them, for example, when it proposes refusing an application for authorisation or approval, or when proposing to take disciplinary action.
- The FSA usually gives supervisory notices when it is taking action on its own initiative against a firm to change the activities it is allowed to do.

This page only describes the Regulatory Decision Committee process. More information is available on the [RDC](#) pages. (Source: *FSA, FAQ's – how the Committee works 24 July 2008*) - [Back](#)

EU Commission Report On Open Hearing On Retail Investment Products

The Commission organised an Open Hearing on Retail Investment Products, in Brussels on 15th July. The hearing brought together senior policy makers, industry experts and consumer representatives to discuss the evolving market for retail investment products and whether the current fragmented regulatory framework provides a sound basis for ensuring that investors receive the information and the quality of service they need to make appropriate investment decisions. The hearing was divided into the following three panels:

- Panel 1: Understanding developments and drivers in markets for retail investment products

- Panel 2: Do existing disclosure and point of sale rules deliver adequate levels of retail investor protection?
- Panel 3: Taking stock of existing EU level arrangements: fit for purpose or in need of improvement?

The following publications are available online: [Programme](#), [Full report](#) and the [Power Point Presentation](#) of Mr. Kockelkoren. (Source: *European Commission, 12 August 2008*) - [Back](#)

FSA Announces Change To RDR Timetable

The FSA announced a change to the timetable for publishing feedback on the Retail Distribution Review (RDR) Discussion Paper. The full feedback statement will now be published in November.

The RDR was set up to seek to improve the underlying efficiency of the retail investment market and brought together consumer and market representatives who contributed a series of ideas to a discussion paper, which was published in June 2007.

According to the current FSA timetable, a feedback statement was due to be published in late October. However, in light of the appointment of Jon Pain, who joins the FSA as managing director of Retail Markets on 8 September, the statement is being moved back to November to enable Jon to fully engage with the process before delivering the next stages of the RDR.

The November feedback statement will include the full feedback received during the discussion period along with the FSA's decisions on the future implementation of any regulatory changes coming out of the RDR, and the timetable for formal consultation on those changes.

Please see the [interim report](#) April 2008 setting out the current thinking on the RDR following a six-month consultation with the market last year. (Source: *FSA press release, FSA/PN/088/2008, 7 August 2008*) - [Back](#)

FSA Review: Investment Quality Of Advice Processes II

The FSA published the final results of its review Investment Quality of Advice Processes II.

Between September and December 2007, the FSA visited a sample of 50 advisory firms, and mystery shopped a further 50 to review the quality of their advice processes and the extent to which these



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processes supported the delivery of the right outcomes for consumers. This review was part of the FSA's wider 'thematic' work on improving the quality of advice.

The review was a follow-up to similar work carried out in 2006, where the FSA identified a number of areas in which the majority of firms needed to improve their processes, in particular in respect of management information and overall systems and controls, the assessment of customer needs, and communications with customers. Each of these three areas were the subject of further communication to the industry after the first review, and these communications included the introduction of a number of specific tools to help firms which had been developed with the assistance of the industry.

Highlights of the findings include:

- Most firms in the visit sample (36 out of 50) were assessed as making progress towards having appropriate advice processes in place, but the vast majority of these (30) still have more to do in order to improve the quality of their advice processes.
- The vast majority of firms (45) gathered relevant management information about their businesses, but just under a third of these firms (16 of the 45) were not actively analysing and using that information to review their processes.
- In a majority of the mystery shops (31 out of 50), concerns were identified about the advice processes employed.
- A significant number of firms (28) did not offer customers a genuine option to pay by fee or did not offer a fee option at all.

Please click [here](#) for a copy of the FSA review paper. (Source: FSA *Investment Quality of Advice Processes II*, 6 August 2008) - [Back](#)

[CESR Publishes Additional Common Positions Agreed By CESR Members Regarding The Prospectus Directive](#)

On 7 August 2008 CESR publishes additional common positions agreed by CESR Members regarding the Prospectus Directive.

This [paper](#) adds new Q&A to those included in the previous document CESR published in May 2008

(CESR/08-426). After each question an indication of the date of its first publication (or amendment) has been included to ease the identification of the new Q&A.

The Q&A are intended to provide market participants with responses in a quick and efficient manner, to 'everyday' questions which are commonly posed to the CESR secretariat or CESR Members.

The additional common positions include:

- Guarantor's responsibility for the content of a prospectus
- Pro forma financial information included in a prospectus on a voluntary basis
- Auditor's statement in Pro Forma Financial information (section 7 Annex II Prospectus Regulation)
- More than one final term for a specific issue of bonds

Please click [here](#) for a copy of the Q&A. (Source: CESR *press release*, 7 August 2008) - [Back](#)

[Commission Updates Questions And Answers On MiFID](#)

The European Commission updated its Markets in Financial Instruments Directive 2004/39/EC (MiFID) and implementing measures Questions and Answers. Answers and/or questions on the following topics cover:

- Best execution – application to securities lending activities and ancillary services (new answer)
- Exemptions – firms that deal on own account (new answer)
- Market transparency – post-trade transparency obligations (new question) (new answer)
- Outsourcing – reception and transmission of orders and execution of orders (new question) (new answer)
- Right of appeal – whether this article applies to Ombudsman awards and compensation scheme payments (new answer)
- Territorial scope – hedge funds (new question) (new answer)



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Please click [here](#) for a copy of the Questions and Answers. - [Back](#)

FSA Calls For The Fair Treatment Of Annuity Customers

On 31 July 2008 the FSA published the results of its review of the quality of annuity provider literature and alleged delays in the transfer of annuity funds. This review forms part of the Government's overall review of the open market option, announced in the December 2006 Pre-Budget Report.

The FSA's review found that:

- More than 60% of 55 annuity firms assessed provide clear information to pension customers approaching retirement age ('wake up' packs) to enable them to make informed decisions about their retirement options - in particular, the option to shop around for an annuity (the open market option). However, a significant minority of these firms provide material that fails to meet the FSA's requirements.
- Delays had occurred in over 60% of 238 annuity transfer cases reviewed, and that delays can be caused by various parties in the transfer process – including transferring and receiving pension firms, intermediaries and customers. The complexity of the process and confusion caused by the diversity of forms used to complete transfers were identified as key reasons for delays.

On transfer delays, the FSA announced that it will also be working with the industry, through the Association of British Insurers, to reform the overall process – in particular, to achieve standardisation and rationalisation of the systems and documentation involved in fund transfer.

The results of the FSA's thematic review [on open market options](#) are available on the FSA website. Please click [here](#) for a copy of the FSA press release. (Source: *FSA/PN/085/2008, 31 July 2008*) - [Back](#)

Funds

Responses On UCITS Consultation Published

On 27 August 2008 CESR published the answers it has received to its consultation on the request for advice to CESR on the UCITS asset management company passport. To view the answers, please click [here](#). (Source: *CESR, website 27 August 2008*) - [Back](#)

IMA Calls For Pragmatic Solutions For Supervision Of Cross-border Fund Management

Responding to CESR's call for evidence on the practicalities of introducing a management company passport, the Investment Management Association (IMA) warned in a press release against imposing dual control of the management company's activities by both its home state supervisor and the supervisor of the fund's Member State. This would be too burdensome and also take away the cost benefits of having such a passport.

IMA believes that CESR needs to analyse the division of duties between the management company supervisor and the fund supervisor, and determine what each needs in order to conduct its duties effectively. The cornerstone of a well-functioning management company passport will be a clear division of duties between the two supervisors concerned and a mutual trust between them.

Commenting, Jarkko Syyrilä, Director of International Relations at IMA said:

"IMA believes that a management company passport is essential in order to enhance the efficiency of the European asset management industry. Introduction of a management company passport will allow a fund manager to carry on all activities for which it has been authorised by the home country in another Member State, without having to apply for authorisation again. CESR's work to solve the supervisory issues on the management company passport will be crucial for the whole set of UCITS IV proposals to progress."

Please click [here](#) a copy of the IMA's press release and click here for a copy of IMA's response to CESR's call for evidence can be viewed [here](#). (Source: *IMA press release, 26 August 2008*) - [Back](#)



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If you wish to discuss any of the above, or for more information, please contact a member of the Financial Regulation Group



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