

December 2008

## InVest

This month's roundup of developments affecting the wealth management industry sees the FSA publishing its Retail Distribution Review Feedback Statement, the European Commission proposing the regulation of credit agencies, ...

---

### In this issue:

#### General News

- FSA Market Watch
- New FSA Small Firms Website
- FSA Calls For Cooperation To Tackle Boiler Room Fraud
- OFT Decides Against Further Analysis Of Derivatives Clearing Market
- Charlie McCreevy Speech On The Single Market Review
- Former UK Ambassador And Belgian Businessman Fined For Market Abuse
- 18 Weeks Suspended Sentence For Misleading The FSA

#### Regulatory Developments

- FSA's Retail Distribution Review Feedback Statement
- FSCP Asks For More Clarity On The RDR
- FSA Publishes Findings Of Basic Advice Review
- FSA Statement On TCF initiative
- Evidence Session On Work Of FSA
- HM Treasury Update On Open Market Review
- FSA Publishes Proposed Changes To Personal Investment Firms' Prudential Requirements

#### New Legislation & Consultations

- Commission Adopts Proposal To Regulate Credit Rating Agencies
- FSA Updates FAQs On Short Selling Ban
- FSA Consults On Regulating Retail Banking

#### Funds

- Persistency Of Life And Pensions Policies
- IMA Says Structured Deposit Should Offer Same Disclosure As Funds

## General News

### FSA Market Watch

On 19 November 2008 the FSA published issue No. 30 of Market Watch, its newsletter on market conduct and transaction reporting issues. The issue covers:

- **Thematic review on rumours:** This article sets out the FSA findings around three main areas: firms' policies on rumours; training and communication of policies; and monitoring of firms' communications and trading. The FSA also provides examples of good and bad practice in handling rumours and concludes with a case study and a summary of industry best practices.
- **Sponsored access:** This article seeks to remind market participants of relevant regulatory requirements and it sets out the FSA's view of the risks involved and its expectations of the protections and controls that firms and trading platforms should consider when seeking to comply with the requirements.
- **Credit default swaps:** The FSA clarifies that although CDSs are not admitted to trading on a prescribed market, most CDSs are likely to be caught by the UK market abuse regime.

Please click [here](#) for a copy of the newsletter. (Source: *Market Watch, Issue No. 30, November 2008*) - [Back](#)

### New FSA Small Firms Website

On 11 November 2008 the FSA modernised its small firms website. An accompanying update highlights the major changes and explains some of the new features. These include:

- sixty [One minute guides](#) which give the basics on a subject with a link to more information if required;

- a [Resource Centre](#) has links to all the case studies, factsheets and web resources such as favourite links.

Please click [here](#) to access the new site. (Source: *FSA, small firms website, 11 November 2008*) - [Back](#)

## FSA Calls For Cooperation To Tackle Boiler Room Fraud

On 10 November 2008 the FSA published a press release calling on regulators and law enforcement agencies from around the world, including the US Securities and Exchange Commission and the Spanish and German regulators, to help tackle a fraud that reaps about £300 million yearly from the UK public, for criminals.

According to the FSA each year, around 30,000 people fall victim to boiler rooms in the UK alone – estimates put the total fraud at £300 million.

The FSA has launched a number of initiatives this year to help raise awareness of boiler rooms. These include:

- working with the Institute of Chartered Secretaries and Administrators to urge listed companies to send warnings about boiler rooms to their shareholders;
- working with APCIMS, the stock broking trade association on a leaflet for its members to give to customers warning them about boiler room fraud; and
- improving the information given to consumers about boiler room fraud through the FSA website [www.moneymadeclear.fsa.gov.uk](http://www.moneymadeclear.fsa.gov.uk).

In the past 18 months, the FSA has also taken action against 7 entities for acting as or assisting boiler rooms, including taking out [injunctions](#), [freezing assets](#), [making people bankrupt](#) and starting [criminal investigations](#). In March, the FSA helped to refund around [£1 million](#) to UK investors.

(Source: *FSA [press release](#), FSA/PN/128/2008, 10 November 2008*) - [Back](#)

## OFT Decides Against Further Analysis Of Derivatives Clearing Market

The OFT has decided not to undertake any work in the market for derivatives clearing, after inviting views earlier this year. The OFT called for submissions on the broader issue of competition in this market in May after

it concluded that ICE Clear Europe's regulatory provisions did not have a significantly adverse effect on competition.

Please click [here](#) for more information. - [Back](#)

## Charlie McCreevy Speech On The Single Market Review

The European Commission published a speech given by Charlie McCreevy, European Commissioner for Internal Market and Services, at the European Consumers' Association Meeting of BEUC's General Assembly Brussels, on 13 November 2008.

In his speech Mr. McCreevy gave an update on the Single Market Review that has been launched last year and announced the publication of a "Communication on progress made under the Single Market Review" later this year.

Please click [here](#) for a copy of the speech. (Source: *European Commission, SPEECH/08/610 Date: 13/11/2008*) - [Back](#)

## Former UK Ambassador And Belgian Businessman Fined For Market Abuse

The FSA published two final notices which have been issued to Mr Richard Ralph, the former British ambassador to Peru and the former executive chairman of AIM-listed mining company, Monterrico Metals Plc (**Monterrico**), fining him £117,691.41 and his friend Mr Filip Boyen £81,982.95 for dealing in Monterrico's shares on the basis of inside information.

The financial penalties for Mr Ralph and Mr Boyen are made up of the disgorgement of their profits and additional penalties of £105,000 and £52,500 respectively.

The Final Notices relating to [Mr Ralph](#) and [Mr Boyen](#) are available from the FSA website. (Source: *FSA [website](#), FSA/PN/133/2008, 13 November 2008*) - [Back](#)

## 18 Weeks Suspended Sentence For Misleading The FSA

On 18 November 2008 the FSA announced on its website that a former mortgage adviser, Simon Robert Gray, has been sentenced at City of Westminster Magistrates Court to 18 weeks imprisonment suspended for 18 months, for making misleading

statements and using forged documents in repeated applications to become an FSA approved person.

This is the first time the FSA has prosecuted an individual for providing false information in an application for approval or authorisation.

A full version of the charges against Mr Gray and the FSA's victim impact assessment statement can be found on the FSA website. (Source: *FSA website, 18 November 2008*) - [Back](#)

---

## Regulatory Developments

### FSA's Retail Distribution Review Feedback Statement

On 25 November 2008 the FSA published the feedback statement to its Retail Distribution Review (**RDR**) which includes proposals to give more consumer confidence and trust in the retail investment market.

According to the accompanying press release the key proposals in the feedback statement include distinguishing between independent advice and sales to create better clarity for consumers about the investment services available. The key points of this distinction are:

- **Independent advice** is where adviser firms provide recommendations that are unrestricted and unbiased and consider all investments and providers from across the market to ensure they meet a customer's needs. Consumers will agree the cost of advice up front – removing the potential for bias – and independent advisers will adhere to significantly higher professional standards.
- **Sales advice** will be where firms recommend the products of one or a limited range of providers and make this clear to customers. Sales advisers will also have to meet the same professional standards as independent advisers and show clearly the cost of their advice.

The FSA also announced that it will be consulting on policy proposals for the RDR during the first half of next year with the intention that all firms will have implemented the changes by the end of 2012.

In parallel with the RDR, the FSA has been reviewing the prudential requirements for personal investment firms (**PIFs**) and will publish a consultation paper on

raising the minimum standard and improving the quality of capital and making it consistent for all firms.

The FSA's [RDR feedback statement](#) can be found on its website. (Source: *FSA [press release, FSA/PN/139/2008, 25 November 2008](#)*) - [Back](#)

### FSCP Asks For More Clarity On The RDR

Responding to the publication of the FSA Feedback Statement on the RDR, the Financial Services Consumer Panel (**FSCP**) published a [press release](#) welcoming much of the progress that the FSA has made in setting out a new regulatory regime for financial advice for consumers. However, the FSCP also warned that there are still many questions unanswered including:

- **The guided sales process.** How is it going to work, how is it going to be kept up to date, is it going properly to incorporate complicating factors such as the interaction between financial products and the benefits system?
- **The remuneration of sales people.** If it is right that independent advisers should not be remunerated by commission, can that also apply to non-independent advisers? And some simple solutions are also simplistic: for example, it is not enough to ban sales-linked remuneration if every month those advisers who have not sold as much as they are targeted to sell are dismissed.
- **The qualifications of those in the non-independent sector,** where the panel believes that these should be parallel to those in the independent sector. There are important questions for the financial services industry here. Some believe that a successful business model can be built on the basis of such a qualified workforce. Others don't.
- **The cost to customers.** Of course one way or another they are going to have to pay for the guidance they are getting. Is this going to be properly transparent to them, as it should be?
- **The products that can be sold.** The idea of a simple suite of products – the so-called Sandler products – has been discredited, largely because the model was so constructed and regulated as to prove unprofitable, so what will the new products look like?"

(Source: *FSCP press release, 25 November 2008*) - [Back](#)

## FSA Publishes Findings Of Basic Advice Review

In parallel with the Retail Distribution Review (**RDR**) the FSA carried out a post implementation review of the Basic Advice regime. A feedback paper published on 25 November 2008 includes the findings from this post-implementation review and sets out the FSA's next steps.

The Basic Advice Regime allows firms to sell some stakeholder products through a streamlined sales process when compared to the 'full' conduct of business regime. This simpler process is based on posing pre-scripted questions and warnings to the customer as principally governed by COBS 9.6 and COBS 9 Annex 2 of the Handbook.

To increase and improve consumer access to investments, the FSA will help firms develop a simplified sales service for a limited range of products, building on the work already underway in the industry and by individual firms. The FSA will remove its current rules for Basic Advice to simplify further this landscape.

Please click [here](#) for a copy of the publication. (Source: *FSA Basic Advice regime – a post implementation review, 25 November 2008*) - [Back](#)

## FSA Statement On TCF initiative

On 12 November 2008 the FSA [announced](#) its intent to accelerate the full integration of Treating Customers Fairly (**TCF**) into core supervisory work. The [FSA update on the Treating Customers Fairly initiative and the December deadline](#) can be found on the FSA website.

The FSA made clear that TCF remains central to its retail strategy, and firms are expected to meet the December 2008 deadline.

From next year, TCF will be embedded into ARROW and firms' compliance with the December deadline will be assessed by using ARROW – it will become an integral part of regular assessments of relationship managed firms; and the progress of small firms will be assessed via the three-year regional assessment programme under the enhanced strategy.

As a result of this, the FSA will no longer publish a report on the final TCF December 2008 deadline, originally planned for Q3 2009.

In response to the FSA's announcement the Financial Services Consumer Panel (**FSCP**) [said](#) it was seriously concerned about the FSA's intention to wind up its TCF initiative early and rely instead on day to day supervision of firms to check that firms were working according to this principle. For the FSA's more principles based regulation to work effectively for consumers, the Panel believes that effective implementation of the principle of Treating Customers Fairly is crucial.

(Source: *FSA press release, FSA/PN/130/2008, 12 November 2008/ FSCP, website press release, 12 November 2008*) - [Back](#)

## Evidence Session On Work Of FSA

On 20 November 2008 the Treasury Committee announced in a press release to hold an evidence session on the work of the FSA on 15 December 2008.

The press release explains that the basis for the session is scrutiny of the FSA's Annual Report 2007/08. As well as considering issues regarding the performance, management, personnel and priorities of the FSA, the Committee wishes to focus specifically on the following aspects of the FSA's work:

- The future of principles-based regulation
- The Treating Customers Fairly initiative
- The Retail Distribution Review
- Financial capability
- Regulation of retail banking conduct of business.

The Committee welcomes written evidence on the issues detailed above. Written evidence should reach the Treasury Committee by 12 noon on Friday 5 December 2008. Submissions should be no more than 2000 words.

Please click [here](#) for a copy of the press release. (Source: *Treasury Committee, press release, 20 November 2008*) - [Back](#)

## HM Treasury Update On Open Market Review

In November 2008 HM Treasury published an update on the review of the Open Market Option (**OMO**). OMO allows those with accumulated pension savings to choose the provider from which they buy their annuity. By using the OMO and shopping around people may be

able to increase the annual income they get from the annuity bought with their pension savings.

At Pre-Budget Report 2007 the Government published a review of the operation of the OMO. That review made a number of recommendations aimed at improving the operation of the OMO.

Please click [here](#) for a copy of the publication. (Source: *Open Market Option an update on the review*) - [Back](#)

## FSA Publishes Proposed Changes To Personal Investment Firms' Prudential Requirements

The FSA has published a consultation paper setting out proposed improvements to prudential requirements for Personal investment firms (**PIFs**) designed to help reduce the impact of market failures in the sector. The proposed new regime, which builds on Discussion Paper 07/4 published in July last year and Feedback Statement 08/2 published in April 2008, includes:

- simplifying the calculation of capital resources and making it consistent for all firms;
- extending the Expenditure Based Requirement to all firms based on three months of annual fixed expenditure and raising the minimum capital resources level from £10,000 to £20,000 for all firms; and
- mandating a sliding scale of additional capital resources that firms should hold as a provision against potential liabilities for any business or activity excluded from their professional indemnity insurance policies.

The period for consultation responses closes on 31 March 2009. Please click [here](#) to access the consultation paper. (Source: *FSA press release, FSA/PN/141/2008, 27 November 2008*) - [Back](#)

---

## New Legislation & Consultations

### Commission Adopts Proposal To Regulate Credit Rating Agencies

On 12 November 2008 the European Commission has put forward a proposal for a Regulation on credit rating agencies. The new rules are designed to ensure high quality credit ratings which are not tainted by the

conflicts of interest which are inherent to the ratings business.

The proposal lays down conditions for the issuance of credit ratings which are needed to restore market confidence and increase investor protection. It introduces a registration procedure for credit rating agencies to enable European supervisors to control the activities of rating agencies whose ratings are used by credit institutions, investment firms, insurance, assurance and reinsurance undertakings, collective investment schemes and pension funds within the Community.

Credit rating agencies will have to comply with rigorous rules to make sure (i) that ratings are not affected by conflicts of interest, (ii) that credit rating agencies remain vigilant on the quality of the rating methodology and the ratings and (iii) that credit rating agencies act in a transparent manner. The proposal also includes an effective surveillance regime whereby European regulators will supervise credit rating agencies.

The proposal is available at:

[http://ec.europa.eu/internal\\_market/securities/agencies/index\\_en.htm](http://ec.europa.eu/internal_market/securities/agencies/index_en.htm)

(Source: *European Union, rapid press release, IP/08/1684, 12 November 2008*) - [Back](#)

### FSA Updates FAQs On Short Selling Ban

On 25 November 2008 the FSA published Short Selling (No. 2) Instrument 2008 - FAQs Version 5 - Issued 25 November 2008.

The only substantive change in this version of the FAQs compared to Version 4 (issued on 31 October 2008) is the following:

The FSA has replaced the previous FAQ 42. with a new FAQ 42. that sets out in more detail the interaction of the provisions of Short Selling (No. 1) Instrument 2008 (relating to companies in rights issue periods) and the provisions of Short Selling (No. 2) Instrument 2008 (relating to UK financial sector companies) in circumstances where a UK financial sector company enters into a rights issue period.

Please click [here](#) for a copy of the publication. (Source: *FSA published Short Selling (No. 2) Instrument 2008*) - [Back](#)

## FSA Consults On Regulating Retail Banking

The FSA is consulting on whether it should monitor the relationships between banks and their retail customers, including deposits and electronic-money. Currently, much of retail banking is undertaken under a system of self-regulation. The Banking Code Standards Board monitors and enforces the voluntary Banking Codes governing current accounts, personal loans and overdrafts, savings, card services and ATMs. Next year, the FSA will become responsible for regulating banks and building societies payment transactions under the Payment Services Directive. The latest consultation will consider whether it should go further and regulate more aspects of banks' relationships with their retail customers.

Please click [here](#) to access the FSA press release and [here](#) to access the consultation paper.- [Back](#)

---

## Funds

### Persistency Of Life And Pensions Policies

On 17 November 2008 the FSA published the 2008 Survey of the Persistency of Life and Pensions policies.

Since 1995, regulated firms have been required to submit returns each year giving information about the persistency of their life assurance and pensions business. Persistency is calculated as the proportion of investors who continue to pay regular premiums to their life and pensions policies, or who do not surrender their single premium policy.

The 2008 report contains a summary of results and a commentary on the 2008 persistency survey. The FSA

gathered data on policies written from 2003 to 2006. The report also contains a summary of overall persistency in the first four years of a policy for the individual product categories. The data is further split by method of sale and whether it is regular or single premium.

Please click [here](#) for a copy of the 2008 Survey. (Source: *FSA 2008 Survey of the Persistency of Life and Pensions policies*, 17 November 2008) - [Back](#)

### IMA Says Structured Deposit Should Offer Same Disclosure As Funds

Responding to the FSA consultation paper, [published](#) on 4 November 2008, proposing a new framework to regulate the way that banks treat their customers, Richard Saunders, Chief Executive of the Investment Management Association, said:

*"This is a welcome first step in levelling the playing field between structured deposits and investment funds. It will, however, be important that when bringing deposits within the scope of the FSA's Conduct of Business rules, the opportunity will be taken to ensure that consumers benefit from comparable disclosure about product features, costs and risks that investors in funds receive. This is particularly important where products such as structured deposits compete directly with funds."*

(Source: *IMA [press release](#)*, 12 November 2008) - [Back](#)

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



Paul Anderson

( 0113 209 2399

\* [paul.anderson@addleshawgoddard.com](mailto:paul.anderson@addleshawgoddard.com)



David Heffron

( 0113 209 2390

\* [david.heffron@addleshawgoddard.com](mailto:david.heffron@addleshawgoddard.com)