



March 2009

InVest

This month's roundup of developments affecting the wealth management industry sees the Banking Act 2009 entering into force, the FSA increasing its fees and consulting on the regulation of short selling, AIFA launching an industry group,...

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General News

FSA Market Watch No. 31

On 25 February 2009 the FSA published Issue No. 31 of Market Watch, the newsletter on transaction reporting issues. The publication covers the following topics:

- alternative instrument identifier (AII) project: update;
- populating the instrument identification code and instrument identification code type fields;
- transaction reporting – new validation for ISO 10383 market identifier codes;
- transaction reporting forum;



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- completing the quantity field for spread bet transactions;
- quality and completeness of transaction reporting; and
- unique client identifiers.

Please click [here](#) for a copy of the newsletter. - [Back↑](#)

ABI Outlines Future Of Europe's Financial Services

The ABI has launched a three-stage plan to help restore confidence and trust in European financial services. A report published on 12 February 2009 outlines the ABI's priorities for Europe and highlights key principles for a global recovery.

The report entitled "*The Insurance Industry: Rebuilding Confidence in Europe*", proposes three steps to help build trust in European capital markets:

- Short term: Better use of the information exchange offered by Colleges of Supervisors.
- Medium term: More resources for Level Three Committees, which bring together European regulators in specific financial sectors.
- Long term: A debate over the feasibility of a single prudential supervisor, to overcome the current lack of trust between European regulators.

Please click [here](#) for a copy of the report. (Source: *ABI, press release Ref: 23/09, 12 February 2009*) - [Back↑](#)

CESR Statement On The Madoff Collapse

On 04 February 2009 CESR published a public statement which provides information for investors affected by the Madoff collapse, and urges regulated firms to communicate with their clients.

CESR envisages that some European investors will experience financial losses, either directly or indirectly, due to the alleged fraud of Bernard Madoff. CESR therefore draws the attention of European investors to the potential actions they can take, or that can possibly be taken on their behalf. CESR also urges those acting on behalf of investors to proactively communicate the steps they are taking to recover funds and any information on next steps.

The statement can be found on the CESR website at: [Public statement - CESR provides information for investors affected by the Madoff collapse: CESR urges regulated firms to communicate with their clients](#)

(Source: *CESR press release, 4 February 2009*) - [Back↑](#)

AIFA Launches Industry Group To Challenge FSA Fee Increase

The Association of Independent Financial Advisers (**AIFA**) and the Association of Mortgage Intermediaries (**AMI**) have issued a joint statement announcing the formation of a "*Regulatory Fees Strategy Group*". The group, to be chaired by Director General, Chris Cummings, is being formed in response to the proposed fee increases from the FSA.

Chris Cummings, Director General, AIFA and AMI, commented:

"We support the case made by FSA to charge the banking community more for its regulation - but cannot agree with the unwarranted level of fee increases proposed for the intermediary community, who have not caused the banking crisis but have been affected by its fallout."

Please click [here](#) for a copy of the statement. (Source: *AIFA, press release, 17 February 2009*) - [Back↑](#)

FSA Publishes Financial Risk Outlook

On 09 February 2009 the FSA published its Financial Risk Outlook (**FRO**) outlining the main risks facing firms, consumers and the regulatory system in the economic downturn, in particular the challenges created by banking sector and real economy deleveraging.

This year's FRO is divided into three sections:

- *Financial and economic crisis* sets out an integrated view of the macroeconomic, financial and regulatory developments which lie behind the crisis. It outlines issues relating to the regulation of banks and bank-like institutions which will be covered by the Turner Review and an FSA discussion paper due to be published in March;
- *Economic outlook* describes a central economic scenario drawn from various forecasts focusing in particular on how deleveraging is likely to affect firms, markets,



consumers and the FSA. Three alternative scenarios explore the ways in which the economy and financial sector could plausibly evolve over the medium and long term to highlight the substantial uncertainties that face both firms and consumers;

- *Outlook for financial sectors and consumers* identifies the risks and implications of the financial and economic environment for firms, market participants and consumers.

The [FRO](#) are available on the FSA website. (Source: [FSA press release](#), FSA/PN/025/2009, 09 February 2009) - [Back↑](#)

Regulatory Developments

FSA Publishes Business Plan And Consults On Fees

On 12 February 2009 the FSA published its Business Plan for 2009/10 alongside the 2009/10 consultation paper on regulatory fees and levies.

The [Business Plan 2009/10](#) takes account of the current difficulties for financial markets and their users. Accordingly, the FSA intends to focus on ensuring firms are soundly run and in particular that they adjust their business models to ensure they can remain well capitalised and securely funded. In carrying out its consumer mandate, the FSA intends to concentrate its resources on helping people cope with the economic downturn and maintaining pressure on firms to treat customers fairly.

The FSA will also play a full role in modernising the global regulatory framework. This will involve taking forward the agenda that will be laid out in an FSA Discussion Paper in March. Finally and crucially the FSA will complete the planned programme of improvements to its supervisory processes.

The FSA's budget of £415m for 2009/10 reflects the cost of taking these priorities forward. To fund its proposed plan of work, the FSA will need to increase the amount it raises from firms (the Annual Funding Requirement) by £117m. The largest component of this increase, approximately £70m, is due to the cost of embedding and delivering higher quality supervision, especially of higher impact firms. To support the enhancement of its supervisory process, the FSA will

also be investing an additional £12m in technology and property infrastructure.

The [Fees Consultation Paper \(CP09/7\)](#) explains how the FSA proposes to raise the annual funding requirement from fee payers, and provides an opportunity for comment.

(Source: [FSA press release FSA/PN/026/2009](#), 12 February 2009)

The AIFA has responded to the FSA's business plan and the proposed increase in regulatory fees that will hit the IFA sector. AIFA is concerned about the impact this will have on IFA firms and is calling for a full review of FSA budgets by the National Audit Office. Please click [here](#) for a copy of the AIFA press release.

Likewise, the IMA calls on the FSA to give clear, substantive reasons as to why there is such a significant increase in supervisory costs for large firms. Please click [here](#) for a copy of the IMA press release. - [Back↑](#)

FSA Code On Remuneration

On 26 February 2009 the FSA published a Code of practice (**Code**) on remuneration policies. The Code that applies to all FSA-regulated firms is set to ensure that firms have remuneration policies which are consistent with sound risk management and which do not expose them to excessive risk. It is not concerned with setting levels of remuneration, which are a matter for the boards of companies and their shareholders.

The FSA indicated that it would use the principles embodied in the Code to assess firms' exposure to risks arising from their remuneration policies as part of the ICAAP process.

FSA chief executive Hector Sants said:

"We have already outlined the work we have been doing on remuneration during the last 12 months. The code of practice we have published today is the next stage in that work and clearly lays out the framework we expect firms to adopt."

Please click [here](#) for a copy of the Code. (Source: [FSA press release](#), 26 February 2009) - [Back↑](#)

FSA Urges All Firms To Stop Selling Single Premium PPI

The FSA announced on its website that it has written to all firms still selling single premium Payment Protection



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Insurance with unsecured personal loans (**SP PPI UPL**) asking them to withdraw the product as soon as possible, and by no later than 29 May 2009.

The letter from Jon Pain, the FSA's managing director of retail markets, reminds firms that the Competition Commission's final report on its PPI market inquiry, published on 29 January, included a remedy that prohibits the sale of single premium PPI policies after 1 October 2010.

The letter asks for a written response to the request to withdraw SP PPI UPL to be sent to the FSA by 31 March 2009.

For a copy of the letter please click on the following link: [Dear CEO Letter](#)

(Source: FSA [press release](#), FSA/PN/031/2009, 24 February 2009) - [Back↑](#)

FSA Publishes Factsheet On Advice Process

On 16 February 2009 the FSA published the sixth series of factsheets entitled "*Improving the quality of your advice process – Management information and systems and controls.*"

The factsheets focus on the different areas of the advice process that the FSA reviews in the firms visited and mystery shopped during the quality of advice processes II project. The examples outlined in the factsheets are designed to help firms to consider their own systems and controls and the use of management information as part of their monitoring.

The FSA encourages firms to familiarise with these examples to ensure that a good quality of advice process is in place.

Please click [here](#) for a copy of the factsheets. (Source: FSA factsheet, 16 February 2009) - [Back↑](#)

Pension-switching Advice

Following a thematic review into pension-switching advice in 2008 the FSA published a suitability assessment template.

This template will form the basis of the follow-up work the FSA intends to undertake in the third quarter of 2009. The follow-up work will include visits and desk-based file reviews, to check firms have acted on the findings of the thematic project. Firms may wish to use the template and notes in assessing the suitability of pension-switching advice.

If the FSA identifies failings concerning the suitability of pension-switching advice and finds that firms have not taken appropriate action, they may be subject to regulatory action. This could include, where appropriate, referral for further investigation with a view to possible enforcement action. The template can be found on the FSA website at:

http://www.fsa.gov.uk/Pages/Library/Other_publications/pension_switching/index.shtml

(Source: FSA website, 9 February 2009) - [Back↑](#)

Review Of Branch And In-store Financial Promotions - December 2008

On 5 February 2009 the FSA published the results of its review of branch and in-store financial promotions.

The FSA has carried out a review into the levels of compliance for in-branch and in-store financial advertising involving 19 individual banks, building societies and other distributors (such as supermarkets or high street retailers) over a one-month period. Material relating to mortgages (including debt consolidation), insurance and investments, was collated from a total of 27 retail outlets and analysed. In total, the FSA reviewed 141 unique promotions.

Overall the results show:

- Good overall standard of compliance – with best results for insurance products and services and poorest for investments.
- Direct action with firms taken in all cases where we had serious concerns.
- Providing up-to-date promotional material was a particular issue.

The full results can be found on the FSA [website](#). (Source: FSA website, 05 February 2009) - [Back↑](#)

FSA Speech On TCF

The FSA published a speech given by Sarah Wilson, Director, Treating Customers Fairly (**TCF**), at the ABI seminar for Non-Executive Directors of insurance companies on 5 February 2009. In her speech Ms Wilson addressed three broad issues:

- Business strategy and its governance;
- Risk management and oversight; and
- Reward.



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Please click [here](#) for a full copy of the speech. - [Back↑](#)

Retail Distribution Review New Standards For Qualifications

On 5 February 2009 the Financial Services Skills Council (**FSSC**) announced that it will develop new standards for qualifications in relation to retail distribution. This follows the publication of the FSA Retail Distribution Review Feedback Statement (**FS**) in November last year. The FS signalled that new minimum entry qualifications for financial advisers would be established. New minimum qualifications are intended to be at QCA Level 4 and would be a requirement from end-2012.

The FSSC explains that in the meantime advisers may wish to study for Level 4 or higher qualifications in readiness for the likely outcomes of the RDR. However, they should be aware that current qualifications cannot be guaranteed to meet the FSA's new requirements from 2010.

To read full press release click [here](#). (Source: FSSC, press release, 05 February 2009) - [Back↑](#)

FSA Amends Short-Selling List

On 9 February 2009 the FSA published an amended list (as at 6 February 2009) of UK financial sector companies in connection with SHORT SELLING (NO 5) INSTRUMENT 2009.

The list was first published on 19 September 2008 and subsequently updated on 20 January 2009.

Please click [here](#) for a copy of the list. - [Back↑](#)

CESR Updates The Prospectus Q&A

On 10 February 2009 CESR published the 8th update of the Prospectus Q&A, including CESR's view on employee shares schemes.

The update modifies questions 1 and 2 and includes a new question 71:

"71. *Employee Share Scheme Prospectuses: Short-form disclosure regime for offers to the employees in those cases where a prospectus is required (application of Article 23.4 of the Prospectus Regulation)*"

Please click [here](#) for a copy of the update. - [Back↑](#)

CESR Updates Table On Prospectuses

On 26 February 2009 CESR published an updated version of its table of relevant information that has to be provided for the passport of prospectuses. The table consists of two columns and provides the following information:

- *Languages accepted for the scrutiny of the Prospectus:* this column includes the languages that each CESR member accepts when acting as home competent authority for the purpose of the scrutiny of the prospectus.
- *Requirements in relation to the translation of the Summary:* Article 19 of the Prospectus Directive allows the competent authority of the host Member State to require the summary of the prospectus to be translated into its official language(s) when prospectuses are being passported into its State. This column provides information for each CESR member when acting as host competent authority on whether or not a translation of the summary of a prospectus passported is required. In addition, it clarifies which are the language(s) acceptable for the translation of the summary when requested.

Please click [here](#) for a copy of the table. (Source: CESR, 09-133, February 2009) - [Back↑](#)

CESR Protocol On The Operation Of The MiFID Database

In preparation of the annual update of the list of shares admitted to trading on regulated markets, CESR published the protocol on the operation of the MiFID database.

The operation of the MiFID market transparency regime involves making certain information regarding shares admitted to trading available to market participants. The regime requires CESR members to make certain calculations regarding shares admitted to trading (and to some extent "liquid shares"). The results of the calculations are published by CESR on the following website: <http://mifiddatabase.cesr.eu>

In order to ensure smooth and harmonised calculation and publication CESR has considered it necessary to agree on this protocol. This protocol describes the tasks and responsibilities of the CESR members and the CESR Secretariat respectively. Additionally it contains



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practical guidance on how to conduct the calculations as well as the necessary technical instructions

(Source: [CESR website](#), 26 Feb. 2009) - [Back↑](#)

CESR Reviews Supervisory Powers And Practices Under MiFID

On 16 February 2009 CESR published a review of supervisory powers and practices, as well as administrative and criminal sanctioning regimes across Europe in relation to MiFID.

The report gives a factual overview of the implementation of MiFID by mapping the supervisory powers, practices and sanctioning regimes of CESR Members.

A similar exercise is now being undertaken regarding the sanctioning powers under the Transparency Directive.

The [report](#) is accompanied by a [press release](#). (Source: *CESR, press release CESR/09-12*) - [Back↑](#)

(including a ban) on short selling would not be warranted; and

- examines the options for enhanced transparency.

The FSA believes that the benefits of short selling such as price efficiency and liquidity, normally outweigh the disadvantages and proposes that there should be no direct restrictions on short selling. However, the FSA sees advantages in having enhanced transparency of short selling and so proposes that disclosure requirements for significant short positions should be introduced for all UK listed stocks.

The consultation period will close on 8 May 2009, following which the FSA will issue a Feedback Statement. This will set out its conclusions on a longer term policy for short selling.

Please click [here](#) for a copy of the Consultation Paper and click [here](#) for a copy of the accompanying newsletter. (Source: *FSA, [press release FSA/PN/023/2009](#), 6 February 2009*) - [Back↑](#)

FSA Publishes Handbook Notice No. 85 Together With The Handbook Development Newsletter

On 27 February 2009 the FSA published Handbook Notice No. 85 together with the Handbook Development Newsletter.

The Handbook Notice introduces the Handbook and other material made by the Board under its legislative powers on 9 and 26 February 2009. It also contains information about other publications relating to the Handbook and, if appropriate, lists minor corrections made to previous instruments made by the Board.

On 9 February 2009, the Board made an instrument which:

- reduces the minimum rights issue subscription period in the Listing Rules sourcebook from 21 days to ten business days (FSA 2009/6).

On 26 February 2009, at its normal monthly meeting, the FSA Board made seven instruments which:

- make minor administrative corrections to the Senior Management Arrangements, Systems and Controls sourcebook (FSA 2009/7);
- address the timing of notification of the intention to redeem or repay tier one and tier two capital requirements (FSA 2009/8);

New Legislation & Consultations

FSA Proposes Enhanced Transparency Requirements On Short Selling For All Stocks

In discussion paper (DP) 09/01 issued on 6 February 2009, the FSA proposed a general short selling disclosure requirement for all UK listed stocks. The proposals follow a comprehensive review of short selling undertaken since the FSA introduced its temporary ban in September 2008.

In short, the DP

- provides a brief description of short selling, the market participants who tend to engage in it, their reasons for doing so and the different methods used. It also provides some detail on the context in which short selling takes place;
- examines the pros and cons of short selling;
- provides an analysis of some of the potential direct constraints on short selling. The potential risks of short selling stocks of companies engaged in rights issues are also discussed. We conclude that direct constraints



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- update guidance on passporting in the Supervision manual (FSA 2009/9);
- amend FSA transaction reporting rules to improve the transaction reports for over-the-counter derivatives and ensure the reporting rules remain proportionate (FSA 2009/10);
- amend current Collective Investment Schemes sourcebook requirements for authorised funds in relation to the use of currency hedging (FSA 2009/11);
- amend the Listing Rules in respect of the Model Code and trading plans (FSA 2009/12); and
- address a gap in the current Disclosure and Transparency Rules and reduce the potential for inappropriate exercise of influence on voting rights and/or for the acquisition of substantial stakes on an undisclosed basis (FSA 2009/13).

These instruments are listed in Annex A of the Handbook Notice. Please click [here](#) for a copy of the Handbook notice. (Source: FSA, *Handbook Notice No. 85, February 2009*)

The Handbook Development Newsletter contains

- information about recent Handbook-related and other developments;
- information about recently issued Handbook-related and other publications;
- an updated timetable for forthcoming publications;
- information about Consumer publications; and
- a link to the Events web page which provides information about forthcoming conferences and training events.

Please click [here](#) for a copy of the Newsletter. (Source: FSA, *Handbook Development Newsletter, February 2009*) - [Back↑](#)

The Banking Act 2009 Enters Into Force

On 21 February 2009 the [Banking Act 2009](#) together with secondary legislation came into force. The new legislation enables the Tripartite authorities comprising of the Bank of England, the FSA and HM Treasury to help failing financial institutions for example by way of

temporary nationalisation or selling it on to a rival institution. The secondary legislation is primarily designed to safeguard third parties' interests and includes:

- [The Banking Act 2009 \(Bank Administration\) \(Modification for Application to Banks in Temporary Public Ownership\) Regulations 2009 \(SI 2009/312\)](#). See: [Explanatory Memorandum](#).
- [The Banking Act 2009 \(Bank Administration\) \(Modification for Application to Multiple Transfers\) Regulations 2009 \(SI 2009/313\)](#). See: [Explanatory Memorandum](#).
- [The Bank Administration \(Sharing Information\) Regulations 2009 \(SI 2009/314\)](#). See: [Explanatory Memorandum](#).
- [The Banking Act 2009 \(Parts 2 and 3 Consequential Amendments\) Order 2009 \(SI 2009/317\)](#). See: [Explanatory Memorandum](#).
- [The Banking Act 2009 \(Third Party Compensation Arrangements for Partial Property Transfers\) Regulations 2009 \(SI 2009/319\)](#). See: [Explanatory Memorandum](#).
- [The Banking Act 2009 \(Restriction of Partial Property Transfers\) Order 2009 \(SI 2009/322\)](#). See: [Explanatory Memorandum](#).

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Call For Evidence On Review Of Investor Compensation Schemes Directive

On 9 February 2009 the European Commission (**Commission**) launched a call for evidence on the review of the application of the Investor Compensation Schemes Directive (Directive 1997/9/EC).

This Directive aims to protect investors against the risk of losses in the event of an investment firm's inability to repay money or return assets held on behalf of their clients. The Commission now wishes to gather information about the application of the Directive.

This call for evidence is also in line with parallel initiatives concerning the Deposit Guarantee Schemes Directive and Insurance guarantee schemes. The closing date reply is 8 April 2009.

An accompanying press release explains that this call for evidence is focused on the following issues:



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- the scope of the Directive in terms of services covered, also in the light of the implementation of Directive 2004/39/EC on markets in financial instruments (MiFID);
- the amount of compensation;
- the funding of the compensation schemes which represents a crucial part of the functioning of the mechanism;
- some technical aspects which may hamper the efficient and timely functioning of the schemes (notably, any existing restrictions on the carrying of unpaid reimbursement debts over a certain period of time and the need to set effective reasonable deadline for reimbursement).

The consultation is available at:

http://ec.europa.eu/internal_market/securities/isd/invest_or_en.htm

Comments should be sent to the following e-mail address: MARKT-G3@ec.europa.eu

(Source: *European Union [press release IP/09/230](#), 9 February 2009*) - [Back↑](#)

Council Adopts Deposit Protection Directive

On 26 February 2009 the Council of the European Union published a [press release](#) announcing that it has adopted a directive raising guarantee levels and reducing payout delays in the event that deposits of a bank would become unavailable.

The new directive includes provisions:

- raising the coverage level to a minimum of EUR 50,000 as from 30 June 2009, rather than the present EUR 20,000;
- setting the coverage level at EUR 100,000 as from 31 December 2010;
- reducing the payout delay to 25 working days (a period of five working days to establish that a credit institution has failed to repay deposits which are due and payable, and of 20 working days, subject to extension by 10 working days, to make the repayment). The corresponding periods are at present 21 working days and three months, subject to the possibility of two three-month extensions.

As the press release explains, the purpose of the adopted directive is to help restoring confidence in the banking sector by strengthening depositor protection through: drastically reducing the payout delays, eliminating co-insurance, increasing the coverage level to EUR 50,000 as early as possible and further setting it at the level of EUR 100,000 by the end of 2010, and enhancing crossborder cooperation between the home Member State, where the bank is authorised, and the host Member State, where the foreign branch is located. The new directive will enter into force on the third day following that of its publication in the Official Journal of the European Union.

(Source: *Council of the European Union, 6983/09 (Presse 52), 26 February 2009*) - [Back↑](#)

Consultation On New Information Gateway Between FSA And Claims Management Regulator

On 20 February 2009 HM Treasury published a consultation paper seeking views on proposed changes to the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 to introduce an Information Gateway between the FSA and the Claims Management Regulator. The purpose of the information gateway is to enable the sharing of information between regulators for regulatory functions.

The draft regulations make the necessary amendment to allow information to be passed from the FSA to the Claims Management Regulator. The amendments take in to account the fact that some information held by the FSA may not be disclosed or is subject to conditions on onward disclosure because of restrictions imposed under European Directives.

The closing date for this consultation is 14 May 2009.

Please click [here](#) for a copy of the Consultation document. (Source: *HM Treasury, [website](#), 20 February 2009*) - [Back↑](#)

IOSCO: Principles On Outsourcing By Markets Consultation Report

The International Organization of Securities Commission's (**IOSCO**) Technical Committee (**TC**) published for public comment a consultation report on Principles on Outsourcing by Markets (**Report**).

The Report sets out a set of principles that are designed to assist markets and market authorities when



considering outsourcing arrangements. The Report will be finalised after consideration of comments received from the public.

Comments may be submitted on or before 20 May 2009.

Please click [here](#) for a copy of the report. (Source: IOSCO, *Principles on Outsourcing by Markets, February 2009*) - [Back↑](#)

CEIOPS Responds On ADR Schemes

On 26 February 2009 CEIOPS published the reply it has sent to the European Commission (EC) on the EC Consultation Document on ADR schemes.

CEIOPS welcomes the EC's efforts on this important area and encourages any attempt to fill the gaps in the European framework as to consistent consumer protection provisions and networks in the context of the development of the single market.

Please click [here](#) for a copy of the document. (Source: CEIOPS, [website](#), 26 February 2009) - [Back↑](#)

European Commission Requests Further Work From JCFC

On 10 February 2009 CEIOPS announced on its website that the Joint Committee on Financial Conglomerates (JCFC) received [a letter from the European Commission \(EC\) requesting further work in relation to its April 2008 Call for Advice](#) - stocktake of existing national implementation practices of the Financial Conglomerates Directive (FCD) in the context of its review.

CEIOPS explains that the EC has asked JCFC to also come forward with a range of possible solutions to the issues it has identified in its work to date in the 3 requested areas (language, scope and internal control mechanisms).

JCFC is currently developing and incorporating suggested solutions and finalising a paper for public consultation by the end of May 2009. The JCFC also plans to hold a public hearing during the consultation period in late June/July, before submitting its final advice in the autumn.

(Source: CEIOPS, [press release](#) 10 February 2009) - [Back↑](#)

General Legal Issues

Ministry Of Justice Guidance On Rome II

On 9 February 2009 the Ministry of Justice published "Guidance on the law applicable to non-contractual obligations (**Rome II**) Outline of the main provisions"

The European Community Regulation on the law applicable to non-contractual obligations came into force on 11 January 2009. The Regulation will apply within the United Kingdom and to all other Member States with the exception of Denmark.

The purpose of the guidance is to provide a brief summary of the most important provisions in the new Regulation.

Please click [here](#) for a copy of the Guidance. (Source: Ministry of Justice *Guidance on the law applicable to non-contractual obligations (Rome II) Outline of the main provisions, 9 February 2009*) - [Back↑](#)

Commission Reviews Fourth And Seventh Company Law Directives

On 24 February 2009 the European Commission launched a Consultation on the Review of the Fourth and Seventh Company Law Directives.

This project is the third step in the simplification of accounting rules for SMEs and other companies in the scope of the Fourth and Seventh Company Law Directives ("Accounting Directives"), which began with a fast-track proposal in 2008. A Member State option to create a new "micro" entity category in order to exempt them from the accounting requirements under the 4th Directive is being proposed by the European Commission, simultaneously with the launch of this stakeholder consultation.

The current consultation aims at raising issues relating to the modernisation and simplification of the Accounting Directives. Positive effects of the review will include a reduction of burden mainly for small companies as well as qualitative improvements for all companies within the scope of these Directives. An additional objective is to increase the clarity of the text for lawmakers and users in general.

Following an analysis of the comments received to the consultation paper a legislative proposal will be presented by the end of 2009.



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Please click [here](#) to access the Commission's website with further information. (Source: *European Commission, website, February 2009*) - [Back↑](#)

Independent Review Of Corporate Governance Of UK Banking Industry By Sir David Walker

On 09 February 2009 the Chancellor of the Exchequer, the Secretary of State for Business, Enterprise and Regulatory Reform and the Financial Services Secretary to the Treasury published a press release announcing a review to recommend measures to improve the corporate governance of UK banks, particularly with regard to risk management.

The review is being chaired by the former financial services regulator, Sir David Walker.

According to the press release the review will examine board management of risk (including the effectiveness of risk and audit committees), incentives to manage risk in bank remuneration policies, the competences needed on bank boards, board practices and structures, and the role played by institutional shareholders.

The terms of reference for the review are to examine corporate governance in the UK banking industry and make recommendations, including in the following areas:

- the effectiveness of risk management at board level, including the incentives in remuneration policy to manage risk effectively;
- the balance of skills, experience and independence required on the boards of UK banking institutions;
- the effectiveness of board practices and the performance of audit, risk, remuneration and nomination committees;
- the role of institutional shareholders in engaging effectively with companies and monitoring of boards; and
- whether the UK approach is consistent with international practice and how national and international best practice can be promulgated.

The review will give preliminary conclusions to commissioning Ministers in the autumn and final recommendations by the end of the year.

Please click [here](#) for a copy of the press release. (Source: *HM Treasury, press release, 10/09, 09 February 2009*) - [Back↑](#)

FSA Enforcement

FSA Wins Appeal Against Fox Hayes

On 17 February 2009 the FSA published a statement on its website announcing that it has won an appeal against a firm of solicitors that used its status as an FSA-authorized firm to approve promotional material used by overseas boiler room operations to defraud UK consumers.

The statement explains that the decision, which overturns an original ruling by the Financial Services and Markets Tribunal, relates to Leeds-based solicitors, Fox Hayes. The firm approved 34 financial promotions for five unauthorised, unregulated overseas companies between 2003 and 2004. Using the approved promotional material as the first point of contact, the overseas companies were able to illegally sell shares to 670 UK investors for about US \$21 million.

As well as finding that Fox Hayes broke FSA rules by approving material that allowed boiler room fraudsters to target UK investors, the Court of Appeal also increased the level of penalty imposed by the Tribunal against the solicitors' firm from £146,000 to £954,770. The revised penalty includes a £454,770 commission made by former senior partner at Fox Hayes. The final penalty will be determined by the Tribunal at a later date.

The FSA decided to appeal the Tribunal decisions on points of law, as part of its fight against overseas boiler room fraudsters and to further deter other regulated individuals and companies from assisting them.

The full [judgement](#) can be found on the British and Irish Legal Information Institute website. (Source: *FSA website, 17 February 2009*) - [Back↑](#)

FSA Fines AIM Company Director For Market Abuse

On 4 February 2009, the FSA published a Final Notice it has issued to Mr Darwin Lewis Clifton OBE and Byron Holdings Ltd (**Byron**) for dealing in the shares of Desire Petroleum plc (**Desire**) on the basis of inside information.



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The accompanying press release explains that between 19 November 2007 and 8 February 2008 Mr Clifton directed Byron to buy shares in Desire on four separate occasions when he had inside information from his position as a non-executive director of Desire.

The FSA claims that Mr Clifton did not consider at the time whether the information he was given was inside information and that he failed to consider the clear and obvious risk that Byron would be committing market abuse by purchasing the shares before the information was generally available.

Whilst Byron had been pursuing the strategy of increasing its Desire shareholding over the long-term, the inside information was a material influence on the timing of its share purchases. It has not sold the shares.

The [final notice](#) can be found on the FSA website. (Source: [FSA press release](#) FSA/PN/021/2009, 4 February 2009) - [Back↑](#)

FSA Secures Over £1 Million For Victims Of Share Scam

The FSA announced on its website that it has obtained a Court Order that Mr Aniz Kassamali Dhanji Manji will return £1m to investors and Mr Suresh Maganlal Bhowan will pay £17,233. These investors were victims of a share scam operated by overseas entities which sold shares to UK investors.

According to the FSA, Mr Manji was the owner of Bayshore Nominees Limited (**Bayshore**) and Mr Bhowan was the sole director. Investors were encouraged to buy worthless shares during 'cold call' from unauthorised share sellers (boiler rooms) Gatemore Securities (**Gatemore**) and Enterprise Analytics Incorporated (**Enterprise**). Bayshore, which held the shares, sent out confirmation notes requiring payment from the investors and arranged the transfer of the shares to the investors. Bayshore then sent the money received from investors, first to other bank accounts, and then off-shore.

At a hearing held on 5 February 2009 at the High Court, the Honourable Mr Justice Floyd declared that Bayshore had broken the law by acting without authorisation, and that Mr Manji and Mr Bhowan had been knowingly concerned in this. It also declared that Gatemore and Enterprise had illegally promoted the shares. Bayshore, Mr Manji and Mr Bhowan agreed to the making of this Order.

More information can be found on the FSA [website](#). (Source: [FSA press release](#), FSA/PN/024/2009, 9 February 2009) - [Back↑](#)

Funds

HFSB Responds To EU Consultation On Hedge Funds

On 18 February 2009 the Hedge Fund Standards Board (**HFSB**) published on its website its submission to the European Commission public consultation on hedge funds.

The European Commission has launched a wide-ranging public consultation on policy issues arising from the activities of the hedge fund industry, with the aim of developing an appropriate regulatory response. The findings will feed into a high-level conference and will serve as the basis for European input into the parallel reflections on hedge funds at the G20 level.

Please click [here](#) for a copy of the response. (Source: [HFSB submission to the European Commission public consultation on hedge funds](#), 18 February 2009) - [Back↑](#)

FSA Consults Further On Change To With-Profits Rules

On 23 February 2009 the FSA published a consultation paper (**CP**) relating to compensation and redress payments arising from operational failures including mis-selling that life insurance companies may currently charge to their with-profits funds. These proposals relate specifically to proprietary firms rather than mutuals.

As the accompanying press release explains, under current rules a firm may pay compensation and redress from assets attributable to shareholders or from the inherited estate of its with-profits fund (if any). In a consultation paper issued last year ([CP08/11](#)) the FSA proposed that the shareholders alone should meet the cost of future compensation and redress payments as the current rules may not lead to the fair treatment of policyholders.

The FSA is now proposing that the amended rules should only apply to compensation and redress payments resulting from events that take place after the rule comes into force. This will provisionally be the end of July.



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The consultation will close on 22 May 2009. The FSA will then publish a policy statement and will finalise draft rules.

[Consultation Paper 09/9](#): With-profit funds - compensation and redress: Further consultation, feedback on CP08/11 and draft Handbook text, can be found on the FSA website.

(Source: [FSA press release](#), [FSA/PN/030/2009](#), 23 February 2009) - [Back↑](#)

[HM Treasury And FSA Response To EU Consultation On Hedge Funds](#)

On 10 February 2009 HM Treasury and FSA published their joint response to the European Commission's consultation on hedge funds.

In summary, HM Treasury and the FSA argue that a re-examination of the EU regulatory framework that applies both to hedge funds and hedge fund managers is appropriate. However, EU legislation aimed at hedge fund activity alone is not likely to be the right means to deliver the necessary improvements.

Please click [here](#) for a copy of the response. - [Back↑](#)

[NAPF Calls For The Debt Management Office To Use A Range Of Gilt Issue Mechanisms](#)

Welcoming the Government's medium term strategy to issue more long-dated, indexed-linked gilt to help pension funds through the recession, the National Association of Pension Funds (**NAPF**) has called for a range of distribution methods to be available to help meet pension funds needs. NAPF also recommended using a combination of mini-tenders, syndication and direct placement of gilts in order to ensure that pension funds' demand for long-dated gilts can be successfully met. It also suggested the Debt Management Office be given a more flexible remit which would allow it to respond better to pension fund demand for these gilts. The NAPF's to the response can be found at:

<http://www.napf.co.uk/policy/recentreports.cfm>

The DMO consultation can be found at:

http://www.dmo.gov.uk/index.aspx?page=Gilts/consultation_papers

(Source: [NAPF press release](#), 4 February 2009) - [Back↑](#)

[UCITS IV: CESR Launches Call For Evidence](#)

On 17 February 2009 CEIOPS published a call for evidence following the European Commission's request for assistance on the content of the implementing measures to be taken pursuant to the revised UCITS Directive.

On 13 January 2009 the European Parliament adopted in plenary session a proposal for a Directive containing amendments to the UCITS Directive (85/611/EEC). This followed approval by the Council of an identical compromise text at a COREPER meeting of 17 December 2008 (the Council's final approval is expected in April/May). As the Directive imposes a strict deadline (1 July 2010) for adoption of certain level 2 measures, the Commission feels it is important for CESR to start its work as soon as possible.

All contributions can be submitted online via CESR's website under the heading 'Consultations' by 31 March 2009.

Please click [here](#) for a copy of the call for evidence. (Source: [CESR, website](#), 17 February 2009) - [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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