

The following Compliance articles are for the week ending 11 September 2009.

COMMENTARY

UPDATE ON LEHMANS-BACKED STRUCTURED PRODUCTS

Following the collapse of Lehman Brothers, the Financial Services Authority (FSA) and Financial Ombudsman Service (FOS) have been looking at the potential detriment this has caused for investors in the UK structured products market.

In May, the FSA and Ombudsman agreed that the issues relating to Lehmans-backed structured products should be considered under the "Wider Implications" process, in order to allow the FSA to explore all options to achieve the best outcome for consumers.

The FSA has now gained enough information from its review to enable it to move forward and believes it is now appropriate to lift the hold on individual adjudications of complaints on an immediate basis.

The FSA will report back on the outcomes of its review in more detail in October but confirms that it will be taking action against firms as a result of the findings of the review.

Dan Waters, Retail Policy Director at the FSA, said: "This is a hugely complex area and during our review we have looked at promotional literature, clarity of information, quality of advice, sales systems and controls, involving plan managers, providers and advisers. There is still much for us to do and we will be outlining some of the findings of the review next month in more detail, but I can confirm that we have found serious issues and will be taking action against firms. In light of the progress we have made, we believe our regulatory action can now progress alongside the Ombudsman adjudicating on individual complaints without prejudicing either, so individual cases referred to the Ombudsman can now proceed."

Source: FSA Website

FINANCIAL CRIME NEWSLETTER

Philip Robinson, Director of the FSA Financial Crime and Intelligence Division announced that he will be stepping down due to retirement at the end of the year and outlined plans for the succession which shows Margaret Cole taking over the newly combined Enforcement and Financial Crime Division, reporting direct to Hector Sants.

The Newsletter covers the following topics and a short survey to ascertain feedback on what readers think of the helpfulness of the newsletter:

News articles

- FSA Annual Financial Crime Conference
- Thematic projects: sanctions and off-shoring
- Illegal Money lending
- National Fraud Authority: National Fraud Strategy
- Measuring the scale and impact of financial crime

News in brief

- Changes to FSA Handbook
- Anti-bribery and corruption in commercial insurance brokers: interim findings

- First criminal prosecution for insider dealing
- Morgan Stanley trader mismarking
- Share sale scam clampdown
- HSBC information security failings
- CIFAS fraud trends
- Draft Bribery Bill

Source: FSA Website

LAUNCH OF PENSION CALCULATOR

Almost one third of people may face financial difficulties when they retire, according to new research, and today the FSA and Association of British Insurers (ABI) are launching a tool to help.

The online pension calculator is designed to help people gauge how much they will have to live on in retirement. The calculator's launch comes as new figures published today by the FSA reveal 31% of people may suffer an increase in financial problems when they enter retirement.

The research examines how life events such as unemployment, bereavement and household status affect levels of financial capability.

Planning for financial security in retirement is especially important in the current economic climate, as more people than ever are facing difficult financial situations and finding their financial capability skills to be insufficient.

The pension calculator, on the "Moneymadeclear" website, enables anyone with a pension fund from a previous employer, those paying into a new pension scheme, or people without any existing pension at all, to calculate their potential retirement income based upon regular payments.

Further functionality will be added to the calculator in the future.

With personal circumstances frequently changing, users are also able to adapt the criteria to suit changing circumstances – for example, to see how their potential future income can be affected by retiring earlier or contributing more.

Source: FSA Website

FIRST CRIMINAL PROSECUTION FOR CHANGE OF CONTROL FAILURES

The sole director of a mortgage broker, pleaded guilty at City of Westminster Magistrates Court to charges of acquiring a controlling interest in the firm without giving the FSA prior notice of the acquisition and of making false or misleading statements to the FSA.

This is the first criminal prosecution brought by the FSA for failing to notify the regulator about a change in control at a regulated firm.

The director was fined £3,000 for acquiring a controlling interest in a regulated firm without giving the FSA prior notice. He was also fined £3,000 for making false and misleading statements to the FSA and ordered to make a contribution towards the FSA's costs.

District Judge Purdy, delivering the verdict, said: "You chose to circumvent the process by not notifying the FSA because you must have known that it would mean your application would be refused. These provisions are designed to protect the public from those individuals who are not fit and proper. This sentence will act as deterrence to others."

Margaret Cole, FSA Director of Enforcement, said: "The FSA must be notified of any changes in control at a firm so we can assess the suitability of the individuals taking over. Being able to check the identity and integrity of a controller is central to proper regulation of the financial services industry and to our statutory duty to protect consumers. [His] failure to notify us of his acquisition of control at the firm was serious enough in itself. This was made worse by the false and misleading statements he made in his applications to the FSA about the control change and his former employment in the financial services industry. This case sends out a strong warning that the FSA will use all its powers, including criminal, against people who act in this way."

Source: FSA Website

SPEECH ON STRATEGY AND APPROACH TO FIGHTING FRAUD

Margaret Cole, Director of Enforcement, FSA, addressed the Fraud Advisory Panel annual general meeting.

"Estimating the size of share fraud in the UK is difficult. We have heard estimates that range from a few tens of millions of pounds, up to a billion pounds. We do know that we're seeing larger frauds than ever before.

We have opened 5 investigations in the last few months, involving ponzi, deposit taking and property collective investment schemes. Consumer losses across the 5 cases could total £170m."

The speech looks back on progress in prosecutions and strengthening the Enforcement Division in terms of working model, resource and technology and looks forward to pending prosecutions and the trends for the future.

Source: FSA Website

WELCOMES GOVERNMENT SCHEME TO HELP BORROWERS

The Council of Mortgage Lenders (CML) welcomed the launch of a new national campaign by the government to provide information to help home-owners struggling to meet their mortgage payments.

The information campaign, which seeks to help borrowers stay in their homes by taking control of their payment problems, reinforces key messages from lenders to mortgage customers:

- Don't ignore the problem
- Get help by talking to your lender
- It's never too early to contact your lender to talk about your worries

Endorsing the launch of today's campaign, the CML's Director General Michael Coogan said: "We welcome this additional initiative by the government to remind borrowers to speak to their lender at the earliest possible opportunity, and preferably as soon as they think they might miss a payment. Avoiding possession is as important to lenders as it is to borrowers, and an early warning will help reduce the risk of this worst-case outcome. Most customers who are committed to resolving their problems and working with their lender can successfully manage their way through a period of short-term payment difficulty and avoid possession."

Source: CML Website

MORTGAGE RATES

Following the rate hold decision by the Bank of England's (BoE) Monetary Policy Committee, the CML points out that mortgage rates are set with reference to a complex range of factors, not just one or two as some recent commentary has tended to imply.

Lenders set rates taking account of their underlying cost of funds (whether from wholesale sources or from retail savers), the cost of structuring the particular product they are offering, the cost of matching the maturity of their lending to the maturity of their funding, the costs of administering the account, the costs of holding the capital needed against the lending being done, and the risk they perceive inherent in the loan.

In addition to these considerations about the individual loan, lenders also have to take account of their business as a whole, some of which is subject to expenses and costs that could not have been foreseen before the credit crunch and which affect the new business being written now.

Source: CML Website

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