

December Newsletter  
Issue 3/2008

Editorial

The case of Fryett and Baines is an interesting one in that it sets out the FSA's position where potentially an overseas insurer is carrying out regulated activities in the UK without the appropriate authorisation and therefore is breaching the General Prohibition.

Fryett encouraged underwriting agents to effect contracts of insurance in the UK on behalf of CIC Greece and CIC Costa Rica. Therefore they were carrying out regulated activities in the UK without the appropriate authorisation and therefore breaching the General Prohibition.

Therefore, where brokers use overseas security, they need to be aware of the authorisation status in the UK of the insurer and also look at their own actions to see whether they are inadvertently acting as an agent of that insurer in the UK.

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Further information on the issues in this newsletter, or any other issues which concern your business, can be obtained from

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**Directors banned for client money breaches**

The FSA has banned two directors of an insurance broker for failing to ensure that their firm complied with FSA client money rules.

Roger Muse and his son Daniel Muse are prohibited for three years from performing any significant influence functions at firms carrying out regulated financial activities. This order will prevent them from running or managing a regulated business whether as sole traders, employees or appointed representatives of another firm.

Roger Muse and Daniel Muse failed to ensure that:

- proper records were kept relating to the firm's transactions and commitments in respect of client money;
- client money calculations were performed at the firm and that the firm kept a record of how it performed the calculations;
- the firm dealt with any shortfall or surplus in client money in accordance with the FSA's rules relating to client money;
- written notice was provided to the firm's bank that monies in its client bank account were held by the firm as trustee; and
- the firm notified the FSA that it was not performing the client money calculations.

**Directors banned for illegal trading**

The FSA has banned Stephen Fryett and Richard Baines from performing any role in relation to regulated financial services activities.

Mr Fryett acted as a Director of CIC Greece and was also involved with CIC Costa Rica, both of which were not authorised to carry out insurance business in the UK. Despite knowing this he encouraged a number of UK insurance brokers and underwriting

agents to issue insurance contracts. Insureyourshop.com Limited, run by Richard Baines, was one of those UK insurance brokers and it issued approximately 1800 insurance contracts, including employer's liability insurance, purportedly underwritten by CIC Greece or CIC Costa Rica.

As a result the customers, including construction firms and fast food outlets such as Chinese, kebab and pizza takeaways and fish and chip shops, were not properly insured and risked substantial loss and, even prosecution because they did not have employers' liability insurance.

**What good looks like – a speech by Sarah Wilson**

Here are some excerpts of what Sarah Wilson said at the Making it Happen Roadshow ICAEW Financial Services Faculty on 18 November.

"What characterises a firm that consistently treats its customers fairly? In June, we said that such firms will be able to:

- demonstrate that senior management have instilled a culture whereby they understand what the fair treatment of customers means; where they expect their staff to achieve this at all times; and where (a relatively small number of) errors are promptly found, put right and learned from;
- be appropriately and accurately measuring performance against all customer fairness issues materially relevant to their business, and be acting on the results;
- be demonstrating through those measures that they are delivering fair outcomes; and
- have no serious failings – whether seen through MI or known to us directly – including in areas of particular regulatory

interest previously publicised by the FSA.

Going forward we will form our view of a firm's delivery of the TCF Outcomes with reference to that firm's management information (where we believe it is robust); direct testing of the consumer experience (for example through call listening, mystery shopping, file reviews, and reviews of consumer communications); and examination of any other relevant, up-to-date evidence (such as the results of recent thematic work). After many years of work, we would expect you to be delivering a very strong performance. This does not mean 100% delivery on all occasions, but – on rare occasions when things go wrong – we would expect senior management to have put in place clear accountabilities and timelines for taking action."

## **GABRIEL**

The FSA has developed a new reporting system named GABRIEL (Gathering Better Regulatory Information Electronically). GABRIEL will be replacing the reporting part of the Firms Online system from 1 October this year; and will become the FSA's central system for the collection, validation and storage of regulatory data. It has already provided an information pack but for those of you with year ends on or after 31 October you will have to report under the new system.

New usernames and passwords will have to be issued so make sure that you give yourselves enough time to set up the new arrangements. The good news is you should be sent an activation e-mail.

The following changes have been made from Firms-On-Line:

- Certain redundant questions have been removed
- certain questions have been made mandatory that were previously optional
- the layout and the wording of certain sections has been altered

- the RMAR has been tailored so that certain questions will only appear to the firms that should complete them.

[http://fsa.gov.uk/smallfirms/regulatory\\_requirements/using\\_gabriel/index.shtml](http://fsa.gov.uk/smallfirms/regulatory_requirements/using_gabriel/index.shtml)

## **Stress and scenario testing**

The FSA recently issued a paper on stress and scenario testing. Whilst this paper was not designed for insurance brokers (but does apply to insurers) the principles of stress and scenario testing can still apply to all entities. If firms haven't thought about it already, perhaps they should be thinking about the effects on the business if certain events took place. For example a drop in insurance rates, an increase in expenses, the loss of a major client or exchange rate fluctuations. All these will have an effect on the balance sheet of the firm.

In the current, uncertain, financial climate perhaps it would be prudent to carry out simple exercises to look at the effects on the business if a particular scenario took place.

## **Credit write backs**

After many months of waiting the FSA has eventually produced the document 'Credit write-backs' – an articulation of the FSA's position. Whilst it didn't get too much prominence on the FSA website there was an accompanied 'Dear CEO' letter as well as the LMBC putting something out on its website. The FSA has stated that the type of evidence that might reasonably be expected is as follows:

- satisfying auditors as to the appropriateness of any credit write-back in the context of fair presentation of financial statements in line with relevant GAAP;
- independent written legal opinion on the appropriateness of any credit write back;
- confirmation that documented credit write-back procedures

which have been approved by the Board have been complied with;

- copies of written communications to insurance creditors or their agents;
- details of the age of the balances, i.e. when were they last active; and
- Board resolution to confirm that the write back is not essential for the regulated entity to meet Threshold Condition 4.

But firms take note: the FSA has noted the following "Where a firm has significant uncorrelated or unmatched cash positions, in the first instance the implication is that a firm's systems and controls are ineffective."

The full version can be found at the following link:

[http://www.fsa.gov.uk/pubs/other/write\\_backs.pdf](http://www.fsa.gov.uk/pubs/other/write_backs.pdf).

## **Commission disclosure**

FSA has released its feedback statement on Transparency, disclosure, conflicts of interest in the commercial insurance market. Discussions have been taking place between the FSA and various insurance trade associations about the outcomes needed to improve transparency for customers. The associations have committed to producing industry guidance and to promote it amongst intermediaries.

The FSA has welcomed this as a "positive and significant step forward". It will review the situation in 2010/11 to see if customer outcomes have been achieved.

**HAPPY CHRISTMAS TO  
ALL OUR READERS**