



June 2009

InSure

This month's roundup of developments affecting the insurance industry sees the FSA publishing feedback to CP "The Path To Solvency II", the European Commission proposing a new supervisory architecture in Europe, the FMLC raising concerns about the Banking Act, ...

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General News

A New Structure For European And Global Financial Supervision

On 18 May 2009 the Bank of International Settlement published a speech given by Dr Nout Wellink, president of the Netherlands Bank and chairman of the Basel Committee on Banking Supervision, at the 37th Economics Conference in Vienna, on 14 May 2009.

In his speech Mr. Wellink outlined the new structure for European and global financial supervision. He argues that in an European context, the proposals of the De Larosière group are a good point of departure, though specific amendments are required. To improve macro-prudential supervision, the European Systemic Risk Council should be set up as soon as possible. Open issues about its mandate and institutional design should be resolved. Regarding micro-prudential supervision, he is in favour of more centralised European decision-making, but only if the necessary requirements for such a leap forward are fulfilled.

In a global context, the scope of supervision should be broadened and include all financial systemically relevant institutions. In line with the G20 declaration, the functioning of colleges of supervisors should be supported.

Please click [here](#) for a copy of the speech. (Source: *BIS, speech by Dr Nout Wellink, 14 May 2009*) - [Back↑](#)

Report On The Future Of The Financial Services Industry In The UK

On 7 May 2009 HM Treasury published a report from UK based financial services leaders to the Government entitled "*UK international financial services – the future*"

The expert group was asked by the Chancellor of the Exchequer to consider how the UK can maintain and develop its international competitiveness in financial services, taking a long-term view. The objective was to propose a framework that would apply to the UK over the next 10 to 15 years. The members of the group



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were drawn from across the financial and related professional services industries.

In summary, the group recommended that the Government and the industry should:

- establish a clear direction for the UK international financial services industry in partnership with the wider economy and overseas markets;
- reaffirm the UK's reputation for competence, responsibility and trustworthiness; and
- ensure effective delivery of these recommendations.

Please click [here](#) for a copy of the report. (Source: *HM Treasury, UK international financial services – the future, May 2009*) - [Back↑](#)

[BoE Speech On 'The Repertoire Of Official Sector Interventions In The Financial System: Last Resort Lending, Market-Making, And Capital'](#)

In a speech given on 28 May 2009 at the Bank of Japan's 2009 International Conference in Tokyo, Paul Tucker – Deputy Governor for Financial Stability and a member of the Monetary Policy Committee – discussed the role the authorities can and might play in the provision of liquidity and capital support to the financial system. He sets out the principles underpinning the Bank of England's provision of liquidity insurance to banks; and some initial thoughts on principles for other support operations.

A full transcript of the speech can be found at the BoE website:

[The Repertoire of Official Sector Interventions in the Financial System: Last Resort Lending, Market-Making, and Capital](#)

(Source: *BoE [press release](#), speech by Paul Tucker, 28 May 2009*) - [Back↑](#)

[FOS Publishes Annual Review Of Personal Finance Disputes](#)

On the 27 May 2009 the FOS published its annual review for the 2008/09 financial year. While half of the total number of disputes related to six of the UK's largest financial services groups – broadly in proportion to the amount of business they carry out with consumers – more than 95% of businesses covered by

the ombudsman service had no complaint referred to the service during the year.

Statistics from the annual review show:

- a three-fold increase in complaints about payment protection insurance (**PPI**) – following a five-fold increase in the previous year;
- complaints about motor, household and travel insurance rising – but complaints about health insurance levelling off;
- complaints about investment bonds more than doubling – but pension complaints falling by 9%;
- 26% of cases referred on behalf of consumers by commercial claims-management companies (a 40% increase on the previous year);
- the proportion of complaints from "blue-collar" workers increasing by 17% – with complaints from people from professional backgrounds ("white-collar") falling by 18% in the last two years;
- 74% of adults said they had heard of the Financial Ombudsman Service – with awareness of the ombudsman highest in the North and South East and lowest in Northern Ireland; and
- the average cost of resolving a dispute at the ombudsman service has fallen 4% year-on-year to £508.

The annual review can be found via the following link: [annual review 2008/09](#)

(Source: *FOS, [press release](#), 27 May 2009*) - [Back↑](#)

New Legislation & Consultations

[European Commission Seeks Advice On Insurance Guarantee Scheme](#)

On 28 May 2009 the European Commission (**Commission**) published a letter which it has sent to the chairman of CEIOPS earlier in May. The letter is in relation to the Commission's communication of 4 March



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2009 "Driving European recovery" on insurance guarantee schemes.

The Commission asks CEIOPS to provide it with an analysis of the feasibility of the design options of an European solution on insurance guarantee schemes.

Taking into account the CEIOPS input, the Commission will then adopt a White Paper on Insurance Guarantees Schemes by the end of this year. The White Paper will set out a European solution for insurance guarantee schemes and propose appropriate follow-up measures.

(Source: *European Commission, letter of 5 May 2009 to Dr. Thomas Steffen, Chairman of CEIOPS*) - [Back](#)

JCFC Consults On Financial Conglomerates Directive

On 28 May the CEBS and CEIOPS through the Joint Committee on Financial Conglomerates (JCFC), published the formal consultation on its proposed advice to the European Commission on its review of the Financial Conglomerates Directive (FCD).

One of the major proposals from the JCFC is to propose a change to the definition of holding companies to ensure that the sectoral directives are supplemented, in the case of groups with cross-sector activities, and that this is appropriately applied, based on the risk profile of the group.

Further CEBS and CEIOPS, through JCFC, will hold a joint public hearing on 8 July 2009 from 9:30-12:00 CET at CEIOPS premises in Frankfurt.

Direct hyperlink to Consultation Paper:

<https://www.ceiops.eu/media/files/consultation/s/consultationpapers/FCD-Review/JCFC-Consultation-Paper-on-FCD-Review.pdf>

Direct hyperlink to Template for Comments:

<https://www.ceiops.eu/media/files/consultation/s/consultationpapers/FCD-Review/Template-for-comment-FCD-review-consultation.doc>

Direct hyperlink to CEIOPS' Public Hearings webpage:

<http://www.ceiops.eu/index.php?option=content&task=view&id=546>

(Source: *CEIOPS, press release: http://www.ceiops.eu/content/view/26/30/, 28 May 2009*) - [Back](#)

European Commission Publishes Responses To The De Larosière Report

On 14 May 2009 the European Commission published a summary of public submissions received on the proposals of the de Larosière report regarding financial supervision in Europe

Whilst the general reaction to the report was positive, many noted that more details are needed on the powers and composition of both macro and micro-supervisors in order to reach definitive positions.

Please click [here](#) for copy of the report. (Source: *Summary of public submissions received on the proposals of the de Larosière report regarding financial supervision in Europe, 14 May 2009*) - [Back](#)

The FSA Publishes Handbook Notice Together With The Handbook Development Newsletter

On 28 May 2009 the FSA published Handbook Notice 88 together with the Handbook Development Newsletter No. 111.

The [Handbook Notice](#) sets out changes to the FSA Handbook made by the FSA Board in relation to:

- the FSA periodic fees and FOS general levies for 2009/2010 (FSA 2009/27);
- the periodic fees tariff bases for payment services institutions (FSA 2009/28);
- the Compensation sourcebook in order to reflect changes to the Deposit Guarantee Schemes Directive (FSA 2009/29); and
- to the regulations governing the recognition requirements for recognised investment exchanges and recognised clearing houses (FSA 2009/30).

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



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- a link to our Events web page which provides information about forthcoming conferences and training events.

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OECD Consults On General Guidance For Financial Regulation

On 18 May 2009 the OECD published for consultation draft general guidance on a policy framework for effective and efficient financial regulation. Major topics include:

- financial landscape;
- policy objectives;
- policy instruments; and
- system design and implementation.

Comments should be provided by 12 June 2009. Please click [here](#) for a copy of the publication. (Source: *OECD, 18 May 2009*) - [Back](#) ↕

Regulatory Developments

The Path To Solvency II

On 6 May 2009 the FSA published Feedback Statement FS09/01 (**FS**). This FS summarises the comments received to the questions the FSA posed in the Discussion Paper "*Insurance Risk Management: The Path to Solvency II (DP08/4)*" and gives the FSA's responses to them.

The FSA stresses that it is essential for the UK insurance industry to fully engage now in preparing for the new Solvency II regime. If firms are yet to do so, senior management should consider now the implications for their business and start planning immediately to ensure compliance with the new rules.

Alongside the responses to comments received, the FSA provides an update to the messages in DP08/4 in light of the Solvency II Directive as adopted which should help firms with their implementation planning.

Along with the publication of this FS the FSA plans to communicate further with stakeholders as the implementation process continues to progress. Chapter 7 of the paper provides details of these plans with

respect to forthcoming thematic reviews. At a European level the FSA has also included the CEIOPS consultation schedule for 2009, these being the Consultation Papers that have and are scheduled to be published on the advice to the European Commission on Level 2 implementing measures.

Please click [here](#) for a copy of the FS. (Source: *FSA newsletter to Feedback Statement 09/01, May 2009*) - [Back](#) ↕

European Commission Proposes Stronger Financial Supervision In Europe

On 27 May 2009 the European Commission (**Commission**) announced the adoption of a Communication on Financial Supervision in Europe. The Communication proposes a set of reforms to the current architecture of financial services committees, with the creation of a new European Systemic Risk Council (**ESRC**) and European System of Financial Supervisors (**ESFS**), composed of new European Supervisory Authorities. Legislation to embody these proposals will follow in the autumn. The Commission also invites all interested parties to submit their reactions on the Communication before 15 July 2009.

The accompanying press release explains that the financial supervision package proposed in this Communication involves two key elements:

- The ESRC should monitor and assess risks to the stability of the financial system as a whole ("macro-prudential supervision"). The ESRC will provide early warning of systemic risks that may be building up and, where necessary, recommendations for action to deal with these risks. The creation of the ESRC would address one of the fundamental weaknesses highlighted by this crisis, which is the exposure of the financial system to interconnected, complex, sectoral and cross-sectoral systemic risks.
- The ESFS should supervise individual financial institutions ("micro-prudential supervision"), and consists of a robust network of national financial supervisors working in tandem with new European Supervisory Authorities, created by the transformation of existing Committees for the banking securities and insurance and occupational pensions sectors. The ESFS is to be built on shared and mutually-reinforcing responsibilities, combining



nationally-based supervision of firms with specific tasks at the European level. It aims to foster harmonised rules and coherent supervisory practice and enforcement. This network should be based on the principles of partnership, flexibility and subsidiarity and should aim to enhance trust between national supervisors by ensuring, inter alia, that host supervisors have an appropriate say in setting financial stability and investor protection policies so that cross-border risks can be addressed more effectively.

More information is available at: [MEMO/09/251](#)

(Source: *European Commission [press release](#), IP/09/836, Brussels, 27 May 2009*) - [Back↑](#)

[European Commission Outlines Work Streams For Insurance Industry](#)

The European Commission published a speech given by Charlie McCreevy, European Commissioner for Internal Market and Services Looking at the Friends First Conference "*Today's World for Financial Advisors*" Dublin, on 11 May 2009.

Mr. McCreevy highlighted a number of work streams – in particular those affecting the financial services sector – that he believes will make for stronger, more transparent financial markets. He stressed that regulating entails finding a balance between protecting consumers and facilitating competition, and that this underpins all the Commission's work. The work streams focus on:

- effective supervision;
- Solvency II; and
- information to consumers and fair treatment during sales (review of the Insurance Mediation Directive).

(Source: *European Commission [rapid press release](#) SPEECH/09/244, 11 May 2009*) - [Back↑](#)

[FSA Statement On Its Use Of Stress Tests](#)

On 28 May 2009 the FSA published a statement on its use of stress tests. This statement clarifies how stress tests have been used within the UK, provides information on the macro economic parameters currently being used, and describes how the UK approach fits within the EU-wide stress testing exercise on the aggregate banking system being co-ordinated by

the Committee of European Banking Supervisors (**CEBS**).

(Source: *FSA [statement](#), FSA/PN/068/2009, 28 May 2009*) - [Back↑](#)

General Legal Issues

[FMLC Raises Concerns About The Banking Act](#)

The Financial Markets Law Committee (**FMLC**) published a letter on its website which it has sent to the Banking Reform Team at HM Treasury. The letter is dated 28 April 2009.

In its letter the FMLC raises various concerns about the legal certainty of the Banking Act 2009 and related legislation. In particular FMLC is concerned,

- that the Banking Act 2009 potentially applies to insurance companies;
- that under section 34(7) of the Banking Act it is possible that trust arrangements relating to a bond could be modified or terminated with potentially adverse consequences for bond holders and other interested parties;
- about the scope of the Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009; and
- about the interaction between the newly created Insolvency and Administration Rules under the Banking Act and the work of the Insolvency Rules Committee which was set up by the Insolvency Service.

Please click [here](#) for a copy of the letter. (Source: *FMLC letter to the HM Treasury Banking Reform Team, 28 April 2009*) - [Back↑](#)

[Corporate Governance And Pay In The City](#)

On 15 May 2009 the House of Commons Treasury Committee (**Committee**) published a report entitled "*Reforming corporate governance and pay in the City*".

This report is the third in a series on the banking crisis. The Committee focuses on remuneration in the City of London, as well as on the nexus of private actors - including non-executive directors, institutional shareholders, credit rating agencies, auditors, the



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media - who are supposed to act as a check on, and balance to, senior managers and the executive boards of banks.

Please click [here](#) for a copy of the report. (Source: *House of Commons Treasury Committee, 12 May 2009*) - [Back↑](#)

Cases

[Insurancewide.Com Services Ltd V Revenue And Customs Commissioners; Revenue And Customs Commissioners V Trader Media Group Ltd](#)

The High Court had to decide whether the provision of such a referral or introductory service in which the provider simply channels customers, who are attracted to its website because of its reputation as a facilitator for the obtaining of insurance services and which plays no part in negotiating the terms of any contracts of

insurance which ultimately result, or in attempting to do so, is thereby constituted an insurance broker or insurance agent, providing the services of an insurance intermediary so as to bring itself within the exemption from VAT provided for by Article 13B of the Sixth Directive and Schedule 9 Group 2 Item 4 of VATA.

On 15 May 2009 the High Court ruled that the act of introduction was sufficient to render a trader, an insurance agent and/or insurance broker and/or intermediary within the meaning of either article 13B of the Sixth VAT Directive (EEC) 77/388 and/or Schedule 9, Group 2, Item 4 of the Value Added Tax Act 1994 (**Act**) and to constitute one or more of the services described in Sch 9, Group 2, Note 1 of the Act.

Please click [here](#) for a transcript of the case.

(Source: *Chancery Division, (Sir Edward Evans-Lombe sitting as a judge of the High Court), 15 May 2009*) - [Back↑](#)

If you wish to discuss any of the above, or for more information, please contact one of the Insurance and Reinsurance Group



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