



October 2008

InSure

This month's edition sees the FSA kick off the implementation of Solvency II, plans for a new VAT regime for insurers, the FSA publishing examples of treating customers fairly, McCreevy talking about group supervision,...

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General News

CEBS Statement On Current Crisis

On 23 September 2008 the Committee of European Banking Supervisors (**CEBS**) issued a statement on the current crisis situation.

The statement places emphasis on the role of banking supervisors and the need to increase communication and co-operation in order to cope with the current crises in the financial markets. Supervisors are to closely monitor developments, including in the inter-bank market and banks' individual exposures to counterparties at risk.

In relation to Lehman Brothers, CEBS clarified that European banks' exposures are manageable and mostly non-material, compared to the banks' total assets and capital base.

With respect to EU banks' exposures to AIG, CEBS pointed out that given the US government support provided to AIG, EU bank supervisors' view that this counterparty risk can be sufficiently mitigated.

Please click [here](#) for a copy of the statement.

(Source: *CEBS Statement on the Current Crisis Situation, 23 September 2008*)

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Economic Slowdown Encourages More Companies To Take Up Trade Credit Insurance Claims ABI

Figures published by the ABI show that the number of companies taking out credit insurance increased by 10% during 2007. This is the third consecutive year that the market has grown, with a 40% rise since 2004. This shows that more companies are relying on trade credit insurance to help them navigate risk and protect them during an economic slowdown.

Trade Credit Insurance is designed to protect businesses against bad debts caused by customer insolvency or payment default. In addition, trade credit insurers commonly offer their clients a range of credit



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management services, such as assessing the creditworthiness of potential customers, and debt collection. So trade credit insurers not only protect firms from customer insolvency, but through an ongoing relationship with their policyholder minimise insolvency risk.

Please click [here](#) for a copy of the ABI press release and click here to access the [Trade credit insurance statistics](#).

(Source: *ABI press release, Ref: 61/08, 04 September 2008*)

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FSA Publishes Data On Pure Protection Contracts Sales

In September the FSA published its annual "Pure Protection Contracts Product Sales Data (PSD) Trends Report September 2008".

The report covers reported pure protection contract sales transacted between 1 April 2007 and 31 March 2008. Highlights include:

- **Sales:** Over 668,000 pure protection contracts were sold between April 2007 and March 2008, representing a fall of 20% on the previous year (2006/07 – 833,000).

Sales of standalone Critical Illness products fell by 49% from 86,000 in 2006/07 to 44,000 in 2007/08.

72% of all pure protection contract sales reported on PSD were Critical Illness Products sold as a Rider Benefit (2006/07 Products – 72%).

52% of Critical Illness Sold as a Rider Benefit contracts were provided by the top five firms (2006/07 – 58%).

- **Selling Channels:** 61% of all Pure Protection contracts were sold through financial advisers and brokers (2006/07 – 56%).
- **Advice:** 93% of all pure protection contracts were sold on an advised basis (2006/07 – 86%).
- **Premium:** 95% of all pure protection contracts were sold as regular premium products (2006/07 – 97%).

Please click [here](#) for a copy of the PSD.

(Source: *FSA, Pure Protection Contracts Product Sales Data, Trends Report September 2008*)

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Britons are being misled into taking out Payment Protection Insurance (PPI) on their Credit Cards

In a press release published on 10 September 2008 Which? the consumer association claims that almost 1.3 million people mistakenly believed that taking out payment protection insurance (PPI) would improve their chances of being approved for a credit card. According to their research, over 9.8 million people in the UK have credit cards with PPI attached. Of these, 13 per cent wrongly believed that getting PPI was a condition of their credit card deal or that their application was more likely to be accepted if they had it.

Credit card PPI is worth more than £970m a year to the industry and each policy costs consumers an average of £127.60. In a poll, 28% were told by their provider that having PPI was a good idea.

Please click [here](#) for a copy of the press release.

(Source: *Which? press release, 10 September 2008*)

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New Legislation & Consultations

FSA's Kick Off to Solvency II

On 24 September 2008 the FSA published "Insurance Risk Management: The path to Solvency 08/4." The Discussion Paper (DP) represents the start of a programme of preparation for Solvency II for the UK insurance market. It highlights and explains key elements of the Solvency II regime, and identifies the actions that insurers should presently be undertaking.

The DP aims to inform insurers by highlighting the key requirements of the Directive, and suggesting how insurers might progress their planning for implementation.

There is a feedback period to 31 December 2008, during which stakeholders are invited to provide their responses. The FSA intends to publish a feedback statement by March 2009. By that time, the FSA plans to contact all firms, asking them to identify the individual responsible for Solvency II, as well as to confirm their



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overall governance arrangements and implementation plans, including timelines and resources.

Please click [here](#) for a copy of the Discussion Paper.

(Source: FSA, [Newsletter 08/4](#), 24 September 2008)

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HM Treasury Proposes Changes To Financial Promotion Order

HM Treasury published a summary of responses to its consultation "Extending Employers' Freedoms: A Consultation on Facilitating Financial Promotions in the Workplace" (the Response to the Consultation) it conducted during 2006.

In relation to promoting insurance products HM Treasury suggests that employers should be provided with a specific new exemption from the financial promotion regime in relation to any communication which they make to their employees in relation to insurance products.

Following the publication of the Responses to the Consultation HM Treasury published a Second consultation on FSMA 2000 (Financial Promotion) (Amendment) Order 2008, which proposes additional changes to the Financial Promotion Regime; including that the exemptions under the regime should be extended to cover communications made by third party administrators in relation to work-related insurance products.

The consultation started on 19 September 2008 and closes on 12 December 2008.

Please click [here](#) for a copy of the summary of responses.

(Source: HM Treasury, *Summary of Responses*, 09 September 2008) - [Back](#) ↑

Please click [here](#) for a copy of the consultation.

(Source: HM Treasury, *website consultations and legislation*, 19 September 2008)

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ABI Response To The Retail Distribution Review

On 23 September 2008 the Association of British Insurers (**ABI**) published its response to the FSA's interim feedback statement on the Retail Distribution Review.

Stephen Haddrill, the ABI's Director General, said:

"The FSA is on the right track with its proposals for clearer payment structures for advisers, and increased professionalism. But it must rethink its ideas on who will be authorised to provide financial advice. We believe that all suitably professional and transparently remunerated advisers should be allowed to provide advice and give product recommendations – not just those who offer products from the whole market. We must not risk reducing consumer access to high quality advice by restricting its supply."

Please click [here](#) for the ABI press release and click [here](#) for ABI's response to the FSA's Interim Feedback Statement on the RDR.

(Source: ABI press release, 23 September 2008, Ref: 62/08)

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Regulatory Developments

FSA Publishes Examples Of Treating Customer Fairly

On 25 September 2008 the FSA published on its website for small friendly societies and small insurance companies examples of actions taken by insurers to ensure they focus on the fair treatment of their customers.

The examples are based on the [six consumer outcomes](#):

- [Outcome 1](#) - Consumers can be confident that they are dealing with firms where the fair treatment of customers is central to the corporate culture.
- [Outcome 2](#) - Products and services marketed and sold in the retail market are designed to meet the needs of identified consumer groups and are targeted accordingly.
- [Outcome 3](#) - Consumers are provided with clear information and are kept appropriately informed before, during and after the point of sale.
- [Outcome 4](#) - Where consumers receive advice, the advice is suitable and takes account of their circumstances.



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- [Outcome 5](#) - Consumers are provided with products that perform as firms have led them to expect, and the associated service is of an acceptable standard and as they have been led to expect.
- [Outcome 6](#) - Consumers do not face unreasonable post-sale barriers imposed by firms to change product, switch provider, submit a claim or make a complaint.

The FSA has previously published a [guide to management information](#) that can help use management information to demonstrate a firms treating customers fairly.

(Source: *FSA Treating customers fairly in small friendly societies and small insurance companies*, 25 September 2008)
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FSA Update On Its Review Of The Sale Of PPI

The FSA [announced](#) that it will escalate its regulatory intervention on the sale of Payment Protection Insurance (PPI). This is due to the poor findings from its recent thematic review on the sale of PPI. The review included a mystery shopping programme that captured customer experiences of face-to-face branch sales of single premium PPI when sold alongside an unsecured personal loan. The results showed:

- very few customers were told that the cost of the payment protection would be added to the loan as a single premium and that interest would be charged on this amount;
- only half of customers said that they were told about the key limitations and exclusions of the policy - this is fundamental to establishing a customer's need and eligibility; and
- many customers were not told of both the monthly cost and total cost of their PPI - at the worst performing firms very few customers were given adequate information on the cost of their policy.

The FSA will publish a further update on the third phase of its thematic work in early 2009. The FSA is considering the Financial Ombudsman Service's (FOS) concerns, raised in its wider implications letter, about PPI complaints and it will be working with the FOS on the appropriate response to this serious matter, in the context of FSA's broader strategy.

Please click [here](#) for a copy of the FSA's update.

(Source: *FSA/PN/112/2008*, 30 September 2008)
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FSA undertaking on "Consequential Losses"

On September 2008 the FSA published an undertaking in relation to the use of the term "consequential losses" in travel insurance policies.

The FSA is entitled to challenge firms using terms which it views as unfair under the Unfair Terms in Consumer Contracts Regulations 1999 ('the Regulations'). The FSA reviews contract terms which are referred to it by consumers, enforcement bodies and consumer organisations.

The FSA is concerned about the use of the phrase 'consequential loss' in exclusion clauses. It believes that this is not plain and intelligible language, as it refers to an expression that has a legal meaning. The FSA is concerned that consumers would not understand this terminology, and therefore, what they are, and are not, covered for under the policy.

Please click [here](#) for a copy of the undertaking.

(Source: *FSA, Undertaking in relation to UK Insurance Limited*, 16 September 2008)
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FSA Insurance Sector Briefing

The FSA published the Insurance Sector Briefing: risk and capital management update. The purpose of this briefing is to provide an update and in particular to focus attention on some important aspects of insurers' risk and capital management in current market conditions. It includes:

- the integration of risk and capital management practices;
- the governance, controls and processes in place to respond to sharp changes in market conditions, such as a fall in equities or a counterparty failure; the valuation of illiquid assets, including asset backed securities;
- re-thinking and updating stress and scenario practices; and
- the effect of widening corporate bond spreads on the valuation of liabilities.



This sector briefing is not a Consultation Paper, and insurers should not interpret its contents as general guidance, however, the FSA welcomes comments.

Please click [here](#) for a copy of the Sector Briefing.

(Source: *Insurance Sector Briefing: Risk and capital management update, 11 September 2008*)

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European Parliament Resolution On Motor Insurance In Europe

On 2 September 2008 the European Parliament adopted a resolution on motor insurance in Europe. The European Parliament welcomed the European Commission's report in relation to Directive 2000/26/EC on insurance against civil liability in respect of the use of motor vehicles (Fourth Motor Insurance Directive). The importance of fully and effectively including all stakeholders, in particular consumers, in the process of consultation in the development of EU policy in this field was highlighted.

The European Parliament has called for the systematic involvement of consumer organisations representing victims in the process of evaluating the effectiveness of the systems in place in the Member States. The Commission was called on to continue to closely monitor the effective functioning of market mechanisms and to report periodically to Parliament on this.

Please click [here](#) for a copy of the resolution.

(Source: *European Parliament resolution of 2 September 2008 on certain issues relating to motor insurance (2007/2258(INI))*)

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McCreedy Speech On Insurance Group Supervision

On 11 September 2008 Charlie McCreedy, European Commissioner for Internal Market and Services, gave a speech during the EUROFI Conference in Nice on Cross-border Insurance Groups Supervision.

Mr McCreedy broadly talked about the progress that has been made during the last year in relation to the Solvency II project. He explained that discussions had now reached a very advanced stage in the European Parliament, with more than 820 draft amendments tabled before the summer. A ECON Committee vote was planned for early October and a vote in Plenary planned in November.

In relation to group supervision, the Commissioner highlighted that a high level of agreement on some key features of the proposed Directive had already been reached. In particular, wide support had been expressed from all sides in favour of a more intensive co-operation of supervisors within active colleges under the responsibility of the group supervisor. This would be complemented by a reinforced mediation role for CEIOPS, which is to provide an independent opinion in a number of circumstances where supervisors within the college have diverging views. Mr McCreedy envisages the introduction of a European dimension in the national mandate of supervisory authorities, with a view to ensuring that they will have due regard to the interests of policyholders in other Member States when carrying out their rights and duties under the new regime.

Please click [here](#) for a copy of the speech.

(Source: *European Commission, Rapid Press release, SPEECH/08/423, 11 September 2008*)

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General Legal Issues

New VAT Rules For Insurance And Financial Services

On 25 September 2008 the European Parliament adopted a resolution backing the European Commission's proposal for amending Directive 2006/112/EC on the common system of value added tax (VAT), as regards the treatment of insurance and financial services.

Currently most financial services are exempt from VAT, but the legislation setting out how this exemption works in detail dates from 1977 and is out of date. The increasing level of cross-border supply of such services within Europe's single market and the greater use of outsourcing of services to third world countries have led to situations not provided for in the original legislation, which means there is the possibility of legal uncertainty. The proposals include:

- *Clarifying the scope of the exemption:* A number of amendments seeks to clarify the scope of the VAT exemption and ensuring a level playing field between different Member States and different types of institutions.



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- *Option to apply tax:* This amendment would give financial services companies everywhere in the EU the option of taxation on their services, which would enable them to claim back VAT they pay on their expenses in providing those services (which is not possible if the ultimate supply is exempt).
- *Cost-sharing groups:* this proposal would allow for cost-sharing groups so economic operators can pool investments and re-distribute the costs for these investments exempt from VAT.

Please click [here](#) for a copy of the press release and click [here](#) for a copy of the resolution.

(Source: *European Parliament, Updating VAT rules on financial services, Economic and monetary affairs, 25 September 2008*)

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In finding for the claimant reinsured in a dispute with the defendant reinsurer over the existence and validity of a contract of reinsurance, the court commented, per curiam, that the wording of s 53(1) of the Marine Insurance Act 1906 was clear. It procured a situation in which, unless there was agreement to the contrary, the insurer might look to the broker for payment of the premium. There was no mention of the fictitious mechanism by which that result was achieved at common law. Nor was there any need for such a mention. Statute had produced the necessary result. An intelligent member of the Lloyd's marine insurance market looking at the Act in 1906 could not have been expected to read the fiction into the section with the consequence that, not only could an insurer obtain the premium from the broker but, without more, no policy could ever be treated as invalid for non-payment of the premium because the assured was always to be treated as having paid it. Section 53(1) meant what it said and no more.

Please click [here](#) for access to the case via LexisNexis.

(Source: *Queen's Bench Division, Commercial Court, His Honour Judge Chambers QC sitting as a High Court Judge*), 11 September 2008)

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Case Summaries

Allianz Insurance Co Egypt v Aigaion Insurance Co SA

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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