

The following Compliance articles are for the week ending 6 March 2009.

### **STOP PRESS - FSA Strengthens Enforcement with Key Appointments**

For our fellow regulatory professionals to whom 18 March has been a key date in the calendar for some time (publication of the eponymous Turner report), there has been more than a hint of the theme with the appointment of a major heavy-hitter to complement the FSA Enforcement Division, and a forensic IT specialist. Currently, Enforcement has 35 in-house criminal specialists including lawyers and investigators.

As part of its strategy of credible deterrence – in 2008 FSA commenced 4 separate insider dealing prosecutions - FSA recently has placed greater emphasis on bringing criminal actions for cases of insider dealing and market abuse. David Kirk, who will step up to the mark as Chief Criminal Counsel in June, is currently Director of the Fraud Prosecution Service, a specialist unit of the Crown Prosecution Service, which he joined after a successful career as a partner with city law firms. Kirk will join the division's specialist lawyers who focus on criminal prosecutions.

It has also been noted that the use of information technology in investigations and enforcement action has become even more central. To this end, FSA has appointed Keith Foggon to the Enforcement Division as Manager of the Digital Evidence Unit. Foggon was formerly head of the Digital Forensics Unit at the Serious Fraud Office and has developed wide-ranging expertise in this area.

### **FSA - New Contracts for Difference Disclosure Regime**

In a response to current market conditions, FSA have dramatically brought forward their new disclosure regime for CfDs. Following extensive consultation within the market, on 3 March FSA announced that the new regime would take effect from 1 June instead of September, bringing the new arrangements in place some three months ahead of the original timetable.

Details of the new arrangements were set out in a Policy Statement published on the FSA website on the same day as the announcement, and which can be accessed through the link below.

The new rules cover financial instruments in the same company, which give a legal right to acquire shares or have a similar economic effect to shares. Shares and such financial instruments will have to be aggregated and disclosed once over the 3% threshold. This will ensure that they are not used covertly to influence corporate governance and/or build up stakes in companies. An exemption has also been put in place for CfD writers acting in a client-serving capacity, to prevent unnecessary disclosures to the market.

Alexander Justham, FSA director of markets, said: "This is a very significant step in improving market transparency and we have brought the implementation date forward to reflect that. The new rules will resolve some of the concerns raised about the risks of market players devising ways to avoid disclosure or over-disclosing."

**Source: FSA Website**

### **FSA and CTFS - Further Regulation of Commodities Futures**

On 5 March, the FSA and the Commodity Futures Trading Commission (CFTC) welcomed the proposals published by the International Organization of Securities Commissions' (IOSCO) Technical Committee recommending improved supervision of the commodity futures markets and better global cooperation towards this end. The proposals were developed by the IOSCO Task Force on Commodity Future Markets, co-chaired by the CFTC and FSA.

The report follows concerns raised around the price rises and volatility in agricultural and energy commodities in 2008 and focused on whether futures market regulators' supervisory approaches were appropriate in light of recent market developments.

The Task Force concluded that in light of the complexity of factors that drive price discovery in futures markets and the critical importance of these issues to world economies, continued monitoring was appropriate to improve understanding of price formation and the interaction between regulated futures markets and related commodity markets. The Task Force also made recommendations to address identified factors that potentially inhibit the ability of futures market regulators to access all of the information that may be needed to understand fully price formation in a particular futures contract.

Specifically, the Task Force recommended that where they cannot already do so, regulators should be able to access relevant information from other markets, such as cash and OTC derivatives, that can affect the pricing of regulated commodity futures. Accessing such information may be needed to understand fully price formation or manipulation in the futures markets. Moreover, because manipulative schemes are often complex and may involve futures, OTC and cash markets in one or more jurisdiction, the Task Force called for measures to improve regulators' supervisory and enforcement powers and the enhancement of global cooperation.

The consultation paper's key recommendations call for improving the availability and quality of information on commodities traded in related physical and OTC derivatives markets in:

- Evaluating regulators' oversight programs against the standards set forth in the Tokyo Communiqué
- Reviewing regulators' powers to ensure they are able to access the information necessary for effective market surveillance
- Promoting improvements or eliminating impediments to regulators' legal and regulatory frameworks that may inhibit their ability to detect and enforce manipulation cases
- Establishing periodic meetings among futures market regulators to share concerns on trends and developments in commodity markets as well as the sharing of market surveillance and enforcement techniques

**Source: FSA Website**

### ***ABI - Equalities Bill Warning***

On 2 March, the Association of British Insurers (ABI) warned that all customers were likely to face higher insurance premiums and less choice if the Equalities Bill restricts the use by insurers of age to help them assess risk. The cost of travel insurance alone could double.

The report: Age and Insurance: Helping older customers find the cover they need shows that restricting the use of age by insurers would be:

- Unnecessary. Insurance is widely available for all customers, regardless of age. Independent research undertaken for the ABI shows that 99% of older customers are already able to find motor insurance, with 98% able to obtain travel insurance
- Unfair. Taking age into account, where it is relevant, ensures that prices are fair to all, including older customers. In motor insurance, the average cost of a claim made by someone aged over 80 is nearly 50% higher than one made by someone aged 60. In travel insurance, the average cost of a claim made by someone aged over 65 is nearly three and a half times more than one made by someone under age 50.

Restricting the use of age would mean that insurers would not be able to take account of differences in risk among older customers, unless a more intrusive and costly approach, such as individual medical assessments, were used. The additional costs would lead to higher premiums

- Restrictive. Without sufficient age-related information, insurers would be unable to offer competitively priced cover to accurately reflect the risk. This could lead to some insurers ceasing to offer cover, and discourage those insurers who currently specialise in providing cover for older customers

**Source: ABI Website**

### ***ABI - Congratulates Itself on Customer Impact Scheme***

On 5 March, the ABI published their 2008-9 Customer Impact Survey Report. Commenting that in hard times industries too often cut back on their investment in serving customers better, the ABI stated that the insurance industry had continued to invest in the largest UK survey of what customers think, and to act on the findings. Despite tough economic conditions, life, pensions and investment companies were performing well in key areas of customer service. Encouraging progress had been made on both sales and post-sales service – in particular, views of companies' payments processes have improved, with 53% of customers saying these were 'excellent' or 'very good'. However, the survey shows that customers are still unsatisfied with the way the industry handles complaints.

The survey measures the experiences of over 20,000 customers on a variety of indicators, combined into three Customer Commitments:

- Commitment 1: Developing and promoting products and services which meet the needs of customers
- Commitment 2: Providing consumers with clear information and good service when they buy products
- Commitment 3: Maintaining appropriate and effective relationships with customers, providing them with a good service after they have bought a product

The survey results highlight particular areas where companies need to make improvements in customer service. Real examples of the changes individual companies have made as a result of previous surveys include:

- New software introduced to allow customer communications to be updated more quickly
- Training programmes for contact centre staff enhanced
- Complicated jargon removed from many communications, and a glossary included to ensure any necessary technical terms are properly explained
- A review of written communications undertaken and changes made to improve quality
- Staff training introduced specifically to ensure that literature is customer-friendly

**Source: ABI Website**

### ***CML - Reacts to Rate Cut***

The dramatic Bank of England rate cut to .5% prompted the following comment from the Council of Mortgage Lenders Director General, Michael Coogan on 5 March: "This latest cut presents immense challenges for lenders whose margins are already squeezed as a result of previous reductions, leaving little scope to lower discretionary mortgage rates further. Savings are the lifeblood of mortgage lending, and unless lenders can offer competitive rates to savers their ability to offer new mortgages is restricted.

National Savings and Investments this week reported record inflows of savings, sucking more money out of the mortgage market, so today's cut represents a double whammy for prospective mortgage borrowers."

**Source: CML Website**

### ***FOS - Appoints new Head of Practice***

On 2 March, the Financial Ombudsman Service welcomed David Baker as it's newly appointed Head of Practice. This new post had been created as part of the Ombudsman service's commitment to transparency and openness. As Head of Practice, David Baker will have responsibility for coordinating, consolidating and documenting information and guidance on casework-policy issues and the Ombudsman's approach to decision-making. In this new senior-management role, David Baker will also join the Ombudsman panel as a lead Ombudsman. David Baker is an economist by training, with significant experience of financial services in both the public and private sectors. He is a former economic adviser with the UK Government Economic Service and the European Development Fund. He has worked in emerging-markets banking-supervision for the Bank of England and in various senior roles at the Financial Services Authority (FSA). More recently he was a director with the Pearl Group.

**Source: FOS Website**

### **FSA Annual Financial Crime Conference - Monday 27 April 2009**

#### **Overview**

*"Fraudsters pose a greater threat to firms and consumers as they seek to commit financial crimes using increasingly sophisticated techniques."* - Financial Risk Outlook (2009)

In current market conditions, it is crucial that firms have adequate systems and controls in place to protect themselves and their customers from financial crime. At our Annual Financial Crime Conference, you can find out about the effects the economic downturn is having on financial crime, what motivates people to commit fraud and how you can make a business case for resources, as presented by some of the top speakers in the anti-financial crime community. We'll explain what the Financial Risk Outlook (FRO) means for you in practice and share good practice techniques in managing a range of financial crime risks.

This year is an opportunity to hear about the latest efforts to raise consumer awareness of financial crime. As we said in the FRO, firms need to work with consumers to tackle the threat of being targeted by criminals, and we'll be assembling a wide range of consumer representatives on the day to discuss how best to achieve this outcome

#### **Who should attend?**

This event is for board members and senior managers responsible for reducing financial crime in their firms, including fraud managers and MLROs. This year's event will be of particular interest to intermediaries and organisations working directly with, or providing advice to, consumers.

#### **Location**

The Brewery, Chiswell Street, London, EC1Y 4SD

#### **Format**

One-day conference including lunch

To book your place please complete the [http://www.fsa.gov.uk/pages/Doing/Events/pdf/fin\\_crime.pdf](http://www.fsa.gov.uk/pages/Doing/Events/pdf/fin_crime.pdf)

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