

The following Compliance articles are for the week ending 3 April 2009.

COMMENTARY

FSA gets tough on market abuse. In addition to “several” cases that are understood to be progressing through the FSA system and destined for the criminal courts, FSA have had a ringing endorsement on their approach and interpretation, winning the market abuse case at the Financial Services Tribunal. The firm involved did not challenge the findings of the FSA investigation, but sought the Tribunal’s view on a point of legal interpretation.

FSA commented that the share trades in question “had a series of unusual features which should have alerted the market maker to the clear and substantial risks of market manipulation. Rather than taking steps to ensure that the trades were genuine, (the firm) continued the highly profitable trading.”

Senior management - take note, please. To quote Margaret Cole “... we are determined to tackle abusive behaviour and to deter market participants from threatening the integrity of our markets.”

Source: FSA Website

QUARTERLY CONSULTATION

On 3 April, FSA published their Quarterly Consultation Paper inviting comments on miscellaneous amendments to the Handbook. CP 09/12 proposes amendments to:

- IPRU(INS) sourcebook, dealing with the submission of EEA statistical returns by insurers passporting into EEA Member States
- GENPRU sourcebook such that the prudential filter continues to apply when assets have been reclassified away from the AFS (Available For Sale) debt category to the L&R (Loans and Receivables) category (or to the Held-to-Maturity category)
- Collective Investment Schemes sourcebook to remove the requirement for an umbrella scheme to launch one or more subsequent sub-funds within 24 months of the launch of the first sub-fund of the scheme
- Allow firms to submit application fees by credit or debit card when varying their Part IV permissions
- Perimeter Guidance manual in relation to the scope of the activity of making arrangements with a view to transactions in investments and also to the definition of personal pension schemes
- Issue guidance setting out the FSA’s view on what packagers of structured products need to do to ensure their product does not amount to a collective investment scheme

Comments on the proposed amendments should be received by FSA no later than 6 June 2009.

Source: FSA Website

SPEECH ON THE REGULATORY RESPONSE OF THE G20 TO THE FINANCIAL CRISIS

On 1 April, David Strachan, Director, Financial Stability, FSA, addressed the Inaugural Summit of the International Centre for Financial Regulation (ICFR) in London. Commenting that the timing was immaculate, with:

1. Turner review being published some days previously on the causes of the crisis and the regulatory changes
2. Recent US unveiling its own far-reaching plans for regulatory reform
3. Jacques de Larosière publishing his report on possible EU regulatory arrangements

4. Communiqué which will be issued from the G20 Leaders' Summit the following day which was anticipated to set out the blueprint for the future international regulatory framework and architecture, building on the very clear and detailed direction given at the Washington Summit in November 2008

Mr. Strachan then explained that he was going to focus on three main topics: counter-cyclical requirements; the scope of regulation; and international regulatory co-operation.

Source: FSA Website

SPEECH ON THE OUTLOOK FOR BANKING & BANKING REGULATION

On 1 April, Dr Thomas Huertas, Director, Banking Sector, FSA, addressed the Inaugural Summit of the International Centre for Financial Regulation (ICFR) in London on the subject of what banking and bank regulation will look like in the future.

The first priority remained containment of the crisis and confirmation that the authorities would do what it takes to prevent the current crisis from deteriorating further, should the massive fiscal and monetary stimulus already injected into the world economy prove insufficient. The longer-term agenda for regulatory reform was also emerging. Agreement was crystallizing around the measures to be taken after the crisis subsides so as to cure the financial system and prevent future crises:

- Measures will be taken to improve macro-prudential supervision
- Every significant financial institution will be subject to supervision. The gaps in the regulatory net will be closed. In particular, hedge funds and large complex non-bank financial intermediaries will come under closer scrutiny
- Regulation will be strengthened. Banks will be required to hold more capital and hold higher quality capital. The authorities will also explore a "belt and braces" approach to capital
- Banks will also be required to hold more liquidity or conduct their business so that they more closely match the maturity of their liabilities to the maturity of their assets
- Banks will be required to improve their governance and risk management, and banks will be required to establish remuneration policies, procedures and practices that are consistent with and promote effective risk management
- Banks will also need to change their attitude toward risk management. Taking risk intelligently and efficiently is what bank management should be all about.

Source: FSA Website

FSA PUBLISHES GENERAL INSURANCE NEWSLETTER NO 16

On 1 April, FSA published their regular newsletter on matters of interest to the GI sector. The newsletter covers the topics listed below, however the main topic continues to be PPI, in respect of which Sarah Wilson, Insurance Sector Leader, commented "Our work into the sale of PPI continues. Firms must consider their obligation to deliver acceptable outcomes for consumers, which means improved sales standards, better complaints handling and products that meet the needs of the customer."

Other topics include:

- Update on the regulation of connected travel insurance
- Conclusions from the review of insurance comparison websites
- Update on unfair contract terms

- Transparency, disclosure and conflicts of interest – confirmed industry guidance
- Clarification on the treatment of credit write-backs
- New modification by consent (INSPRU 2.1.22R)
- Updates on changes to the reporting of prudential information
- Consultation Paper on stress and scenario testing
- New limits for professional indemnity insurance
- Impact of foreign exchange rates
- Restriction of business to insurance (INSPRU 1.5)
- Solvency II update
- Euro-Sterling value for insurance regulatory purposes

Source: FSA Website

FSA – PUBLISHES LIFE INSURANCE NEWSLETTER NO 14

On 1 April, FSA published their regular newsletter on matters of interest to the Life Insurance sector. The newsletter covers the topics listed below; however the main topic continues to be the Retail Distribution Review and specifically the choices facing insurers in relation to adviser charges.

Sarah Wilson, Insurance Sector Leader, commented “Under our proposals, insurers would not have the option to pay adviser firms any other commissions (e.g. shares of product charges, or rewards for placing business through a platform) and adviser firms will have to charge the consumer the same amount for their services, regardless of which particular product provider they recommend.

This leaves insurers with important decisions to make. Some firms may want to offer facilities for deducting adviser charges from investments and will therefore need to make changes to their systems. Others may choose to let adviser firms make their own arrangements to collect charges (potentially involving third parties like platforms) and will be working out what they need to do to create commission-free products. Perhaps most importantly of all, insurers will need to think about how they will compete for business in future with competition focused so clearly on the consumer and not the adviser.

In the coming months, we will be drawing up detailed proposals for consultation. Through thinking about and planning their own business responses to the RDR, we hope that insurers will also be in a position to provide us with well informed responses to our consultation in June.”

Other topics include:

- Pensions and TCF – OMOs, quality of advice and unfair contract terms
- New modification by consent (INSPRU 2.1.22R)
- Prudential requirements – reporting of assets in annual returns
- Consultation Paper on stress and scenario testing
- New limits for professional indemnity insurance
- Valuation of bonds
- Impact of foreign exchange rates
- COBS 21 requirements – unregulated collective investment schemes

- Solvency II update
- Euro-Sterling value for insurance regulatory purposes

Source: FSA Website

OCCASIONAL PAPER ON LIFE & PENSIONS DISCLOSURE

One of its series of Occasional Papers on research and topics of general interest to the regulated financial sector, this document was produced by Peter Andrews, Head of the Economics of Financial Regulation Department in the Strategy and Risk Division of the FSA and published by FSA on 1 April.

The paper concludes that after disclosure, some consumers did indeed shop around more at least in the period covered by the data. Given the state of competition in the relevant market, this suggests that the disclosure regime which, substantially, continues to be operated by the FSA, produced benefits.

One argument for benefits is that consumers who shop around are likely to increase the efficiency of their consumption. Another argument for benefits is that, in response to shopping around, firms are likely to seek to improve their offerings. This could be by setting prices closer to marginal cost, thereby improving allocative efficiency. Equally, it could be by improving quality for a given price. In both cases, firms are more likely in consequence to seek to improve the efficiency of their production.

Source: FSA Website

LETTER ON PROTECTION OF CLIENT ASSETS

Richard Sutcliffe, Head of Prudential Standards, Conduct and Organisational Policy, FSA has published on the FSA web-site his letter dated 20 March to the Compliance Officers of all firms which hold relevant client money permissions, to remind them of their responsibility under FSA Principle 10: 'A firm must arrange adequate protection for clients' assets when it is responsible for them.'

Commenting that market events during the past 12 months have highlighted the importance of the segregation regime, the letter states that it is likely that FSA will see further corporate insolvencies involving clients' assets and money. "We are also concerned that as the recession deepens, there is an increasing risk of financial crime involving clients' assets and money. In this economic environment, the protection of a client's entitlement is of paramount importance and firms should be paying due regard to the requirements we place on their systems and controls as outlined in CASS."

Where firms failed to comply with basic CASS requirements, it was only apparent upon the insolvency of a firm. CASS was designed to minimise the loss to clients upon insolvency and equip an insolvency practitioner with relevant, timely information. The letter went on to detail specific record-keeping requirements, deal with acknowledgements of trust, comment on due diligence and diversification and comment on further work that FSA will be undertaking in 2009.

Source: FSA Website

FSA CONSULTS ON EXTRA DEPOSIT PROTECTION FOR TEMPORARY HIGH BALANCES

On 31 March, FSA published CP 09/11 which seeks views on whether the Financial Services Compensation Scheme (FSCS) should provide extra protection for holders of temporary high deposit balances in the event of the failure of a UK bank, if the EU Deposit Guarantee Schemes Directive provides the UK with the scope to provide such protection.

The current maximum deposit protected by the FSCS is £50,000 per individual per bank or building society. But some bank customers occasionally have balances far in excess of this at a single institution as a result of transactions such as:

- i. sale of a primary residence and property bought for dependent relatives, for use as their primary residence;
- ii. pension lump sums;
- iii. inheritance;
- iv. divorce settlements;
- v. redundancy payments;
- vi. proceeds of pure protection contracts; or
- vii. court awards and out-of-court settlements for personal injury.

There would be a monetary limit of £500,000 and a time limit of six months for claims under i) to vi). For personal injury awards and settlements there would be unlimited additional protection and the time limit would be 18 months to reflect that personal injury awards and settlements are often intended to provide an income for the rest of the injured person's life and that it may be difficult to assess for some time how the money should be allocated and invested between financial institutions.

Source: FSA Website

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