

The following Compliance articles are for the week ending 1 May 2009.

COMMENTARY

FSA JOINS MEDIA CONSTERNATION ON SWINE FLU

On 1 May, FSA published a warning to regulated firms to ensure that, in light of the recent outbreak of influenza in Mexico and subsequent reports from the World Health Organization, firms should be assessing their contingency plans to consider what steps they may need to take to address possible issues. The FSA is already contacting the 'high impact' firms including infrastructure providers that it regulates to establish whether the influenza outbreak is affecting any aspects of their business. In 2006 the FSA ran a market wide business continuity exercise that was based on a pandemic scenario.

Source: FSA Website

GOOD AND POOR PRACTICES IN KFDs

On 30 April, FSA published an annex to their report "Good and Poor Practices in Key Features Documents" (KFD) published in September 2007, which summarised the results of their review of a sample of 200 documents. This annex:

- Provides an update on the progress firms have made in improving the effectiveness of their KFD and Simplified Prospectuses (SP)
- Describes some common themes which are still holding back progress by some firms
- Gives further examples of good and poor practice

FSA have stated that they will follow-up with firms who produce KFDs and SPs that are still not up to the standard they expect. They will maintain attention on the quality of KFDs and SPs as part of their supervisory work and will assess overall progress again in 2010.

They have also stated that providing clear information is essential for delivering fair outcomes for consumers. Thus they challenged firms to improve their KFDs and SPs by the end of 2008 in line with their Treating Customer Fairly (TCF) commitments. They gave specific feedback to firms in their sample about their deficient KFDs. Apparently, very few firms thought that FSA's assessments were unfair.

The research that firms have shared with FSA endorses the good and poor practice in the 2007 paper. FSA is therefore confident that the standard of clarity expected is reasonable.

Key attributes of an effective KFD or SP are:

- It focuses only on the key aspects relevant to the decision to buy; and, where necessary, is supported by signposts so an interested party knows where to go for more information. It is not compromised by information which is immaterial to the decision to invest. Too much information not only masks the key information, it also creates an immediate barrier to the document being read
- The key aspects are presented well both to help them stand out and to help the reader navigate through the document. For complex products this may require good use of design techniques such as colour and graphics, rather than relying wholly on text
- It is written clearly and succinctly in language readily understandable by the target audience, using short sentences and paragraphs
- It has a clear hierarchy of headings and subheadings. The headings are written in a way that engages the intended audience

Source: FSA Website

SPEECH BY LORD TURNER

Lord Turner addressed the Global Financial Forum in New York on 27 April. He stated that the potential macroeconomic costs of tighter regulation for banks had to be set against the benefits of lower risk to financial stability. Lord Turner said: "A major objective must be to return banking to its basic functions – providing vital services of real value to the real economy and a major lesson of the crisis is that that we cannot rely on market discipline alone or even primarily to achieve this, or to ensure that financial instability risks are contained, but must use robust regulation. The required reform is multifaceted, but three elements of reform are particularly important: a macro-prudential approach, major changes to capital adequacy regulation and major changes in the regulation of liquidity." He told the conference that in designing a new global framework for the regulation of banking there was significant agreement, but also areas with no clear answers yet, including:

- How to balance any possible costs of higher capital and liquidity requirements against greater systemic stability
- Whether banks that are "too big to fail" may be expected to hold extra capital
- The possibility of cross-border banks facing more onerous local liquidity and capital arrangements

In conclusion, Lord Turner said: "We need to design a banking system and credit intermediation system focused on its core and essential functions in the real economy and better able to be a shock absorber rather than itself a source of instability."

Source: FSA Website

TACKLING FINANCIAL CRIME IN THE CURRENT ECONOMIC MARKET

Sally Dewar, Managing Director, Wholesale, FSA addressed the FSA Annual Financial Crime Conference on 27 April 2009. She made reference to the progress made in the past 5 years, this being:

- The national strategy on fraud – through the National Fraud Strategic Authority with a clearer understanding of priorities and where FSA needs to focus efforts to be most effective
- A record number of mortgage fraudsters – 40 in the last two years, have been taken out of the market and over half a million pound in fines issued
- The FSA has secured its first ever criminal conviction for insider dealing, with several more prosecutions in the pipeline
- A money laundering regime that is risk-based and proportionate
- 200,000 suspicious activity reports are received by SOCA every year – information which is utilized by numerous public organizations and law enforcement agencies
- A simplified and more flexible Fraud Act which makes fraud easier to prosecute

In closing, Ms Dewar said that her key points were:

1. Financial crime continues to remain a key priority for the FSA and it should be for firms too. It was vital that firms continued to focus on strengthening their controls around operational risks mentioned in the FRO document, including financial crime
2. FSA will continue to help firms, by reviewing industry practices and highlighting areas of good and poor practice so that firms can benchmark their own controls. Read the regular Financial Crime Newsletters and note any Financial Crime speeches

3. FSA will pursue their 'credible deterrence' agenda by taking action where they have the lead responsibility or through key partners where they don't
4. Partnership working and information sharing was key to staying one step ahead of the fraudsters

"There has been, and no doubt will continue to be, much debate about the most effective way to reduce financial crime. We shouldn't let that distract us from the goal of working together to tackle it. Today, the priority must be for all of us involved in the fight against financial crime to exchange ideas on how we can work together more effectively and to stay one step ahead of those who would seek to defraud society. In turbulent and changing times, it is crucial that we remain focused. The number and breadth of interests of the people gathered here today should give us heart that we do remain as committed as ever to achieving that goal."

Source: FSA Website

CREDIBLE DETERRANCE

Margaret Cole, Director of Enforcement, also addressed the FSA Annual Financial Crime Conference on 27 April 2009. In this powerful speech, which made reference to the "frightened" word in an echo of Hector Sants's speech on 12 March, Ms Cole addressed the meeting after Professor Gill who gave insight into the mind of the fraudster.

Ms Cole said "Credible deterrence is all about delivering outcomes that make a real difference to consumers and to markets. It means delivering results that make people sit up and pay attention. It's about making people realise that they can suffer meaningful consequences if they break the law and if they don't improve their standards of behaviour. Credible deterrence is a means to an end. Making people frightened of the FSA is a means to an end. The end is to change behaviour so that markets are clean, fair and orderly and so that retail customers get a fair deal. We recognise that changing behaviour will be difficult, but I firmly believe that we have the skills, bravery and resilience to succeed. We are visible in the arena and are ready for the challenges we face. Finally, I would urge anyone who remains in doubt about how serious we are about this to look at the fate of McQuoid, Radcliffe or Fox Hayes and its Partners. Actions always speak louder than words and we are visibly demonstrating that the FSA means business."

Source: FSA Website

OVER 65s ARE MOST LIKELY TO BE TARGETED BY FRAUDSTERS

People over 65 are more likely to be targeted by fraudsters and con artists warned the FSA on 27 April, as it unveiled plans to help protect older people from financial scams by working in partnership with Age Concern and Help the Aged, the UK's foremost charity for older people.

In an FSA survey on people's awareness and attitudes to financial crime, it showed that:

- 35% of people targeted by share fraudsters in the last year were over 65
- 23% of people aged over 65 felt they could become victims of fraud in 2009, yet nearly 49% did not think there was enough information on how to protect themselves from fraud
- Worryingly 41% of the people questioned who did not know that fraudsters could use personal details in passports, driving licenses and mortgage applications to steal their identity, were aged over 65

Other key themes from the survey:

- Nearly a quarter of people in the UK felt they were more likely to fall victim to fraud in 2009

- About 12 million adult internet users in the UK have been contacted by criminals wanting them to confirm their bank details, take part in a pyramid scheme or a money transfer scam (also called 419 scams)
- Half of the people surveyed did not know that their mortgage application or insurance document held enough information for it to be used to steal their identity
- Three out of five people targeted by share fraudsters, pyramid scheme operators and 419 scams are men
- Women were more likely than men to have been billed for products they did not remember buying
- Two thirds of those who did not know their passports, driving licenses or birth certificate held valuable information that can be used to steal their identities, were women

Source: FSA Website

ABI COMMENTS ON EQUALITY BILL

On 27 April, the ABI commented that the Equality Bill must avoid imposing any restrictions on the use of age by insurers. Artificial age restrictions will only mean higher insurance costs and less choice.

Commenting on publication of the Bill, Nick Starling, the ABI's Director of General Insurance and Health, said: "Insurers oppose unfair discrimination. But outlawing the use of age would lead to higher insurance costs for all customers, as insurers would have insufficient information to fully assess the risk, and less choice for consumers. We dispute the Government's claim that one in five older people have trouble getting motor or household insurance. Our research shows that 99% of older customers can obtain motor insurance, with 98% able to buy travel insurance. We will be monitoring secondary legislation carefully to ensure that insurers remain able to offer competitively priced products to all ages."

Source: ABI Website

COMMENTS ON BANK LENDING DATA

On 1 May, the Council of Mortgage Lenders (CML) noted that net mortgage lending was mildly positive at £84 million in the first quarter of this year, according to Bank of England lending statistics. CML's current forecast is for negative net lending of £25 billion over the year as a whole, but they are now cautiously optimistic that it may be possible to revise this forecast over the next couple of months.

However, prospects for any sustained improvement in net lending remain only modest. Mortgage approvals rose in March, but the number of house purchase loans approved (46,464) remains well below the number in the same month last year (61,578) or in March 2007 (133,194). On this basis, there is little prospect of any very significant volume of net lending in the near future, as net lending for the next few months will largely reflect current approvals activity in the house purchase market.

All lenders continue to face ongoing funding constraints, but at the same time consumer demand is also far from certain. With further increases in unemployment expected, and with all the uncertainties that still remain over house prices, no-one should be surprised if there is a sustained period of relatively subdued lending volumes for some time. Having said this, the plethora of initiatives designed to help and support the financial system should also begin to feed a positive effect into the market over the coming months.

Source: CML Website

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