

The following Compliance articles are for the week ending 21 August 2009.

COMMENTARY

FSA PROVIDES CLARITY FOR ACTIVIST SHAREHOLDERS

The Financial Services Authority (FSA) has set out how its rules apply to activist shareholders who wish to work together to promote effective corporate governance in companies in which they have invested.

The FSA said in a letter sent to trade associations that its requirements do not prevent legitimate activity of this nature. The FSA strongly supports Sir David Walker's proposals to strengthen shareholder engagement with the boards of investee companies aimed at promoting good corporate governance.

The letter makes clear that its rules do not stand in the way of Sir David's proposals. Alexander Justham, FSA Director of Markets, said: "There is nothing under FSA rules that prevents investors discussing matters when it is for a legitimate purpose. Our letter provides clarity to investors that they are free to engage with the boards of companies as Sir David Walker envisaged."

The FSA has set out its approach on the three key areas of its rules:

The market abuse rules do not prevent investors from engaging collectively with the management of an investee company. However, trading on the basis of knowing another investor's intentions or working jointly to avoid disclosure of shareholdings could constitute market abuse.

FSA rules on disclosure of major shareholdings require that investors who have agreed to pursue the same long-term voting strategy should aggregate their shareholdings when considering whether their shareholdings reach the threshold for disclosure (3% of a company's shares). However, this disclosure would be unlikely to be triggered by ad hoc discussions between investors on particular corporate issues.

Under the EU Acquisitions Directive that was implemented earlier this year, where investors are "acting in concert" they require FSA approval if they reach a controlling shareholding (10% or more of a company's shares) in a regulated firm. "Acting in concert" is not defined in the Directive but the FSA does not view the requirement as preventing ad hoc discussions or understandings between investors that are intended solely to promote generally accepted principles of good corporate governance in firms in which they have invested.

Source: FSA Website

FSA AND CFTC - STATEMENT ON OIL MARKETS

Lord Turner, chairman of the FSA and Gary Gensler, chairman of the U.S. Commodity Futures Trading Commission (CFTC), have announced that they have taken steps to strengthen cross border supervision of the energy futures markets.

This action builds upon the existing co-operative efforts by the two authorities to address cross border oversight of US and UK energy markets, and will enhance the ongoing information sharing agreed to in the 2006 CFTC – FSA arrangement on linked contracts.

The respective organisations will immediately work toward implementing strengthened surveillance over US-linked energy contracts including, where appropriate:

- Enhanced direct access rights to trade execution and audit trail data

- Mutual on-site visits of exchange operators
- Sharing of exchange regulations and notices
- Sharing of disciplinary notices
- The framework to consider the coordination of taking emergency action

Lord Turner, FSA chairman, said: "It is important that we continue to pursue all means to maintain fair, orderly and efficient markets, both nationally and internationally. The measures announced today will help to facilitate co-ordinated action, where appropriate. I am pleased that we continue to work collaboratively with the CFTC to achieve our common goals."

Commenting on the latest international arrangement, CFTC chairman Gary Gensler stated: "I believe that we must effectively utilise all existing powers to ensure that futures markets remain free of manipulation, fraud or other market abuses. Achieving this goal requires a coordinated international response. The CFTC will work closely with the FSA to respond to these challenges in a co-ordinated manner."

In November 2006, the CFTC and the FSA signed a Memorandum of Understanding to share information necessary for the respective authorities to detect potential abusive or manipulative trading practices that involve trading in related contracts on UK and US derivatives exchanges.

The CFTC and the FSA will continue to work together on oversight of related contracts traded in both of their markets and other matters of mutual concern.

[Source: FSA Website](#)

MARKET COMMENTARY

The housing market has continued to improve gradually in recent weeks, as activity picks up further from the lows seen around the turn of the year.

But, as the Bank of England has pointed out, the economic backdrop remains challenging and the housing market recovery is fragile. The Council of Mortgage Lenders (CML) say that we may see a modest dip towards the end of the year as seasonal factors weaken.

The CML's second quarter arrears and possessions data offered the welcome news that fewer borrowers are struggling currently than had been feared, although the number did still rise modestly. And lenders are able to help the vast majority who fall behind to stay in their homes.

Historically low interest rates have created considerable breathing room for many struggling borrowers. The Bank suggested in its Inflation Report that rates will remain at or near current levels for some considerable time, which should continue to help, but the CML still expect a further increase in the number falling behind on their mortgage payments as the labour market weakens further.

[Source: CML Website](#)

THE ECONOMY

The economy is showing signs of moving out of recession, a new survey has indicated. The findings of the latest UK Business Confidence Monitor, carried out by the Institute of Chartered Accountants in England and Wales, revealed that, in the third quarter of the year, business optimism reached its highest level in the two years since the economic crisis began.

[Source: http://www.horsfield-smith.co.uk](http://www.horsfield-smith.co.uk)

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