

The following Compliance articles are for the week ending 2 October 2009.

COMMENTARY

SALE AND RENT BACK

The Financial Services Authority (FSA) set out a package of measures based at protecting vulnerable consumers in the Sale and Rent Back (SRB) market.

Exploitative advertising and high-pressure sales techniques will be banned under the new proposals, due to come into effect on 30 June 2010, which builds on the FSA's interim regulation which started on 1 July 2009.

The new proposals include:

- A cooling-off period to give consumers more time to make decisions
- Banning cold calling and prohibiting firms from dropping promotional leaflets through letter boxes
- Prohibiting the use of emotive terms like 'fast sale', 'mortgage rescue' and 'cash quickly' in promotional literature
- Ensuring consumers have security of tenure
- A requirement that in every sale firms check that the consumer can afford the deal and it is right for them

Ed Harley, FSA Head of Mortgage Policy, said: "Sale and Rent Back can be the right solution for some consumers, but many of the people typically targeted are financially vulnerable and have been badly hit by the experience. The FSA's proposed new rules will help to protect consumers. We want to prevent high-pressure and inappropriate sales, and help consumers understand sale and rent back products, so they only enter into sale and rent back where it is an appropriate and sustainable solution for them."

The proposed expanded regime is designed to ensure an SRB market where:

- Firms are fit and proper and appropriately resourced
- Firms' staff are competent to carry out their role
- Consumers get clear, concise and consistent information about a firm's services and products so they can make informed choices
- Consumers have time to consider the nature of the product and possible alternatives and to seek advice to help them reach a decision
- Consumers are sold suitable products that take account of their circumstances, needs, and affordability
- If things go wrong, consumers have appropriate protection

Since the introduction of the interim regime, sale and rent back firms must be authorised otherwise they face the potential of fines or imprisonment.

The FSA is proactively monitoring the SRB market for unauthorised activity, and will take action if necessary.

Consumers should ensure that they only deal with authorised firms and be aware of the risks involved in sale and rent back schemes. Normally they will be paid less than the full market value for their home and may not be able to stay as a tenant in the home in the long term.

CP 09/22 will be open for responses until 30 November 2009.

Source: FSA Website

PPI TOUGH MEASURES

The FSA has announced a package of tough measures to protect consumers in the Payment Protection Insurance (PPI) market and ensure they are better treated when buying PPI or complaining about it.

Firms representing more than 40% of face-to-face sales in the Single Premium Unsecured Personal Loan PPI market have agreed to review these sales and redress those consumers identified as mis-sold.

Ongoing supervisory action continues with the remainder of this market place.

These measures build on the agreement the FSA obtained from the industry earlier in 2009 to stop selling Single Premium PPI on unsecured loans.

For complaints about all PPI products, new measures will tackle the key issue that too many complaints are rejected by firms and then overturned by the Financial Ombudsman Service (FOS) in favour of the consumer:

- New guidance (due to take effect by the end of the year) will ensure PPI complaints are handled properly, and redressed fairly where appropriate - the FOS has indicated support for the FSA's proposed approach
- A new rule will require firms to reopen some 185,000 previously rejected PPI complaints and reassess them against the guidance

In addition, the FSA is launching targeted assessment of sales practices for PPI on secured loans and credit cards; if the potential for mis-selling is identified, pro-active reviews by firms may be extended to these areas too.

Jon Pain, FSA managing director of retail markets, said: "Consumers should not be pressured or deceived into buying PPI and they are entitled to have a policy properly explained to them.

It is unacceptable that despite previous warnings about poor sales practices, backed by 22 enforcement cases and significant fines, the PPI sector still needs the FSA to intervene on this. And the outcome of a complaint about a PPI sale should not depend on whether or not the complainant persists past the firm on to the FOS.

The industry must show it can act fairly, consistently and in the best interest of consumers on PPI. All firms operating in this sector should take note and where necessary get their house in order.

Where we find problems in PPI sales or complaint handling, firms can expect tough action, including requiring them to undertake reviews and, where appropriate, pay redress."

Source: FSA Website

POLICY ON SHORT SELLING

The FSA has issued a Feedback Statement that confirms that it intends to pursue enhanced transparency of short selling through disclosure of significant short positions in all equities.

However, it will work towards agreement on future requirements at an international level rather than introducing a separate domestic regime. In the meantime it has no plans for immediate changes to its current short selling requirements.

Currently, the FSA requires disclosure to the market of net short positions of 0.25% or more of the issued share capital of UK financial sector companies or companies carrying out a rights issue.

Alexander Justham, FSA Director of Markets, said: "The consultation exercise has confirmed our support for enhanced disclosure requirements for significant short positions rather than any direct restrictions on short selling, other than on a temporary basis in exceptional market conditions. But we remain committed to securing agreement on as wide an international basis as possible and, in particular, to achieving a harmonised regime within Europe."

The Feedback Statement details the responses that the FSA received to its proposals in the February 2009 Discussion Paper (DP) on short selling.

The DP examined the arguments for and against restrictions on short selling. It proposed a disclosure requirement for the short selling of all stocks, not just those of financial services companies, using an initial disclosure threshold of 0.5% of issued share capital. It also stated that the FSA's preferred route was to achieve international agreement on policy.

Since the DP was published, the Committee of European Securities Regulators (CESR) has issued proposals for a short selling disclosure regime. CESR's proposals for public disclosures of significant short positions are very similar to the FSA's but also include the idea for private disclosures to regulators at 0.1%.

In today's Feedback Statement, the FSA states that it is open to the possibility of requiring private disclosures at the lower threshold. The FSA will continue to work with CESR to develop an agreed European disclosure policy for short selling.

Source: FSA Website

CREDIT CONDITIONS

Responding to the publication of today's Bank of England Credit Conditions Survey, the Council of Mortgage Lenders (CML) economist Paul Samter commented: "Lenders reported a welcome reduction in default rates on mortgages in the third quarter - the first in two years. Following our own figures showing a decline in mortgage possessions in the previous three months, there are encouraging signs that households are coping better than expected with difficult conditions.

Despite this, however, we still expect payment problems to increase in the coming months, given the weak economy and jobs market.

The survey also reported a small reduction in mortgage availability in the second quarter, mainly due to an unexpected deterioration in the cost and availability of funds for lenders themselves.

More encouragingly, however, the survey found that lenders expect mortgage availability to improve modestly in the next three months.

There have been recent signs of an improvement in wholesale funding market conditions, and the survey records a notable pick-up in lenders' expectations that this will continue in the next three months."

Source: CML Website

AUGUST LENDING DATA

Commenting on the latest data from the Bank of England, CML economist Paul Samter said: "Net lending turned positive in August, and for the first eight months of the year it has totalled £5.5 billion. Housing market activity has flattened off, but remains stable and well above the very low levels seen a year ago. The weak economy and limited capacity to lend is continuing to restrict further improvement and we expect lending to remain subdued."

Source: CML Website

CURRENT ACCOUNT CHARGES AND HARDSHIP

The Ombudsman has clarified their stance on bank charges.

Source: FOS Website

FSA EVENTS MONTHLY UPDATE - OCTOBER 2009

Please find below an outline of our autumn events programme.

Conferences

Liquidity Conference, 9 October 2009, QEII Conference Centre, London SW1

This conference provides you with the opportunity to learn more about the liquidity reforms from the people who designed them. Emphasis will be on the implications of the rule changes, planning for compliance with the new requirements and how the FSA will assess firms from a liquidity risk perspective.

The Turner Review: progress towards global regulatory reform, 2 November 2009, London

This conference will aim to take stock of international progress and in particular discuss the future steps required to strengthen the regulation of the banking industry. The conference will also be an opportunity to consider the Turner Review Feedback Statement which was published in September. Key figures from industry, government and regulation will speak at the conference.

Seminars

Seminars for Compliance Consultants/Officers, October 2009 - March 2010, Edinburgh, London and Manchester

Topics include: What does a good firm look like; Financials / prudential reporting requirements; Retail distribution review; Retail distribution review professionalism and General investments.

Briefings

Wholesale Small Firms' Briefings, 9, 22 October and 13 November 2009, FSA, London

Please note the new date available for Investment Managers These tailored briefings are specifically designed for smaller Wholesale firms: Private Equity firms, Wholesale Brokers, and Investment Managers.

Consultation Events

Mortgage Market Review - Consultation Roadshow for regulated firms, November - December 2009, various locations

We are reviewing the mortgage market and in October 2009 will publish a Discussion Paper on the future shape of regulation. These roadshows will give firms an outline of our current thinking and the opportunity to give their views.

Coming Soon

Insurance Sector Conference - To register your interest in attending please e-mail dave.octave@fsa.gov.uk

For full details of all our events please visit: <http://www.fsa.gov.uk/Pages/Doing/Events/index.shtml>

Dates & Deadlines

14 Oct	CT61 payment
19 Oct	PAYE/NIC/student loan payment PAYE/NIC payment PAYE payment CIS return date
22 Oct	PAYE/NIC/student loan payment PAYE/NIC payment
30 Oct	VAT Date VAT Return Date Company accounts filing deadline Corporation tax return date

Source: www.horsfield-smith.co.uk

George Bylett
Corporate Governance Assurance Services Ltd
www.cgas.co.uk

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