



FIRST QUARTER 2011: FSA REGULATORY DEVELOPMENTS

A TRAINING AND COMPETENCE BULLETIN

April 2011

This bulletin is prepared every quarter by The Compliance Exchange as a Training and Competence tool for our clients and prospective clients. It summarises FSA's consultation and policy papers for the quarter.

CONSULTATION PAPERS

11/01 6 January Quarterly Consultation No. 27

A 116 page document summarising various amendments to certain sections of the Handbook, including:

- to require a firm to tell FSA before it or another undertaking in its group issues any capital instrument which it wishes to include as regulatory capital;
- to the liquidity regime set out in the Prudential sourcebook for Banks, Building Societies and Investment Firms ;
- to add qualifications to the list of qualifications that are appropriate for carrying on the activities set out in the Training and Competence sourcebook;
- to accommodate within the Conduct of Business sourcebook proposed changes announced by HM Treasury (the Treasury) June 2010 to remove the requirement to annuitise pension savings by age 75, and replace the unsecured pension arrangement (USP), and alternatively secured pension arrangement(ASP), with other income withdrawal options;
- to the rules regarding Child Trust Funds (CTFs) following the government's announcement of its intention to phase out government contributions to CTFs;
- to amend the Glossary definition of 'approved index' in relation to COBS 21 (Permitted Links for long term insurance);
- to provide that the new Retail Distribution Review (RDR) rules on Professionalism and Adviser Charging should not apply to advised sales of Holloway policies with a small investment element;
- to the Banking: Conduct of Business sourcebook in order to state that firms should put interest rates on statements, and to update reference to the industry cash ISA transfer guidelines;
- to the Supervision manual (SUP) to require firms who are planning on changing their key contact telephone number to notify us of the new details before the change takes place; and
- to the Listing Rules (LRs) to make it clearer how the rules are applied.

1/02 1 February Regulatory fees and levies: - Rates proposals 2011/12

A 182 page document outlining FSA's budget for fiscal 2011-12. Notably annual funding rises from £454.7 million to £500.5 million with the total overall burden on firms of £1,089.5 million when the FSCS, FOS and Money Advisory Service's levies are included.

11/03 2 February Product disclosure: Retail investments

This 74 page paper proposes changes to reflect RDR Adviser Charging and to improve pension scheme disclosure, in particular:

- amending the key features illustrations (KFIs) that firms are required to give their clients (this comes from FSA Retail Distribution Review (RDR) rules on Adviser and Consultancy Charging);
- enhanced disclosures in relation to personal pension schemes marketed as SIPPs; and
- potentially replacing monetary projections by inflation-adjusted projections for personal and stakeholder pensions (both individual and group).

CP11/04 10 February The Client Money and Asset Return (CMAR): Operational Implementation

FSA propose to implement the Client Money and Asset Return (CMAR) through GABRIEL, the online information gathering system. This will apply to large and medium sized CASS firms as from 1 June 2011. Such firms must submit their CMARs within 15 business days of the end of each month. Small CASS firms reporting requirements have been postponed. (45 pages)

The text of SUP 16 Annex 29R has been altered to provide a pro forma copy of the CMAR Return.

CP 11/05 24 February Protecting with-profits policyholders

A 99 page consultation on fair treatment of with-profits policyholders (COBS 20). The paper focuses on conflicts and recognises that potential conflicts of interest may arise between with-profits policyholders and non-profit policyholders within the same fund, between with-profits policyholders and the members of mutually-owned firms, between with-profits policyholders and management, and between different classes of with-profits policyholders, for example, those with and without guarantees.

FSA proposes that firms maintain contingency arrangements in the event they experience sustained and significant falls in new business volumes and to have a credible distribution plan and a detailed run-off strategy.

In relation to corporate governance FSA propose that a with-profits committee should be required for all with-profits funds except small funds.

CP 11/06 31 March Use of non-EEA rules in calculating group capital requirement

This paper sets out FSA's proposals for removing the rules permitting the use of non-EEA regulators' rules in calculating the group capital requirements of a UK banking/investment firm group on a standardised approach, in order to be consistent with the general approach taken by other Member States. To achieve this FSA propose to delete BIPRU 8.7.35R, 8.7.36G and 8.7.38R from the FSA Handbook. 29 pages.

Total consultation pages Q1 2011 - 545

DISCUSSION PAPER

DP11/1 25 January Product Intervention

This 75 page paper discusses FSA's "new approach" and proposes a more intrusive approach to the regulation of retail financial services, aiming to ensure that potential consumer detriment problems are identified and offset at an early stage. It points out that there have been problems in retail financial services which were not going to be solved simply by demanding fair disclosure in the sales processes. It therefore proposes increased supervisory and enforcement focus on firms' product governance processes.

FSA identifies indicators of problematic product features such as complex products, including bundled products or those with opaque structures. Risk indicators for investment products are:

- Use of non-standard assets for investment purposes.
- Use of product names that imply greater levels of safety/return than are actually possible.
- Charges that do not appear to reflect the level of service provided e.g. a passive collective investment scheme with a high annual charge.
- Performance risks that are difficult to assess or are not properly understood by the provider or distributor.

FEEDBACK STATEMENTS

FS11/1 10 March Enhancing the auditor's contribution to prudential regulation: Feedback on DP10/3

A 55 page document jointly produced by FSA and the Financial Reporting Council which summarises industry feedback to the supervisory responses to the financial crisis, highlighting the need to examine the role of auditors in prudential supervision. The paper elaborates on a code of practice designed to improve the dialogue between regulated firms' audit committees, the external auditor and the supervisor.

Principle 1: Supervisors and auditors shall seek an open, cooperative and constructive relationship at all levels.

Principle 2: There should be regular dialogue between the supervisor and auditor.

Principle 3: Supervisors and auditors shall share all information relevant to carrying out their respective statutory duties in a timely fashion.

Principle 4: Auditors and supervisors shall respect their duty to treat information shared between the two parties or received from firms confidentially.

The paper also recognises that the application of professional scepticism is fundamental to the audit process.



FS11/2 28 March Consumer complaints (emerging risks and mass claims): Feedback on DP10/1

A joint offering from FSA, FOS and OFT, this 24 page paper argues for stronger coordination between regulators and the ombudsman service. A Coordination Committee has been formed to promote effective exchange of information between the FSA, OFT, and ombudsman service. It also addresses the issue of mass claims, particularly those that are channelled through a third party Complaints Management Company.

Total discussion and feedback pages Q1 2011 - 154

POLICY STATEMENTS

PS11/01 20 January

Distribution of retail investments: Delivering the RDR - professionalism Feedback to CP10/14 and CP10/22 and final rules

This 126 page documents sets out the final rule amendments that will usher in the changes pursuant to the Retail Distribution Review. It introduces a new definition – the *retail investment adviser* – an individual who largely advises or deals for retail clients in relation to securities, derivatives, packaged products and Friendly Society tax-exempt policies. Such persons will have to be accredited by a designated body for the purpose of providing the independent verification required under the Training and Competence rulebook.

FSA has published a 16 page list of the qualifications and institutions that are accredited to provide the various qualifications. Institutions include trade bodies (CISI, CFA Institute, ACI, ACIIA, Chartered Insurance Institute etc.), universities (Manchester, Reading, Stirling etc.) and stock exchanges (London, Singapore, Kuala Lumpur, New Zealand etc.).

The new T&C rules came into effect on 1 February 2011 with further rules regarding independent verification effective 31 December 2012 and a new definition – the *retail investment product*, basically expanded list of packaged products.

PS11/02 10 February Implementation of the 2nd Electronic Money Directive - supplement to HM Treasury's consultation and final rules

This 115 page paper makes changes to the FSA Handbook to enable them to discharge their responsibilities under the Electronic Money Regulations 2011 (the EMRs). This entails amendments to PRIN, SYSC, COND, GEN, GENPRU, BIPRU, COBS, SUP DEPP DISP, PERG and ELM (Electronic Money Regulations).

PS11/03 25 February Decision Procedure and Penalties manual and Enforcement Guide review

This 52 page paper contains the final agreed changes to FSA's approach to enforcement including a new rule in GEN that an authorised firm must not pay a financial penalty imposed on a present or former employee, director or partner of the firm or an affiliated company. The amendments also



prevent a recipient of a decision notice from publishing the notice or any details concerning it unless FSA have published the notice or those details.

The “settlement discount” – normally 30% applied to fines where the subject settles without appealing to the tribunal is now extended to the length of time of suspension periods.

The paper also recognises that the Financial Services and Markets Tribunal has been replaced by the “Upper Tribunal”.

Another clarification is that the fact that the FSA has withdrawn a firm’s authorisation, as a result of which the firm may have less earning potential, may be relevant in assessing whether the penalty will cause the firm serious financial hardship.

Decision notices that relate to disciplinary actions may be removed from FSA’s website after 6 years.

PS11/04 25 February Tracing employers' liability insurers

A 68 page policy document containing the final version of a statutory instrument relating to the Insurance Conduct of Business rules (ICOBS). Under this, insurers are required to produce an employers’ liability register and must obtain a director’s certificate and an independent assurance report

PS11/05: 25 March Auditor's Client Assets Report

This 50 page Policy Statement addresses improving the auditor’s report on client assets and publishes final rules. The rules are aimed at authorised professional firms – in particular auditors in relation to their “reasonable assurance” or “limited assurance” review of firms’ client money and custody arrangements and to have regard, where relevant, to material published by the Auditing Practices Board that deals specifically with the client assets report which the auditor is required to submit to the FSA. A prescribed form is to be used by the auditor and must include a Breaches Schedule, all to be submitted within four months of the accounting reference date.

Total Policy Statement pages for Q1 2011 = 411

Total Q1 2011 document pages 1110

The Compliance Exchange is not licensed or authorised to conduct investment business or offer investment advice in any jurisdiction. No investment, legal or regulatory advice is offered. No liability is accepted and no endorsement or recommendation implied for financial promotion purposes. Editorial and research material featured at The Compliance Exchange may not be copied without the Author's permission. All rights including intellectual property rights are reserved.