



Corporate Insurance Regulatory Update

HM Treasury Publications

A new approach to financial regulation: building a stronger system February 2011

HM Treasury has published a consultation paper on the new regulatory structure. This follows on from the consultation paper published in July 2010 setting out proposals for the reform of the UK's system of financial regulation. The new consultation sets out the next stage of the Government's thinking, and addresses five key themes emerging from responses to the July consultation paper:

- The need for the new regulatory authorities' core statutory objectives to be balanced and supplemented with other factors
- The importance of accountability and transparency for the Prudential Regulation Authority (to be responsible for prudential regulation of firms), the Financial Conduct Authority (to be responsible for conduct of business regulation) and the Financial Policy Committee (to be responsible for regulation of stability and resilience of the financial system as a whole)
- The need for a strong, coherent markets regulation function within the Financial Conduct Authority
- The importance of the European and international agenda, both during the transition phase and subsequently
- The importance of effective coordination between the new regulatory authorities

The consultation closes on 14 April 2011. The Government proposes to publish a draft bill in the spring. As a result of the brevity of the consultation period, the Treasury will be holding a number of round table discussions and seminars to proactively seek the view of respondents and engage in dialogue.

A copy of the consultation paper can be found at:
http://www.hm-treasury.gov.uk/consult_finreg_strong.htm

FSA Policy Documents

CP11/4: The Client Money and Asset Return: Operational Implementation 10 February 2011

The consultation paper follows on from PS10/06 *Client Assets Sourcebook (Enhancements) Instrument 2010*, which introduced the Client Money and Asset Return (CMAR), and deals with the operational implementation of the CMAR requirement. The FSA is proposing to remove CASS small firms from the scope of the CMAR requirement, so that only CASS medium and large firms will be obliged to complete the return in line with the timetable set out in PS10/06 i.e. first return for June 2011 to be submitted by Thursday 21 July 2011. The requirement will only be extended to CASS small firms once the FSA has introduced the detailed operational processes of data collection and analysis received from the higher impact firms holding the largest client money positions. A further consultation on extending the requirement to small firms will be issued at that point. The FSA is proposing to implement the CMAR through GABRIEL.

The obligation to complete CMAR does not affect general insurance intermediaries who only hold client money in the course of insurance mediation activity under CASS 5.

The deadline for responses is 10 April 2011.

A copy of the consultation paper can be found at:
http://www.fsa.gov.uk/pubs/cp/cp11_04.pdf

CP11/5: Protecting with-profits policyholders 24 February 2011

CP11/5 consults on proposals to address some of the issues raised by the FSA in its With Profits Regime Review. It proposes a number of changes to rules and guidance on the operation of with-profits funds, most of which are found in COBS20.

The issues covered are:

- Conflicts of interest
- The fair treatment of with-profits policyholders in mutually owned funds
- The terms on which new business is written
- Material reductions in new business
- Market value reductions
- Strategic investments
- Charges made to with-profits funds
- Excess surplus
- Reattribution of inherited estates
- Corporate governance

The deadline for responses is 24 May 2011.

A further consultation paper relating to changes to COBS20 arising from Solvency II and issues about a firm's communication with their with-profits policyholders will be published later in 2011.

A copy of the consultation paper can be found at:
http://www.fsa.gov.uk/pages/Library/Policy/CP/2011/11_05.shtml

PS11/3: Decision Procedure and Penalties manual and Enforcement Guide review

25 February 2011

The Policy Statement responds to comments received in response to consultation paper 10/23: *Decision Procedure and Penalties manual and Enforcement Guide review*, in which the FSA sought views on proposed amendments to the DEPP and EG. Four main changes were proposed:

- To include in the EG the FSA policy for publishing decision notices. The FSA's proposed approach was that a decision notice would only be published if a person decided to refer the matter to the Upper Tribunal, unless the FSA considered there to be a compelling reason to publish earlier.
- To amend the FSA policy on reviewing whether or not published notices and related press releases should remain published on the FSA's website.
- To apply the settlement discount scheme (which applies in cases involving financial penalties and provides for a discount of up to 30% for settling, depending on the stage at which settlement occurs), to the length of suspension periods. The FSA was given the power to impose suspensions on authorised persons and approved persons in The Financial Services Act 2010.
- To adopt a penalties policy and decision maker for using FSA enforcement powers under the Cross-Border Payments in Euro Regulations 2010.

The FSA also sought view on a proposal to implement a new rule in GEN that a firm, except a sole trader, must not pay a financial penalty that has been imposed on a present or former employee, director or partner of the firm or an affiliated company.

The FSA is broadly adopting the proposals included in the consultation paper. The amendments will come into force on 6 March 2011.

A copy of the policy statement can be found at:

http://www.fsa.gov.uk/pages/Library/Policy/Policy/2011/11_03.shtml

PS11/4: Tracing employers' liability insurers

25 February 2011

The policy statement follows on from CP10/13 in which the FSA consulted on proposals to help claimants trace EL insurers.

The policy statement introduces a compulsory framework for EL insurers designed to assist potential claimants to trace the details of any EL insurance which may be related to their claim, either through an insurer's own website or through a tracing office facility. The new framework is designed to fill in the gaps in the current voluntary code of practice developed by the ABI/Lloyds Market Association.

The new requirements apply to all firms carrying out or managing insurance contracts which include UK EL cover. These firms are now required to:

- Maintain an Employers' Liability Register (ELR), either on the firm's own website or through a 'qualified tracing office', containing the required information, including full details of the relevant EL policies, policyholder, employer and employee details;
- Produce director and auditor reports certifying that the ELR complies with the new rules;
- Ensure that the ELR has an effective search function, allowing potential claimants to input data on a specified employer in a particular period in order to retrieve data, and which allows for information requests from qualified tracing offices; and
- Notify the FSA if it carries on EL business and provide details of its ELR.

A 'qualified tracing office' is one which meets certain conditions set out in the instrument relating to search functions and data input. The Employers Liability Tracing Office (ELTO), an initiative set up by the industry, is the most widely used example. Although the FSA has no power to compel firms to make tracing information available to ELTO, it is expected that many firms will do so and will, in the process, satisfy the requirements set out by the FSA relating to maintenance of an ELR.

A copy of the policy statement can be found at:

http://www.fsa.gov.uk/pages/Library/Policy/Policy/2011/11_04.shtml

Guidance Consultation: Code of Practice for the relationship between the external auditor and the supervisor 10 February 2011

The FSA is consulting on a draft code of practice designed to enhance the dialogue between auditors and supervisors, which has been produced by the working party on the role of auditors established by the Bank of England, of which the FSA is a member. This follows on from the objective stated in DP10/03 of improving the quality and frequency of engagement between supervisors and external auditors of high impact firms.

The Code sets out principles to guide interactions between supervisors and auditors, covering the nature of the relationship between them, how often and in what form they should be communicating with each other and the way in which they should share information. For some firms, the code specifies a minimum level of meetings between the firm, its supervisor and its external auditor.

One of the objectives is to enhance the FSA's ability to scrutinise specific accounting practices and related judgements.

The deadline for responses to the draft code is 25 March 2011.

A copy of the consultation can be found at:

http://www.fsa.gov.uk/pages/Library/Policy/guidance_consultations/2011/11_05.shtml

Handbook Notice 107 25 February 2011

The handbook notice sets out the changes made to the FSA Handbook in February 2011.

Changes include:

- Clarification of the rules regarding the elimination of reciprocal financing in the calculation of group capital resources for insurers (INSPRU 6.1.42AR and INSPRU 6.1.42BG)
- A new rule that an authorised firm must not pay a financial penalty imposed on an employee and an update of the FSA's guidance on the approach it takes to enforcement
- A requirement on insurers that write EL insurance to publish policy details so that potential claimants can trace relevant insurer and claim compensation

A copy of the Handbook notice can be found at:

http://www.fsa.gov.uk/pubs/handbook/hb_notice107.pdf

Handbook Development Newsletter/Policy Development Update (Issue 132): 28 February 2011

The FSA has changed the name of the Handbook development newsletters to policy development updates, on the basis that this title better reflects the published and forthcoming policy updates it contains.

The PDU sets out the policy documents published since 28 January 2011 and Handbook and other developments since that date. It also sets out a timetable for forthcoming publications.

A copy of the PDU can be found at:

<http://www.fsa.gov.uk/pubs/handbook/hb132.pdf>

FSA Corporate Documents

Retail Conduct Risk Outlook 28 February 2011

This is the FSA's first Retail Conduct Risk Outlook, which examines how a range of current, emerging and potential risks could impact customers. The RCRO contains the FSA's highest priority retail conduct issues, which will be addressed in its Business Plan in March, and will inform how it will set priorities and deploy resources.

The RCRO analyses how firms and consumers have responded to the uncertain macroeconomic environment, the development of new regulation, and other market developments and then discusses current and emerging risks and potential concerns arising.

In terms of environmental factors, the RCRO notes that:

- Innovation is increasing in the asset management and life sector – in terms of products, distribution and wider business model.
- Life insurers are responding to a number of large-scale regulatory initiatives, which will have a significant effect on the way they do business (for example, the RDR and Solvency II).
- The combination of regulatory changes affecting retail intermediaries may have a significant impact on the business models of firms, which could lead to conduct risk arising for consumers of the impacted businesses.
- All firms are affected by a large number of regulatory and public policy initiatives. In some cases (for example the RDR) regulatory change will require firms to radically change business models and strategy. This should bring benefits to most consumers, but may also introduce new risks.

Current risks identified include mis-selling of payment protection insurance.

Emerging risks identified include:

- Strategies in the run up to the introduction of the RDR, and the possibility that revenue maximisation could lead to consumer detriment
- Weaknesses identified in the network model for advisers, where the FSA has concerns over the level of control and oversight that networks exert
- Firms' reward policies and practices
- Risks associated with with-profits products, including that they may not meet the needs of consumers because the complexity, lack of transparency and potential conflict of interests inherent in the provision of with-profits products makes it difficult for consumers fully to understand the products

- The increasing popularity of complex investment products, such as traded life policy investments

Potential concerns identified include:

- Risks associated with the development of other protection solutions to run alongside credit facilities in place of PPI, such as term assurance contracts, or stand alone policies.
- Risks associated with bundling products, including (i) increased complexity for consumers due to the multiple products involved and the greater volume of information, and (ii) potentially increased switching costs, as switching away from a provider may mean switching more than one product.
- Risks associated with cross-selling of products by banks and building societies, including mis selling and product design.
- Risks associated with new business models that may emerge as a result of the RDR to deal with the loss of commission income on new product sales, and new strategies for getting products to market.
- Risks arising out of significant pressures in the life insurance sector, including lack of investment in non-core parts of the business, aggressive growth strategies to increase profits and earnings and changes to product mix as a result of Solvency II among other factors.

A copy of the RCRO can be found at:

<http://www.fsa.gov.uk/pubs/other/rcro.pdf>

FSA Communication Documents

Dear CEO letter: Transition to new regulatory structure

7 February 2011

The CEO letter covers the FSA's progress towards the new regulatory structure.

In order to ensure a smooth transition, the FSA will be making changes to its management structure from 4 April 2011, starting with replacing the current Supervision and Risk business units with a Prudential Business Unit and Consumer & Markets Business Unit. An organisation plan is attached to the letter.

The letter states that notwithstanding this internal reorganisation, integrated supervision will continue until the FSA has designed and piloted new regulatory processes and trained staff.

A further letter will be sent to CEOs in April to explain where their firms will sit in the new regulatory structure.

A copy of the letter can be found at:

http://www.fsa.gov.uk/pubs/international/dceo_transition.pdf

General Insurance Newsletter: February 2011

15 February 2011

The FSA has published its General Insurance Newsletter covering:

- Update on the latest position with Solvency II
- Feedback on the FSA's 2010 stress testing exercise
- The EU consultation paper on changes to the IMD
- Oral disclosure in relation to protection products
- New guidance consultation process

- Product Intervention Discussion paper
- The Test Achats case on gender based pricing in insurance
- Payment protection insurance complaints
- Enforcement cases
- Transition to the new regulatory structure
- Request for feedback on the dedicated smaller insurers' website

A copy of the newsletter can be found at:

http://www.fsa.gov.uk/pubs/newsletters/gi_feb_11.pdf

Life Insurance Newsletter: February 2011 15 February 2011

The FSA published its Life Insurance Newsletter, covering:

- First Quarterly Consultation paper for 2011, which proposes amendments on a number of topics relevant to the life industry including the annuitisation of pension savings, Child Trust Funds, the RDR and long-term linked life assurance business
- Update on the latest position with Solvency II
- New guidance consultation process
- New quarterly newsletter focussing on the RDR
- CP on changes to the Handbook arising from workplace pension reforms
- Product Intervention Discussion Paper
- CP on Product Disclosure: retail investments
- COBS projection rules for non-MiFID products
- Recent enforcement cases
- The Test Achats case on gender based pricing in insurance

A copy of the newsletter can be found at:

http://www.fsa.gov.uk/pubs/newsletters/life_feb11.pdf

RDR Newsletter: February 2011 9 February 2011

This is the first edition of the FSA's RDR newsletter, which aims to keep firms up to date with RDR publications and developments.

The Newsletter covers:

- Final rules on professional standards published in January 2011
- CP10/29 on the role of platforms in a RDR world
- Myth busting, dealing with misconceptions of the RDR
- Recent enforcement cases
- Recent speeches
- Regional roadshows for small financial advisers.

A copy of the newsletter can be found at:

<http://www.fsa.gov.uk/pubs/newsletters/rdr1.pdf>

Speech: The Future of Insurance Regulation 9 February 2011

Hector Sants gave a speech on the key regulatory issues affecting the insurance industry covering:

- Solvency II
- The new supervisory structure in the UK
- The new European regulatory structure

A copy of the speech can be found at:

http://www.fsa.gov.uk/pages/Library/Communication/Speeches/2011/0209_hs.shtml

Other FSA Publications

Solvency II: Internal Model Approval Process Thematic Review Findings February 2011

The FSA has published a report setting out the findings of the Internal Model Review Process thematic review. The report sets out:

- an explanation of the approach adopted for the thematic review
- an overall summary of the results
- a more detailed summary of the thematic review findings, including observed better practice
- areas for firms to consider when preparing for internal model approval.

The report does not constitute FSA guidance, and is subject to Solvency II level 2 implementing measures and level 3 guidance, which are yet to be finalised. The report is also subject to any rules and guidance the FSA may make to transpose the Directive. However, it does represent the FSA's current thinking on internal models.

A copy of the report can be found at:

http://www.fsa.gov.uk/pubs/international/imap_final.pdf

Europe

Regulating Financial Services for Sustainable Growth: A Progress Report February 2011

The Commission has published a report detailing progress made in its post-financial crisis programme of regulatory reforms. This follows the Commission's June 2010 Communication on Regulating Financial Services for Sustainable Growth which laid out the Commission's detailed plans for reform.

The report notes the importance of the new pan-European regulatory structure and highlights the importance of communication between local regulators, commenting that correct treatment of risk is a focal point. The Commission draws attention to the lack of uniformity across Europe, both in terms of regulators and also in terms of technical rules themselves and makes reference to reducing variations in national rules and regulations via the introduction of a single European rulebook

The progress report also sets out the various legislative measures that have already been adopted by the Commission for 2011, together with those which have been proposed but have not yet been adopted.

A copy of the report can be found at:

http://ec.europa.eu/commission_2010-2014/barnier/docs/110209_progress_report_financial_issues_en.pdf

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