



Regulatory Roundup – 8 February 2010 Issue #8



Corporate Governance

The FSA has issued Consultation Paper CP10/03: 'Effective corporate governance'. As we all know, the FSA places considerable emphasis on good corporate governance and is a subject matter that can be guaranteed to feature in the planning of an ARROW visit.

The proposals, which need to be considered by most (if not all) firms, include the introduction of 6 new controlled functions and the return of CF13 (Finance function); CF14 (Risk function); and CF15 (Internal audit function) in place of CF28 (systems and controls). There will also be the removal of some exemptions enjoyed by firms in general and LLPs specifically.

The consultation period ends 28 April and the FSA hopes to issue the new rules in Q3. Although the CP does suggest some transitional arrangements in order to give firms time to consider the impact of the proposals in the light of their organisational structure, firms may wish to turn their thoughts to CP10/3 now.

We have prepared a summary of the proposals contained within CP10/3 which can be accessed via the link below.

The proposals in CP10/03 relate to the 'significant influence controlled functions', which are basically all the controlled functions except CF30 'the customer function'.

However CF30 doesn't completely escape as a separate consultation paper – CP10/02 'Mortgage Market Review – Arrears and Approved Persons' - proposes introducing a new customer function (CF31). This will only be of relevance to home finance business but a consequence of this CP is that CF30 will be renamed 'customer function (designated investment business)'. This consultation ends 30 April with final rules being published in June.

http://www.fsa.gov.uk/pubs/cp/cp10_03.pdf

[Complyport Doc](#)

Client Money & Assets

The FSA has issued a fairly scathing report on the handling of client money and assets by firms.

Regulatory action has been taken against a number of firms including s166 and two Enforcement referrals ("... and a number of other firms under active consideration for Enforcement Referrals.").

A 'Dear CEO' letter has also gone out, although only to relationship managed firms. Other firms which have the ability to hold (or, according to the FSA website, that have the ability to control) clients' money and assets will be provided with a link to the letter and report via a regulatory update. The links below will allow access to both the report and letter – as well as a 'Dear CO' letter sent in March last year on the same topic. Apart from obvious areas such as reconciliations there were failings in elementary areas such



as the trust status requirement under CASS 7.8.

There is the threat of more CASS related visits later this year so the message to those firms which hold client money/assets – even if not relationship managed - is to review their current operations in the light of the report findings and to ensure that there are no gaps.

[CEO Letter 0119.pdf](#)

[Letter Client Assets.pdf](#)

[CASS Risk.pdf](#)

AFIBs

The Regulatory Roundup of 5th November included an article on 'alternative finance investment bonds' which will cover the sukuk (Islamic bond) market. The nature of such bonds is that some could be regarded as collective investment schemes. HM Treasury is introducing a new specified investment known as 'Alternative Finance Investment Bonds' under article 77A of the Regulated Activities Order so that these instruments are regulated in a similar manner to conventional bonds or debentures.

The FSA has sent out letters to firms that it believes have an interest in this area which invited such firms to apply for a VoP using a streamline process. The new legislation is expected to be implemented on 25th February.

Fine start to the year (1)

Thanks to Standard Life, the FSA has made a good start to the year with fines totaling £2.5m in the month of January. The penalty was in respect of failures in 'systems and controls' concerning marketing (although the FSA summary table refers to fraudulent mortgage applications being submitted). It is still some way behind this time last year (£6.1m) but then again 2009 had the benefit of the first entry of the year being a £5.25m penalty imposed on Aon – oddly enough also for failures in 'systems and controls'.

<http://www.fsa.gov.uk/Pages/About/Media/Facts/Fines/index.shtml>

Fine start to the year (2)

On the subject of fines, February started with the FSA releasing details of Simon Treacher mis-marking fund assets whilst a fund manager at BlueRay Asset Management Ltd. Mr Treacher was fined £140,000; the FSA made no criticism of BlueRay. Although it is a relief for all that the FSA didn't find some reason for apportioning blame on the firm, it is interesting to compare the FSA approach here with that of Fabien Risk Services and Stephen Allen, one of its Director's who received a ban. Here two co-directors colluded to misuse client funds without the knowledge of Mr Allen. The evidence shows that the two co-directors prepared false and misleading accounting records which could have misled Mr Allen. In addition he reported the matter to the FSA. However despite this Mr Allen was deemed to have failed in his duty as a director of a regulated firm (the perpetrators each received a ban as well).

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2010/022.shtml>

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2010/006.shtml>

[Stephen Robert Allen.pdf](#)

If any of the topics discussed above raise questions or a need for guidance or support, please feel free to



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