

Financial Services Bulletin

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Section one – news

'UK International Financial Services – the future' report published

UK International Financial Services – the future report was launched in May by the Financial Services Global Competitiveness Group, co-chaired by the Chancellor Alistair Darling and former Citi Chairman Sir Win Bischoff.

The report, which reflects the view of the UK's financial services leaders, states that the UK's financial services sector can continue to be a world leader by working as a genuine partner of British business and emerging economies while embracing the need for global regulatory reform.

http://www.hm-treasury.gov.uk/ukinternational_financialservices.htm

Credit Rating Agencies

Following concerns at the performance of Credit Rating Agencies (CRAs) the European Commission consulted and brought forward a proposal for a Regulation in November 2008. The proposal was discussed in Council and in the European Parliament and agreed text was adopted by both bodies in April 2009. This text will now be translated and the approved Regulation is expected to come into force before the end of 2009.

PSGC Report published

The Professional Services Global Competitiveness Group (PSGC) reported in March on the medium and long-term challenges facing professional services in the UK. The group was set up to look at the medium-to longer-term challenges and opportunities facing the Professional Services sector, and was co-chaired by the Financial Services Secretary Lord Myners and Sir Michael Snyder, Senior Partner at Kingston Smith LLP. The group's report outlines a number of areas of focus for the Government, the professional services industry and professional bodies, to ensure that the sector remain competitive, and is available at:

http://www.hm-treasury.gov.uk/d/professional_services_group160309.pdf

Acquisitions Directive implemented

In March 2009, HM Treasury laid two Statutory Instruments in Parliament, one to implement the Acquisitions Directive by amending the Controllers Regime in FSMA, and a second to exempt certain non-directive businesses (i.e. firms which are not covered by EU directives) from the requirements of this regime. The FSA then changed its rules, issuing an FSA Handbook Notice on 28 March 2009. More details can be found at:

http://www.hm-treasury.gov.uk/consult_implement_acquisitions_index.htm

and

<http://www.fsa.gov.uk/Pages/Doing/Regulated/Notify/Control/index.shtml>



HM TREASURY

The Walker Review of corporate governance

The original Terms of Reference for the review were to examine corporate governance in the UK banking industry and make recommendations, including in the following areas:

- the effectiveness of risk management at board level, including the incentives in remuneration policy to manage risk effectively;
- the balance of skills, experience and independence required on the boards of UK banking institutions;
- the effectiveness of board practices and the performance of audit, risk, remuneration and nomination committees;
- the role of institutional shareholders in engaging effectively with companies and monitoring of boards; and
- whether the UK approach is consistent with international practice and how national and international best practice can be promulgated.

On 21 April, the Terms of Reference were extended so that the Review shall also identify where its recommendations are applicable to other financial institutions.

The review started in February 2009. A consultation document will be published in summer 2009 with conclusions in autumn 2009.

Paper on future of financial regulation

The Government's view on financial regulation for the long term will be published before the summer. This publication will cover the Government position on important topics such as work on delivering effective macroprudential regulation and the question of how to effectively regulate large systemic institutions. The publication will also present a series of consultation questions for how to strengthen prudential financial regulation under the headings: Strengthening regulation and the regulators; protecting and supporting consumers; and improving efficiency and competition in financial markets.

The UK implementation of the Payment Services Directive (PSD)

The PSD aims to harmonise conduct of business rules for all providers of electronic payment services across the EU, and creates a tiered prudential authorisation regime for non-bank payment service providers – known as 'Payment Institutions'.

The Council and European Parliament reached political agreement on the PSD on 24 April 2007. The Directive was formally adopted on 13 November 2007, and was published in the Official Journal on 5 December 2007. The Directive must be transposed into the national law of all EU Member States by 1 November 2009.

On 9 February the Government laid before Parliament regulations to implement the EU Payment Services Directive (PSD) into UK legislation. These regulations came into force on 2 March 2009, and the PSD regulatory regime will be in place on 1 November 2009. The Government committed to early implementation in order to help firms consider the incoming requirements and prepare for compliance.

Further information can be found at:

http://www.hm-treasury.gov.uk/fin_payment_index.htm

Dematerialisation

Dematerialisation refers to the process of removing paper from the share settlement process (i.e. the settlement of a sale or purchase of a share). The Government intends to launch a discussion paper on dematerialisation in Autumn 2009.

The Banking Act 2009 – consultations on secondary legislation

The Banking Act 2009 builds on the tripartite framework to enhance the Authorities' (Bank of England, HM Treasury and the Financial Services Authority (FSA)) ability to deal with crises in the banking system, to protect depositors and to maintain financial stability. The centrepiece is a permanent special resolution regime (SRR), providing the Authorities with a range of tools to deal with banks in financial difficulties. In particular, the SRR builds on and refines the temporary tools introduced by the Banking (Special Provisions) Act 2008 (BSPA), which were used to bring Northern Rock plc into temporary public ownership in February 2008, and also to resolve Bradford & Bingley plc in September 2008 and the UK subsidiaries of two Icelandic banks (Heritable and Kaupthing Singer and Friedlander) in October 2008.

The Act also contains a range of other measures: to improve the legal framework and increase the efficiency of the Financial Services Compensation Scheme; to enhance the operation of regulatory frameworks for preventing firms from failing; to protect consumers; and to strengthen the Bank of England.

Parts 1-3 (which establish the special resolution regime), and provisions in Parts 4 and 7 were brought into force on 21 February 2009, – along with connected secondary legislation – coinciding with the expiry of the BSPA. Provisions in Part 7 relating to the Bank of England's Court of Directors and the Bank's financial stability remit were commenced on 1 June 2009.

The Act was introduced into the House of Commons on 7 October 2008. The Act followed an accelerated timetable and received Royal Assent on 12 February 2009.

The new Banking Act powers were first used in March 2009 in relation to Dunfermline Building Society. Dunfermline's retail and wholesale deposits, branches, head office and originated residential mortgages (other social housing loans and related deposits) were transferred to the Nationwide Building Society. Dunfermline's social housing portfolio was placed into a bridge bank wholly owned by the Bank of England. A court order was also made to place the remainder of Dunfermline's business into the Building Society Special Administration Procedure. This part

of the business included commercial loans, acquired residential mortgages, subordinated debt and most of Dunfermline's treasury assets.

Some essential pieces of secondary legislation were made on an emergency basis to enable the resolution of Dunfermline Building Society. These were 'The Building Societies (Insolvency and Special Administration) Order 2009', 'The Building Society Special Administration (Scotland) Rules 2009' and 'The Financial Services and Markets Act 2000 (Contribution to Costs of Special Resolution Regime) Regulations 2009'.¹

The first two of these orders apply the bank insolvency procedure and the bank administration procedure (as set out in parts 2 and 3 of the Act, respectively) to building societies and put in place statutory insolvency rules for building society special administration in Scotland. The Government has committed to open a full consultation on the insolvency and administration procedures rules before the start of Parliamentary recess on 21 July. Comments will be invited on all of the procedures and rules, including those that have been made on a contingency basis.

The purpose of the third instrument is to allow the Treasury to call upon Financial Services Compensation Scheme (FSCS) funds to contribute to costs associated with the exercise of a stabilisation power under the SRR. The instrument also provides for safeguards for the use of these powers, namely a cap on the amount that FSCS can contribute to, independent verification of resolution costs that the FSCS will contribute to and independent valuation of what the FSCS would have received in terms of recoveries had a stabilisation option not been used.

As with the building society secondary legislation, the Government has committed to consult fully with industry and other interested stakeholders on these orders and regulations. The Treasury will shortly be publishing documents on these issues, including drafts of the permanent instruments, for full and open consultation.

¹Instruments 805, 806 and 807
<http://www.opsi.gov.uk/si/si200908>

Section two – live consultations

CESR consults on MiFID complex and non-complex financial instruments for the purposes of the Directive's appropriateness requirements

MiFID requires that a firm which is selling a 'complex' financial instrument to a retail client on an execution-only basis must consider its 'appropriateness' for that client – for 'non-complex' financial instruments this is required only in limited circumstances. The paper sets out for consultation CESR's further analysis of types of MiFID financial instruments and its proposed views on how specific types of MiFID products are likely to fit within the complex/non-complex categories for the purposes of the appropriateness requirements.

The deadline for comments on this consultation is 17 July 2009. The consultation paper is available from:

<http://www.cesr.eu/popup2.php?id=5721>

EU consultation on the harmonisation of securities law

The consultation paper seeks to obtain information on the necessity to improve the EU-wide legal framework for securities holding and disposition and on how future EU legislation in this field could address the issue.

The European Commission intends to propose a legislative measure towards the end of 2009. Before making its proposals, the Commission has invited comments on the basis of a consultation document by 11 June 2009. This is available from:

http://ec.europa.eu/internal_market/consultations/docs/2009/securities-law/hsl_consultation_en.pdf

EU financial regulation and supervision

The European Commission published its Communication on European Financial Supervision on 27 May 2009, setting out its proposals for a new European financial supervisory framework. Legislative proposals are expected to follow in the autumn of this year. The European Commission has invited reactions from stakeholders to the Communication by 15 June 2009 at the latest.

The full text of the Commission Communication and Impact Assessment is available at:

http://ec.europa.eu/internal_market/finances/committees/index_en.htm#communication

Review of Market Abuse Directive

The European Commission has launched a call for evidence on its review of the application of the Market Abuse Directive, including some preliminary findings and proposals to improve and simplify this Directive. The Market Abuse Directive aims to ensure that behaviour such as insider dealing and market manipulation is properly deterred and sanctioned. The deadline for comments on this consultation is 10 June 2009. The consultation paper is available from:

http://ec.europa.eu/internal_market/consultations/2009/market_abuse_en.htm

Review into resolution arrangements for failing investment banks

As indicated in the Pre-Budget Report and Budget 09, the Government is conducting a detailed review of the resolution arrangements for failing investment banks. This report outlines the Government's thinking on the changes to market practice, regulation and insolvency law that might be needed to deal with any future investment banking failure. In particular it considers the treatment of investment banking clients after default, the future of their assets, and the treatment of their open or unreconciled trading positions. It also examines what can be done to make the process of insolvency more effective, and to limit the damage that may be done by a failing investment bank. The consultation period closes on July 10, and will be followed by further consultation in the Autumn.

Section 3 closed consultations

Review of Prospectus Directive

The European Commission launched a consultation on its review of the application of the Prospectus Directive, including some proposals to improve and simplify this Directive. The Prospectus Directive aims to ensure that investors are provided with clear and comprehensive information when making investment decisions. The consultation period ended on 10 March 2009.

Extension of the Statutory Regime for Issuer Liability

Section 90A of the Financial Services and Markets Act 2000 established a statutory civil liability regime for issuer misstatements to the markets in publications that are required for the purposes of the Transparency Obligations Directive (2004/109). Professor Paul Davies of LSE was asked to advise whether any further extension of this liability regime was needed. His report of June 2007 concluded that the current regime was soundly based, however he also recommended extending the limited scope of the statutory regime to a wider range of markets, transactions and issuer disclosures. HM Treasury consulted in July 2008 on proposed regulations based on Professor Davies' recommendations. Responses were due by 9 October 2008.

We are currently working on updating the draft regulations in light of responses to consultation.

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Regulation of Alternative Finance Investment Bonds consultation

The Treasury publicly consulted on the legislative framework for the regulation of sukuk (referred to in legislation as Alternative Finance Investment Bonds, AFIBs). Sukuk relate to instruments used by Islamic finance institutions in place of conventional bonds. The consultation period concluded in March and the response will be published in the Summer. We presented four options:

1. introduce legislative amendments to explicitly exempt AFIB instruments from Collective Investment Scheme regulations and create a new specified investment under the Regulated Activities Order (RAO). Introduce a unique regulatory definition for sukuk for this purpose;
2. same as option 1 but sukuk will be defined by the existing tax definition;
3. same as option 1 but include sukuk under the existing specified investment of creating or acknowledging indebtedness; and
4. do nothing.

UK negotiating approach to the revision of the Electronic Money Directive and the UK implementation of the revised Regulation 2560 on cross border payments in euro

In October 2008 the European Commission published proposals for revising two pieces of EU legislation in the payment service sphere.

The first proposal concerns the repeal of the E-Money Directive (EMD), which in 2001 introduced a prudential regulatory regime for e-money institutions and the introduction of a revised directive on the prudential regime for e-money issuance. The EMD was implemented in the UK through the Financial Services and Markets Act (FSMA) in 2002, with e-money issuers in the UK subject to FSA rules.

The second proposal concerns the repeal of Regulation 2560, which addresses the charges levied on cross-border payment transactions, and legislating for a new regulation on cross-border payments. Adopted at EU level in 2001, the HM Treasury Regulations on Cross-Border Payments in Euro came into force in March 2003.

Significantly, both proposals seek to align these pieces of legislation with the Payment Services Directive (PSD), on which agreement was reached in 2007.

On 20 January 2009, HM Treasury published its consultation on both proposals with a view to informing the Government approach towards EU level negotiations on revising the EMD, and the implementation of a revised Regulation into UK law. This consultation closed on 14 April 2009. The Government will be publishing a summary of consultation responses in the coming weeks.

Consultation a on new Information Gateway between FSA and the Claims Management Regulator

This consultation, which sought views on proposed changes to the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 to introduce an Information Gateway between the Financial Services Authority and the Claims Management Regulator closed on 14 May 2009. There were no objections to the proposed changes.

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Financial Services Bulletin

The Financial Services Bulletin, which has replaced the FSMA bulletin, is intended to reflect more widely the work of the financial service teams in the International Financial Directorate of HM Treasury

Any comments on the new bulletin please email fsma.bulletin@hm-treasury.x.gsi.gov.uk

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