



# HM TREASURY

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## **FSMA BULLETIN No.48**

**April 2007**

This FSMA Bulletin provides an update on:

1. legislation adopted after the previous Bulletin;
2. progress on consultations which have closed;
3. new consultations and those still open;
4. consultations planned in the next three months.

**Do you have any ideas or thoughts on any aspects of FSMA or FSA regulation which would benefit from simplification or deregulation, or which might merit further examination or review? If so please e-mail [fsma.bulletin@hm-treasury.x.gsi.gov.uk](mailto:fsma.bulletin@hm-treasury.x.gsi.gov.uk)**

## **SECTION ONE: LEGISLATION ADOPTED AFTER FSMA BULLETIN NO 47 (JANUARY 2007)**

### **FSA Information Gateways to the Gambling Commission, Financial Reporting Council and The Pensions Regulator**

A consultation document on the introduction of new information exchange gateways between the FSA and the Gambling Commission, the FSA and the Financial Reporting Council (and certain of its operating bodies), and the FSA and the Pensions Regulator closed on 29 August 2006. The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) (Amendment) Regulations 2006 came into force on 20th January 2007.

### **Home Reversions and Ijara Products**

The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2006 which introduces FSA regulation of home reversion schemes and Ijara products will come into force on 6th April 2007. Certain transitional provisions also apply.

### **UK implementation of EC Markets in Financial Instruments Directive, MiFID (2004/39/EC)**

A consultation on Treasury aspects of how MiFID will be implemented in the UK closed on 31st March 2006. A feedback statement summarising the responses received and explaining any changes to the legislation is available on the HMT website. The majority of the implementing legislation was presented to Parliament in December - and that requiring affirmative resolution adopted in mid January. Two pieces of further implementing legislation were made in end January (Proceeds of Crime Act 2002 (Business in the Regulated Sector) Order 2007 and Terrorism Act 2000 (Business in the Regulated Sector) Order 2007) and a further one in March (the Financial Services and Markets Act 2000 (Markets in Financial Instruments) (Amendment) Regulations 2007).

## **Consultation on the Financial Services and Markets Act 2000 (Collective Investment Schemes) (Amendment) Order 2007**

Consultation on proposal to allow exemption from Financial Services Regulation for custodial and insurance-based Tenancy Deposit schemes. ODPM proposes to introduce custodial and insurance-based Tenancy Deposit schemes. Both kinds of scheme potentially fall within the definition of a collective investment scheme in FSMA. The Consultation closed on 24 August 2006. The Financial Services and Markets Act 2000 (Collective Investment Schemes) (Amendment) Order 2007 will come into force on 6th April 2007

## **SECTION TWO: PROGRESS ON CONSULTATIONS WHICH HAVE CLOSED**

### **FSMA Controllers Regime**

A consultation on reform of the 'controllers regime' in Part XII of the FSMA closed on 14<sup>th</sup> June 2006. The proposals would reduce the requirements which apply to everyone to report to the FSA when they hold a controlling relationship over a body regulated by the FSA. A tighter definition of 'controlling relationship', which is closer to the minimum requirements of EU law is proposed. The result should be a more proportionate regime. The Commission's review of the Banking Consolidation Directive (BCD) is likely to address the vast majority of the simplification measures planned under the review of the controllers regime. The momentum behind this at EU level has increased making it sensible that these are taken forward through the BCD.

### **Amendment To The Supervisory Review Process For Cross-Border Mergers And Acquisitions**

A discussion paper that explained the Commission's proposal for amending the supervisory review process in six EC directives and set out a number of questions aimed at establishing a UK negotiating position. The paper also included feedback from the March consultation on the FSMA Controllers Regime. An update on the Commission proposal progress with negotiations of the directive,

summary of responses to the discussion paper and a partial Initial RIA was published early in March 2007. A further consultation and partial RIA on transposition of the directive will be published towards the end of 2007,

### **Consultation on Deregulating Freight Forwarding Insurance**

A consultation seeking views and evidence on the Government's intention to remove the insurance activities of freight forwarders from the scope of Financial Services Authority (FSA) regulation opened on 21 December 2006 and closed on 22 March 2007.

### **Proposed Changes to the Eligibility Rules for Establishing a Pension Scheme**

This consultation closed on 23rd December 2005. A formal response was published on 23rd March 2006. Following overwhelming support in the consultation, a new FSA regulated activity related to the operation of personal pension schemes will be introduced in April 2007. This will help boost competition in the personal pensions market as well as extend consumer protection. A final RIA has also now been published on the HMT website.

The Government has made the necessary amendments in Parliament to the Financial Services and Markets Act (FSMA) Regulated Activities Order (2001) to include the new activity of 'establishing, operating or winding up' a personal pension scheme. This will become the basis on which persons are 'eligible' under tax law to establish non-occupational registered pension schemes. The necessary changes to the 2004 Finance Act in order to establish eligibility to offer tax-privileged pensions will be made in Finance Bill 2007. Draft clauses have been placed on the HM Treasury website. The FSA began accepting applications to be registered for the new activity from April 2007 in October 2006 and will close doors on March 23<sup>rd</sup>.

### **Financial Promotions in the Workplace**

This consultation closed on 16<sup>th</sup> June 2006. The proposals would enable company pensions administrators to provide written material and make oral promotions about company pensions to employees without needing to be regulated by the FSA. Employers would also

be able to communicate to employees about work-related insurance cover without needing to be regulated by the FSA.

## **Consultation on Exemption for Incoming Approved EEA Prospectuses**

This consultation document seeks views on the proposal to amend the Financial Promotion Order to include in the existing exemption in respect of prospectuses or supplementary prospectuses approved by the FSA, those which have been approved by the home competent authority of an issuer based in another EEA member state. The consultation was launched on 22 December 2006 and closed on 16 March 2007.

## **Myners Principles**

The Myners Principles make use of comply-or-explain principles to improve the efficiency of investment decisions. This consultation, which related to revising current voluntary codes relating to institutional investment decision-making, closed in April 2005. The findings of the consultation will be included in the consideration of the NAPF January 2007 Review of the Myners Principles, 'Institutional Investment in the UK Six Years On', which is expected to report to Government end October 2007.

## **Payments Services Directive**

The consultation on the European Commission's proposal for a Payment Services Directive closed on 25 September 2006. The proposed Directive harmonises the regulatory regime for payment services across EU Member States and introduces a new EU-wide licensing regime for "Payment Institutions", allowing non-bank payment service providers to offer their services EU-wide on the basis of a licence obtained in any one EU Member State. The purpose of the consultation was to inform the UK negotiating position in Council. A summary of consultation responses and a revised Regulatory Impact Assessment was published on 18 December 2006 and can be accessed via the HM Treasury website under "Consultations and Legislation". Once the Directive has been adopted, HM Treasury will begin a consultation process in relation to the implementation of the Directive in UK.

EU Finance Ministers agreed an approach to the Directive at the 27 March 2007 ECOFIN. The European Parliament is now expected to vote on the revised text of the Directive in a plenary at the end of April, with a view to adopting the legislation at the first reading stage. A general approach on this Directive was approved at the 27 March 2007 ECOFIN. The European Parliament is now expected to vote on the text of this Directive in a plenary at the end of April, with a view to securing a first reading deal.

### **Review of the Regulation of Travel Insurance Sold along with a holiday – call for evidence**

The Treasury previously committed to review the way in which travel insurance sold along with a holiday and other related travel is regulated by early 2007 (travel insurance sold in this way is not currently subject to statutory regulation). A call for evidence was launched on 23 November 2006. It closed on 22 February 2007.

### **Implementation of EC Transparency Directive (2004/109/EC)**

The Transparency Directive relates to financial reporting by listed companies to markets and also increases the transparency of ownership of listed companies. The Treasury consultation on its proposed approach to implementing the Directive's major shareholdings notifications obligations closed in June 2005. A consultation feedback statement is available on the HMT website. The FSA consultation on implementation closed in June 2006. HMT also sought views on the implications of extending the civil liability regime for transparency disclosures. This consultation and the response to it are also available on the HMT website. Further to this consultation, the Treasury have appointed Professor Paul Davies QC to conduct a review of issuer liability for financial disclosures. This is ongoing and expected to report by May 2007. The primary legislative vehicle for implementation of the Directive and related measures is the Companies Act, which gained royal assent on 8 November 2006.

## **SECTION THREE: NEW CONSULTATIONS AND THOSE STILL OPEN**

## **Consultation On The Government's Long-Term Approach For Financial Capability.**

This consultation document seeks views on the Government's broad plan of action for achieving the vision of more financially capable consumers. There is more work to be done, both on access to generic financial advice and on how to use the Government's levers to integrate financial capability across public services. To inform further work the Government is currently consulting. The paper was launched on 15 January and consultation closes on 13 April.

The Government has also launched an independent feasibility study into generic financial advice, led by Otto Thoresen. The review launched its call for evidence on 13 March, this closes on 27 April.

## **Consultation on Draft Money Laundering Regulations 2007**

On 22 January 2007 HM Treasury published a consultation on draft Money Laundering Regulations 2007. The Regulations will implement the third EU Money Laundering Directive. The document follows a previous consultation on implementing the Directive, which closed on 20 October 2006. The Regulations will repeal and replace the Money Laundering Regulations 2003 and set out a number of requirements on firms in the regulated sector. The current consultation closed on 2 April.

## **Consultation on implementing Article 4(4)-4a(1) of the Fifth Motor Insurance Directive**

A consultation seeking views on the Government's intended approach to implementation of one part of the EU's Fifth Motor Insurance Directive. Broadly, Article 4(4)-4a(1) provides, in circumstances where a vehicle is dispatched from one EEA State to another, a 30-day derogation from the general rule that motor insurance cover can only be provided by an insurer authorised to write business in the Member State in which the vehicle is registered. This provision is intended to make it easier for consumers to purchase insurance where a vehicle is being imported from one EEA State to another. The consultation opened on 1 March and closes on 24 May 2007.

## **The Role of the Policyholder Advocate in the Reattribution Process**

The consultation document sets out proposals to exempt the role of policyholder advocate from the scope of FSMA. This will enable him to carry out the functions intended in the FSA rules without being authorised by the FSA. In particular, the proposed amendments would exempt a policyholder advocate from requiring authorisation in respect of the regulated activities which relate to arranging deals in, and advising on, investments. The consultation closed on 23 March 2007.

## **Proposals for a UK Unclaimed Assets Scheme**

A consultation on proposals to introduce an unclaimed assets scheme in the UK, building on the ongoing commitment from the sector to working together to make the scheme a success. The document sets out details of the banks and building societies' proposed changes to the Banking Code in addition to proposals for legislation. The key principles underlying the proposed scheme are:

- wherever possible to re-unite account holders with the assets that are rightfully theirs;
- to provide a legal right for account holders to reclaim their money at any time;
- to take a light touch approach which minimises running costs for the scheme and participating institutions by wherever possible building on existing infrastructure in order to maximise the money available for reinvestment in the community; and
- to take account of better regulation principles. The proposed UK scheme will therefore differ significantly from other international arrangements being, in part, a self-regulatory scheme.

The consultation closes on 12 June 2007.

## **SECTION FOUR: CONSULTATIONS PLANNED IN THE NEXT THREE MONTHS**

### **UK implementation of a UCITS compliant covered bonds regime**

The Treasury has been working closely with the Financial Services Authority and industry on the development of a UK covered bonds regime. UK covered bonds are based on well-accepted market standards and benefit from a high level of legal certainty. The object of Treasury and FSA work is to ensure compliance with the Undertakings for Collective Investment in Transferable Securities ('UCITS') Directive. Such compliance creates a level playing field for UK covered bonds in the EU and delivers the preferential capital treatment under the Capital Requirements Directive. There will be a consultation on the proposed legislative framework.