



HM TREASURY

FSMA BULLETIN No.50

January 2008

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

SECTION ONE: LEGISLATION ADOPTED AFTER FSMA BULLETIN NO 48 (AUGUST 2007)

Exemption for Incoming Approved EEA Prospectuses

The Financial Services and Markets Act 2000 (Financial Promotion) (Amendment No. 2) Order 2007 came into effect on 1st October 2007.

MiFID – Client classification transitionals

An informal consultation seeking views on proposed Regulations that would map most firms' current client classification limitations across to the equivalent new MiFID categories opened on 13 June and closed on 12 July. The legislation came into force on 15 August for certain transitional provisions and 1 November for all other purposes

Money Laundering

The Money Laundering Regulations 2007 came into effect on 15th December 2007, having been announced in July 2007.

The Treasury has also made a number of procedural or other changes to UK money laundering regulations in November 2007, and has announced the supervision and enforcement regime for the European 'Wire Transfer' Regulations.

Details are available on the HM Treasury Website.

Reinsurance Directive

Regulations to complete implementation of the Reinsurance Directive were laid before Parliament on 19 November and came into force on 10 December 2007. The Reinsurance Directive fills a gap in EU insurance law which, hitherto, has not extended to the activities of pure reinsurers (ie those that carry on reinsurance business only). Provisions in the Directive relating to the prudential supervision of such companies have already been implemented through rule changes in the handbook of the FSA. The Treasury's regulations focus on amendments to the FSMA and related secondary legislation which implement the single passport for pure reinsurers under the Directive, and bring arrangements for transfers of reinsurance business into line with Directive requirements.

Other amendments include changes to clarify and regularise arrangements for notification and publication of reinsurance business transfers, and a consequential amendment to the definition of 'authorised insurance company' in section 268 of the Companies Act 1985 (and its analogue in section 843 of the Companies Act 2006) that is necessary to ensure the regime for ISPVs (special purpose reinsurance vehicles) implemented by FSA operates correctly.

Sex Discrimination Act 1975 (Amendment) Regulations 2007

The Gender Directive on sex discrimination in goods and services (2004/113/EC) is being implemented by the Government Equalities Office through the Sex Discrimination Act 1975 (Amendment) Regulations 2007. Draft Regulations, laid before Parliament on 28 November, were intended to give effect to the Directive in Great Britain by 21 December 2007. However, the Government is considering whether laying draft UK-wide Regulations would be more effective. This means legislating after 21 December and work is well advanced to ensure that this happens early in the New Year.

Among other things, the Regulations will introduce new protections on grounds of pregnancy, maternity and gender reassignment, and specify the circumstances in which insurance companies may charge different premiums or offer different benefits to men and women. The Treasury consulted on provisions requiring that that data relevant to the use of sex as an actuarial factor must be compiled, published and regularly updated. It has published guidance to clarify how insurance companies should meet their obligations. The guidance, which will have statutory force, applies to England, Scotland, Wales and Northern Ireland. However, the changes to the law referred to in the Treasury's response to consultation and the guidance note remain proposals only. The guidance will be updated to reflect any changes that may be made to the implementing Regulations which are now expected to come into force early in 2008.

SECTION TWO: PROGRESS ON CONSULTATIONS WHICH HAVE CLOSED

Consultation on better regulation measures for the asset management sector

This consultation seeks views on a package of better regulation proposals for the asset management sector. The proposals are to:

- allow paperless settlement trades in of units in Authorised Unit Trusts and shares in Open-Ended Investment Companies,
- introduce a protected cell regime for Open-Ended Investment Companies and
- speed up the process by which foreign UCITS funds passport into the UK.

The consultation closed on 1 August 2007 and an announcement will be made in due course.

UK Covered Bonds

Proposals for a UK covered bonds regime compliant with the Undertakings for Collective Investment in Transferable Securities ('UCITS') Directive were launched in July. Compliance with UCITS will create a level-playing field for UK covered bonds in the EU and deliver the best possible risk weight of UK covered bonds under the Capital Requirements Directive. Consultation closed on 15 October. A summary of responses will be published on the HMT website in due course.

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 later this year.

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

This consultation, which sought views on the Government's broad plan of action for achieving the vision of more financially capable consumers, closed on 13 April 2007 and a summary of responses appeared on the HM Treasury website in July. 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. An action plan setting out how this will be done will be published in Spring 2008.

The Government has also launched an independent feasibility study into generic financial advice, led by Otto Thoresen. The review published an interim report on 22 October and the final report in due in 2008.

Financial Promotions in the Workplace

This consultation closed on 16th 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. A further consultation will be launched in the New Year covering certain changes proposed in the previous consultation.

Myners Principles

The Myners Principles make use of comply-or-explain principles to improve the efficiency of investment decisions. The NAPF January 2007 Review of the Myners Principles, 'Institutional Investment in the UK Six Years On', reported to Government in November 2007. The Government will consider the implications of the recommendations and consult early in 2008.

Consultation on amendments to the Collective Investment Schemes border for property transactions

HMT consulted in January 2007 on the definition of a collective investment scheme (CIS) set out in FSMA S235(1). This prohibits establishing, operating or winding up a CIS without FSA authorization.

The Schedule to the FSMA Collective Investment Schemes Order 2001 lists certain cases in which arrangements which would otherwise be considered CISs are exempt. There was uncertainty over whether certain types of property transaction fell within the definition of a CIS, particularly how exemptions applied to special purpose vehicles or multiple transactions.

The consultation closed on 29 March 2007. Responses to the consultation highlighted difficulties the proposed clarifications would cause for schemes set up deliberately to qualify as CISs in order to benefit from tax relief. The Treasury is developing revised proposals which were put out for further consultation in July. An announcement will be made in due course.

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). The legislation was made on 13 December 2007 and Parliamentary approval will need to be achieved within 28 days. An interim authorisation regime will be in place from 20 June 2008 until 31 December 2009.

Proposals for a UK Unclaimed Assets Scheme

Following the consultations on the proposed scheme, on November 7 the Dormant Bank and Building Society Accounts Bill was introduced in Parliament to facilitate the scheme.

The proposed legislation will allow participating banks and building societies to extinguish their liability to a dormant account holder upon transfer of the balance of the account to a reclaim fund. After transfer account holders will have the right of repayment from a reclaim fund which will need to be authorised by the Financial Services Authority. Account holders will be able to continue their usual relationship with their bank or building society, which will act as agent of a reclaim fund.

Money not needed to fund reclaim applications will be passed to the Big Lottery Fund for onward distribution according to the distribution priorities in England, Scotland, Wales and Northern Ireland. In

addition, smaller locally-based financial institutions may transfer money not needed for reclaim to charities that benefit their local communities.

SECTION THREE: NEW CONSULTATIONS AND THOSE STILL OPEN

Regulation of Modified Credit Agreements: a consultation

The Government proposes legislation to ensure that the regulatory regimes of the Financial Services Authority and Office of Fair Trading in relation to mortgages remain mutually exclusive. The Government is seeking views on this policy proposal.

This consultation paper is a joint publication by HM Treasury and the Department for Business, Enterprise and Regulatory Reform (BERR) and was published on 22 November 2007. The closing date for responses is 14 February 2008.

Banking reform - protecting depositors

This discussion paper sought views on a number of questions around the ways in which the current framework for dealing with banks in distress, and in particular depositor protection, might be improved to respond better to the challenges of recent events which have demonstrated the importance of depositor confidence if institutions are to weather periods of financial instability. The closing date for comments was 5 December 2007. Informed by the responses to the discussion paper, the Government intends to publish a consultation paper on possible measures early in 2008.

UK implementation of the Payment Services Directive (PSD)

The PSD aims to harmonise conduct of business rules for all providers of payment services across the EU, and creates a prudential authorisation regime for non-bank providers of payment services – 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 published in the Official Journal is expected before the end of the year on 5 December 2007.

The Directive must be transposed into the national law of all EU Member States by 1 November 2009. HM Treasury is commencing work to implement the PSD, and published a policy consultation document and preliminary impact assessment on PSD

implementation on 19 December 2007. The closing date for responses is 18 March 2008.

SECTION FOUR: CONSULTATIONS PLANNED IN THE NEXT THREE MONTHS

FSMA Market Abuse Regime: A review of the sunset clauses

Market abuse is a serious offence that damages investor confidence and the attractiveness of financial markets. A robust and effective regime for tackling market abuse is therefore a key component of the regulatory architecture. This consultation will seek views on the appropriate scope of the UK's market abuse regime.

The UK currently has a wider definition of market abuse than that established in the EU's 2003 Market Abuse Directive. When implementing the Market Abuse Directive in 2005 the UK opted broadly to retain the market abuse regime introduced here in 2001, but adopted the Directive requirements in other areas – for example in relation to disclosure obligations placed on issuing firms. There were mixed views as to the merits of a 'superequivalent' regime and so HM Treasury committed to review the scope by May 2008 to assess whether the superequivalences remained justified. A consultation paper will be issued in January 2008 to consider whether the wider scope remains desirable.

Legislative Reform Order (LRO) to amend Lloyd's Act 1982

In June 2007 the Government announced that it would be developing proposals to modernise the governance arrangements at Lloyd's, to take the form of an order under the Legislative and Regulatory Reform Act 2006 amending Lloyd's Act 1982.

The Treasury will be bringing forward a formal consultation on the proposed LRO shortly, in line with the commitment to publish proposals in 2008.