



HM TREASURY

FSMA BULLETIN No.47

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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 46 (SEPTEMBER 2006)**

UK Transposition of the Capital Requirements Directive (2006/48/EC and 2006/49/EC)

This consultation closed on 23rd May 2006. It lays out the options for transposing two areas of the directive into UK law. All respondents were content with the Treasury's proposals for transposition and the regulations were made and laid in Parliament on 5th December 2006 to come into force on 1st January 2007. The FSA is responsible for implementing the vast bulk of the directive and is currently finalising its Handbook text.

Home Reversions and Ijara Products

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

The Investment Exchanges and Clearing Houses Act 2006

The Investment Exchanges and Clearing Houses Act amends Part 18 FSMA to enable the FSA to prevent UK RIEs and RCHs from making changes to their regulatory provisions (defined as their rules, guidance, arrangements, policy or practice) which are disproportionate to the end they are intended to achieve or which do not pursue a reasonable regulatory objective. It also applies this restriction on regulatory provision to applicants for recognition as an investment exchange or clearing house. The Act makes provision for the FSA to make rules (or, in the first twelve months of operation, to give directions (waivers)) to specify proposed changes or types of change in respect of which the notification obligation will not apply and for necessary processes including notification to the FSA of proposed changes to regulatory provision, the calling in by the FSA of some proposals for detailed examination, and, if a proposal is called in, the making of representations to the FSA about the proposal. The Act came into force on 20 December 2006.

Changes to the Financial Services Compensation Scheme (Mesothelioma)

Section 3 of the Compensation Act 2006 relating to damages for mesothelioma includes a power for the Treasury to make regulations, including enabling the FSA to make rules concerning the Financial Services Compensation Scheme concerning certain pre-FSMA cases. These should facilitate the speeding up of payment of claims to mesothelioma victims. Following consultation the affirmative regulations were made by the Treasury on 6 December 2006. Changes to the FSA's rules came into effect on 22 December 2006.

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 - further legislation will follow in early 2007.

SECTION TWO: PROGRESS ON CONSULTATIONS WHICH HAVE CLOSED

Community Investment Tax Relief (CITR)

A consultation was launched in June 2005 on extending CITR to the personal lending activities of Community Development Finance Institutions. Consultation respondents were supportive of an extension and highlighted a range of practical issues that need addressing. As announced in the 2005 Pre-Budget Report, the Government is continuing to consider the case for, and practicalities of, this extension.

FSMA Controllers Regime

A consultation on reform of the 'controllers regime' in Part XII of the FSMA closed on 14th 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, summary of responses to the discussion paper and a partial RIA will be published early in 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.

Myners Principles

This consultation, which related to revising current voluntary codes relating to institutional investment decision-making, closed in April 2005. The code makes use of comply-or-explain principles to improve the efficiency of investment decisions. A consultation feedback statement incorporating further aspects of institutional investment decision making is expected to be issued shortly.

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 license 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". After the Directive gets adopted, HM Treasury will launch a consultation process on issues around implementation of the Directive.

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 now 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 will be made in Finance Bill 2007. Draft clauses have been placed on the HM Treasury website. The FSA has begun to accept applications for the new activity.

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.

Consultation on the Financial Services and Markets Act 2000 (Collective Investment Schemes) (Amendment) Order 2006.

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.

Regulatory Reform Order: A Second Consultation on Proposed Changes to the Financial Services And Markets Act 2000

Consultation on the Government's proposals to amend various provisions in the Financial Services and Markets Act 2000 (FSMA) closed on 21 June 2006. The proposals will be implemented by a Regulatory Reform Order (RRO) made under the Regulatory Reform Act 2000 (RRA). The draft Order was laid on 19 December and it is

hoped that the measures will come into force in Spring/Summer 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 Easter 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 Exemption for Incoming Approved EEA Prospectuses

This consultation document seeks views on the proposal to amend the Financial Promotion Order to include prospectuses or supplementary prospectuses approved by the home competent authority of another Member State. The consultation was launched on 22 December 2006 and closes on 16 March 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.

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. The deadline for responses is 22 February 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. The consultation closes on 22 March 2007.

SECTION FOUR: CONSULTATIONS PLANNED IN THE NEXT THREE MONTHS

Minor Changes UK Implementation of the EC Collateral Directive (2002/47/EC)

A consultation which proposes to alter the way this EC Directive is implemented in the UK should be issued in October. Relatively minor proposed changes relate to the priority given to financial collateral compared to other classes of creditor in cases of insolvency. A consultation will now be launched in Spring 2007.