



# HM TREASURY

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## **FSMA BULLETIN No.49**

**August 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)**

### **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. The legislation came into force on 20 July 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 came into force on 6th April 2007. Certain transitional provisions also apply.

### **FSMA (Regulated Activities) (Amendment) Order 2007**

The regulation of long term insurance sales depended on whether a policy was deemed to have an element of investment. Article 3(1) of the Regulated Activities Order 2001, No.544 defined a “qualifying contract of insurance” by reference to the following criteria:

- whether benefits under the contract are payable only on death or in respect of incapacity;
- whether a policy has a surrender value or the surrender value does not exceed the amount of a single premium;
- the term of a policy and the age of the policy-holder

As a result, policies exceeding ten years, and paying out after a policyholder was aged 70, were ‘qualifying contracts of insurance’ and were treated as investments. They were subject to FSA conduct of business rules (COB). Non-qualifying policies that did not meet these criteria came under conduct of business rules (ICOB). This new Order removes the age and term condition, so that long-term pure protection insurance will not fall within the definition of a qualifying contract of insurance and will be regulated under the ICOB rules. The Order came into force on 6th June 2007.

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

The amendment proposes 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 legislation came into force on 20 July 2007

## **Regulatory Reform (Financial Services and Markets Act 2000) Order 2007**

The Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 makes a range of amendments to FSMA. These will reduce the procedural burdens for the FSA associated with discontinuing or suspending the listing of a security; requirements that guidance, even that of a routine or technical nature, must be cleared by the FSA board; and burdens associated with consulting on guidance. It also lightens the authorisation requirements for partnerships whose members change and enables the FSA to waive or modify its rules for all those subject to them. The Order came into force on 20 July.

## **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.

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

This consultation, which sought seeks views on the Government's broad plan of action for achieving the vision of more financially capable consumers, closed on 13 April 2007. 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

closed on 13 April. A summary of the consultation responses will be published on the HM Treasury website in due course.

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

### **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.

### **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 Autumn covering certain changes proposed in the previous consultation.

### **MiFID - Client classifications transitionals**

An informal consultation was launched on 13 June regarding amendments to the Financial Services and Markets Act 2000(Markets in Financial Instruments) Regulations 2007. The consultation seeks views on proposed Regulations that would map most firms' current client classification limitations across to the equivalent new MiFID categories. The transitionals will simplify the process of moving to the new MiFID terminology and require no action from firms. The proposed draft Regulations also make technical amendments to the passporting transitional provisions that were contained in the Financial Services and Markets Act (Markets in Financial Instruments) Regulation 2007. These changes amend and extend our

domestic transitionals in light of the recently agreed CESR mapping process. The consultation closed on 12th July.

### **Statutory Instrument 2007 No. 2157: the Money Laundering Regulations 2007**

These Regulations implement in part in the UK the requirements contained in the Third Money Laundering Directive. The Money Laundering Regulations 2003 are revoked. Part 1 defines the scope of the regulated sector. Part 2 implement the risk-based approach to customer due diligence, specify what situations qualify for simplified and enhanced due diligence and make specific provision for firms to rely on CDD conducted by certain other firms. Part 3 requires firms to establish procedures, train their staff and keep records. Part 4 allocates a supervisor for every firm in the the sector and sets up a system of mandatory registration for money service businesses, high value dealers and trust and company service providers. Part 5 contains enforcement provisions for the FSA, OFT, HMRC and DETI (who supervise credit unions in Northern Ireland). Part 6 contains transitional provisions. The Regulations come into force on 15th December 2007

### **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 closed on 24 May 2007. The statutory instrument transposing this requirement is expected to come into force this summer.

### **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.

### **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 closed doors on 23 March.

### **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.

### **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. His final report was published in May 2007 and HMT expect to consult on implementation of his proposals in autumn 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.

### **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.

### **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 closed on 12 June 2007.

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

### **Consultation on the use of gender as a factor in the assessment of insurance risks**

This consultation, published on 12 June 2007, invites views on how insurance firms should meet a new obligation to publish data relating to the use of gender as a risk factor. The Treasury will publish Guidance in accordance with proposed Regulations amending the Sex Discrimination Act 1975.

The Department for Communities and Local Government (DCLG) has published proposals for implementing the EU Gender Directive through the Sex Discrimination Act 1975 (Amendment) Regulations 2007. This implements the principle of equal treatment between women and men in the access to and the supply of goods and services. The deadline for implementation is 21 December 2007.

In order to implement the Gender Directive DCLG proposes, among other things, to amend the Sex Discrimination Act relating to insurance to specify the circumstances under which insurance companies may charge different premiums or offer different benefits to men and women. One proposed condition is that data relevant to establishing the case for differential treatment by gender must be published and regularly updated in accordance with guidance issued by the Treasury. The consultation closes on 3 September 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.

### **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 is currently going through translation into all Community languages, and the Council is expected to formally adopt the Directive under the Portuguese Presidency, before its publication in the Official Journal.

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 expects to publish a consultation document and preliminary impact assessment on PSD implementation during Autumn 2007.