

February Newsletter
Issue 2/2009

Editorial

Hector Sants in the FSA's business plan has stated "The financial services industry is facing unprecedented challenges, which look set to continue in 2009. The FSA has a central part to play in addressing these challenges and providing leadership on the future shape of regulation. We will be focused on ensuring firms are soundly run in these difficult times and consumers are protected." This will mean additional financial resources and staff (an extra 280 by the first half of 2009/10 so we are told) and higher fees from firms although there won't be an increase for the smallest firms. Another rollercoaster year to look forward to!

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Further information on the issues in this newsletter, or any other issues which concern your business, can be obtained from
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Revisions to Senior Management Arrangements, Systems and Controls Sourcebook

As I mentioned in my October newsletter the FSA is amending the Senior Management Arrangements, Systems and Controls Sourcebook and these changes will take effect from 1 April 2009. The changes are mainly in the form of extra guidance to assist firms in meeting general requirements. However there are also a few additional rules that firms need to be aware of. In particular the area of financial crime is covered and this is very topical given the large fine received by Aon. For all you rule buffs the new rules will be at SYSC 6.3.

Firms are now required to establish systems and controls that "enable it to identify, assess, monitor and manage money laundering risk ". (SYSC 6.3.1R)

They must also "carry out a regular assessment of the adequacy of these systems and controls" to ensure that they continue to comply with SYSC 6.3.1R.

"A firm must allocate to a director or senior manager (who may also be the money laundering reporting officer) overall responsibility within the firm for the establishment and maintenance of effective anti money laundering systems and controls."

A firm must "appoint an individual as MLRO, with responsibility for oversight of its compliance with the FSA's rules on systems and

controls against money laundering".

The big question is what are adequate systems and controls? Looking at the Aon judgement (which highlights amongst other things breakdown of internal process) there are certainly things that firms can ask themselves when looking at some of the parties that they do business with when assessing any money laundering risk:

- 1) do I have a formal agreement in place with my business producers/introducers
- 2) have I conducted any form of due diligence on the parties that I deal with
- 3) do I carry out business in areas of the world where there is a perceived higher risk of money laundering
- 4) are there any controls over payments made to introducers/producing brokers
- 5) do the payments equate to the level of service agreed/provided; and
- 6) do I have procedures in place to ensure that any required internal procedures are adhered to?

If you wish to discuss aspects of the new rules or your own arrangements for assessing and monitoring new or existing relationships please call or e-mail me.

New Professional Indemnity requirements with effect from 1 March 2009

As mentioned in my November newsletter the EU is prescribing increased minimum rates to keep the limits in line with the increase in the European Index of Consumer Prices. The aggregate limit has increased to €1.68m and the single claim limit has been raised to €1.12m. This should not be an issue for the larger firms. However for smaller firms that traditionally buy £1m of cover this is going to be insufficient. Also firms should note that in the PI section in GABRIEL the FSA asks for limits for those conducting insurance mediation to be shown in Euros. Therefore for those buying £1m this level of cover after taking the current rate of exchange into account is not even close to the prescribed limits. Take note!

Speech by Sarah Wilson, FSA at an ABI seminar for NE directors of insurance companies

The focus of the speech was slightly different since the deadline where all firms must be treating customers fairly has now passed. Ms Wilson emphasised that firms must be able to demonstrate to themselves and the FSA that they are delivering fair outcomes to their customers. She confirmed that the FSA will continue to take 'decisive action' where it finds actual or potential consumer detriment and this will include action against senior management where necessary. TCF is now a key aspect of supervisory visits.

The speech did not cover much on the general insurance market but did cover aspects of the Retail Distribution Review (RDR) (not applicable to general insurance). A factor applicable to TCF is the issue of an adviser charging for advice rather than receiving commission from product advisers. It wants to remove the possibility of commission bias and ensure that the cost of advice is clear to consumers.

TCF must be central to any firm's culture and all directors play a key role in determining that culture.

FSA business plan

The FSA issued its business plan for 2009/10 recently. For insurance brokers there appeared little that had a direct impact on insurance brokers. However it did note that it continues to carry out thematic reviews on anti-bribery and corruption systems and controls within commercial insurance brokers. Apparently it is visiting 20 firms in Q1 of 2009 and it plans to publish its findings in Q4. For smaller firms it will continue its review of small firms' financial crime systems and controls in the areas of anti-money laundering and counter-terrorist financing, fraud, financial sanctions and data security. This project will also report in Q4. For a full view of the plan click on the following link:

http://www.fsa.gov.uk/pubs/plan/pb2009_10.pdf

Clarification of ICOBS requirements for supplying PPI

The Competition Commission has published its final report on its investigation into the sale of PPI.

As a result the FSA has provided a clarification of its conduct of business requirements for firms selling PPI, which are set out in the Insurance Conduct of Business sourcebook (ICOBS), to ensure that firms are clear that these standards and requirements remain in place.

Going forward, the FSA will continue to look closely at the full range of regulatory tools and actions available to it to ensure that firms selling PPI meet its requirements to enable customers to make informed purchasing decisions. This may include consulting on new rules if necessary. For further information please click on the following link:

http://www.fsa.gov.uk/pages/Library/Other_publications/Miscellaneous/2009/icobs.shtml

FSA priorities for 2009

We understand that about 20 risk assessments will be conducted this year, with a focus on client money, credit writebacks, financial crime and illicit payments, and conflicts of interest. We still await the market guidance on issues surrounding commission disclosure for commercial clients and the review of the client money rules I'm sure will provide some interesting challenges for the FSA.