

July Newsletter  
Issue 7/2009

Editorial

The newsletter highlights two cases where senior individuals have been fined and banned. This serves as a reminder to all senior management that the FSA is only too happy to take action against individuals who do not meet the standards of competence and capability when conducting themselves. All directors, as approved persons must be in a position to be able to demonstrate that they supervise the areas of the business that they are responsible for.

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Further information on the issues in this newsletter, or any other issues which concern your business, can be obtained from  
**Chris Keene on**  
**020 7369 5375 /**  
**07775 610006**

**Revision of the IMD**

In the run-up to the European Forum of Intermediaries organised by BIPAR two interviews have been published with senior members of the European Commission covering the future of the IMD. The following points have come out of those interviews:

- 1) It has become clear that the transposition of the IMD has highlighted certain weaknesses in its current form. These are primarily due to the minimum harmonization approach of the current IMD. Also as a result of associated developments within the EU and internationally these have made the current IMD outdated.
- 2) The new IMD will focus even more on consumer protection, with a level playing field being applied for alternative forms of distribution. The future will mean a more transparent world.
- 3) The new IMD will need to be a more 'modern and harmonized' Directive that leaves less room for national gold plating and diverging national interpretations. However this level of harmonization needs to be appropriate and take into account the distinctive characteristics of insurance intermediaries.
- 4) An important issue will be remuneration transparency and management of conflicts of interest. Future regulation in this area needs to be aware of a level playing field (with for example banks) as well as direct and indirect costs that could be imposed, particularly on small and medium sized intermediaries.

- 5) The Commission intends to come forward with a proposal for the revision of the IMD by no later than the end of 2010.

So watch this space!

**FSA fines director for appointed representative control failings**

The FSA has fined Richard Holmes, a director of insurance broker AIF Ltd £20,020 for control failings in relation to an appointed representative (AR) firm.

In September 2006, Holmes appointed an AR without carrying out the necessary checks, using only assurances from two business contacts. These individuals were subsequently banned by the FSA on 2 November 2006.

The following February, an insurance underwriter advised Holmes that the AR had premiums outstanding and rather than checking further, he relied on assurances from the AR that the premiums had been brought up to date. Again, when the AR appeared to have problems paying insurance premiums promptly to AIF, Holmes failed to increase his monitoring in any way and he did not investigate the way the AR was carrying out its business.

The FSA said "Senior management at firms are responsible for the standards and conduct of the businesses they run – this applies to all firms both large and small. In particular, senior managers should ensure that their appointed representatives are appropriately overseen.

As a director of the firm, Richard Holmes failed to carry out sufficient initial checks and then failed to monitor adequately the activities of the AR over a period of almost a year despite identifying a number of

concerns early on during the AR agreement – this falls below the standards that FSA expects of firms. Directors who fail to discharge their personal responsibilities, including monitoring ARs properly, give rise to a risk of consumer loss and we will take action against them."

### **FSA plans better information for consumers on firms' complaints handling**

The FSA has published proposals that will enable people to see how firms handle complaints – including the number received, the main products and services covered and how quickly they are resolved. The proposals would see firms publishing their own complaints data every six months and the FSA would publish results from the whole sector twice a year.

The FSA is proposing that firms receiving the largest number of complaints publish information on:

- How many complaints they have opened and closed;
- The percentage closed within eight weeks; and
- The percentage of complaints upheld.

This information will need to be broken down into five product areas: banking, home finance, general insurance and pure protection, life and pensions, and investments. To make it easier for people to understand the data and compare the standard of different firms' complaints handling, firms will need to provide contextual information such as the number of complaints per 1000 customer accounts. These proposals are part of a number of steps the FSA is announcing to improve transparency.

### **FSA proposes bigger fines to achieve credible deterrence**

The FSA has published plans to create a consistent and more transparent framework for calculating financial penalties which could mean some fines treble in size.

The new plans reflect the FSA's determination to change behaviour and address concerns that firms are repeatedly failing to improve standards (e.g. in relation to mis-selling to consumers and market misconduct). They will also ensure that fines better reflect the scale of the wrongdoing and that any profits made from the breaches are clawed back.

### **FSA bans director for inadequate supervision of his firm**

The FSA has prohibited Simon Robins, Compliance Director of Chase UK Corporation Limited (Chase), for failing to adequately supervise the operations of the firm. As a result of these failings the firm was used by third parties to obtain mortgage applications on a fraudulent basis.

The FSA said "It is vital that directors demonstrate the necessary competence and capability to ensure their firm provides suitable advice and meets compliance standards. Those who do not demonstrate these qualities face being banned from senior roles in the financial services industry."

### **Small Firms' Financial Reporting**

The FSA has recently carried out some thematic work aimed at testing the accuracy and validity of financial data submitted to them. Firms identified as financially weak were then visited. Over 7000 firms were subjected to detailed testing

and 60 firms were visited. This also involved cross referencing against statutory account filings at Companies House, as well as other data sources available, including that from product providers. From the firms visited the FSA found the following:

- Only one in three firms had submitted accurate data.
- One in three Directors were assessed as having a poor understanding of financial reporting or an over-reliance on external consultants.
- Where the FSA assessed firms as having mis-reported, either in error or to mislead, half of these were subsequently found to have undeclared financial resources deficits and are currently subject to further supervisory action.

Three firms have had their permissions cancelled and the FSA expects that a further 30 firms to have risk alerts raised against them.

The FSA's analysis included reviews of the recoverability and liquidity of intra-group and external debtors, creditors, provision for tax and other liabilities, and significant post-balance sheet events which were likely to have a substantive negative impact on capital.

The FSA noted that the targeted visits caused serious concerns that some firms view the capital adequacy test as only being measured when submitting the annual returns that it requires. It stressed that firms are required to maintain sufficient capital of sufficient quality to meet its capital requirements on a permanent basis and, equally important, are able to demonstrate the same if requested.