

October Newsletter
Issue 10/2009

Editorial

The FSA has now written to all relationship managed firms setting out their 'more intrusive approach' and their expectations when a person applies for a Significant Influence Function, including information on the interview process. Whilst this letter has only gone to relationship managed firms, ie those that have a designated supervisor smaller firms would do well not to assume that this process only applies to the larger firms. All firms need to ensure that any individual that is put forward for a Significant Influence Function (primarily the director function for smaller brokers) is sufficiently aware of their role and responsibilities. It may be appropriate to hold dummy interviews to ensure that individual is aware of the overall risk management framework within the firm and the main risks that threaten the success of the business.

In this issue:

- FSA reaffirms approach to consumer responsibilities
- FSA chairman outlines factors for successful European regulation
- FSA unveils tough measures to protect PPI consumers
- Subscription market practices – EU competition
- FSA re-affirms its 'more intrusive regulatory approach' into appointing approved persons

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

FSA reaffirms approach to consumer responsibilities

The FSA has issued a feedback statement reaffirming its regulatory approach to balancing the responsibilities of consumers and firms which it first set out in a previous Discussion Paper.

The previous paper articulated how the FSA considered consumer responsibility in its decision and policymaking. For example, the intensity of regulation increases in line with the risks posed to customers by different products. Central to this is the obligation on firms to treat customers fairly. The discussion paper also explained the links between this work and other FSA initiatives such as the continuing programme of Financial Capability and the FSA's consumer communications.

The feedback statement acknowledges that the responses reflected a variety of views and there was no consensus. In the absence of wider agreement on where the balance of responsibilities lies between firms and consumers, the FSA will maintain its current approach as set out in the discussion paper.

FSA chairman outlines factors for successful European regulation

The EU has agreed major changes to the structure of regulatory and supervisory cooperation in Europe to introduce greater integration and coordination between regulators. Lord Turner said that the success of these proposals will depend upon:

- The ability of the proposed European Systemic Risk Board to develop good quality risk

analysis and the "willingness of politicians to take its warning seriously and to countenance potentially unpopular responses";

- Achieving a commonly agreed and enforced rule book. This needs a balance between political oversight and delegation to technical experts. It will require "technicians devoted to good regulation and supervision independent of apparent national interests (such as influencing the location of activities)"; and
- A robust process of peer review between different regulators that would include resourcing and supervisory processes.

Lord Turner also warned about the risks that remain for host countries from cross-border banking business. The structures for cross-border business need to recognise the national interests of the host country. Host states should have the right to receive prudential information about entire groups and should be given powers to restrict the activities of branches where prudential weaknesses are not being adequately addressed by the firm or its home supervisor.

FSA unveils tough measures to protect PPI consumers

The FSA has announced a package of tough measures to protect consumers in the Payment Protection Insurance (PPI) market and ensure they are better treated when buying PPI or complaining about it.

Firms representing more than 40% of face-to-face sales in the Single Premium Unsecured Personal Loan PPI market have agreed to review these sales and redress those consumers identified as mis-sold. Ongoing supervisory action continues with the remainder of this market place.

For complaints about all PPI products, new measures will tackle the key issue that too many complaints are rejected by firms and then overturned by the Financial Ombudsman Service (FOS) in favour of the consumer:

- new guidance (due to take effect by the end of the year) will ensure PPI complaints are handled properly, and redressed fairly where appropriate - the FOS has indicated support for the FSA's proposed approach; and
- a new rule will require firms to reopen some 185,000 previously rejected PPI complaints and reassess them against the guidance.

In addition, the FSA is launching targeted assessment of sales practices for PPI on secured loans and credit cards; if the potential for mis-selling is identified, proactive reviews by firms may be extended to these areas too.

Subscription market practices – EU competition

The London & International Insurance Brokers Association has issued a reminder to its members, reminding them to ensure that they incorporate the changes as set out in their bulletin in 2008. There are two aspects to consider:

- 1) Firstly the MRC needs to be changed to reflect the fact that following insurers/underwriters are not obliged to follow the leader's premium; and secondly
- 2) Brokers need to review their practices to embed the Principles set out by BIPAR (the European Federation of Insurance Intermediaries). In particular I think that brokers should consider the following principles:
 - a. Before placing a risk, an intermediary will review and advise a client on market structures available to meet its needs and, in particular, the relative merits of a single insurer or a multiple insurer placement.
 - b. If the client, on advice of the intermediary, instructs the latter to place the risk with multiple insurers, the intermediary will review, explain the relative merits and advise the client on a range of options for multiple insurer placement.

LIIBA has noted that DG Comp (the EU Competition Directorate) has extensive powers to require changes in business practices and to levy firms up to 10% of group turnover. Therefore based on past experience any investigation by DG Comp would be expensive and time consuming.

FSA re-affirms its 'more intrusive regulatory approach' into appointing approved persons

The FSA has written to all relationship managed firms clarifying its new approach to approving and supervising persons performing significant influence functions (SIF's). One of the key questions that it expects relevant senior management of a firm to be able to answer is: What are the circumstances under which the firm will fail? Senior management will be expected to be able to demonstrate their understanding of the inherent risks in the business/markets and to articulate what plans are in place to mitigate the risk of failure.

The interview will explore a range of issues that are relevant to the approval decision, including, but not limited to the:

- responsibilities of a person approved by the FSA to perform a controlled function;
- knowledge, skills and experience that the person will bring to the role;
- person's view of the main risks facing the firm and the role they play in managing them; and
- the FSA's expectations of the individual in performing the SIF role.

Therefore, it is important to ensure that the person is well prepared and has an adequate understanding of the firm's business model and the sector in which it operates, so that the FSA can determine whether the person is fit and proper.