

September Newsletter
Issue 9/2009

Editorial

After the Aon fine back in January firms only had the judgement to go by to try and work out what the key issues were from the judgement. Now that the FSA has produced an albeit interim report firms are in a position to review their own systems and procedures against the weaknesses set out by the FSA.

Particularly interesting are the issues of Third Parties being paid commission that is commensurate with the services that they provide. Also the vetting procedures of staff in broker firms, which was considered weak compared to other financial services sectors. As with the Aon fine firms (if they haven't done so already) should use this information to ensure that they have robust risk based systems and controls to counter potentially corrupt and non-transparent practices. But before you go and change everything ensure that your actions are driven by a risk based approach.

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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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Interim findings for review of anti bribery and corruption systems and controls in commercial insurance brokers.

The FSA has taken the step of publishing its interim findings since the publishing of the full report will be delayed. Some significant weaknesses were identified and the FSA hopes that firms will assess their own controls and strengthen them where necessary. The concerns and common issues are set out below:

- 1) Weak monitoring of third party (TP) relationships and payments:
 - a. Checks on integrity of TP's was very basic such as printing off websites;
 - b. Checks were not done to see if the TP was connected to the assured;
 - c. Firms did not conduct regular reviews of the nature of their relationship with approved TP's, which led to redundant TP accounts being shown as live;
 - d. Firms had not conducted their own due diligence when a team or business was acquired;
 - e. Commission was shared equally between firms and TP's with no real consideration of whether this was commensurate with the services provided by the TP;
 - f. Some firms had made payments to other parties on the instruction of the TP without understanding why;
 - g. There was no independent check of the due diligence process outside the producing department; and
 - h. There was no central list kept of TP's used to obtain business.
- 2) Some firms failed to review their systems after the Dear CEO letter in November 2007 and several that did concluded that their systems were adequate.
 - 3) Despite insurance brokers not being subject to the Money Laundering Regulations all firms had appointed a MLRO. No firms had made a Suspicious Activity Report.
 - 4) Few firms adopted a risk based approach by focussing on high risk jurisdictions and TP's that were individuals.
 - 5) Compliance and internal audit checking of TP relationships only considered whether the proper process had been followed. Few firms considered the adequacy of the underlying due diligence.
 - 6) Firms received bank details from TP's through informal channels, rather than for example on official letterheads signed by an authorised signatory.
 - 7) Vetting of staff was weak where firms normally relied on minimal references and/or market gossip or referrals. Few firms carried out checks of criminal records or financial soundness.

- 8) Staff were not trained on anti-bribery or corruption and particularly for staff in high risk positions.
- 9) Control over expenses payments were effective, although some staff were given large cash advances to facilitate travel in high risk jurisdictions.
- 10) Some senior management received large bonuses which were only related to the profitability of the business.

FSA bans director for inadequate control of his firm and winds up the business

The FSA has prohibited Graham Darby, Director of insurance broker Ambrose Darby, for failing to control the business of the firm adequately. The order bans Darby performing significant influence functions at any authorised financial firm.

The FSA found that Darby, who was diagnosed in July 2008 with a severe medical condition, did not conduct client money reconciliations as required and did not have a full understanding of the firm's responsibilities regarding the handling of client money.

The FSA also petitioned for the winding up of Ambrose Darby on the basis that Darby, as a result of his illness, was not able to resolve the client money issues at the firm and wind up the company himself in an orderly fashion and there was no other officer of the firm who was able to do this.

So if you run a small business don't get ill and if you do make sure that you have someone available to

step in to discharge the company's duties in your absence!

Reforming remuneration practices

Following their consultation the FSA has introduced a new code that will require large banks, building societies and broker dealers in the UK to establish, implement and maintain remuneration policies consistent with effective risk management. The new code is designed to achieve two objectives: firstly, that boards focus more closely on ensuring that the total amount distributed by a firm is consistent with good risk management and sustainability; and secondly that individual compensation practices provide the right incentives.

The code makes clear that it is not expected that firms will enter into contracts with individuals which provide guaranteed bonuses for more than one year. It is also expected that for senior employees two-thirds of bonuses will be spread over three years. The new Code will come into force on 1 January 2010.

The scope of the code is currently restricted to large banks/building societies/ credit institutions which the FSA estimates will apply to 26 groups operating in London.

However certain international insurance bodies such as CEIOPS are currently considering how remuneration principles should be applied and the FSA will report on the development of remuneration principles in these bodies when it publishes its views on the question whether to extend the scope of the Code to the rest of the financial sector in about three months' time.

What's in a name

The FSA has issues a short guide to small firms about the appropriate use of trading names. The purpose of allowing firms to add trading names to the FSA Register is to add genuine trading names that belong to the firm, not someone else. It is purely an administrative step to assist firms who already, or may wish to trade under a name that is different from their registered company name.

Where there is no link between the authorised firm and the trading name that is being added, i.e. it is the trading name of an unauthorised firm and there is no Appointed Representative agreement between these two firms, this may mean that regulated activities are being carried out by the unauthorised firm, in breach of section 19 of FSMA.