Retail Compliance Bulletin

7th September 2009
(as at 4th September)

RESOURCES
GLOBAL PROFESSIONALS

Introduction

The Retail Compliance Bulletin is a digest of material drawn from the FSA, FSCS and FOS and other carefully selected sources (including HM Revenue and Customs; HM Treasury; Department of Business and Department of Work and Pensions) plus a roundup of relevant market news.

Ordinarily, readers should be able to obtain all of the basic information they need on these publications from our Bulletins. However, access to original source material is provided by way of a link at the end of each article. Where we feel that benefit will be gained from reading the source material we will say so.

We strongly recommend that Retail Compliance Bulletins are retained for future reference. They should also be used as the basis of the Compliance Implications section of the Compliance Officer's Report.

Index

The purpose of this index is to enable readers to readily identify those articles in Retail Compliance Bulletin that are most likely to be of interest to them. We do however suggest that this bulletin should be read in its entirety.

1 FSA publishes "Reforming remuneration practices in financial services - Feedback on CP09/10 and final Rules" policy statement.

Who does this affect? Large Banks, Building Societies and Broker Dealers

Our Comment: Important for those few large firms affected.

This Policy Statement (PS09/15) reports on the main issues arising from Consultation Paper 09/10 (Reforming remuneration practices in financial services) and publishes final rules. Only about 26 firms are expected to fall within the scope of the new rules initially, but the principles could always be extended at a later date.

The PS introduces 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. Eight principles have also been added to the FSA's handbook to ensure firms understand how the FSA will assess compliance.

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.

Firms are expected to provide the FSA with a remuneration policy statement by the end of October. This will have to be signed off by remuneration committees and will enable the FSA to check compliance with the code. Non-compliant firms could face enforcement action or ultimately, be forced to hold additional capital should they pursue risky processes.

The rule and code are consistent with the recommendations of the Financial Stability Board and with the measures being considered by others such as Switzerland and the EU. International negotiations on common guidelines should be concluded in the first half of 2010.

What happens next?
The new Code will come into force on 1 January 2010. The key steps for the implementation of the new regulatory framework will be:

- By the end of August FSA will send letters to firms' remuneration committees asking them to complete a remuneration policy statement.
- Firms return their remuneration policy statements to FSA by end-October.
- FSA hold meetings with remuneration committees and HR/risk function staff between November 2009 and February 2010.
- The Code on remuneration practices comes into force for firms within its scope on 1 January 2010.
- The transitional arrangements for firms required to amend employment contracts that may be amended by the firm end on 31 March 2010.
- Transitional arrangements for firms required to amend or terminate other employment contracts end on 31 December 2010.

http://www.fsa.gov.uk/pubs/policy/ps09_15.pdf

Article Reference: CB240809a

2 FSA Issues Handbook Notice No 91

Who does this affect? All authorised firms.

Our Comment: Extra meeting to bring in changes

The FSA has issued its latest monthly Handbook Notice (No. 91) containing one instrument. This edition contains one instrument within the handbook, which is as follows:

Senior Management Arrangements, Systems and Controls (Remuneration Code) Instrument 2009 [FSA 2009/48]
In force date: 1 January 2010
Implements a Remuneration Code which will apply to large banks, building societies and broker dealers (See also Article Reference: CB240809a above)

http://www.fsa.gov.uk/pubs/handbook/hb_notice91.pdf

Article Reference: CB240809b

FSA – CONSULTATIONS & OTHER NEWS

3 FSA response to Treasury Select Committee report on mortgage arrears and access to mortgage finance

Who does this affect? All mortgage firms.

Our Comment: Proposals to come later.

The FSA is currently conducting a wide-ranging review of all aspects of its mortgage regulation and will be publishing proposals this autumn.
The review of everything from securitisation to arrears is based on establishing precisely what went wrong in the mortgage market and fixing those problems – as well as ensuring there is a sustainable market for the long term.
The FSA continues to take a robust position with firms as soon as they have evidence of wrong doing and also to ensure borrowers are treated fairly throughout the lifetime of their mortgage.
With sale and rent back, and any new areas of scope, the FSA will bring its sanctions to bear against firms that break the rules as well as tackling unauthorised business.
The FSA will respond in full to the Treasury Select Committee's report in due course.

Article Reference: CB240809c

4 The FSA restates its approach to giving guidance and the status of guidance

Who does this affect? All authorised firms.

Our Comment: Need to be aware of such status

In Chapter 2 of the FSA's Enforcement Guide, FSA make clear that their approach to regulation and enforcement involves a combination of high-level principles, detailed rules, guidance and supporting material, with an increasing emphasis on the FSA's Principles for Businesses ('the Principles').

This is because FSA believe that an approach that is based less on detailed rules and that focuses more on outcomes will allow them to achieve their regulatory objectives in a more efficient and effective way.

This web site restatement illustrates the FSA's approach to guidance and supporting material.

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

Article Reference: CB240809d

5 Wider Implications referral: Lehmans-backed structured products - update

Who does this affect? All authorised firms.

Our Comment: Further delays

Since Lehman Brothers' collapse in September 2008, the Financial Services Authority (FSA) and Financial Ombudsman Service (the Ombudsman) have been looking at the potential detriment this has caused for investors in the UK structured products market.

In May, the FSA and Ombudsman agreed that the issues relating to Lehmans-backed structured products should be considered under the "Wider Implications" process in order to allow the FSA to explore all options to achieve the best outcome for consumers.

The FSA committed to update the Ombudsman three months into its review, and has today provided this update. Although the FSA has completed several elements of its work, it has asked the Ombudsman to continue to defer its consideration of complaints by a further three months to allow the FSA to consider the remaining aspects.

The FSA's update, and additional information on this Wider Implications referral, can be found on http://www.widerimplications.info/case_studies/wi_13.html
The FSA's Moneymadeclear website provides general information for consumers on structured products.
http://www.moneymadeclear.fsa.gov.uk/products/investments/types/structured_products.html

Article Reference: CB240809e

6 FSA publishes industry-level complaints data to increase transparency

Who does this affect? All authorised firms.

Our Comment: Will be of interest to all

The FSA has for the first time published aggregate figures showing how many complaints regulated firms have received and how they have dealt with them. As part of the FSA's wider commitment to publishing more information about firms and industry sectors, this data covers:

- the volume of complaints firms have received, by product type and cause of the complaint, e.g. delays and misleading advice; and
- how firms have handled complaints, including the speed of complaints-handling and the proportion of complaints that have been upheld by firms.

The data published covers 2006-2008 and indicates that the overall number of complaints has increased by 5.7% over this period. The speed of firms' complaints handling and the proportion of complaints upheld by firms remained fairly stable over the period - at the end of 2008, 10% of complaints took longer than eight weeks to resolve and 40% of complaints were decided in customers' favour.

The FSA plans to publish aggregate data covering the first half of 2009 in October, and will then publish updates every six months after that. This industry-level information complements the FSA's proposals to publish firm-specific complaints data, set out in July, which would enable people to see how individual firms are handling complaints.

http://www.fsa.gov.uk/Pages/Library/Other_publications/complaints_data/index.shtml

Article Reference: CB070909d

7 FSA Review of small SIPP operators

Who does this affect? Mainly SIPP firms.

Our Comment: Relevant for SIPP firms

The FSA has published the results of its thematic review of small SIPP operators which it commenced in December 2008.

As a result:

- FSA have written to the senior management of every small SIPP operator, explaining their findings, in particular in the areas of Treating Customers Fairly (TCF), relationships with firms that give SIPP advice, systems and controls, disclosure of fees and charges, and the production of illustrations.
- The FSA findings will be of interest to any firm that operates or is considering operating a SIPP, as well as to firms that give investment advice on SIPPs and members of the public whose SIPP is administered by a SIPP operator.
- FSA have also produced a factsheet which summarises the standards all SIPP operators should be achieving and the rules they should follow.

http://www.fsa.gov.uk/smallfirms/your_firm_type/financial/resources_for/sipp.shtml

Article Reference: CB070909e

FSA – ENFORCEMENT NEWS

8 FSA bans and fines mortgage broker £70,000 for mortgage fraud

Who does this affect? All authorised firms.

Our Comment: FSA crackdown continues

The Financial Services Authority (FSA) has banned a London mortgage broker, Grace Nmadibechi Ada Ukala, and fined her £70,000 for knowingly submitting false and misleading mortgage applications.

Ukala was an FSA approved person and the director of Goldsparkle Consulting Services Limited (Goldsparkle), a small mortgage broker firm based in South East London. She submitted five mortgage applications for herself supported by false and misleading income and employment information. She also failed to disclose accurately her earnings from Goldsparkle to Her Majesty's Revenue and Customs (HMRC) and misused funds that belonged to Goldsparkle to meet her personal mortgage repayments.

http://www.fsa.gov.uk/pubs/final/grace_ukala.pdf

Article Reference: CB240809g

9 FSA suspends mortgage & insurance broker

Who does this affect? All authorised firms.

Our Comment: Further action to come

Michael Robert Cameron, trading as Fidelity Corporate Services, a mortgage and insurance broker, is no longer permitted to conduct any regulated activities, including advising on and arranging insurance and mortgages. Mr Cameron has never been permitted by the FSA to advise on or arrange investments.

FSA have reason to believe that Mr Cameron may have obtained money from a customer for the purpose of investment, but failed to repay that investment on request. Customers who have given money to Mr Cameron for investment have been advised to check any documentation they have relating to the investment and contact the product provider directly to check the status of their investment.

http://www.fsa.gov.uk/pubs/final/fidelity.pdf

Article Reference: CB240809h

10 FSA fines director for not disclosing information about adviser

Who does this affect? All authorised firms.

Our Comment: Principal's responsibilities highlighted again

The FSA has fined Christopher Davies, director of Newquay Investment Services (2004) Limited, an IFA based in Cornwall, £17,500 for not disclosing to the FSA important information about an adviser Davies had employed at Newquay. This led to an unacceptable risk of customers being recommended unsuitable mortgages.

After Newquay had applied to the FSA last year for the adviser to be confirmed as an approved person, Davies became aware that the adviser's previous employer had suspended the adviser because of concerns about his business methods and ethics including apparently inflating income figures in mortgage applications. Davies raised these concerns with the adviser and concluded that the adviser had lied to him about why he had left his previous employment. Davies then failed to disclose this significantly adverse information to the FSA.

Despite being aware of the concerns of the adviser's previous employer and of the adviser misleading him on these matters Davies failed to:

- exercise appropriate control over mortgage applications submitted by the adviser;
- consider whether it was appropriate, in light of indications that the adviser was not fit and proper, to allow him to continue giving advice on life and other products; and
- understand the risks associated with 'fast track' mortgages and as a result allowed the adviser to submit mortgages of this type to lenders.

FSA commented that "Davies' failures exposed Newquay's customers to an unacceptable risk of being recommended mortgages which may not have been suitable for them and exposed lenders to the risk of offering mortgages on the basis of false or misleading information passed through Newquay. When Davies became aware of the later adverse information relating to the adviser he should have immediately informed the FSA. The fine indicates that the FSA takes a serious view of such failings and serves as a deterrent to directors of regulated firms from acting in a similar way."

http://www.fsa.gov.uk/pubs/final/christopher_davies.pdf

Article Reference: CB070909f

11 FSA takes action against chief executive of mortgage network for poor controls over appointed representatives

Who does this affect? All authorised firms.

Our Comment: Competence & capability examined

The FSA has withdrawn the approval for Steven Moorley, director of Premier Network Group Ltd (in liquidation) in Leicestershire, to perform the roles of chief executive and "apportionment and oversight of responsibilities" because it found he lacked the necessary competence and capability. But for Moorley's financial circumstances, the FSA would also have imposed a penalty of £30,000 on him.

Moorley failed to manage and control an expanding network of mortgage brokers to acceptable standards. As a result of these failings some of the network's Appointed Representatives (ARs) took advantage of the weak systems and controls by submitting fraudulent mortgage applications and recommending unsuitable mortgage contracts.

Moorley also failed to ensure that the network:

- handled complaints in compliance with regulatory requirements;
- submitted complete and accurate information to the FSA in its regulatory returns; and
- took appropriate action when some of its ARs were removed from lenders' panels.

FSA commented that: "Senior management of authorised networks are responsible for the quality and integrity of financial advice conducted in their names. This case highlights the risks posed by limited control and oversight of Appointed Representatives. Moorley's conduct was particularly serious because it exposed customers to the risk of receiving unsuitable advice and allowed the network to be used by some of its Appointed Representatives to submit fraudulent mortgage applications."

http://www.fsa.gov.uk/pubs/final/steven_moorley.pdf

Article Reference: CB070909g

12 FSA fines broker for failing to prevent insider dealing

Who does this affect? All authorised firms.

Our Comment: Approved persons principles enforced

The FSA has fined Mark Lockwood, a former trading desk manager at a retail stockbroking firm, £20,000 for failing to observe proper standards of market conduct. Lockwood failed to identify and act on a suspicious client order that allowed the firm to be used to facilitate insider dealing. As a result of his failings the firm failed to identify the trade as suspicious and report it to the FSA.

Lockwood's misconduct related to his dealings with a client who sold shares in oil and gas exploration company Amerisur on 23 May 2007 - ahead of an announcement by the company of a placing of shares the next day. The client has been subject to separate FSA enforcement action for market abuse in relation to Amerisur shares.

Lockwood failed to identify that the transaction was being conducted on the basis of inside information, despite his own knowledge of the impending transaction and clear warning signals from the client. He failed to prevent the trade or alert his firm to the possibility that the trade was being conducted on the basis of inside information. As a result no Suspicious Transaction Report (STR) was submitted to the FSA and the trading only came to light because of a report submitted by another broker.

FSA commented that: "This fine emphasises the importance of the Suspicious Transaction Reporting regime. Tackling market abuse and insider dealing is not just an issue for the regulator. Broking firms are the front line of defence against people who seek to misuse and profit from their possession of privileged information. STRs are a key tool for the FSA in detecting market abuse. Lockwood's failure could have meant that this incident went undetected and unpunished. Approved persons should be in no doubt as to their responsibilities in this area and the FSA will not hesitate to take action where they fall down on these."

http://www.fsa.gov.uk/pubs/final/mark_lockwood.pdf

Article Reference: CB070909h

13 More Final Notices Issued

Who does this affect? All authorised firms.

Our Comment: FSA continue to crack down on smaller firms.

The FSA continue to take enforcement action against both firms and individuals. The notices issued in this period include cases of:

- Not conducting any regulated activities during a period of at least 12 months
  http://www.fsa.gov.uk/pubs/final/sandie_gillam.pdf
- Conviction of a money laundering offence
  http://www.fsa.gov.uk/pubs/final/colin_wright.pdf
- Failure to notify a change of address
  http://www.fsa.gov.uk/pubs/final/mortgages_plus.pdf
- Failure to submit RMAR returns
  http://www.fsa.gov.uk/pubs/final/iqbal_saleem.pdf
- Non payment of fees & levies
  http://www.fsa.gov.uk/pubs/final/dewdney.pdf
  http://www.fsa.gov.uk/pubs/final/cavendish_120809.pdf

Article Reference: RCB070909a

REGULATORY REMINDERS

Nothing significant to report in this period

FSA CONFERENCES, TRAINING EVENTS AND COURSES

Nothing significant to report in this period

HM REVENUE AND CUSTOMS (HMRC) AND HM TREASURY NEWS

Nothing significant to report in this period

OTHER FINANCIAL SERVICES NEWS

14 FSA issues Credit Union Newsletter No.9

Who does this affect? All credit unions.

Our Comment: Relevant for credit unions

It is a long time since FSA have issued a newsletter. They have been waiting for the Legislative Reform Order (LRO) to be finalised, and this has taken longer than they originally expected. This means this newsletter is rather longer than usual, as FSA have held back information on a number of topics. It covers not only the legislation but also some of the common issues FSA face in supervising credit unions, some current areas of supervisory activity and some more general regulatory matters that affect credit unions.

http://www.fsa.gov.uk/pubs/newsletters/cu_newsletter9.pdf

Article Reference: CB240809j