

FSA Update

At the FSA last week: -

Enforcement notices: -

The FSA has (on 3 July) issued a first supervisory notice to **Nasreen Begum Hussain trading as My Insurance Solutions** varying her permission by removing all regulated activities with immediate effect. The FSA found breaches of Principle 11 (relations with regulators) of its Principles for Businesses ("the Principles") and a failure to satisfy relevant Threshold Conditions.

<http://www.fsa.gov.uk/static/pubs/final/nasreen-hussain.pdf>

Adviser network enters administration

On 3 July, **Sage Financial Services Limited** and **Burns-Anderson Limited**, financial advisers based in Macclesfield and Bristol respectively, went into administration. The firms ran a network of appointed representatives, which relied upon the permission held by Sage and Burns-Anderson to be able to give advice. The FSA has issued a consumer alert as these appointed representatives are no longer authorised to carry out regulated financial services.

<http://www.fsa.gov.uk/consumerinformation/firmnews/2012/sage-ba.shtml>

FSA issues finalised guidance on centralised investment propositions

Further to a guidance consultation paper (GC 12/6) issued in April 2012, the FSA has (on 5 July) issued finalised guidance (FG 12/16) on the sales processes which it will consider to be appropriate in relation to replacement business and centralised investment propositions.

The finalised guidance sets out the FSA's expectations and gives examples of good and poor practice in relation to the information which firms should, when recommending replacing an existing investment, provide to customers on costs and the reasons why the new investment may out-perform the existing investment and/or why the existing investment no longer meets the client's needs and objectives. It also sets out the information which should be obtained and provided in order to ensure that recommendations are suitable given the potential tax implications and the client's specific objectives.

It also sets out the factors which firms should take into account when selling or intending to sell centralised investment propositions ("CIPs") to ensure that they are suitable for particular clients and the controls and oversight which it expects firms to put in place to mitigate the risk of unsuitable advice.

<http://www.fsa.gov.uk/static/pubs/guidance/fg12-16.pdf>

http://www.fsa.gov.uk/library/policy/guidance_consultations/2012/gc1206

FSA feeds back on impact of Solvency II on unit-linked and index-linked insurance business

Following its consultation paper (CP11/23), issued in November 2011, the FSA has (on 29 June) published details of feedback received from firms in relation to its proposed changes to the rules and guidance at chapter 21 of its Conduct of Business Sourcebook ("COBS"). These changes are aimed at ensuring compliance with the requirements of Solvency II for unit-linked and index-linked insurance policies.

<http://www.fsa.gov.uk/library/policy/dp/2012/fs12-02>

Key issues

- Enforcement notices
- Adviser network enters administration
- FSA issues finalised guidance on centralised investment propositions
- FSA feeds back on impact of Solvency II on unit-linked and index-linked insurance business
- HM Treasury consults on sanctions for directors of failed bank

Further afield: -

HM Treasury consults on sanctions for directors of failed banks

HM Treasury has (on 4 July) set out proposals aimed at strengthening the accountability of bank directors. Its consultation paper proposes changes to the emphasis of the approved person regime to prohibit those involved in the management of failed institutions from performing controlled functions unless they show good reasons as to why they should be allowed to do so. The paper also sets out amendments which could be made to the criminal law to introduce an offence of serious misconduct in the management of a bank.

The paper sets out the government's view that changes to guidance around the approved person regime may be an appropriate supporting measure, but will not be sufficient by themselves to increase accountability to the levels to be expected of bank directors, given the far-reaching consequences of their decisions. It therefore proposes the introduction of a rebuttable presumption that the director of a failed bank is not suitable to be approved by the regulator to hold a position as a senior executive in a bank.

It proposes that the necessary amendments enabling this would be incorporated into the provisions of the Financial Services Bill, which is currently before the House of Lords.

Discussing the prospect of the introduction of criminal sanctions, the paper sets out the various standards against which directors could be judged. At the most draconian end of

this scale is a possible strict liability offence, where simply being a director of a bank at the time when it failed would attract criminal liability. The paper recognises that the prosecution of individuals under this offence would be likely to be fraught with difficulties and sets out alternatives involving liability based on negligence, incompetence or recklessness. It favours the option of an offence based on recklessness (i.e. failure to have sufficient regard for the dangers posed to the safety and soundness of a firm, or for the possibility of such dangers).

Any changes to the criminal law would be included in a separate Bill to be introduced before the end of the present Parliament.

HM Treasury has invited responses to its consultation paper by 30 September.

Comment

The proposed reforms are part of the drive by the FSA, supported by the government, to hold individuals, as well as firms, accountable for their conduct. One need look no further, for example, than the heated parliamentary debates on standards of accountability in the banking industry, or the speeches given by Martin Wheatley and Tracey McDermott over the past week.

Margaret Cole, Hector Sants, Lord Turner and Martin Wheatley, in their appearances before the Treasury Select Committee in November 2011, expressed support for the suggestion of exclusion of approved persons involved in mismanagement of institutions, but urged caution in relation to the criminalisation of such conduct.

Senior executives will recognise the importance of accountability and acknowledge the need to rebuild public confidence by tightening some elements of the regulatory framework. They will, however, be anxious to respond to the proposals to ensure that the government and the FSA continue to recognise the need to proceed proportionately and that appropriate safeguards are included in any amendments made to the approved persons regime and/or the criminal law.

http://www.hm-treasury.gov.uk/d/consult_sanctions_directors_banks.pdf

[http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120705/ebtext/120705-0002.htm#12070562000004](http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120705/debtext/120705-0002.htm#12070562000004)

<http://www.fsa.gov.uk/library/communication/speeches/2012/0702-mw.shtml>

<http://www.fsa.gov.uk/library/communication/speeches/2012/0702-tm.shtml>

<http://www.publications.parliament.uk/pa/cm201012/cmselect/cmtreasy/uc1574-ii/uc157401.htm> (see in particular questions 121 to 125)

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