



London Update

UK Financial Services Regulatory Developments

February 2008

This edition of London Update covers UK and EU developments from December 1, 2007 to January 31, 2008.

UK Developments

FSA Issues Policy Statement on Listing Investment Entities

On December 7, the Financial Services Authority (FSA) published policy statement PS07/20 containing its final Listing Rules following three rounds of consultations in connection with its Investment Entities Listing Review.

The FSA is modernising its Listing Rules for investment entities and introducing a more principles-based regime to allow the listing of investment entities with alternative investment strategies, while retaining appropriate levels of investor protection.

The existing Chapter 14 of the Listing Rules (which deals with EU Prospectus Directive-minimum listings of equity securities) will be limited and not available to investment entities. Additional amendments will be made to a new Chapter 15 of the Listing Rules and these new rules will create a unitary listing regime for investment entities.

The changes to the Listing Rules will take effect on March 6.

www.fsa.gov.uk/pubs/policy/ps07_20.pdf

FSA Launches Consultation on Changes to Close Links Reporting

On December 10, the FSA published consultation paper CP07/21 on close links calling for submissions on its proposals to remove its annual close links reporting requirement and providing more detail on event-driven and monthly close links notifications currently applicable to FSA-regulated entities.

The paper also sets out proposed changes to close links notifications associated with temporary investments and includes proposals to change the FSA's threshold conditions for obtaining authorisation.

The consultation closes on March 14.

www.fsa.gov.uk/pubs/cp/cp07_21.pdf

FSA Publishes Regulatory Simplification Plan

On December 11, the FSA published its Simplification Plan, which outlines improvements to the UK regulation of the financial services industry.

The 2007 Simplification Plan updates the FSA's 2006 Simplification Plan and reflects the latest position on each of the FSA's current initiatives, including the main EU legislative initiatives that impact the UK's financial services industry. The FSA plans to identify further simplification measures in February 2008.

www.fsa.gov.uk/pubs/other/simplification_update.pdf

FSA and Treasury Issue Joint Discussion Paper on EU Regulation of Commodity and Exotic Derivatives

On December 13, the FSA and HM Treasury issued a discussion paper in respect of the European Commission's review of the regulation of commodity and exotic derivatives. The Commission's review is linked to the introduction of the EU Markets in Financial Instruments Directive (MiFID) and the EU Capital Adequacy Directive (CAD).

The paper seeks to clarify the UK's objectives, identify market failures, examine policy options and assist the UK in formulating its policy position. The FSA and Treasury believe that specialist commodity derivatives firms do not pose the same market risks as firms that are active across a wider range of financial markets.

The Commission's review: (i) examines the regime for prudential capital supervision of specialist commodity derivative firms, (ii) clarifies the scope of the exemptions and instruments under MiFID, (iii) addresses conduct of business issues, and (iv) considers market conduct issues.

The deadline for comments is March 14, and a final report is expected from the European Commission in October 2008.

www.fsa.gov.uk/pubs/discussion/hmt_fsa_derivatives.pdf

FSA Fines Norwich Union Life for Exposing Customers to Fraud

On December 17, the FSA announced that it had fined Norwich Union Life (NUL) £1.26 million for not implementing effective systems and controls to protect confidential information and to manage its risk of being a victim of financial crime in breach of FSA Principle 3 in respect of management and control.

NUL's system weaknesses meant that fraudsters were able to impersonate customers and obtain customer details from NUL's call centres. The fraudsters were then able to use this information to obtain the surrender of 74 customers' life policies totalling £3.3 million.

The FSA found that NUL had failed to properly assess the risks posed to its business by financial crime and, as a result, NUL's customers were more likely to fall victim to financial crimes such as identity theft.

NUL had also failed to address issues highlighted internally by its compliance department after the frauds were attempted or committed. The FSA stated that NUL had since implemented a number of remedial actions and had cooperated fully with the FSA's investigation. Further, all of the fraudulently surrendered insurance policies have been reinstated in full. Because NUL agreed to settle the FSA investigation at an early stage, it qualified for a 30% discount on the penalty assessed under the FSA's executive settlement procedure.

www.fsa.gov.uk/pubs/final/Norwich_Union_Life.pdf

UK and Italian Regulators Sign Cooperation Agreement

On December 14, the FSA announced that it had signed a Memorandum of Understanding (MoU) with the Italian regulator Commissione Nazionale per le Società e la Borsa (CONSOB) following the merger of the London Stock Exchange Group plc and Borsa Italiana SpA (Borsa Italiana) on October 1, 2007. The MoU establishes the framework within which the FSA and CONSOB will cooperate in the oversight and supervision of the London Stock Exchange and Borsa Italiana.

www.fsa.gov.uk/pubs/mou/fsa_cnsb.pdf

FSA Publishes Quarterly Consultation

On January 4, the FSA published its 15th quarterly consultation (CPo8/1) setting out proposed changes to its handbook. The proposals include miscellaneous changes to its General Prudential sourcebook in respect of the calculation of solo capital resources for entities at the head of financial conglomerates, amending the Supervision manual to reflect changes to the FSA's approved persons regime and its integrated regulatory reporting requirements, as well as amendments to the UK Listing Rules for investment entities listing depositary receipts. The consultation also includes miscellaneous changes proposed to the FSA's Market Conduct and Collective Investment Schemes sourcebooks.

http://www.fsa.gov.uk/pubs/cp/cpo8_01.pdf

FSA Clarifies Expectations for Authorised Collective Investment Scheme Managers

On January 10, the FSA published “Treating Customers Fairly and UK Authorised Collective Investment Scheme Managers.” The document includes examples of UK good practice for authorised collective investment scheme managers and clarifies the FSA’s expectations of scheme managers in complying with their responsibilities as set out in the FSA’s policy statement “Guidance on Responsibilities of Providers and Distributors for the Fair Treatment of Customers” (PS07/11). The document specifically focuses on the identification of target markets and the selection of distribution channels.

http://www.fsa.gov.uk/pubs/other/TCF_CIs_managers.pdf

Further FSA Review of the Listing Regime Structure

On January 14, the FSA published DPo8/1, “A Review of the Structure of the Listing Regime,” continuing a long-running consultation that commenced at the end of 2006. The new discussion paper focuses on clarifying the obligations of issuers of various types of listed securities in the UK.

The paper sets out a proposed structure in which securities subject to higher standards will be more clearly separated from directive minimum standards. The proposals include re-labelling Primary Listings (the most stringent form of listing in terms of requirements) as “Tier One Listings” and Secondary Listings and Global Depositary Receipts (GDRs) (both only available to overseas companies) as “Tier Two Listings.” Secondary Listings and GDRs would continue to be admitted to trading, but they would not be “Officially Listed.”

The discussion paper explores proposals to relax requirements on UK companies in order to promote a level playing field for both overseas and UK issuers. UK companies are currently only eligible for a Primary Listing and not a Secondary Listing. The paper also seeks views on whether overseas companies should “comply or explain” in respect of the UK’s Combined Code on Corporate Governance.

The deadline for comments is April 14.

http://www.fsa.gov.uk/pubs/discussion/dpo8_01.pdf

UK Hedge Fund Working Group Publishes Best Practice Standards

On January 22, the Hedge Fund Working Group (HFWG) published its final report containing best practice standards for hedge fund managers following consultation with the hedge fund industry and interested parties. The HFWG published its initial consultation paper in October 2007 and received more than 75 written responses, as described in the November 2007 edition of *London Update*.

The final report included voluntary standards that seek to address five key areas: disclosure, valuation, risk, the governance of funds, and hedge funds’ conduct as shareholders. Compliance with the voluntary hedge fund standards will be on a “comply or explain” basis.

The report also included recommendations for hedge fund managers to adopt in order to manage potential and actual conflicts of interest with the interests of investors, which include adopting an independent process for valuing portfolios and implementing robust governance of funds. The report recommended enhanced disclosure for investors and the implementation of comprehensive risk management procedures. A proposed standard relating to the disclosure of positions held via contracts for differences (CFDs) is awaiting the outcome of a consultation by the FSA into CFDs.

A new Hedge Fund Standards Board (HFSB) will be set up to oversee the new standards. Existing members of the HFWG will initially act as interim trustees of the HFSB and Sir Andrew Large will act as the HFSB’s interim chairman until permanent trustees are appointed.

Hedge fund managers are now being invited to become signatories to the new standards. Further details are provided on the HFSB’s website, www.hfsb.org.

The HFWG, comprising 14 leading hedge fund managers based mainly in London, was set up in July 2007 in response to concerns both about the growing impact of hedge funds and financial stability. The standards aim to address these and other issues through increased disclosure to investors and other counterparties.

www.pellin.co.uk/HFWG/HFWG-FINAL-REPORT.pdf

FSA Commences Criminal Prosecution for Insider Dealing

On January 22, the FSA announced that the former general counsel of TTP Communications PLC (TTP) Christopher McQuoid and McQuoid's father-in-law James Melbourne had appeared before the City of London Magistrates Court charged with insider dealing under section 52 of the Criminal Justice Act 1993.

McQuoid was formerly the head of legal at Thomas Cook and was general counsel at TTP between 2000 and 2007.

The FSA has alleged that the two men were in possession of inside information related to a proposed cash offer from Motorola Incorporated for the entire issued share capital of TTP when they personally acquired 153,824 shares in TTP on May 30, 2006.

The FSA has previously communicated its intention to take a harder line on insider trading, and this is the first time it has brought a criminal case for insider trading. Previous cases had been brought under the FSA's civil enforcement powers.

The defendants have indicated a plea of not guilty. The Magistrates Court, as is usual with serious charges, committed the defendants for trial in the Crown Court. The proceedings were adjourned until February 19 and the defendants were granted bail.

www.fsa.gov.uk/pages/Library/Communication/PR/2008/006.shtml

For more information, contact:

	Direct Dial	Email
Martin Cornish	+44 (0) 20 7776 7622	martin.cornish@kattenlaw.co.uk
Edward Black	+44 (0) 20 7776 7624	edward.black@kattenlaw.co.uk
Sean Donovan-Smith	+44 (0) 20 7776 7625	sean.donovan-smith@kattenlaw.co.uk

Upcoming Breakfast Seminar:

Comparing London and Switzerland as a Domicile for Fund Managers

Tuesday, March 11

London Capital Club, London EC4

For an invitation, please send an email to terri.duggan@kattenlaw.co.uk

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Katten Muchin Rosenman Cornish LLP

www.kattenlaw.co.uk

1-3 Frederick's Place • Old Jewry • London EC2R 8AE
+44 (0) 20 7776 7620 tel • +44 (0) 20 7776 7621 fax

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