



## London Update

### UK Financial Services Regulatory Developments

July 2007

#### **New Rules Continue Move Towards Principles-Based Regulation**

On May 31, the Financial Services Authority (FSA) published Policy Statement 07/6 marking a further significant step towards more principles-based regulation. The Policy Statement confirms the approach proposed by the FSA in October 2006 to revise its Conduct of Business rules on the basis of principles and high-level rules, except where detailed provisions are either required by EU Directives, or are the only practicable way of achieving consumer protection or other regulatory outcomes.

As a result, the FSA's revised Conduct of Business rule book will be half the length of its current rule book. It will implement the relevant provisions of the EU Markets in Financial Instruments Directive (MiFID) as well as non-MiFID Conduct of Business rules.

The Policy Statement also provides feedback on responses received by the FSA to the remaining proposals made in CP 06/19, "Reforming Conduct of Business Regulation", and CP 06/20, "Financial Promotion and other Communications". It also confirms, with some amendments, the rules and guidance published in PS 07/2, "Implementing the Markets in Financial Instruments Directive".

[http://www.fsa.gov.uk/pubs/policy/ps07\\_06.pdf](http://www.fsa.gov.uk/pubs/policy/ps07_06.pdf)

#### **AIC Publishes Corporate Governance Guide**

The Association of Investment Companies (AIC) published its Corporate Governance Guide for Investment Companies on June 4. The guide incorporates the UK Combined Code on Corporate Governance, the AIC Code of Corporate Governance and certain requirements of the UK Listing Rules.

The UK Financial Reporting Council has confirmed that AIC member companies which use the AIC Code and guide will meet their obligations under the Combined Code and the associated disclosure requirements of the Listing Rules.

<http://www.theaic.co.uk/files/technical/AICGuide.pdf>

#### **Review of Issuer Liability and Fraudulent Misstatement**

On June 4, HM Treasury published the final report by Professor Paul Davies QC, a leading company law academic, on issuer liability to investors in respect of misstatements to the market. New Section 90A of the UK Financial Services and Markets Act 2000 (FSMA), introduced by section 1270 of the UK Companies Act 2006, establishes a statutory liability regime under which issuers will be liable for fraudulent misstatements in periodic disclosures to the market – a law change required in order to implement the EU Transparency Directive. The review was commissioned to consider industry concerns about the consistency of the new statutory liability regime and whether common law rights of shareholders were at risk.

The final report recommends that HM Treasury should introduce regulations to extend the statutory liability regime to include liability for corporate misstatements to the market. The report also recommends that (i) fraud be maintained as the standard of liability; (ii) the statutory regime should apply to all ad hoc disclosures and Regulatory Information Service (RIS) announcements; (iii) the regime should extend to disclosure by issuers with securities listed on exchanges (including AIM and the Plus (Ofex) Market) and all multilateral trading facilities; (iv) there should be liability for dishonest delay in making statements to the RIS; and (v) rights should be conferred equally on buyers and sellers.

[http://www.hm-treasury.gov.uk/media/4/7/davies\\_review\\_finalreport\\_040607.pdf](http://www.hm-treasury.gov.uk/media/4/7/davies_review_finalreport_040607.pdf)

## **FSA Publishes Feedback on Private Equity Risks**

On June 11, the FSA published its feedback to Discussion Paper DPo6/6 "Private Equity: A discussion of risk and regulatory engagement", which examined the impact of growth and development in the private equity market on the FSA's regulation of the UK's wholesale markets.

In DPo6/6 the FSA identified the risks it perceived were posed to its statutory objectives by the growth in private equity and outlined the measures it has taken to mitigate these risks. The feedback received confirmed that FSA had correctly identified and prioritized those risks and that the proposed regulatory approach to dealing with them was appropriate and effective.

According to the FSA, conflicts of interest still pose a significant risk in the private equity markets. The FSA intends to tighten the regulatory reporting requirements for firms and will conduct a semi-annual survey every six months on banks' exposures to leveraged buy-outs in which private equity funds had a stake.

Separately, the International Organization of Securities Commissions (IOSCO) has also commissioned a taskforce, to be chaired by the FSA, to assess the impact of recent developments in the private equity market and identify issues which can be addressed within IOSCO's remit.

[http://www.fsa.gov.uk/pubs/discussion/fso7\\_o3.pdf](http://www.fsa.gov.uk/pubs/discussion/fso7_o3.pdf)

## **Hedge Funds to Consider Voluntary Code of Conduct**

On June 19, former Bank of England deputy governor Sir Andrew Large announced that he had been recruited to lead a study of voluntary standards for the hedge fund industry. The study has been initiated by a working group of 13 of the largest hedge funds, including Man Group and GLG Partners.

The working group said the study will be carried out in the context of the UK Financial Services Authority's more principles-based regulatory approach. The group will begin by reviewing existing principles, standards and guidelines. The 13 initial hedge fund managers involved are: Brevan Howard, Brummer & Partners, Centaurus Capital, Cheyne Capital, CQS, GLG, Gartmore, Landsdowne Partners, London Diversified, Man Group, Marshall Wace, Och-Ziff and RAB Capital Plc.

## **FSA Publishes Annual Report**

On June 21, the FSA published its Annual Report for the year 2006/07. The report details FSA's work in the previous year under three headings: (i) promoting efficient, orderly and fair financial markets; (ii) helping retail consumers achieve a fair deal; and (iii) improving business capability and effectiveness.

The FSA continued to review existing regulations to see where unnecessary regulations may be eliminated or replaced with principles. The FSA's Chairman, Callum MacCarthy, acknowledged that more problems lie within the retail market than in the wholesale market as a result of complex products, information asymmetries and low levels of consumer awareness.

For the year 2006/07, the FSA had set 74 targets, of which 61 were delivered on time and eight were delayed but still delivered in the financial year. Five are still outstanding.

The FSA's enforcement division closed 219 investigations. The Regulatory Decisions Committee considered 17 new cases compared to 46 last year and the FSA levied £14.66 million in financial penalties during the year compared to £17.43 million for the previous year.

[http://www.fsa.gov.uk/pages/Library/Corporate/Annual/aro6\\_o7.shtml](http://www.fsa.gov.uk/pages/Library/Corporate/Annual/aro6_o7.shtml)

## **FSA Publishes First Papers from its Retail Distribution Review**

On June 27, the FSA published the first proposals for discussion from its Retail Distribution Review (RDR) project launched in June 2006. DPo7/1 "A Review of Retail Distribution" follows six months of work looking at the causes of problems in the UK retail investment market.

The discussion paper seeks views on current market standards, including the growth in the use of online trading platforms, cost-effective ways of providing advice to a wider range of consumers and improving consumer understanding.

A core proposal of the paper is the improvement of the regulated investment advice market by dividing it into two parts: (i) professional financial planning and advisory service, and (ii) primary advice.

The comment period will end on December 31 and the FSA aims to publish a feedback statement in Q2 2008.

A companion discussion paper, DPO7/2 "Platforms: the role of wraps and fund supermarkets" seeks industry views on standards that should be met by online platforms used by intermediaries (and sometimes consumers directly) to view and administer investment portfolios.

[http://www.fsa.gov.uk/pubs/discussion/dpo7\\_o1.pdf](http://www.fsa.gov.uk/pubs/discussion/dpo7_o1.pdf)

[http://www.fsa.gov.uk/pubs/discussion/dpo7\\_o2.pdf](http://www.fsa.gov.uk/pubs/discussion/dpo7_o2.pdf)

## EU Developments

### **CESR Publishes Final Guidance on Implementation of MiFID**

On May 29, The Committee of European Securities Regulators (CESR) announced the completion of their work in relation to MiFID aimed at fostering supervisory convergence and securing consistent implementation among EU Member State regulators in the day-to-day application of the MiFID provisions. CESR has now published guidance and recommendations on inducements, best execution, passporting and transaction reporting which focuses on operational aspects and practical solutions that arise as a consequence of MiFID.

[http://www.cesr-eu.org/index.php?page=document\\_details&id=4612&from\\_id=53](http://www.cesr-eu.org/index.php?page=document_details&id=4612&from_id=53)

### **For more information, contact:**

|                    | <b>Direct Dial</b>   | <b>Email</b>   |
|--------------------|----------------------|--|
| Martin Cornish     | +44 (0) 20 7776 7622 | <a href="mailto:martin.cornish@kattenlaw.co.uk">martin.cornish@kattenlaw.co.uk</a>         |
| Edward Black       | +44 (0) 20 7776 7624 | <a href="mailto:edward.black@kattenlaw.co.uk">edward.black@kattenlaw.co.uk</a>             |
| Jennifer L. Nye    | +44 (0) 20 7776 7627 | <a href="mailto:jennifer.nye@kattenlaw.co.uk">jennifer.nye@kattenlaw.co.uk</a>             |
| Sean Donovan-Smith | +44 (0) 20 7776 7625 | <a href="mailto:sean.donovan-smith@kattenlaw.co.uk">sean.donovan-smith@kattenlaw.co.uk</a> |

### **Upcoming Breakfast Seminar:**

**Date:** 10 July 2007

**Venue:** London Capital Club, London EC4

### **MiFID Update and Other FSA Regulatory Hotspots**

Presented by: Edward Black and Sean Donovan-Smith – Katten Muchin Rosenman Cornish LLP

For an invitation please contact [terri.duggan@kattenlaw.co.uk](mailto:terri.duggan@kattenlaw.co.uk)

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**Katten Muchin Rosenman Cornish LLP**

[www.kattenlaw.co.uk](http://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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The Members of Katten Muchin Rosenman Cornish LLP (who for convenience only refer to themselves as Partners) are: Martin Cornish, Jayne M. Black, Arthur W. Hahn (U.S. lawyer), Andrew MacLaren, William Natbony (U.S. lawyer), and Jennifer L. Nye (U.S. Lawyer).

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