



London Update

UK Financial Services Regulatory Developments

June 2007

National Audit Office Reports on FSA Performance

On April 30, the UK National Audit Office (NAO) announced the results of its assessment of the performance of the UK Financial Services Authority (FSA), the first undertaken since the FSA's creation in 2001. The report assesses:

- performance management;
- working with other regulators;
- international influence and representation;
- financial crime; and
- financial capability.

The report was broadly positive in the five areas examined, for example stating "The FSA is highly regarded within the financial services industry in the UK and internationally and its risk-based approach is increasingly seen as a model to follow by other regulators." Concerns were raised by stakeholders on the number of rules in the FSA Handbook, the implementation of "more principles-based regulation" and the need for the FSA's approach to reflect the actual experience of consumers.

The head of the NAO, Sir John Bourn, commented that "The FSA has done well . . . but the challenge for the FSA is now to move to the next level. It must do more to demonstrate its impact; to get a clearer understanding of how much its different activities cost; and, crucially, to streamline its processes and advice, to benefit industry and consumers."

See the links below for the full NAO report and FSA's response.

<http://www.nao.org.uk/pn/06-07/0607500.htm>

http://www.fsa.gov.uk/pages/Library/Communication/Statements/2007/nao_review.shtml

FSA Fines Private Bank for Weak Anti-Fraud Controls

The FSA announced on May 10 that it had fined BNP Paribas Private Bank £350,000 (approximately \$690,000) for weaknesses in its anti-fraud systems and controls. This is the first time a private bank has been fined for weaknesses in its anti-fraud systems.

Between February 2002 and March 2005 a senior employee was able to fraudulently transfer £1.4 million out of clients' accounts using forged signatures and instructions and by falsifying change of address documents. The fraud was detected in 2005 and brought to the attention of the FSA.

After the bank brought the fraud to the FSA's attention, it co-operated fully with the investigation and qualified for a 30% discount on the penalty imposed by agreeing to settle at an early stage.

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2007/060.shtml>

FSA Fines Firm \$240,000 for Unauthorized Investment Management

On May 11, the FSA has fined Charterhouse Consulting Wealth Management Limited (Charterhouse) £122,500 (approximately \$240,000) for carrying out discretionary portfolio management without permission and for various conduct of business failings.

Charterhouse did not have the appropriate regulatory permission to act as a discretionary investment manager. The FSA found that Charterhouse would often send clients an email before 6.30 am in the morning proposing the switching of funds and requiring a response by 8.00 am. Switches would then take place without any instruction from the client. Charterhouse also failed to record sufficient "know your client" information to demonstrate the suitability of its advice, it failed to ensure transactions were appropriate for customers in light of their attitude to risk and it failed to communicate with its clients in a clear, fair and not misleading manner.

The FSA stated that the fine imposed took into account the mitigating steps taken by Charterhouse to prevent a recurrence of these rules breaches. Charterhouse also agreed to settle at the earliest opportunity. The fine would otherwise have been £175,000 but the actual penalty reflected a 30% discount.

http://www.fsa.gov.uk/pubs/final/charterhouse_11may07.pdf

FSA Recognizes First Industry Guidance

In November 2006, the FSA announced that as part of its move to "more principles-based regulation" it would recognize certain industry developed guidance and issued a Discussion Paper on the methodology for doing this. The FSA has now confirmed that its supervision of outsourcing by firms will in the future take account of industry guidance which has been issued by MiFID Connect, a joint project established by eleven financial services industry associations. This is the first guidance developed by the industry which the FSA has recognized. It is also the first formal industry guidance related to the EU Markets in Financial Instruments Directive (MiFID). The FSA has approved this Guidance before formally responding to the November 2006 Discussion Paper.

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2007/062.shtml>

UK Treasury Encourages EU Enforcement

UK Treasury Minister Ed Balls released the text of a letter he wrote on May 15 to Charlie McCreevy, European Commissioner for the Internal Market and Services, setting out his concerns over the potential failure of some EU Member States to implement MiFID by the November 2007 deadline.

The letter welcomes the European Commission's efforts to force Member States to implement MiFID on time and urges it to maintain the pressure on member states to ensure the implementation deadline is successfully reached.

So far only the UK, Romania and Ireland have enacted the necessary domestic legislation and regulations needed to implement into national law the measures set out in MiFID. The failure of other Member States to do this will make it difficult or impossible to achieve the envisaged single market in financial services.

http://www.hm-treasury.gov.uk/newsroom_and_speeches/press/2007/press_56_07.cfm

UK Crime Agency Publishes First Annual Report

The UK's Serious Organised Crime Agency (SOCA) published its first annual report on May 18. SOCA, the British equivalent of the FBI, was launched to target resources in fighting organized crime and was formed in 2006 following the merger of the National Criminal Intelligence Service, the National Crime Squad and other law enforcement bodies. Although SOCA has more than 4,000 officers and an annual budget of £400 million (approximately \$800 million), the agency has prosecuted an average of just 30 people a month in its first year. However, the report highlighted SOCA's successes in combating drug trafficking. In the last year, SOCA has seized a fifth of Europe's cocaine supply, with a street value of £3 billion (approximately \$6 billion), and has also seized 1.5 tonnes of heroin, 4.4 million ecstasy tablets, 260 kilos of opium and 1 million doses of LSD.

SOCA has identified an initial target list of more than 1,600 of Britain's "most wanted" criminals, and SOCA is currently focusing on 160 individuals involved with money-laundering, drug trafficking, human smuggling and electronic fraud.

http://www.soca.gov.uk/assessPublications/downloads/SOCAAnnualRep2006_7.pdf

FSA Publishes MiFID Notifications Guide

On May 23, the FSA published the MiFID Permissions and Notifications Guide. The guide explains the changes that firms must make in implementing MiFID by November 1. Many of the MiFID requirements will also be applied to non-MiFID business.

The guide covers such things as MiFID waivers, client categorization, passporting, tied agents, client money and approved persons. It also includes maps and tables setting out how MiFID services, activities and financial instruments relate to the existing EU Investment Services Directive, which is being replaced by MiFID, and to the EU Banking Consolidation Directive.

http://www.fsa.gov.uk/pubs/international/mifid_guide.pdf

New FSA Rules Continue Move to More Principles-Based Regulation

On May 31, the FSA published Policy Statement PS 07/6, which marks a further significant step towards more principles-based regulation. PS 07/6 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 revised Conduct of Business rule book will be half the length of the corresponding current rule book. It will implement the relevant provisions of MiFID as well as containing non-MiFID Conduct of Business rules.

The Policy Statement also provides feedback on the responses to remaining proposals made in CP 06/19, "Reforming Conduct of Business Regulation", and CP 06/20, "Financial Promotion and other Communications". Finally, it 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

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 focus on operational aspects and practical solutions arising as a consequence of MiFID.

http://www.cesr-eu.org/index.php?page=document_details&id=4612&from_id=53

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Upcoming Breakfast Seminar:

Date: 12 June 2007

Venue: London Capital Club, London EC4

Hedge Fund Derivatives

Presented by: Marilyn Selby Okoshi – Katten Muchin Rosenman LLP, New York

For an invitation please contact terri.duggan@kattenlaw.co.uk

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