

REGULATION NEWSLETTER FOR INTERMEDIARIES

Monday 9th to Friday 13th November 2009

Welcome to the weekly regulation newsletter designed specifically for intermediaries. This newsletter is compiled by IFact Services and includes regulatory and topical information relating to Independent Financial Advisers, General Insurance and Mortgage and Home Finance Advisers.



Consultation Paper CP09/26: Regulatory fees and levies: policy proposals for 2010/11

Financial Services Authority

http://www.fsa.gov.uk/pubs/cp/cp09_26.pdf

The Financial Services Authority (FSA) has announced proposals to simplify the structure of the fees it levies on regulated firms and to enhance fairness and transparency. Following a review of its approach for determining the annual fees that firms pay, the FSA is consulting on a number of measures to ensure that fees continue to be set in a fair way, and to make the basis for calculating fees easier for firms to understand, including:

- Setting a standard 'minimum fee' that all firms will have to pay to cover the basic cost of being regulated;
- Ensuring that 'variable' fees over and above this basic minimum amount increase in direct relation to a firm's size - with the result that fees for the largest firms reflect the greater regulatory engagement they receive.

By the end of November, the FSA will publish a Fees Calculator which will enable firms to assess what these proposals mean for them. Mark Norris, the FSA's chief operating officer, said: "We are committed to delivering fair and transparent fees to all authorised firms. This is particularly important given that we are funded entirely by the firms we regulate, so we need to ensure firms can clearly see how we calculate their contribution to the running costs of the FSA."

The FSA is inviting responses to the proposals in its consultation paper by 11 January 2010. In February 2010, depending on the outcome of this consultation, the FSA plans to consult on fee levels for 2010/11 using this new fee model.

Speech - FSA Mortgage Market Review - what it means for intermediaries

Financial Services Authority

http://www.fsa.gov.uk/pages/Library/Communication/Speeches/2009/1111_lt.shtml

Speech by Lesley Titcomb, Director of Small Firms and Contact Centre, FSA at the Mortgage Business Expo. This speech outlines the proposals that will have the most impact on intermediaries in respect of LTV/LTI caps, Income verification, affordability, Approved person, Charging, Non-advised sales, Retail Distribution Review, Disclosure, Prudential reform, High-risk lenders and the 'new' FSA and small firms.

www.qbeurope.com/pi
tel: 020 7105 4000
e-mail: enquiries@uk.qbe.com

Speech - How the regulator views the mortgage market

Financial Services Authority

http://www.fsa.gov.uk/pages/Library/Communication/Speeches/2009/1113_jp.shtml

Speaking at the Council of Mortgage Lenders' Annual Conference, Jon Pain, the Financial Services Authority's (FSA) managing director of Supervision, said it is important to acknowledge that although the mortgage market worked well for many, it failed for a significant minority. Therefore, the priority must be to move towards a market that is flexible, sustainable for all and works for consumers. Jon Pain emphasised the FSA's new bolder approach to regulation, the importance of intensive supervision focused on outcomes, and its commitment to restore confidence in financial markets, to protect consumers and reduce financial crime. He also sought to address some of the issues raised by the industry following the publication of the mortgage market review last month. Outlining the rationale for the review, the key points emphasised were:

- The FSA is not seeking to block access to the market through income verification measures; rather, it expects these to yield various benefits, including a reduction in the number of unaffordable and unsuitable mortgage transactions; a decrease in arrears and repossession rates; improved transparency; a reduction in mortgage fraud; and an improved confidence in, and therefore sustainability of, the market more generally;
- The FSA will work closely with firms to identify acceptable verification measures and best practice for affordability assessments;
- Affordability checks will not look to judge how individuals spend their money but it is essential for lenders to do an appropriate and proper assessment of a borrower's genuine ability to repay;
- It is not the FSA's intention to penalise 'non-banks' or to stifle competition but is looking to curb the particularly high-risk lending strategies that led to significantly higher mortgage arrears levels; and
- The issue of arrears need urgent attention and to this end, the FSA will consult in January 2010 on tightening its conduct of business rules on arrears handling.

Jon Pain concluded: "Just as a house requires solid foundations to be long lasting, mortgages need to be based on a proper assessment of affordability if we are to have a sustainable market. Everyone who takes out a mortgage should be able to repay it - they should have some evidence that they can repay it and lenders should take note of that evidence. We want lenders to get back to the basics of responsible lending and we will continue to push the industry where we find firms are not treating their customers fairly."

Occasional Paper OP39: Regulatory reform & the cost of retail investing through life offices: 1988 - 2006

Financial Services Authority

<http://www.fsa.gov.uk/pubs/occpapers/op39.pdf>

Between 1988 and 2006 the Government and the financial market regulators launched two major sets of reforms designed to lower the cost of retail investing through Life Offices, to wit: Disclosure Reform (1992 to 1995) and the combination of Stakeholder Pensions, PIA Regulatory Update 64 RU64, and the FSA's Comparative Tables project (1999 to 2001). Each initiative aimed to reduce the cost of investing by making it easier for customers to find and identify low cost Life Office products, thereby promoting price competition between Life Offices. As it happens, the overall average cost of investing through retail-oriented Life Offices did in fact fall from an average of 3.85% of Funds Under Management (FUM) per year prior to Disclosure Reform to 1.86% of FUM per year after Stakeholder Pensions/RU64/Comparative Tables a total fall of 199 basis points. The FSA asked 1776 Consulting to investigate the role that these reform efforts played in bringing this decline about.

www.qbeeurope.com/pi
tel: 020 7105 4000
e-mail: enquiries@uk.qbe.com

Final Notice - FSA fines & bans former UBS employee for helping conceal unauthorised trading losses

Financial Services Authority

<http://www.fsa.gov.uk/pubs/final/cumming.pdf>

The Financial Services Authority (FSA) has banned and fined Andrew Cumming, a former client adviser at the London branch of UBS AG (UBS), for his role in the activities that led to the firm receiving an £8 million fine earlier this month for systems and controls failings. Cumming has been fined £35,000 and prohibited from performing any regulated function for a minimum period of five years on the grounds that he is not fit and proper. Paperwork signed by Cumming, who worked in UBS' international wealth management business, helped to document false loans which were used to conceal losses arising from unauthorised trading.

Customers whose funds were used were told they were providing loans to other UBS customers with promises of high rates of interest. To make these 'loans' appear official, documents were produced using UBS headed paper and sent to customers stating that the 'loans' were guaranteed by the firm. The FSA's investigation concluded that Cumming signed these documents on seven occasions between October 2005 and October 2007 having been asked by a senior colleague to do so, even though he knew the 'loans' were not authorised by UBS.

By late 2007, Cumming was fully aware that the 'loans' were being used to conceal losses which had arisen as a result of unauthorised transactions but he failed to escalate this knowledge. Instead, Cumming signed a further 'loan' and allowed the ruse to continue.

Margaret Cole, FSA director of enforcement and financial crime, said: "Cumming deliberately misled UBS and its customers. Although he did not stand to make a personal gain, his complicity allowed a colleague to continue making unauthorised trades, while the losses continued to mount up. We are committed to deterring behaviour of this kind by banning and fining anyone found to have committed such misconduct."

In setting the financial penalty, the FSA took into account the fact that Cumming did not initiate the circumstances which led to his misconduct, nor did he conduct any of the unauthorised transactions. Because he agreed to settle at an early stage of the FSA's investigation he qualified for a 30% discount in respect of his financial penalty. Cumming also proved to the FSA that he is in serious financial hardship, entitling him to a further discount.

If it wasn't for the settlement discount and Cumming's hardship, the FSA would have imposed a financial penalty of £100,000. Cumming worked at UBS' London branch from 1999 until March 2008, when he was dismissed for gross misconduct relating to this case. Earlier this month, the FSA fined UBS £8million for systems and controls failures that allowed employees to carry out unauthorised transactions with customer money. UBS has since repaid the affected customers in excess of US\$42 million by way of redress.

www.qbeurope.com/pi
tel: 020 7105 4000
e-mail: enquiries@uk.qbe.com

Final Notice - Mortgage broker banned for concealing true nature of governance & for mortgage fraud

Financial Services Authority

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/156.shtml>

The Financial Services Authority (FSA) has banned Birmingham mortgage broker Mohammed Hanif for obtaining authorisation by giving the FSA false information to conceal his involvement in the running of the business. The authorisation application stated that Hanif's daughter-in-law, Zaneb Sarfraz, trading as Pak Property Centre, had the necessary competence, capability and business experience to be an authorised person, and that she would be involved in the management and control of Pak Property Centre. In fact, she had no knowledge of the financial services industry, she was not aware of the purpose of the authorisation application submitted in her name, and she had very little involvement in the running of the business. From the outset Hanif was the controlling mind of Pak Property Centre.

Having obtained authorisation on a false basis Hanif, together with the only mortgage adviser at Pak Property Centre, Anbur Saddiq, submitted a mortgage application for Mrs Sarfraz based on false information about her earnings from the business. Saddiq also made false mortgage applications for himself and for a family member. He has also been banned by the FSA.

Margaret Cole, the FSA's director of enforcement and financial crime, said: "Maintaining the integrity of the authorisation process is essential if we are to keep dishonest people out of the regulated financial services industry. This was a deliberate act of deception and exploitation by Hanif. He deceived the FSA by presenting sham governance arrangements during the authorisation process. In doing this seemingly he had no regard for the impact on the reputation of Mrs Sarfraz. This misconduct, which is very serious in itself, is compounded by the fact that he went on to use the authorised business to commit mortgage fraud."

The permission of Zaneb Sarfraz trading as Pak Property Centre has also been cancelled.

Consultation Paper CP09/27: A review of the Credit Union Sourcebook (CRED)

Financial Services Authority

http://www.fsa.gov.uk/pubs/cp/cp09_27.pdf

The Financial Services Authority (FSA) has set out its proposals for strengthening the financial resilience of the credit union sector and ensuring that its customers are adequately protected. The proposals aim to raise prudential standards in the sector, particularly on capital and liquidity. The proposed regime could also help ensure credit unions are prepared for the new government legislation allowing them to carry out a wider range of financial activities. The main proposals are set out below:

- Introduction of a minimum capital to assets ratio of at least 3% for smaller credit unions;
- Higher initial start up capital for new credit unions - £10,000 for small start-ups and £50,000 for larger ones; and
- An increase in the minimum liquidity requirement to 10% of total liabilities for all credit unions.

These changes will be phased in over two to three years to give firms enough time to comply with any new rules.

Paul Sharma, FSA director of prudential policy, said: "Our reforms for credit unions will ensure they are financially sounder, well managed with fewer failures and defaults. Raising the standards will also enable firms to be better placed to take advantage of the proposed legislative changes."

The FSA is also proposing to reduce the submission period for annual financial returns from seven to four months so that financial information received from credit unions is more timely and consistent.

www.qbeeurope.com/pi
tel: 020 7105 4000
e-mail: enquiries@uk.qbe.com

Speech - FSA chief says cultural change needed to drive reform

Financial Services Authority

http://www.fsa.gov.uk/pages/Library/Communication/Speeches/2009/1109_hs.shtml

Reform will only come if both the regulator and the regulated are committed to genuine change, according to Financial Services Authority (FSA) chief executive Hector Sants. Speaking at Bloomberg, London, Hector Sants emphasised how the FSA has changed and how its radical new intensive supervisory regime is already delivering the right outcomes for firms, consumers and for financial stability, but that there needs to be genuine cultural and behavioural change within the financial industry to ensure the lessons of the crisis provide the outcomes society expects.

Hector Sants warned: "There remains, I believe, an absence of the acceptance of collective responsibility for what has happened. I personally remain unconvinced that all senior management have taken on board the need to change and operate in a genuinely different manner."

Hector Sants demonstrated how the experience of the past two years has equipped the UK regulator to deliver a new, stronger supervisory approach. Having completed the implementation of its Supervisory Enhancement Programme (SEP), it now has 280 more supervisory and specialist staff, a new training regime and a new risk identification process. Supervisors are now judging firms on the likely consequences of their decisions and proactively challenging business models.

This radical new approach to supervision has successfully delivered results on both prudential and conduct issues; helping to protect consumers and secure financially stronger, more resilient firms. This year, the FSA has taken action and secured redress for consumers in respect of payment protection insurance for both mortgages and personal loans (MPPI and PPI), for mortgage arrears handling and pension switching. It will be increasingly proactive in testing risks inherent in products from their development and using techniques such as mystery shopping to test the true outcome for consumers.

Stronger prudential supervision is already ensuring that firms are able to better deal with financial pressures, enhancing financial stability throughout the crisis. Without the FSA's rigorous stress tests the recent bank recapitalisations would not have been possible and the FSA was the first major regulator, globally, to introduce new rules to tackle liquidity risk.

However, Hector Sants continued: "I believe it is important to recognise that there are limits to what regulatory rules can achieve. It would be a mistake not to recognise that some of the failures which have occurred have their roots in the issues of culture and behaviour."

The FSA has already introduced a tougher approval process for senior management and has seen a number of applicants withdraw as a result of greater challenge, but is now looking to explore an individual's ability to create a strong ethical framework. Acknowledging that culture is driven by those at the top of an organisation, the FSA will be opening the debate on how it can assess a senior executive's impact on an institution's culture as part of its authorisation regime. This topic will be included in a forthcoming FSA discussion paper.

Commenting on the current debate on regulatory structure, Hector Sants stated that all organisational structures will have fault lines but given the demonstrable effectiveness of the revised FSA approach of integrated supervision of individual firms it is critical that "society must not lose the benefits of the hard learning experience the FSA has been through".

www.qbeeurope.com/pi
tel: 020 7105 4000
e-mail: enquiries@uk.qbe.com

From the Pensions Regulator - Regulator's 2009 recovery plan report shows how schemes are coping in the downturn

Other Items of Interest

<http://www.thepensionsregulator.gov.uk/onlinePublications/factsandfigures.aspx>

The Pensions Regulator published the latest edition of its annual analysis of recovery plans from defined benefit and hybrid pension schemes. This analysis updates previous publications in 2007 and 2008, providing an overview of scheme recovery plans with valuation effective dates from 22 September 2005 to 21 September 2008. This represents the first near complete triennial cycle of the regulator's scheme funding regime - with schemes divided into three 'tranches' based on the effective date of the scheme valuation.

Pensions Regulator chair, David Norgrove said: " The three tranches of scheme valuations have been conducted in very different economic circumstances and this analysis explores some of the effects that the downturn, and other factors such as longevity improvements, have had on scheme funding. We urge trustees to continue to take a prudent approach to assessing schemes' technical provisions, to maintain an honest and open dialogue with employers, and to remain aware of the changing economic situation as they focus on the long term interests of scheme members. The regulator will continue to focus on this shared goal. Some of the key findings are:

- We have not seen a material increase in schemes triggering our scrutiny on technical provisions (funding targets) over the last two tranches. This reflects in part technical factors affecting the trigger calculation.
- We have seen an increase in both recovery plan lengths and back-end loading. This resonates with the regulator's statement on the employer covenant in June, emphasising the flexibility in our funding framework where employers face short-term cash constraints.
- Mortality assumptions have demonstrated greater prudence in response to evidence of increasing longevity and our regulatory guidance. Schemes have moved towards the use of baseline mortality assumptions which reflect more up-to-date mortality experience in combination with adjustments which allow for future mortality improvements and an underpin.
- There has been an increase in the mean effective single discount rate adopted in the third tranche, reflecting increasing reliance on future investment returns. We will continue to monitor developments in this area, and in particular it should be noted that the data predates market activity in late 2008 and early 2009.
- The proportion of tranche 3 recovery plans that triggered was 60 per cent, compared with 70 per cent and 52 per cent in tranches 1 and 2 respectively.
- The weighted average recovery plan length was 8.3 years for tranche 3 schemes, up from 6.1 years for schemes in tranche 2. From tranche 2 to tranche 3, the proportion of recovery plans that triggered solely on technical provisions was lower.
- There has been an overall reduction in the number of clearance applications in the financial year 2008-09 from 2007-08. "

www.qbeeurope.com/pi
tel: 020 7105 4000
e-mail: enquiries@uk.qbe.com

DWP - Understanding Small Employers' likely Responses to Workplace Pension Reforms

Other Items of Interest

<http://research.dwp.gov.uk/asd/asd5/rports2009-2010/rrep617.pdf>

The Department for Work and Pensions publishes the findings of research exploring small employers' likely responses to the workplace pension reforms set out in the 2008 Pensions Act. The main findings are:

- The idea of a 'saving culture' in which people take responsibility for saving for the future and do not rely heavily on credit was highly regarded by all employers.
- Although there was broad support for the general aims of the reforms, the economic climate at the time of the fieldwork meant that small employers were concerned about an increase to the cost of their businesses. This was apparent even among those employers that currently provided a company pension scheme and especially apparent among those providers with low participation rates.
- Employers found it difficult to estimate the cost of each administrative stage required to implement the reforms. This was partly due to a lack of understanding of the detail of the reforms and partly due to the way some small employers outsource their administration.
- However, respondents reported that previous government initiatives, such as National Minimum Wage and online tax returns, had been easy to implement as a result of straight forward communication from Government. They also noted that they had absorbed the costs of previous reforms without significant impact.
- Employers did not hold strong views on phasing, those who were not already contributing to a pension thought it was a good idea which would "soften the blow" of contribution costs. However, those already contributing to pensions felt that a 3% contribution at the outset would be less confusing and reduce administration.
- Employers typically said they would prefer the contribution rate changes in phasing to occur in April, in line with the financial year.

www.qbeurope.com/pi
tel: 020 7105 4000
e-mail: enquiries@uk.qbe.com

Important notice

QBE Insurance (Europe) Limited and any of its associated companies and contractors ("QBE") shall not be liable for any losses or damages whatsoever, whether in contract, tort (including negligence except in the case of death or personal injury) or otherwise arising from use of or reliance on information in, derived from or absent from this Newsletter, or from any delay in receiving or accessing this Newsletter for whatever reason.

QBE does not represent or warrant that access to the Newsletter will be uninterrupted or that there will be no failures, errors or omissions or loss of transmitted information.

QBE shall not be liable to the reader or any third parties for any direct, indirect, special, consequential or punitive damages allegedly sustained arising out of use of or reliance on this Newsletter or any of the information or materials available in it or via the links referred to by it or any subsequent links.

Third party websites

The Newsletter contains links to websites over which QBE has no control. QBE does not accept responsibility or liability for the operation or content of such websites.

Applicable law

The Newsletter (including these terms) shall be governed by English law. The English courts shall have exclusive jurisdiction over any disputes arising in connection with the Newsletter.

Complimentary Helpdesk

Should you require further information or have questions relating to this update or any regulatory issues, QBE has arranged for IFACT Services Ltd to provide a complimentary telephone service to assist intermediaries.

IFACT can be contacted at:

Telephone Number: 08456 121211
Email: queries@ifact.co.uk
Website: www.ifact.co.uk

QBE PI is a combination of the professional indemnity strengths and capabilities of the market leading DA Constable Syndicate 386 and QBE Insurance (Europe) into one specialist team. With over 30 years experience combined, QBE PI is the largest professional indemnity team in the market offering a broad range of flexible solutions to suit the needs of brokers and clients - from major multinational to sole practitioners. QBE PI has been structured to provide the most effective underwriting and claims service reflecting the diversity of our clients' size and professions. Our four underwriting units provide comprehensive insurance solutions across the spectrum of client sizes and buying preferences. For more information, visit www.QBEurope.com/pi

www.qbeurope.com/pi
tel: 020 7105 4000
e-mail: enquiries@uk.qbe.com