

REGULATION NEWSLETTER FOR INTERMEDIARIES

Monday 1st to Friday 5th June 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.



Policy Statement PS09/9: Regulating sale & rent back: an interim regime

Financial Services Authority

http://www.fsa.gov.uk/pubs/policy/ps09_09.pdf

The Financial Services Authority (FSA) has published the details of the regime that it aims to introduce on 1 July to tackle immediate problems for customers in the sale and rent back (SRB) market. This follows HM Treasury's announcement that it is extending the scope of FSA regulation to include SRB, as it considers this to be the most appropriate way of ensuring consumer protection in this market. This supports the recommendation made last year by the Office of Fair Trading (OFT), following a market study which found that sale and rent back deals had the potential to cause serious harm to homeowners who are often already in a vulnerable position. A recent FSA survey of 2,006 adults aged 18 and over interviewed across Great Britain found that:

- only 42% of those surveyed knew that SRB is currently unregulated (meaning that people who currently take part in these schemes do not benefit from the protection afforded by the Financial Ombudsman Service if needed);
- the majority thought they would be entitled to stay in their home for more than five years (whereas the typical contract is six to 12 months); and
- the majority (58%) surveyed thought SRB should be regulated.

The FSA is taking a two stage approach to regulating the SRB market. An interim regime will be brought in as soon as any statutory changes come into force (expected on 1 July) in order to address the most immediate problems for consumers, followed by a more comprehensive regime which will start on 30 June 2010.

Ed Harley, FSA head of mortgage policy, said: "We know that some consumers enter into sale and rent back arrangements without understanding the costs and risks involved. This can be a source of real distress for people in already difficult circumstances. Firms entering our regime will need to run their business in a way that means customers are treated fairly. This includes making clear to customers important details, such as the length of time they can stay in the property, before they enter into the arrangement."

Under the interim regime firms will need to meet FSA threshold conditions including the requirement to have adequate resources and to be run by fit and proper people. Firms will also have to comply with the Principles for Businesses and meet a number of systems and controls and conduct of business rules. Firms that are currently unauthorised and that intend to carry on any of the new SRB regulated activities after the commencement of the interim regime will need to apply for interim permission. Similarly, firms that are currently authorised for other activities will need to apply for interim variation of permission. Firms are encouraged to start preparing now for authorisation and to apply as soon as the interim regime starts.

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Policy Statement PS09/8: Fee-raising arrangements & regulatory fees & levies

Financial Services Authority

http://www.fsa.gov.uk/pubs/policy/ps09_08.pdf

This consolidated policy statement is relevant to all authorised firms and other bodies that pay FSA regulatory fees, as well as those applying for authorisation. In the Consolidated Policy Statement (CPS) FSA explain their policy on fee-raising arrangements. It gives a broad overview of FSA fees rules but readers should always consult the Fees Manual in the current version of the FSA Handbook to see how the rules and guidance would apply in their particular circumstances.

Small Firm Pages - FSA publishes final regulatory fees and levies for 2009/100

Financial Services Authority

<http://www.fsa.gov.uk/smallfirms/resources/bp.shtml>

The amount the FSA needs to raise from firms this year has risen from last year. How these fee increases apply to different firms depends on a range of factors. As set out in February's consultation paper, fee rates will be lower than proposed for financial advisers, mortgage advisers and general insurance intermediaries. The minimum FSA fees (the basic fee which all firms are required to pay) will be frozen at 2008/09 levels and, once the financial penalty rebate is applied, approximately 10,000 small firms will experience a fee reduction compared to the previous year. The largest firms in areas requiring most regulatory work and engagement will pay most. The amount individual firms will pay compared to last year will vary widely and will depend on the specifics of their business. Firms can get an indication of the fees and levies they will pay by using FSA's Fees Calculator. Click on the link above for additional information and the fees calculator.

Financial Promotions - Over 50's life cover

Financial Services Authority

http://www.fsa.gov.uk/pages/Doing/Regulated/Promo/thematic/life_cover.shtml

FSA have recently conducted a review of the advertising of 'Over 50's Life Plans'. These Whole of Life plans provide a guaranteed sum, which is payable on death. They are promoted on the basis of guaranteed acceptance without the need for a medical. However, there are some disadvantages to these products. It is crucial that customers are given sufficient information to allow them to make an informed decision about the suitability of these plans for their own circumstances, particularly as they are sold without advice. The products FSA reviewed did not have any investment element, so their advertising falls within the remit of the relevant chapter of the Insurance Conduct of Business Sourcebook governing financial promotions (ICOBS 2.2). The overarching principle in ICOBS 2.2.2 is that firms must take reasonable steps to make their financial promotions clear, fair and not misleading. FSA looked at 44 promotions from 13 different firms covering direct mail, press, in-store leaflets, websites and TV promotions over a two-month period.

What FSA found - Generally promotions were of a good standard and product benefits were balanced, with an appropriate description of relevant risks or drawbacks. Promotions often implied that cover was contingent on continuing payments, but this vital fact could have been made more explicit. On a few websites FSA found it was possible for customers to bypass any risk disclosures and go straight to the 'obtain a quote' page, which usually then allowed them to purchase the product. In direct mail packs, where benefits were prominently presented in the covering letter FSA found some examples where the letter lacked balance and did not disclose the appropriate risks or drawbacks. Instead they merely made reference to the Terms and Conditions document elsewhere in the pack. Click on the link above for additional findings from the review.

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Final Notice - Finance Direct (FD)

Financial Services Authority

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

A Final Notice has been issued to the above cancelling their permissions. The Notice records that on the basis of the facts and matters and conclusions described in its Warning Notice dated 5 March 2009, and in the Decision Notice, it appears to the FSA that FD is failing to satisfy the threshold conditions. Specifically, FD's resources are not adequate in relation to the regulated activities it has permission to carry on. Specifically, FD is unable to meet its liabilities as they have fallen due. These failings are significant and material in relation to the regulated activities for which FD has permission, and FD therefore fails to satisfy Threshold Condition 4 (Adequate resources). Click on the link above to view the Final Notice in full.

Final Notice - Network Data Limited (NDL)

Financial Services Authority

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

A Final Notice has been issued to the above cancelling permissions. The FSA gave NDL a Decision Notice on 24 April 2009 which notified NDL that the FSA had decided to cancel the permission granted to NDL. NDL was informed of its statutory right to make a reference to the Financial Services and Markets Tribunal, but NDL has not referred the Decision Notice to the Tribunal within 28 days of the date on which the Decision Notice was given to it. Accordingly, the FSA has cancelled NDL's permission. By a First Supervisory Notice dated 17 April 2009, NDL's Part IV permission was varied by removing all regulated activities with immediate effect. A copy of the First Supervisory Notice, by which the FSA removed all regulated activities from NDL's permission, is displayed on the FSA's website. By a Second Supervisory Notice dated 24 April 2009, the FSA decided not to rescind the variation of NDL's permission effected by the First Supervisory Notice dated 17 April 2009. On the basis of the facts and matters and conclusions described in its Warning Notice dated 17 April 2009 (the "Warning Notice"), and in the Decision Notice, it appears to the FSA that it is no longer necessary to keep NDL's permission in force and that the FSA must cancel it, following the variation action removing all regulated activities.

Final Notice - Bansal Estates and Insurance Agents

Financial Services Authority

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

A Final Notice has been issued to the above cancelling their permissions. It appears to the FSA that it is no longer necessary to keep Bansal's permission in force and that the FSA must cancel it, following the variation action removing all regulated activities. In addition to its obligation to cancel Bansal's permission, the FSA also considers that cancellation of Bansal's permission is necessary because Bansal has repeatedly failed to submit Retail Mediation Activities Returns promptly, or at all, despite the FSA's repeated requests that it do so, including the RMARs for the periods ended 28 February and 31 August 2008, both of which remain outstanding. Bansal has thereby failed to comply with Principle 11 (Relations with Regulators) of the FSA's Principles for Businesses. Click on the link above to view the Final Notice in full.

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Final Notice - George Albert Loscombe trading as Simple Mortgage Solutions

Financial Services Authority

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

The FSA have issued a final notice to the above cancelling their permissions. The reason for the action is confirmed in the final notice as being that it appears to the FSA that they are failing to satisfy the threshold conditions. Specifically, they have failed to comply with a Financial Ombudsman Service award made against them on 16 March 2007, despite repeated requests by the FSA that they do so. Click on the link above to view the Final Notice in full.

Consultation Paper CP09/16: FSCS: Verification of the single customer view & changes to deposit compensation

Financial Services Authority

http://www.fsa.gov.uk/pubs/cp/cp09_16.pdf

The Financial Services Authority (FSA) proposes to extend until December 2010 interim rules which allow separate compensation cover for customers with deposits in two merging building societies. It also proposes a similar extension for customers of a building society which merges with a subsidiary of another mutual society and for customers whose deposits are transferred from a failed firm to another deposit taker where they already have an account. The rules, due to expire on 30 September 2009, were introduced following concerns that customers with savings in two merging societies, or whose deposits were transferred, could find their combined investment exceeded the £50,000 maximum deposit protection limit for the Financial Services Compensation Scheme (FSCS).

Jon Pain, the FSA's retail markets managing director, said: "The interim rules were introduced on a temporary basis to reassure customers involved in particular mergers or transfers. They helped existing savers who wished to keep below the deposit protection limit and also served to reduce withdrawals by savers from successor firms driven purely by compensation considerations. We now propose to extend the operation of these rules until December 2010, by which time it should be clear what changes will be made to the EU Deposit Guarantee Schemes Directive. We will then be able to put in place permanent arrangements which will take account of any new EU requirements."

The European Union Deposit Guarantee Schemes Directive (DSGD) has recently been amended to introduce an EU-wide common deposit protection limit of €100,000 from 31 December 2010. But this amendment will only take effect if the EU Commission reports that such a change would be appropriate and financially viable for all EU Member States. The Commission's report is due by the end of this year, but even then it may not be clear what the eventual outcome will be. In these circumstances the FSA has decided that an extension to December 2010 is the right course now allowing a permanent decision to be made later when the final DSGD position is known.

The separate compensation arrangements apply only if the new firm formed by a merger, or a firm that takes over deposits from another deposit taker, informs the FSA beforehand that it wishes them to apply and also continues to operate the business of the previous firm under its former name. The proposed extension of these rules is set out in CP09/16 and consultation on this will conclude on 6 July 2009 to allow the necessary changes to be made in good time before the interim rules expire in September.

CP09/16 also proposes measures on how the FSA would supervise the 'single customer view' (SCV) of deposits covered by the FSCS, if that goes forward. The FSA consulted on the SCV in CP09/3 published in January 2009. CP09/16 also makes proposals on how the FSCS would treat term deposit accounts when it pays compensation following a default. Consultation on these proposals will conclude on 4 September 2009.

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Consultation Paper CP09/14: Strengthening liquidity standards 3: Liquidity transitional measures

Financial Services Authority

http://www.fsa.gov.uk/pubs/cp/cp09_14.pdf

This paper directly affects all UK-regulated deposit-takers (banks and building societies), including branches of both European Economic Area (EEA) and other overseas banks operating in the UK. It is also relevant to non-bank securities firms and small investment firms (including limited licence/limited activity BIPRU investment firms). Although FSA do not think this paper will be of direct interest to individual consumers, they think it may be of interest to organisations that represent, or comment upon, the interests of banking consumers. This Consultation Paper (CP) sets out FSA's proposals for transitional measures which are intended to aid the implementation of their new liquidity regime (on which FSA consulted through CP08/22 and CP09/13). FSA propose a phased approach, differentiated for each class of firm within the scope of the new liquidity regime.

Consultation Paper CP09/17: A Specialist Sourcebook for Building Societies: Enhanced supervisory guidance

Financial Services Authority

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/073.shtml>

The Financial Services Authority (FSA) is consulting on additional guidance to ensure that building societies diversifying away from the traditional business model have the risk management systems and skills necessary to operate safely. Using a combination of existing and new guidance, the FSA expects building societies to re-examine their risk management and business models in the areas of liquidity, wholesale funding and lending to ensure they are aligned. Societies that demonstrate the necessary risk management systems and skills will have complete flexibility to run their business within the statutory limits set by the Building Societies Act. Those which cannot, the FSA will steer to a simpler business model category and activities they can safely undertake.

Jon Pain, the FSA's retail managing director, said: "Our approach is very simple; the more diversification, the higher the level of management skills and systems and controls the FSA will demand from the firm. This interventionist approach is entirely consistent with our heightened supervision and is designed to challenge and encourage a strong and vibrant building society sector for the future. Building societies will still be free to innovate and diversify, but not beyond the limits of their risk management skills."

The consultation paper forms part of the FSA's intensive supervisory regime for building societies, where supervisors are judging the sustainability of business models and assessing senior management skills. Building societies have statutory freedoms to diversify and innovate, but recent experience has shown some building societies diversified without having the requisite skills and systems to manage the risks. The guidance outlined would not limit those freedoms to diversify, but would clearly set out the skills and controls buildings societies need to have to manage more complex business models. The consultation will close on 5 September 2009.

Building Society Statistics

Financial Services Authority

http://www.fsa.gov.uk/pages/Library/Other_publications/Miscellaneous/2009/bs_stats.shtml

Building Society statistics for 2008 are now available and a set of 13 tables follows, similar in scope, coverage and level of detail to the tables FSA published in May 2008.

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Consultation Paper CP09/15: Extension of the short selling disclosure obligation

Financial Services Authority

http://www.fsa.gov.uk/pubs/cp/cp09_15.pdf

The paper will be of interest to UK financial sector companies, short sellers of stock, consumers, other firms and trade bodies and their advisers. The Financial Services Authority (FSA) is proposing to extend the current disclosure regime for significant net short positions in the stocks of UK financial sector companies, due to expire on 30 June 2009. Extending the regime will continue to help reduce the potential for abusive behaviour and disorderly markets. The FSA expects that, in the longer term, the requirements will be replaced by a broader short selling regime for all UK stocks. As is the case at present, disclosures will only need to be made if a net short position exceeds 0.25% of a company's issued shared capital or increases by 0.1% bands above that (e.g. net short position reaches 0.35%. 0.45% and so on).

Sally Dewar, managing director of wholesale and markets at the FSA, said: "Keeping the disclosure requirements will continue to enhance transparency and limit the potential for market abuse, while details of a long term regime for short selling are being drawn up. We remain committed to achieving an international consensus that is as wide as possible on our broader short selling regime." The consultation period on the FSA proposals will close on 12 June to enable any new measures to be put in place before the current regime expires.

Press Release - Financial Services Compensation Scheme Board appointments

Financial Services Authority

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/070.shtml>

The Financial Services Authority (FSA) has appointed two new non-executive directors to the board of the Financial Services Compensation Scheme (FSCS). They are:

Ivan Rogers - Ivan Rogers started his career as a civil servant and posts he held included Principal Private Secretary to former Prime Minister Tony Blair, Private Secretary to Kenneth Clarke, former Chancellor of the Exchequer, and Director of European Policy and Director of Budget and Tax policy at HM Treasury. He joined Citi Group as a Senior Government Banker for the UK in July 2006 and is a member of Citi Group's UK Banking and Broking Board.

Phillip Wallace - Phillip Wallace was a chartered accountant at KPMG from 1971 to 2005 finishing as a Vice Chairman and Chairman of the Audit Committee. His main specialism was Corporate Recovery where he was the senior partner responsible for complex restructurings and insolvency. Since his retirement Mr Wallace has pursued a number of non-executive roles including the Chairmanship of the Insolvency Services Steering Board which he took up in 2007.

The FSA has also confirmed the reappointment of David Hall as chairman of FSCS until 31 March 2012. FSA chairman Adair Turner said: "We are pleased that Ivan Rogers and Phillip Wallace have been appointed to the FSCS Board as non-executive directors. They bring with them experience in their fields which will greatly benefit the FSCS. We are also pleased that David Hall is remaining as FSCS Chairman. He has done an outstanding job at the FSCS which has faced unprecedented pressures during the past year."

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From the ICO - ICO launches an updated guide for privacy impact assessments

Information Commissioner

http://www.ico.gov.uk/upload/documents/pia_handbook_html_v2/index.html

The Information Commissioner's Office (ICO) is urging organisations to always consider the impact on individuals' privacy before developing new IT systems or changing the way they handle personal information. The call comes as the ICO launches the latest version of the Privacy Impact Assessment (PIA) handbook. The user friendly handbook is designed to help organisations address the risks to personal privacy before implementing new initiatives and technologies.

Jonathan Bamford, Assistant Information Commissioner at the ICO, said: "For the public to have trust in an organisation, individuals must be confident that their information is held securely and processed in line with the Data Protection Principles. Each time someone gives away their personal information this not only puts the data at risk, they can leave a footprint creating a detailed picture of aspects of their daily lives. Therefore, it is essential that before introducing new systems and technologies, which could accelerate the growth of a surveillance society, full consideration is given to the impact on individuals and that safeguards are in place to minimise intrusion. Privacy impact assessments are a common sense approach to help organisations develop privacy friendly ways of working. The new PIA handbook is more accessible and will aim to assist organisations in protecting people's personal information and ensuring that privacy safeguards are built into systems at the outset rather than bolted on as an inadequate and expensive afterthought.

Following the HMRC data breach in November 2007 the Cabinet Office introduced a mandatory procedure for all central government departments and their agencies to adopt Privacy Impact Assessments when developing new systems. The ICO encourages all organisations to incorporate data protection safeguards into any new project involving personal information. The benefits of a Privacy Impact Assessment include:

- Identifying and managing risks
- Avoiding unnecessary costs
- Avoiding the introduction of inadequate solutions too late in a scheme's development
- Avoiding loss of trust and reputational damage
- The opportunity to inform and seek feedback from stakeholders
- Meeting and exceeding legal requirements

From the ABI - ABI warning over regulation 'contagion'

Financial Services Authority

[http://www.abi.org.uk/BookShop/ResearchReports/ABI RESTORING MKT CONFIDENCE FORMATTED content 0206094web version publicationscomplete.pdf](http://www.abi.org.uk/BookShop/ResearchReports/ABI_RESTORING_MKT_CONFIDENCE_FORMATTED_content_0206094web_version_publicationscomplete.pdf)

Regulators and governments must not harm other industries, such as insurance, as they deal with the banking crisis, warns the Association of British Insurers. In its new report, Restoring Market Confidence, the ABI says that any changes should tackle the problems that arose in the banking sector, not apply a 'one size fits all' set of remedies to the rest of the financial services sector. The ABI report also argues that regulation must not inhibit the ability of firms to offer competitive products for consumers, or add unnecessary costs to businesses. The report comes ahead of the deadline for consultations to the Turner Review on June 15, and in the midst of an ambitious regulatory programme covering UK, EU and international initiatives.

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