Scientia Compliance Ltd
Compliance & Risk Management Services

COMPLIANCE NEWS

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Editorial

For those of you who feel holding the CF8 function is a heavy burden to carry, your prayers have been answered – the CF8 function has been removed. However, don't break out the champagne too soon. The FSA still requires transparency of responsibilities, particularly in the area of compliance.

TCF

"We don't want to see firms generating management information just to satisfy a visit from the regulator." Sarah Wilson, FSA

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Further information on the issues in this newsletter, or any other issues which concern your business, can be obtained from Chris Keene on 020 7369 5375 / 07775 610006

Organisational systems and controls - extending the common platform - feedback on CP07/23 and final rules

At the end of September the FSA issued 'Organisational systems and controls - extending the common platform - feedback on CP07/23 and final rules'. The publication was released quite quietly but insurance intermediaries certainly need to be aware of it. However the good news is that the majority of information is reinforcing good practice. In this issue we highlight some of the interesting areas for insurance intermediaries.

Background

Common platform firms are those that are subject to the Markets in Financial Instruments Directive (MiFID) and the Capital Requirements Directive (CRD). ie not stand alone insurance brokers. Essentially this policy statement is about extending organisational systems and controls requirements to non-common platform firms (known as 'non-scope' firms). The common platform firms had to contend with rule changes as a result of these directives back in late 2007. What has resulted here is mainly guidance (as opposed to rules) so there is an element of flexibility of how firms can comply with existing Principles and rules. Implementation has been put back to 1 April 2009 since everyone is busy concentrating on meeting the TCF deadline of 31 December 2008.

Common platform firms now have to adhere to SYSC chapters 4-6, and SYSC chapters 2-3 have been disapplied. The aim is to do the same for non-common platform firms where possible, thus producing a common set of high level provisions that can be applied proportionately and flexibly. The new provisions are more detailed and should improve awareness in these areas.

Business continuity

The FSA has now added more guidance. Firms should be mindful of the continuity of their business and the guidance is designed to help develop and benchmark business continuity plans. It does not create new obligations for firms that already have adequate business continuity plans.

Regular monitoring

Existing SYSC provisions explicitly require a firm to monitor and regularly evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements to ensure compliance with decision-making and business continuity. It also implicitly requires firms to consider periodically whether they are fit for purpose to deliver compliance with other regulatory requirements (including but not limited to TCF). The new guidance allows non-scope firms to consider what is proportionate and fits the needs of their business.

Segregation of duties

A firm should segregate duties of individuals and departments in a way that reduces opportunities for financial crime or the contravention of regulatory requirements. The FSA has confirmed its proposal and that it will treat these provisions as guidance and not as rules. The key is proportionality. Non-scope firms should meet these provisions to the extent it is appropriate, taking into account the business of the firm and its circumstances. Where a non-scope firm is unable to ensure the complete segregation of duties, SYSC 5.1.10G states that it should ensure it has adequate compensating controls in place.

Compliance function

The FSA has provided guidance noting that the compliance function has:

• the necessary authority, resources, expertise and access to relevant information;

• a compliance officer;

• compliance officers who are independent of the activities they monitor and

• remuneration arrangements which do not compromise compliance objectivity.

This should not affect the behaviour of firms that meet their existing provisions.

Internal audit

The FSA views internal audit as an integral part of a firm's corporate governance arrangements, providing assurances that its key business risks are being managed and that its internal control framework is operating effectively. It is providing guidance that, where appropriate and proportionate in view of the nature, scale and complexity of its business, a firm should establish and maintain an internal audit function. The key issue here is proportionality. The FSA would like internal audit and compliance to be separate. However it recognises that they can be part of the same function as long as nothing stops the individuals from carrying out their functions soundly honestly and professionally.

Risk control

The FSA is going to apply the risk control provisions in SYSC 7 to non-scope firms as guidance. This would not be substantially different from existing provisions in SYSC 3. This involves where appropriate setting up a risk management function or setting up a risk assessment function which essentially is what firms have to comply with already if the size and complexity of the business is such that it is appropriate. Also that the governing body should be furnished with such information

Outsourcing

Whilst the provisions on outsourcing have been in the Handbook as guidance the FSA is now re-enforcing with a rule that firms when outsourcing a critical or important function must remain responsible for discharging its regulatory obligations. More guidance will be provided on what is 'critical' and 'important'.

Conflicts of Interest

The essential requirement is that firms should identify and manage conflicts of interest. They should have arrangements in place to undertake this in relation to the size and complexity of the firms. There is no new requirement for firms to evidence that they have addressed conflicts of interest. However, there is an expectation that firms should be able to document the potential for conflicts they have identified, and the arrangements they have for managing them.

Apportionment and Oversight

The FSA has decided to remove the requirement for individuals holding the CF8 function. It believes that it will create flexibility for non-scope firms to choose the appropriate means for ensuring their senior personnel are responsible for the firm's compliance. The FSA will remove all relevant CF8s (with the limited exception of CF8s held by some authorised professional firms) from the Register automatically and communicate this change via the website. Therefore directors are now collectively responsible for apportionment and oversight.

Other news

Mortgage enforcement

The enforcement action on mortgage brokers continues with two directors being censured for poor compliance and sales practices. Amongst other things they failed to ensure the firm put in place appropriate written sales and compliance procedures and operate in accordance with them; and failed to ensure that their compliance department had sufficient experienced and qualified staff.

A mortgage broker in North Wales has been banned for giving poor advice. He was fined £100,000 for exposing 1500 customers to unsuitable advice.

PPI

In an update on its thematic review of sale of Payment Protection Insurance (PPI) the FSA has set out that, due to the poor findings from its recent work, it is escalating its regulatory intervention.

The FSA will consider the action it will take to deal with ongoing non-compliant sales practices and consider actions to identify and remedy non-compliant past sales, using a range of regulatory powers at its disposal.

TCF

Here is a quote from a recent Sarah Wilson speech at the BBA: "We don't want to see firms generating management information just to satisfy a visit from the regulator. We understand completely that a file badged as TCF MI is not worth anything unless it really is used by senior management as a way of measuring how the firm is behaving and whether outcomes are being met."

Firms take note. Also think about what you are producing already - it may be that this information can be 'badged' under the TCF banner as well as normal management information that helps you to run a good business.