DUFF & PHELPS

REGULATORY **FOCUS**

A synopsis of the Financial Conduct Authority's (FCA) latest news and publications issued in January 2016.

ISSUE 92

MiFID II delayed by a year

The European Commission (EC) confirmed on 10 February 2016 that it has proposed a one year extension for the implementation of MiFID II, due to the complexity of the technical challenges. The new deadline for implementation is 3 January 2018. However, firms should continue their preparation for MiFID II but they will have greater legal certainty and more time to do so.

ESMA Publishes a Letter from the European Commission on the AIFMD Passport

On 17 December 2015, the EC replied to opinion and advice provided by the European Securities and Markets Authority (ESMA) on 30 July 2015 on the application of the AIFMD passport to non-EU AIFMs and non-EU AIFs, on the functioning of the passport for EU AIFMs and on the national private placement regimes (NPPRs).

The EC considers that, with regard to the granting of AIFMD passports to third country managers and funds, ESMA's country-by-country assessment approach is correct. The EC expresses the view that the outcome of the assessment (as per Article 67 of AIFMD) may differ depending on the different regulatory and supervisory frameworks of third countries in which non-EU AIFMs and funds are established. It also acknowledges the resource constraints that led ESMA to deliver the advice in waves of selected countries.

The EC also invites ESMA to complete by 30 June 2016 assessments of the following countries:

- US, Hong Kong and Singapore – selected as part of the "first wave" of assessments, but for which to date no definitive advice has been provided
- Japan, Canada, Isle of Man, Cayman Islands, Bermuda and Australia for the "second wave"

The EC also invites ESMA to provide a more detailed assessment of the capacity and track record of supervisory authorities in third country jurisdictions in making sure that AIFMD rules are effectively enforced and advises that this should include jurisdictions looked at in the first wave of country assessments. It suggests that these assessments could be based on the International Organisation of Securities Commission (IOSCO) principles on which the IMF relies when conducting Financial Sector Assessment Programs.

In order to better assess the potential market disruption and competition effects of the third country AIFMD passport, the EC also invites ESMA to provide an initial assessment of the expected inflow of funds by type and size into the EU from relevant third countries.

Finally, the EC agrees with ESMA's view that a further opinion on the functioning of the EU AIFMD passport and NPPRs should be provided by ESMA once AIFMD has been fully transposed in all Member States and once more information is available on the functioning of the framework. It suggests that it would be helpful to have this in time for the review of the Directive planned to commence in 2017.

OUR RECENT AWARDS*

BEST OVERALL ADVISORY FIRM IN THE U.S. 2014
HFMWeek

BEST ASIAN ADVISORY FIRM FOR REGULATION AND COMPLIANCE 2014
HFMWeek

BEST EUROPEAN ADVISORY FIRM FOR REGULATION AND COMPLIANCE 2014
HFMWeek

BEST ADVISORY FIRM REGULATION AND COMPLIANCE 2014
HFMWeek

BEST SEC REGISTRATION TEAM – HONG KONG 2014
Acquisition International

UCITS FUND ADVISOR OF THE YEAR – IRELAND 2014
Acquisition International

*Awarded to Kinetic Partners, which was acquired by Duff & Phelps in January 2015

2015 Corruption Perceptions Index

Transparency International, the global coalition against corruption, has released its 2015 Corruption Perceptions Index, which measures the perceived levels of public sector corruption worldwide. According to the index, sixty-eight percent of countries, including half of the G20, have a serious corruption problem, with no country identified as corruption-free.

Jose Ugaz, the Chair of Transparency International, commented that the index "clearly shows that corruption remains a blight around the world." He did, however, continue to say that "2015 was a year when people again took to the streets to protest corruption."

Countries that showed improvements included Greece, Senagal and the UK, which is now ranked 10th. Angola, South Sudan, Sudan, Afghanistan, North Korea and Somalia had the lowest scores.

This index should be taken into account by firms when considering the AML risks they face in different jurisdictions.

Supervision Matters

FCA clarification of its supervisory intentions: overall responsibility for the legal function under the Senior Managers Regime

16 December 2015

The FCA made final its new rules detailing its accountability framework for individuals working in banks, building societies and credit unions. The FCA highlighted the importance of identifying those individuals who have 'overall responsibility' for activities, functions or areas of a business, and ensuring that they are pre-approved for Senior Management Functions. This regime is to be extended to other investment firms in 2018.

The FCA provided clarification in two areas. Firstly, when identifying the person with 'overall responsibility', the FCA means the individual with 'ultimate responsibility' for the managing or supervising of a function and reporting to the governing body.

Secondly, although the FCA said that each firm is responsible for determining which are the main business activities in respect of which a person would have overall responsibility, it has specifically commented on a firm's legal function. This is an area where there has been uncertainty that the FCA intends to address.

While there will not be time to address this before the Senior Managers Regime comes into force in March 2016, the FCA plans to issue a consultation paper on this matter though no timing has been announced. In the meantime, firms should make decisions in good faith as to who should be included within the regime. For example if the person clearly has overall responsibility for a business area that clearly falls within scope, then that person should be approved for that role.

The full article can be accessed here.

Andrew Bailey appointed as new Chief Executive of the FCA

26 January 2016

Andrew Bailey is currently the Deputy Governor for Prudential Regulation at the Bank of England and Chief Executive Officer of the Prudential Regulation Authority. He will commence as Chief Executive of the FCA in July 2016. In the interim period, Tracey McDermott will remain in post as Acting CEO. Ms McDermott commented in a statement from the FCA that she felt that after participating in the recruitment process, the position of CEO was "not the right job" for her in her present circumstances.

John Griffith-Jones, Chairman of the FCA welcomed Andrew and is confident that as an FCA Board member since 2013 he is fully aware of the regulatory issues that have challenged the Regulator recently. He has also been involved with setting the FCA's strategy for the future. This involvement coupled with his regulatory experience, proven track record and excellent national and international reputation will enable him to continue to build upon the FCA's work over the past three years.

The FCA has also made the following Non-executive FCA Board member appointments: Bradley Fried; Baroness (Sarah) Hogg; Ruth Kelly and Tom Wright. The appointments will take effect from 1 April 2016. The appointees replace: Sir Brian Pomeroy and Amanda Davidson who will step down on 31 March 2016 and Mick McAteer who stood down on 31 December 2015.

Please see here for the full Press Release.

Other Developments

Minutes of the MiFID II implementation roundtable January 2016

8 January 2016

Concerns were voiced about the timeline for MiFID II but the delay of a year announced since the roundtable will be welcomed by firms.

Questions were raised regarding the quality of data being requested for pre and post-trade transparency as well as transaction reporting. The FCA confirmed that the transaction reporting guidance (TRUP) will be replaced by the EU transaction reporting guidelines which were published for consultation by ESMA at the end of 2015. In addition, the FCA commented that feedback was welcome for the MiFID Guide published in the December 2015 CP 15 / 43. Firms can expect a further consultation paper in the first half of 2016, although the timing of this would be contingent on EU legislation.

It was also noted that the Investor Protection and Intermediary Standing Committee (IPISC) has published three guidelines and the FCA continues to work with ESMA in relation to IPISC guidance.

The minutes can be found here.

CP16/3: Financial Services Compensation Scheme – management expenses levy limit 2016/17

On 18 January 2016, the FCA and the PRA released a joint consultation paper on the management expenses levy limit (MELL) for the Financial Services Compensation Scheme (FSCS). The MELL, which the FCA and PRA are required to jointly set under the Financial Services and Markets Act 2000 (FSMA), provides the FSCS with the necessary financial resources to carry out its function efficiently and economically, and more specifically, meet its responsibilities to consumers. In the consultation paper, the regulators recommend that the levy be set at £72.7 million, which would consist of a management expenses budget of £67.4 million and a contingency reserve of £5.3 million. The management expenses portion of the proposed MELL for 2016/17 represents a 2.5% reduction compared to the 2015/16 levy. The proposed contingency reserve remains unchanged from 2015/16. Both regulators believe a MELL of £72.7 million is adequate to allow the organisation to meet its obligations.

The FCA and PRA have invited comments on the consultation paper. The final rules will take effect on 1 April 2016. The consultation paper will be of particular interest to those firms which are not FSCS exempt for the purposes of fees.

The Consultation Paper can be found here.

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