

FSA Update

15 August 2011

At the FSA last week:

- **Consultation Paper published on recovery and resolution plans**

The FSA has published Consultation Paper CP11/16: "Recovery and Resolution Plans", setting out a proposed requirement for certain financial services firms to prepare and maintain recovery and resolution plans. Under the proposals, banks and large investment firms in the UK must develop recovery plans in coordination with the FSA, which would be required to have the following features:

- a sufficient number of material and credible options to cope with a range of scenarios including both distinctive and market wide stresses;
- options which address capital shortfalls, liquidity pressures and profitability issues and aim to return the firm to a stable and sustainable position;
- options that the firm would not consider in less severe circumstances, such as disposals of the whole business, parts of the businesses or group entities, raising equity capital which has not been planned for in the firm's business plan, complete elimination of dividends and variable remuneration, and debt exchanges and other liability management actions;
- appropriate governance processes including triggers and procedures to ensure timely implementation of recovery options in a range of stress situations; and
- plans should be reviewed at least annually and approved by the Board.

In addition, CP11/16 proposes resolution plans, which relate to how a firm will wind-down if it fails and are intended to enable the authorities to assess the potential effect on financial stability and whether this is acceptable. The resolution data and analysis to be provided by firms is intended to identify significant barriers to resolution, to facilitate the effective use of the powers under the Special Resolution Regime (SRR) and reduce the risk that taxpayers' funds will be required to support a failing firm. The information provided to the authorities will be used to prepare a strategic plan. Resolution plans must also be reviewed by the firm at least annually and updated to reflect any material developments in a firm's business.

All UK incorporated deposit-takers, subsidiaries and significant investment firms with assets exceeding GBP 15 billion will need to implement recovery and resolution plans. The FSA has indicated that branches of overseas entities will not be subject to the rules, but arrangements for resolving branches will be pursued bilaterally with the home state regulator and through the relevant Crisis Management Groups or Cross Border Stability Groups.

Key Issues

Consultation Paper published on
recovery and resolution plans

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CP11/16 also sets out proposed requirements relating to investment business client money and custody assets (CMA), known as the CASS Resolution Pack (CASS RP). The CASS RP aims to promote the speedier return of CMA to clients once a firm has failed, by ensuring that CMA information would be readily accessible to the Insolvency Practitioner appointed to that failed firm. The CASS RP proposals apply to all firms subject to CASS 6 or 7 due to their holding of (investment business only) CMA.

Finally, the paper includes a discussion of different approaches to removing barriers to resolution and

enhancing resolvability, including the resolution of trading books, enhancing the resolution toolkit and bail-in.

The FSA has invited comments on CP11/16 by 9 November 2011 and intends to issue a policy statement around the end of 2011, with an expectation that some firms will have recovery and resolution plans in place by 30 June 2012.

http://www.fsa.gov.uk/pubs/cp/cp11_16.pdf

This Client briefing does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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