

Changes to statutory status disclosure and use of the FSA logo

Introduction

In the Quarterly Consultation held in April 2008 the FSA proposed amendments to the rules on statutory status disclosure about a firm's relationship with the FSA and the use of the FSA logo. The new rules have been introduced specifically for incoming EEA firms that want to operate in the UK, while UK firms will still have to comply with the existing requirements.

Application

The new rules in the FSA Handbook (GEN 4.5) only apply to MiFID or equivalent third country business conducted within the UK territory and where it is not related to transactions concluded on an MTF (Multilateral Trading Facility) operator or on a regulated market. The specific rules refer to the way a firm should disclose its relation with the FSA when communicating with customers or when approving a financial promotion; they do not apply to communications with an eligible counterparty.

Rationale and objectives

The proposed modifications have the purpose of giving consumers a clearer view of the degree of oversight the FSA has on the firms they apply to, particularly those displaying the FSA logo. Consumers who apply to firms that operate in the UK will be interested in these changes to better understand how those firms (UK and incoming EEA firms) are regulated by the FSA and by which Authority they have been authorised. The new provisions will reduce the risk that consumers make decisions without a full understanding of the regulatory regime applicable to them.

The FSA is aware of the limited benefits these provisions will bring to consumers, given that the changes in the use of the logo will only be noticed by well informed consumers who understand the relevance of written disclosures.

Current requirements

UK firms that are subject to the Distance Marketing Directive and the Insurance Mediation Directive must disclose their regulatory status in the form: "Authorised and regulated by the Financial Services Authority".

At present MiFID firms are not subject to the rules of GEN 4 and are instead required to provide retail clients with a statement of the competent authority that granted the authorisation according to the Conduct of Business rules in COBS 6.1.4R (COBS 6.1).

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For incoming EEA firms the most important distinction to be underlined is the one between EEA firms with a ‘top-up’ permission, which means that they are authorised by the FSA to carry on specific types of business in the UK, and those without it.

EEA firms without a top-up permission must disclose as follows: “Authorised by (name of Home State regulator) and regulated by the FSA for the conduct of UK business”.

EEA firms with a top-up permission are required to state: “Authorised by (name of Home State regulator) and by the FSA; regulated by the FSA for conduct of UK business”.

An incoming EEA firm is currently allowed to use the FSA logo when it is related to a regulated activity carried on in a UK branch.

New requirements

Three groups of amendments to the Handbook are proposed to clarify the regulatory relationship between firms and the FSA to be stated in every letter, email or facsimile according to the General Provisions of the FSA Handbook (GEN 4).

1. Simplification of letter disclosure requirements

UK firms will still have to comply with the existing requirements on status disclosure so they have to display the statement: "Authorised and regulated by the Financial Services Authority"

Incoming EEA firms without a top-up permission can choose between two optional statements: either "Authorised by [name of Home State regulator]";

or " Authorised by [name of Home State regulator] and subject to limited regulation by the Financial Services Authority. Details about the extent of our regulation by the Financial Services Authority are available from us on request".

EEA firms with a top-up permission will have to state the types of business for which they have authorisation from the FSA:

" Authorised by [name of Home State regulator] and authorised and subject to limited regulation by the Financial Services Authority. Details about the extent of our regulation by the Financial Services Authority are available from us on request".

2. Clarification of the basis on which firms do business in the UK

Firms that are not regulated by the FSA have prohibition to declare they are regulated by the FSA in their status disclosure: if they choose to do so they have to explain in a clear, fair and not misleading way the limits of such statement.

Firms will be allowed to specify only that they have been authorised by their Home State competent authority and will be responsible for any further statement that could be misleading for consumers.

Firms should not mention that clients have recourse to the Financial Ombudsman Service or to the Financial Services Compensation Scheme if these are not available.

3. Use of the FSA logo

The general licence to use the logo will be granted to firms that have been authorised by the FSA to carry on a regulated activity from an establishment in the UK.

Incoming EEA firms operating from a UK branch that carry on a regulated activity according to an authorisation received from their Home State competent authority will not be allowed to use the FSA logo.

Deadlines

Starting from the 31st October 2008 the proposed requirements will be implemented for a specific category of firms: EEA firms with a UK branch involved in the deposit-taking business will need to apply these changes to the FSA logo by that date with an estimated cost of around £3000 per firm. All other firms have a transitional period of 12 months to make the due modifications.

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