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For the attention of Iain Coke, Head of Financial Services Faculty

23 July 2008

Dear Sirs

Re: FSF 01/08 – Skilled Persons' Guidance - Reporting Under s166 FSMA 2000

We are pleased to have the opportunity to comment on your interim guidance on the work of skilled persons appointed under s166 of the Financial Services and Markets Act 2000. We have only three issues of significance that we wish to bring to your attention and these are set out below, followed by some more minor points related to drafting.

Classification of reporting engagements (Section 2)

In section 2, paragraph 19 states that there are normally three types of engagement: limited or reasonable assurance and agreed-upon-procedures. Paragraph 36 notes that where engagements require assessments against "normal", "industry" or "good" practice then such practices are not themselves suitable criteria for assurance work. While it may be possible, as indicated in paragraph 36, to develop underlying criteria in conjunction with the FSA, in our experience this is not always possible. In such cases the evaluation may be based solely on the professional judgement and experience of the skilled person and be submitted in the form of a narrative report with no overall opinion or conclusion expressed. This can be a suitable approach where it is properly agreed with the FSA and documented in the Requirements Notice. It is particularly useful where the FSA is seeking to increase its understanding of a firm's business processes and activities or seeks expert advice (SUP 5.3.2G). We suggest that this type of engagement which can be categorised in the nature of a non-assurance or advisory engagement is also acknowledged in paragraph 19.

In paragraph 26 it is stated that "Where expert analysis requires the application of professional judgement, the expression of an assurance conclusion ... may be the appropriate form of reporting.". However we suggest that this assertion needs further explanation in the light of paragraph 36 of the International Framework for Assurance Engagements which states "... The evaluation or measurement of a subject matter on the basis of the practitioner's own expectations, judgements and individual experience would not constitute suitable criteria. " This links to our point in the paragraph above.

Guidance for s166 RAR engagements

FSA policy statement PS 07/22 (External assurance on regulatory returns) which introduced the wider application of the s166 process to regulatory reports made it clear that there are two distinct types of Return Assurance Report (RAR). These are, firstly, the reports commissioned from skilled persons (s166 RARs) and, secondly, thematic reviews conducted as part of normal supervisory activity (thematic RARs). The original consultation through CP 07/15 made it clear that the latter will primarily be conducted by the FSA themselves and it is, therefore, reasonable that paragraph 8 clarifies that Thematic RARs are outside the scope of FSF 01/08. However the guidance makes no specific reference to s166 RARs and discusses reports on financial information (in effect the s166 RARs) only briefly in paragraphs 153 to 157.

We also note that in paragraph 3.14 of CP07/15 the FSA stated it 'will be working with the accounting and audit profession to develop guidance, where necessary'. We expect such guidance to include more detail of FSA's expectations of s166 RAR reporting.

Given that FSA indicated in CP 07/15 that they anticipate commissioning around 35 s166 RARs each year we consider that this guidance should contain specific reference to this type of report. Further we suggest that the similarities between reports of this type means there is scope to agree typical Requirement Notices and conclusions in advance with FSA in order to avoid repetitive negotiations with FSA around these matters. Such further guidance should be prepared jointly with the FSA (as presaged in CP 07/15) and would replicate the standardisation built into the previous process for reporting on banks' prudential returns under s.39 of the Banking Act 1987.

Indication of FSA acquiescence

The APB Practice Notes referred to in the guidance all carry a statement that the relevant Practice Note has been prepared with advice and assistance from staff of the FSA. We suggest that the FSA is approached with a view to agreeing to a similar statement of tacit approval to this guidance. We consider that those following the guidance are entitled to take comfort that they are meeting the expectations of the FSA.

Other matters

Paragraph 38, first bullet: "... more capable of reliable measurement than qualitative ..." not "or"?

Paragraph 39, second bullet: refers to money laundering and training and competence as areas where FSA has a greater number of rules, however in recent times the money laundering sourcebook has been withdrawn and replaced by fewer key rules in SYSC and the training and competence sourcebook has also been reduced in size.

Paragraph 61 notes that the skilled person will need to consider local laws where there is a requirement to include overseas entities within the reporting scope. However it should also advise that it will be necessary for any staff supplied by a non-UK affiliate of the skilled person to become familiar with the basic requirements of the FSA's rules.

Paragraph 90: the examples of risk mitigation are somewhat trite and do not add to the understanding of the issue (risk of misinterpretation).

Paragraph 99: it should be made clear that the engagement leader for the skilled person report should be involved in such key judgemental matters.

Paragraph 107: "... Where appropriate the skilled person includes in the following". Delete "in"?

Paragraph 109: it appears the cross reference should be to paragraph 107 not 104.

Conclusion

We would welcome the opportunity to discuss our comments further. If you wish to do so then please contact Andrew Hawkins (020 7212 5270) or David Brewin (020 7212 5274) by telephone or in writing at the above address.

Yours faithfully