



IMS News

FSA consults on greater CfD disclosure

The FSA believes that there is potential for market failures to occur from using Contracts for Difference (“CfDs”) on an undisclosed basis to influence corporate governance and build up stakes in companies. They believe these failures need to be addressed to ensure market confidence and efficiency are maintained..

Consultation Paper 07/20 proposes two alternative approaches to securing greater disclosure.

The first approach aims to strengthen the current disclosure regime by requiring a disclosure of any CfDs written over 3% or more of the total voting rights attached to a company's shares unless it was clear that:

- The CfD holder could not exercise or seek to exercise voting rights and had made a clear statement to that effect; and
- There were no arrangements or understandings in relation to the potential sale of the underlying shares by the CfD holder.

The FSA expects that the majority of CfDs are expected to fall within this 'safe harbour', removing the need for disclosure.

In addition, the FSA proposal would enable companies to request a notification if they believed a CfD holder had an economic interest of 5% or more of the company's shares regardless of 'safe harbours'. The FSA believes that it would also make clear the responsibilities of a CfD holder to ensure that any statements made about voting rights in a company are clear and not misleading. It believes that this approach would also make it harder for CfD holders to build up significant stakes in companies without disclosure. In cost benefit analysis the FSA consider the cost of implementing such targeted disclosure to be minimal.

The second approach identified by the FSA is a general disclosure regime which would achieve the same objectives by requiring CfD holders to reveal all economic interest of stakes of 5% or more in a company's shares. This would be broadly equivalent to extending the Takeover Panel's current regime in an offer period. The FSA believe that the total direct cost of implementation could be about £20-50 million with potentially wider costs to the CfD and equity market as a whole. While this regime would be the more expensive, it could entail simpler rules.

Sally Dewar, FSA Director of Markets, said:

“This is not a clampdown on CfDs but a means, following extensive research, of addressing the concerns about their use on an undisclosed basis. While the behaviour that concerns us is not widespread, it is important enough to require a tightening of the existing regime to ensure fair and orderly markets”.

“Our goal is to provide an effective and proportionate disclosure regime that works for all involved, and sustains market confidence and efficiency.”

The FSA propose that any rule changes would only apply to CfDs relating to UK shares admitted to trading on a regulated or prescribed market. This includes shares admitted to the regulated markets of UK Recognised Investment Exchanges and the Alternative Investment Market (AIM).

We know that the FSA is concerned about Market Abuse and these proposals represent a further attempt to address an area where they perceive a risk of Market Abuse occurring.

These proposals have a three month consultation process so firms could expect rules to be put in place by mid 2008 through the FSA Disclosure Rules and Transparency Rules Sourcebook. Click [here](#) to access CP 07/20

If you would like to discuss how IMS is able to assist you please contact Craig Nichols, cn@imsconsulting.co.uk, Scott Wilson dsw@imsconsulting.co.uk, Stephen Burke sjb@imsconsulting.co.uk, Chris Rexworthy cre@imsconsulting.co.uk or your usual IMS contact on 020 7408 2448.

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