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Retail Advice and Regulation

**Assignment 1 Notes**

*(Part 1 – Financial Services Regulation)*

*Recommended Time: 3 hours*

1. **Explain the impact of the Financial Services Act 2012 on the role of the Bank of England in connection with financial services and contrast it with the role of the Financial Conduct Authority (FCA).**

**10 marks**

Answer should include:

* + - A brief explanation of the role of the Bank of England prior to 1 April 2013 and the role of the Financial Services Authority (FSA).
    - An explanation of the revised structure effective from 1 April 2013.
    - The role of each body, including the three operational objectives of the FCA and the Bank’s two core purposes as well as the role of the Prudential Regulation Authority (PRA).
    - Mention of the Retail Distribution Review and the Memorandum of Understanding.

As only 10 marks are available answers need to be concise and broadly an equal split between the two elements of the question.

(The relevant section of the Study Manual is Part 1, Chapter 1.2 and 1.3)

**10 marks**

1. **Outline the features of the FCA’s risk-based approach to supervision.**

**15 marks**

Answer should include coverage of the FCA’s three pillar approach:

• Pillar 1 – proactive supervision for the biggest firms by means of a structured conduct assessment. Where a structured conduct assessment has taken place, to assist firms to raise standards and to maximise the success of the FCA’s supervisory arrangements, it is important that a firm understands the FCA’s evaluation of its risk so that it can take appropriate action

• Pillar 2 – event-driven, reactive supervision of actual or emerging risks. The FCA intends to communicate the outcomes of its pillars of supervision to each firm within an appropriate time frame. In the case of firms in which risks have been identified which could have a material bearing on the FCA meeting its statutory objectives, the FCA will also outline a remedial programme intended to address these

• Pillar 3 – thematic work that focuses on risks and issues affecting multiple firms or a sector as a whole. The FCA considers that it would generally be inappropriate for a firm to disclose its FCA risk assessment to third parties, except to those who have a need or right to be aware of it, for example external auditors. FCA risk assessments are directed towards a specific purpose - namely illustration of the risks posed by a firm to the FCA’s statutory objectives and to enable the FCA to allocate its resources accordingly. Using a risk assessment for any other purpose has the potential to be misleading. The FCA therefore discourages firms from disclosing their assessments unless they are required to make them public under relevant disclosure obligations.

Given that 15 marks are available 4-5 marks are available for each part.

(The relevant section of the Study Manual is Part 1, Chapter 3.5)

**15 marks**

1. **Explain the features of a typical complaints procedure that meets the Financial Conduct Authority’s (FCA’s) requirements.**

**10 marks**

Explanation should include the definition of a compliant and the features:

* + Eligibility – an eligible complainant is a consumer, a charity which has an annual income of less than £1 million.
  + Acknowledgement/communications The FCA rules require that once a complaint has been received a firm must investigate it “competently, diligently and impartially”, obtaining additional information as necessary.
  + Response. Once a firm has received a complaint, it must send the complainant a prompt written acknowledgement providing early reassurance that it has received the complaint and is dealing with it
  + Appeals. When the complainant is sent this final response or a written holding response he or she must be notified of his or her right to refer the matter to the Financial Ombudsman Service (FOS) within six months.
  + Records. A firm must keep records of each complaint received and the measures taken to resolve it

A couple of marks approximately for each.

(The relevant section of the Study Manual is Part 1, Chapter 1.9.)

**10 marks**

1. **Identify and explain the European Directives that are most relevant to regulated activities in financial services.**

**15 marks**

Full answers should include mention and explanation of the following directives:

* + Markets in Financial Instruments Directive (MiFID) - is the framework of European Union (EU) legislation for: • investment intermediaries that provide services to clients around shares, bonds, units in collective investment schemes and derivatives (collectively known as ‘financial instruments’) and • the organised trading of financial instruments.
  + Insurance Mediation Directive (IMD) provided a set of “conduct of business” rules for the sale (at the point of sale) of insurance products, both life and general, to ensure a basic harmonised level of consumer protection throughout the EU. The subject continues to receive the attention of the European Commission and future changes and the IDD is intended to strengthen the application of the original aims.
  + Capital Requirements Directive – only a brief summary of the material in the manual necessary
  + Money Laundering Directives - was well-known early in the 20th Century when gangsters like Al Capone pitted their wits against the authorities. The successful incarceration of Capone at Alcatraz - and that was for the offence of $1,000,000 tax evasion, very minor compared with his wider activities where he placed $100s millions of illegally obtained monies through “legitimate” business enterprises - led to the fraudsters becoming more organised. In response, authorities across the world needed to become more organised themselves. And so it continues

Each of these is covered in the relevant section of the study manual and in more than sufficient depth for the purposes of this question. As only 15 marks are available 3-4 marks are available for each.

(The relevant section of the Study Manual is Part 1, Chapter 2.2.)

**15 marks**

1. **Explain the process of money laundering and the relevant legislation that addresses this financial crime.**

**5 marks**

Answer should cover:

* + Placement
  + Layering
  + Integration

The relevant legislation, including the Proceeds of Crime Act 2002, is covered in the study manual.

(The relevant section of the Study Manual is Part 1, Chapter 4.5.)

**5 marks**

1. **Outline the duties of firms in connection with money laundering.**

**10 marks**

Answer should include coverage of:

* + - Risk assessment
    - Customer due diligence and enhanced due diligence
    - Monitoring
    - Procedures and processes.

Relevant examples would help.

(The relevant section of the Study Manual is Part 1, Chapter 4.5.)

**10 marks**

1. **Describe with examples, the difference between regulated activities and controlled functions. Answers should highlight any implications for dual regulated firms.**

**15 marks**

Include the following points:

There are numerous regulated activities such as

• advising on investments • advising on pension transfers/opt outs

• advising on P2P (peer-to-peer) agreements

• dealing in investments as agent

• providing basic advice on stakeholder products

• managing investments.

Controlled functions such as Director function, non-executive director function, Chief executive function, Partner function, Directors of an unincorporated association, Small friendly society function.

Fit and proper, approved persons can carry out controlled functions.

Answers should mention exclusions and exemptions.

The split between PRA and FCA in these areas should also be identified.

Examples should be included to illustrate this answer.

(The relevant section of the Study Manual is Part 1, Chapter 4.1 and 4.2)

**15 marks**

1. **Explain the role of the Financial Conduct Authority (FCA) and the Pensions Regulator (TPR) in the regulation of pension arrangements.**

**20 marks**

As 20 marks are available a full explanation is required that covers:

* + The difference between workplace and retail pensions
  + The division of responsibility between TPR and FCA
  + The Memorandum of Understanding between the two bodies
  + Relevant legislation
  + Any changes between the role of the Financial Services Authority and FCA
  + Brief mention of proposed or discussed future changes could be relevant for a full answer
  + The FCA has the strategic objective to ensure that the relevant markets function well (in addition to the statutory objectives originally set up by the FSMA). To achieve this, it has three operational objectives:
  + • to secure an appropriate degree of protection for consumers
  + • to protect and enhance the integrity of the UK financial system
  + • to promote effective competition in the interests of consumers.
  + TPR was originally set four objectives by the Pensions Act 2004, which were updated by the Pensions Act 2008. These remain:
  + • to protect the benefits of members of work-based pension schemes
  + • to promote good administration and improve understanding of work-based pension schemes • to reduce the risk of situations arising which may lead to compensation being payable from the Pension Protection Fund (PPF)
  + • to maximise employer compliance with employer duties (including the requirement to automatically enrol eligible employees into a qualifying pension provision with a minimum contribution) and with certain employment safeguards.

(The relevant section of the Study Manual is Part 1, Chapter 1.2 and 1.5)

**20 marks**