

FSA Update

10 January 2012

At the FSA in the past few weeks:-

Quiet at the FSA, but other regulators active...

There has been relatively little enforcement activity at the FSA over the festive period. However, some other, traditionally less active, regulators have issued some important enforcement decisions. In addition to the well publicised action taken by the accountancy regulator in relation to historic audit failures relating to client money segregation, other regulators have also been busy...

Lloyd's publicly censures Equity Syndicate Management for systems and controls failures

The Enforcement Board of Lloyd's of London has (on 3 January 2012) publicly censured Equity Syndicate Management Limited ("**Equity**"), the managing agent of a syndicate underwriting motor insurance business, for failing to comply with relevant systems and controls procedures in relation to its reserving procedures.

The action arose from an independent actuarial review which reported a deterioration of £311 million in respect of net ultimate claims.

The Notice of Censure also criticises the failure by Equity to ensure that its board was provided with sufficiently comprehensive management information, and the board's failure to insist upon this information being provided. It also states that, but for specific mitigating factors, a fine of at least £1 million would have been likely to have been imposed.

Lloyd's worked closely with the FSA in taking action against Equity, and the FSA agreed with the action taken. No action has been taken by the FSA against Equity.

<http://www.lloyds.com/Search?q=equity+syndicate+management+limited>

AIM publicly censures and fines Seymour Pierce in relation to inaccurate market announcements

The London Stock Exchange's AIM Disciplinary Committee has (on 21 December 2011) publicly censured and imposed a financial penalty of £400,000 on nominated adviser Seymour Pierce in respect of inaccuracies in announcements made to the market. The Nomad was found to have breached AIM rules by failing to advise an AIM listed company to make timely announcements in relation to changes in its financial position and by failing to conduct appropriate levels of due diligence in respect of the same company (which is now in administration).

Half of the £400,000 penalty is payable immediately, with the remaining £200,000 suspended, becoming payable in the event of further material breaches in the next two years.

The notice relating to the public censure makes it clear that there have been some significant changes

to governance and management arrangements since the breaches occurred.

No action has been taken against Seymour Pierce by the FSA.

<http://www.londonstockexchange.com/about-the-exchange/media-relations/press-releases/2011/aimseymourpiercecensure.htm>

FSA secures more interim injunctions and freezing orders in unauthorised land banking cases

Following action taken in the High Court against other individuals and companies throughout 2011 (see, for example *FSA Update*, 20 December 2011) and separate ongoing criminal investigations (see, for example, *FSA Update*, 21 November 2011 and 28 November 2011), the FSA's Unauthorised Business Division ended 2011 with a continued focus on unauthorised land banking by

Key issues

- Quiet at the FSA, but other regulators active...
- FSA secures more interim injunctions and freezing orders in unauthorised land banking cases
- ESMA announces 2012 work programme
- BBA releases Bribery Act compliance guidance

securing interim injunctions and freezing orders against four companies. Specifically, the orders obtained prevent St Clair Estates Limited, OFG Investments Limited, Option Land UK Limited and GIG Properties Limited from selling plots of land on a particular site, understood to be at Winkleigh Airfield in Devon, and freeze £850,000, thought to be derived from customer investments.

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2011/118.shtml>

Final Notices

- David Wood, a former Independent Financial Adviser from South Wales, has (on 20 December 2011) been banned from performing any function in relation to any regulated activity, following his conviction in May 2011 of 57 counts of financial crime (fraud, theft and forgery) offences.

<http://www.fsa.gov.uk/pubs/final/davidwood.pdf>

- The FSA has issued Final Notices to Ashley Segunoshin (20 December), Karamat Ali (6 January) and Kumarans Silk Limited, Sohail Anjum, Sardar Agha and Akhtar Mahmood (trading as AM & Sons Money Exchange) (all on 5 January) cancelling their registration as Small Payment Institutions under Payment Services Regulations 2009 following non provision of required information.

<http://www.fsa.gov.uk/pubs/final/ashleysegunoshin.pdf>

<http://www.fsa.gov.uk/pubs/final/karamat-ali.pdf>

<http://www.fsa.gov.uk/pubs/final/kumarans-silk.pdf>

http://www.fsa.gov.uk/pubs/final/sohail_anjum.pdf

http://www.fsa.gov.uk/pubs/final/sardar_gha.pdf

http://www.fsa.gov.uk/pubs/final/akhtar_mahmood.pdf

Further afield: - ESMA announces 2012 work programme

In a wide ranging and ambitious document, ESMA has set out its objectives and approach for 2012. It has set out its priorities as: -

- Producing and finalising a single European rulebook by harmonising technical standards, continuing to provide advice to the European Commission and continuing to produce guidelines and recommendations;
- Contributing to safeguarding financial stability by analysing trends, identifying potential risks at the micro-prudential, cross-border and cross-sector levels, liaising between European Supervisory Authorities and other competent authorities, conducting a stress testing exercise and responding in crisis situations as necessary by co-ordinating with national competent authorities;
- Enhancing financial consumer protection by analysing, reviewing and co-ordinating national competent authorities' financial literacy education initiatives and industry training standards, contributing towards common disclosure rules across Europe, issuing warnings (such

as that it issued in December 2011 in respect of foreign exchange investments – see FSA Update, 12 December 2011, considering temporary bans of products and continuing, together with others, to have input into the MiFID review and the review of Packaged Retail Investment Products;

- Supervising credit rating agencies by conducting desk and on-site reviews of credit rating agencies already registered and by developing co-operation arrangements with third country regulators through memoranda of understanding; and
- Fostering supervisory convergence amongst securities regulators/avoiding regulatory arbitrage by conducting peer reviews of existing EU legislation, and the way in which it is applied in practice in various areas, including use of sanctions under Market Abuse Directive, good practice under the Prospectus Directive, market abuse supervisory practices and conduct of business supervisory practices, and by producing practical tools, such as FAQ documents.

As the work programme document itself acknowledges, such a broad set of objectives will be difficult to achieve with the limited resources currently available to ESMA. Although staff numbers have increased to 75 since its establishment last year and will, it is intended, rise to 101 by the end of 2012, this will still only give a one to one ratio with stakeholders. ESMA's budget of €20.2 million is also likely to come under significant pressure from such a long list of competing demands.

BBA releases Bribery Act compliance guidance

The British Bankers Association ("BBA") has issued guidance to the banking sector on relation to the implementation of the Bribery Act 2010 ("BA 2010")

The guidance consolidates and reproduces the key provisions of the BA 2010 and associated guidance issued by the Serious Fraud Office, Ministry of Justice (to whose consultation and guidance the BBA contributed) and FSA. In particular the BBA guidance considers the Ministry of Justice 'six principles' guidance and considers their application to the banking sector.

In addition to signposting these provisions, it seeks to provide institutions with practical assistance as to how best to embed compliance into their business operations, with particular focus on areas of concern such as gifts, corporate hospitality and promotional expenditure, and incident management and reporting.

It also contains useful commentary comparing banks' obligations under the BA 2010 with banks' existing separate anti-bribery regulatory obligations under the US Foreign Corrupt Practices Act and the FSA's rules and Principles for Businesses, and looks at how the provisions of the BA 2010 are likely to be enforced.

The full text of the guidance can be found at

<http://www.bba.org.uk/media/article/bribery-act-2010-guidance-on-compliance>

Authors



Roger Best
Partner

T: +44 20 7006 1640
E: roger.best
@cliffordchance.com



Mathew Newick
Partner

T: +44 20 7006 8942
E: mathew.newick
@cliffordchance.com



Martin Saunders
Partner

T: +44 20 7006 8630
E: martin.saunders
@cliffordchance.com



Carlos Conceicao
Partner

T: +44 20 7006 8281
E: carlos.conceicao
@cliffordchance.com



Luke Tolaini
Partner

T: +44 20 7006 4666
E: luke.tolaini
@cliffordchance.com



Chris Stott
Professional Support Lawyer

T: +44 20 7006 5918
E: chris.stott
@cliffordchance.com

This publication 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.

www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

© Clifford Chance LLP 2011

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street, London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh* ■ Rome ■ São Paulo ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

*Clifford Chance has a co-operation agreement with Al-Jadaan & Partners Law Firm in Riyadh.