

At the FSA last week:-

Changes to identity of FSA settlement decision makers take effect

As from 6 February, the rules relating to the FSA's executive settlement procedures under Chapter 5 of the FSA's Decision Procedure and Penalties Manual ("**DEPP**") changed. The definition of "settlement decision maker" in the glossary to the Handbook has been widened to include senior FSA management below director level. In practice, this means that Heads of Department may now authorise settlements. Previously, only directors of division level could do so.

Further wording has also been inserted into DEPP 5.1.1G to clarify that at least one of the settlement decision makers signing off on settlements should be from a division other than the Enforcement and Financial Crime Division, and that those doing so will not usually have been directly involved in "*establishing the evidence on which the decision is based*" (DEPP 5.1.1(3)G). Minor consequential amendments have also been made to paragraphs 2.38 and 5.5 of the FSA's Enforcement Guide.

The changes, which have not been widely publicised, have been made further to consultation in September 2011 (Chapter 5, CP11/18 - http://www.fsa.gov.uk/library/policy/cp/2011/11_18.shtml). The response to

this consultation expressed concerns that heads of department may not have appropriate experience and knowledge and/or may defer to the more senior director involved in the decision making process. This concern has been rejected by the FSA.

These changes are the prelude to the more significant amendments to DEPP, and the creation of an equivalent set of procedures for the relatively small number of enforcement decisions anticipated to be taken by the Prudential Regulation Authority.

FSA issues supervisory notice in respect of alleged client asset failings

An example of such a type of enforcement decision, albeit against a different factual background, has presented itself this week.

The FSA, using the Own Initiative Variation of Permission ("**OIVOP**") procedure under section 45 of the Financial Services and Markets Act 2000 ("**FSMA**"), has issued a First Supervisory Notice to **Pritchard Stockbrokers Limited**, preventing it from carrying out the regulated activities set out in its Part IV permission. The action relates to alleged failures to arrange adequate protection for client assets, and alleged use of client assets on the firm's own account, placing it in breach of Rule 7.3.1 of the FSA's Client Assets Sourcebook ("**CASS**"), Principle 10 of its Principles for Businesses and/or Threshold

Condition 5 set out in Schedule 6 to FSMA.

In the particular circumstances of this case, action would be likely to be taken by the FCA rather than by the PRA in respect of alleged breaches after the separation of the FSA's functions. However, there are some circumstances in which concerns may come to light through prudential regulation processes and/or in which the PRA may wish to intervene using the OIVOP procedure to vary or restrict the activities undertaken by firms under the new regulatory architecture.

The procedures which will govern the use of the OIVOP tool by the PRA in support of its objectives remain unclear at this stage as the Financial Services Bill continues to progress through Parliament. In particular, details of the personnel which would be involved in the decisions as to when and how to use it, and details of subjects' rights to challenge its use are awaited.

http://www.fsa.gov.uk/static/pubs/final/pritchard_stockbrokers_limited.pdf

Key issues

- Changes to identity of FSA settlement decision makers take effect
- FSA issues supervisory notice in respect of alleged client asset failings
- Court of Appeal overturns Upper Tribunal's refusal to issue witness summonses
- MPs debate Financial Services Bill
- First insider dealing trial in relation to contracts for difference gets underway

Further afield:- Court of Appeal overturns Upper Tribunal's refusal to issue witness summonses

In a case arising from enforcement action taken in 2009, subsequently pursued to the Upper Tribunal, in respect of alleged failures by an insurance broker to effect insurance, and forgery of insurance documents, the subject of the action has successfully pursued an appeal against the Upper Tribunal's decision not to issue witness summonses requiring the attendance of two police officers involved in an underlying investigation. The subject suggested that the dates of early meetings, disputed by the FSA, may have meant that the FSA commenced action outside the relevant limitation period under section 66 of FSMA.

Finding that the Tribunal erred in law by failing to address the merits of the subject's application for witness summonses in respect of the police officers, the Court of Appeal has upheld the appeal and directed the Tribunal to issue the summonses requiring the officers to attend at a forthcoming hearing, where the subject will challenge the imposition of a financial penalty of £150,000 on him in 2010.

Jeffery v Financial Services Authority, CA (8 February 2012) (unreported)

MPs debate Financial Services Bill

The Financial Services Bill has received its second reading in Parliament. The debate concentrated on the proposed arrangements for future prudential oversight, and consisted largely of political argument as to responsibility for past failures to respond adequately to the financial crisis.

However, there was some discussion of the proposed role and powers of the FCA. For example, the Shadow Chancellor signalled opposition to the government's rejection of the recommendations that the FCA should be able to issue warning notices without reference to the subject of those notices and that the FCA inherit some competition powers concurrent with those of the Office of Fair Trading.

The bill will now move to be considered by the Financial Services Bill Committee on 21 February.

First insider dealing trial in relation to contracts for difference gets underway

The trial of five individuals associated with Blue Index Limited a specialist Contract for Difference ("CFD") brokerage, for insider dealing offences, is due to commence today (6 February). Former co-owner and directors James Swallow and James

Sanders, his wife Miranda Sanders and former trader Christopher Hossain are, together with another former employee, Adam Buck, charged with insider dealing in connection with trading in CFDs ahead of seven separate takeover announcements.

The case is the first occasion in which trades concerning CFDs have been the subject of a prosecution for insider dealing under section 52 of the Criminal Justice Act 1993.

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