

# FSA Update

## At the FSA last week: -

### FSA fines and bans broker for market abuse and integrity breaches

The FSA has (on 9 July) imposed a financial penalty of £30,000 on **Jay Rutland** and has prohibited him from performing any function in relation to any regulated activity for market abuse and for breaches of Principle 1 (integrity) of its Statements of Principle for Approved Persons ("**APER**").

The FSA found that Mr Rutland, who was formerly a senior broker employed by **Pacific Continental Securities (UK) Limited ("PCS")**, improperly disclosed inside information to his colleagues for use when seeking to sell shares to customers, and that he "watered down" risk warning warnings contained in scripts approved by PCS's compliance department or directors.

The Regulatory Decisions Committee rejected Mr Rutland's representations that the information was not inside information as it had been disclosed in a presentation to PCS staff and that he had been solely responsible for altering the sales scripts in question. It found that he had acted without integrity by deliberately defying compliance procedures and by encouraging members of his team to use the non-approved scripts to seek to maximise financial gain.

The penalty imposed on Mr Rutland was reduced from £160,000 to reflect

the serious financial hardship which that penalty would have caused him. Mr Rutland had referred the matter to the Upper Tribunal, but withdrew his reference.

The action against Mr Rutland follows separate regulatory action against PCS, concluded in January 2009, which led to a public censure imposed on the firm for breaches of Principles 1 (integrity), 3 (management and control), 6 (treating customers fairly) and 11 (co-operation with regulators) of the FSA's Principles for Businesses in relation to sales of high risk securities to retail investors. In that case, the FSA indicated that it would have imposed a financial penalty of £2 million but for PCS's insolvency. At that time, it also imposed a financial penalty of £80,000 and a prohibition order on PCS's former Chief Executive **Steven Griggs** for breaches of Principles 1 (integrity) and 5 (significant influence functions: organisation of firm's affairs) of APER.

#### Comment

Although the conduct for which Mr Rutland has been disciplined took place in 2007, the action is reflective of the FSA's current enforcement approach. In particular, the wording of the Final Notice is illustrative of the emphasis which the FSA is placing, and which the FCA will place, on the protection of consumers, even in cases involving market conduct. It also provides further evidence, if it were needed after the succession of enforcement cases involving individuals in large firms which have been publicised this year to date, of the FSA's wish to conspicuously underline the standards expected of

market participants at all stages of transactions.

<http://www.fsa.gov.uk/static/pubs/final/jay-rutland.pdf>

[http://www.fsa.gov.uk/static/pubs/final/pacific\\_continental.pdf](http://www.fsa.gov.uk/static/pubs/final/pacific_continental.pdf)

[http://www.fsa.gov.uk/static/pubs/final/steven\\_griggs.pdf](http://www.fsa.gov.uk/static/pubs/final/steven_griggs.pdf)

### Upper Tribunal rejects application for approval of Arch Cru adviser

The Upper Tribunal has (on 12 July) dismissed a reference made by **First Financial Advisors Limited** relating to an application for **Stephen Danner** to be approved to perform the CF30

## Key issues

- FSA fines and bans broker for market abuse and integrity breaches
- Upper Tribunal rejects application for approval of Arch Cru adviser
- Other enforcement notices
- FSA freezes assets of suspected land banking firm
- FSA issues finalised guidance on PPI customer contact letters
- FSA consults (again) on transposition of Solvency II
- UKLA launches new knowledge base
- FSA to commission review of Money Advice Service
- Office of Fair Trading on personal current accounts by end of 2012

(customer) controlled function.

The FSA objected to the application for approval made on behalf of Mr Danner on the basis that he does not satisfy the integrity and reputation, competence and capability or financial soundness elements of the requirements for fitness and propriety set out under section 61 of the Financial Services and Markets Act 2000 ("FSMA"). In particular, the FSA considered that his previous involvement in advising clients to invest in products provided by Arch Cru rendered him unsuitable to occupy a controlled function. The FSA marshalled extensive expert evidence to point in particular to conflicts of interest in the advice provided by Mr Danner to customers of the firm which he previously ran, and to indicators that products were not suitable for the customers to whom he recommended them. The tribunal, agreeing with this expert analysis, upheld the FSA's refusal of his application on the grounds of a lack of integrity and reputation and competence and capability, although did not uphold the FSA's argument that a contingent liability relating to a disputed debt meant that Mr Danner lacked financial soundness.

#### Comment

This decision is the first occasion on which the tribunal has had the opportunity to comment upon issues relating to the mis-selling of Arch Cru investments, in relation to which the FSA has proposed redress arrangements under section 404 of FSMA (and in relation to which consultation continues).

It is also of interest in the context of the recent proposals outlined by HM Treasury for the introduction of a rebuttable presumption that directors of failed banks are unsuitable to act

as approved persons in other institutions. Although the facts and the scale of the institutions concerned clearly differ significantly, it may be illustrative of the challenges which, should the proposals translate into changes to the approved persons regime, individuals may face in convincing the FSA that they are suitable to be allowed to perform controlled functions.

[http://www.tribunals.gov.uk/financeandtax/Documents/decisions/First\\_Financial\\_Advisors\\_Ltd\\_v\\_FSA.pdf](http://www.tribunals.gov.uk/financeandtax/Documents/decisions/First_Financial_Advisors_Ltd_v_FSA.pdf)

#### Other enforcement notices: -

The FSA has (on 12 July) refused the application of **Safari General Trading Limited** for registration as a small payment institution under the Payment Services Regulations 2009 as its application remained incomplete after repeated attempts by the FSA to contact the applicant.

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

#### FSA freezes assets of suspected land banking firm

The FSA has (on 13 July) released details of freezing orders obtained on 13 June against **Asset L.I. Inc (trading as Asset Land Worldwide), Equity Services (London) Limited, Asset Land Investment PLC** and three unnamed individuals. It has also, using its powers under section 380 of FSMA, obtained injunctions preventing any of these companies or individuals from selling plots of land on particular sites pending the conclusion of ongoing investigations being conducted by the FSA and other enforcement authorities.

<http://www.fsa.gov.uk/library/communication/pr/2012/073.shtml>

#### FSA issues finalised guidance on PPI customer contact letters

The FSA has (on 13 July) published finalised guidance (FG12/17) on contact with customers who may have been mis-sold payment protection insurance but have yet to complain. The guidance sets out the FSA's expectations as to the contents of customer contact letters, and how they should be presented so that they are clear, fair and not misleading.

The guidance sets out the FSA's view of how Principles 6 (treating customers fairly) and 7 (communications with customers) and its rules on complaint handling, time limits for consumers to make complaints and other obligations such as record keeping, contained in its Dispute Resolution ("DISP") and Senior Management Arrangements, Systems and Controls ("SYSC") sourcebooks, apply to PPI customer contact letters.

The finalised guidance follows industry feedback received on its guidance consultation paper (GC 12/4) issued in March 2012. The FSA, whilst acknowledging the feedback received both from firms and consumer bodies, has made only minor amendments to the guidance as originally drafted.

<http://www.fsa.gov.uk/static/pubs/guidance/fg12-17.pdf>

<http://www.fsa.gov.uk/static/pubs/guidance/fg12-17-summary.pdf>

[http://www.fsa.gov.uk/library/policy/guidance\\_consultations/2012/gc1204](http://www.fsa.gov.uk/library/policy/guidance_consultations/2012/gc1204)

## FSA consults (again) on transposition of Solvency II

Further to its first consultation paper on the transposition of Solvency II (CP11/22), issued in November 2011, the FSA has (on 11 July) issued a further paper (CP 12/13) consulting on areas not covered, or only partially covered in the first consultation paper. The areas covered include the application of the rules to the Lloyd's insurance market (to be set out in a new sourcebook ("SOLPRU")), the FSA's policy in relation to separate disclosure of capital add-ons and changes to existing handbook rules governing with-profits and unit linked business. The paper should be read in conjunction with the subsequent erratum notice issued by the FSA, which sets out a corrected Appendix 6.

Some areas, including the impact of Solvency II on external audit and the FSA's approved persons regime, have not yet been finalised. As the FSA's accompanying press release sets out, the integration of Solvency II in these and other areas awaits the outcome of ongoing discussion at the European level and, in the case of the integration of the rules into the approved person regime, changes arising from the transfer of the FSA's responsibilities to the Prudential Regulation Authority ("PRA") and Financial Conduct Authority ("FCA").

The FSA has invited firms to comment on the consultation paper by 11 October 2012, and has stated that it will collate feedback received with that responding to other consultation exercises in relation to the transposition of Solvency II into a policy statement to be issued in late 2012 or early 2013.

[http://www.fsa.gov.uk/library/policy/cp/2011/11\\_22.shtml](http://www.fsa.gov.uk/library/policy/cp/2011/11_22.shtml)

<http://www.fsa.gov.uk/static/pubs/cp/cp12-13.pdf>

<http://www.fsa.gov.uk/static/pubs/cp/erratum-cp-12-13.pdf>

## UKLA launches new knowledge base

The FSA, in its role as the UK Listing Authority ("UKLA") has (on 13 July) issued the second edition of its Primary Market Bulletin. It sets out its plans for a new repository of technical guidance to maintain and consolidate in one place the publications it issues to assist with the interpretation and application of Part 6 of FSMA.

It proposes that the new 'UKLA Knowledge Base' will incorporate the sections of historic notes which remain current and relevant, and will contain new material. Notes will be categorised as either "Procedural Notes" or "Technical Notes". The UKLA has proposed a number of new notes to supplement and update existing material in areas including block listings, its decision making and review process, sponsors' obligations and related party transactions.

The UKLA has invited firms to comment on its plans by 14 August 2012.

<http://www.fsa.gov.uk/pubs/ukla/ukla-bulletin-no2.pdf>

## FSA to commission review of Money Advice Service

The Financial Secretary to the Treasury, Mark Hoban, has indicated that the FSA intends to commission an independent review into "the economy, efficiency and effectiveness" of the use of public

resources by the Money Advice Service ("MAS"). He indicated that Lord Turner has made clear that the review will be commissioned in the first half of next year (although he did not elaborate further on timing or as to which of the FSA's successor bodies would assume responsibility for commissioning and overseeing the review).

MAS is currently funded by a levy on the financial services industry. It is currently the subject of a separate inquiry by a sub-committee of the Treasury Select Committee. Its Chief Executive, Tony Hobman, recently resigned following criticism of the level of his remuneration.

<http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120711/text/120711w0001.htm#12071151000434>

## Further afield

### Office of Fair Trading on personal current accounts by end of 2012

The Office of Fair Trading ("OFT") has (on 13 July) announced a review of the UK personal current account market. The review, which follows its market study in 2008 and responds to recommendations made by the Independent Commission on Banking in September 2011, forms part of a longer programme of work for the OFT aimed at addressing its concerns on competition and customer focus in the retail banking market. It will concentrate on areas including the ease with which customers may switch from one bank to another and transparency of personal current account charges. In addition, it will look at the operation of payment systems and the banking market for

small and medium sized enterprises. The OFT intends to complete its review and publish a report by the end of 2012.

The OFT's focus is on ensuring that all sectors work well for consumers by overseeing effective competition at the macro level, whilst the focus of the FSA is (and that of the FCA) from 2013 will be) on the day to day experiences of consumers of retail banking services. However, the review is an illustration of an alignment of the priorities and co-ordination between the FSA/FCA and OFT. Shortly before taking up his post on 1 July, the OFT's new Chief Executive, Clive Maxwell, acknowledged and welcomed the emphasis which Martin Wheatley, the FCA's Chief Executive Designate, has indicated that he proposes to place on individuals customers' experiences, and outlined how he considers the OFT's and FCA's approach to regulation will, together with increased competition and changes of attitude by institutions, contribute to a better functioning retail banking market.

<http://www.offt.gov.uk/OFTwork/markets-work/othermarketswork/pca-review/>

<http://www.offt.gov.uk/news-and-updates/speeches/2012/0412>

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