

# FSA Update

## Last week at the FSA:-

### FSA imposes prohibition orders for UCIS due diligence failures

The FSA has (on 17 August) released details of prohibition orders imposed on **Richard Rhys** and **Anthony Adams**. The Final Notices issued to them are dated 27 July 2012 and 21 February 2012. However, the FSA appears to have waited until the conclusion of settlement negotiations relating to the withdrawal of a reference to the Upper Tribunal before releasing details of the action.

Mr Rhys has been prohibited from performing any function in relation to any regulated activity, whilst Mr Adams has been prohibited from performing any significant influence function other than as or through an appointed representative.

The FSA's action relates to the marketing and promotion in 2004 and 2005 of a scheme known as the environmentally beneficial plant scheme ("the EBP Scheme") by MNFA Limited ("MNFA"), of which both Mr Rhys and Mr Adams are former directors. MNFA provided mortgage brokerage and related services until it entered voluntary liquidation in January 2009. Mr Adams, in addition to being a director of MNFA, occupied the CF8 (apportionment and oversight), CF10 (compliance oversight) and CF11 (money laundering reporting) significant influence functions at the firm during the period with which the

FSA's action is concerned. MNFA's Part IV permission was cancelled in March 2009. No action has been taken by the FSA against MNFA, although the Final Notices note that MNFA derived approximately £760,000 in commission in connection with the EBP Scheme.

The FSA has based both prohibition orders upon findings that Mr Rhys and Mr Adams lack competence and capability as set out in its Fit and Proper Test for Approved Persons ("FIT").

Specifically, the FSA found that Mr Rhys made statements that obviously risked misleading investors (and which did in fact mislead them) and caused MNFA to promote the EBP Scheme without conducting proper due diligence. It found that both men failed to inform themselves of and understand the relevant requirements relating to unregulated collective investment schemes ("UCIS") and failed to take any steps to ensure that MNFA assessed the suitability of its advice to consumers. It found that Mr Adams failed to take any steps to ensure that there was compliance monitoring of the EBP Scheme. The Final Notices state that the majority of investors in the EBP Scheme, who invested approximately £11.6 million in total, have sustained substantial losses.

The FSA found that, as a result, MNFA breached restrictions on the promotion of UCIS (under section 238 of the Financial Services and Markets Act 2000 ("FSMA")), wrongly classified sales as "execution only" and wrongly classified clients, leading to a risk of them receiving unsuitable

advice (in breach of the provisions of the Conduct of Business ("COB") section of the FSA's Handbook, which was in force at the relevant time, but which ceased to have effect in 2007).

<http://www.fsa.gov.uk/static/pubs/final/richard-rhys.pdf>

<http://www.fsa.gov.uk/static/pubs/final/anthony-adams.pdf>

### Other Final Notices

- The FSA has (on 14 August) cancelled the registration of **Idowu Oyewole, Eciru and Company** and **Zim Network Financial Services Limited** as small payment institutions under the Payment Services Regulations 2009 ("PSR") for failures to submit annual returns, and the authorisation of **Mian International Limited** as an authorised payment institution under PSR for failure to pay fees and levies.

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

<http://www.fsa.gov.uk/static/pubs/final/idowe-oyewole.pdf>

<http://www.fsa.gov.uk/static/pubs/final/zim-network.pdf>

<http://www.fsa.gov.uk/static/pubs/final/mian-international.pdf>

## Key issues

- FSA imposes prohibition orders for UCIS due diligence failures
- FSA outlines its approach to transposition of Short Selling Regulation
- FSA publishes view on crowdfunding

- The FSA has (on 15 August) cancelled the registration of **3 Old Brothers** as a small payment institution under PSR for failure to pay fees and levies. <http://www.fsa.gov.uk/static/pubs/final/3-old-brothers.pdf>
- In a Final Notice dated 20 July but released last week, further to a judgment handed down by the Upper Tribunal last month (see FSA Update – 16 July), the FSA has refused an application made by **First Financial Advisers Limited** for **Stephen Danner** to perform the CF30 (customer) controlled function. <http://www.fsa.gov.uk/static/pubs/final/stephen-danner.pdf>  
<https://onlineservices.cliffordchanace.com/online/freeDownload.action?key=OBWlbFgNhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZex%2Bzj%2BofwRGizZHywghNSLtp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=132811>

### FSA outlines its approach to transposition of Short Selling Regulation

The FSA has (on 16 August) published a special edition of its Market Watch newsletter giving advance notice of its approach to the transposition of the EU Short Selling Regulation ("the Regulation") in the UK.

The Regulation will come into effect on 1 November 2012. As it will have direct effect in UK law, there is no general need for implementing measures in domestic legislation and FSA rules to apply its provisions. However the FSA has clarified how the implementation of the Regulation will alter existing rules and guidance.

In particular, the newsletter sets out that the FSA will consult on the removal of the domestic short position disclosure regime and, separately, on whether the arrangements set out in the Decisions Procedure and Penalties of its Handbook ("DEPP") should be applied to infringements of the Regulation. It also sets out its proposed approach to the use by it of temporary suspension powers, how it considers public disclosures of significant short positions and notifications of short positions in shares and sovereign debt should be made and how it expects the market maker and authorised primary dealer exemption process to work.

[http://www.fsa.gov.uk/static/pubs/newletters/mw\\_newsletter42.pdf](http://www.fsa.gov.uk/static/pubs/newletters/mw_newsletter42.pdf)

### FSA publishes view on crowdfunding

The FSA has (on 17 August) published an information page on "crowdfunding" on its website. It has noted that there is increasing interest in crowdfunding, which involves a large group of people contributing money to support a business, individual or campaign, as a new way for businesses and individuals to raise funds and for people to invest money.

The information page, the latest to be issued by the FSA as part of its efforts to engage more directly with consumers, outlines some of the benefits and risks of crowdfunding. It sets out its view that most crowdfunding should be targeted at sophisticated investors and warns that the practice may often be conducted without permission or authorisation, which may lead to investors in a crowdfund having little or no protection if the business or project fails.

[http://www.fsa.gov.uk/consumerinformation/product\\_news/saving\\_investments/crowdfunding](http://www.fsa.gov.uk/consumerinformation/product_news/saving_investments/crowdfunding)

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