

FSA Update

Last week at the FSA:-

FSA fines bank for money laundering failures

The FSA has (on 2 August) imposed a civil penalty of £294,000 on **Turkish Bank (UK) Limited ("TBUK")** for breaches of the Money Laundering Regulations 2007 ("MLR").

The action relates to failures, in correspondent banking relationships with respondents in Northern Cyprus and Turkey, to establish and maintain appropriate and risk-sensitive anti-money laundering ("AML") policies and procedures, carry out adequate due diligence and ongoing monitoring of customers acting as respondent banks and to maintain adequate records.

Correspondent banking describes situations where a bank (TBUK in this instance) provides services in the UK to respondent institutions, such as payment or clearing related services, which those institutions are not able to provide in the UK.

In this case, the FSA found that it was not appropriate for TBUK, when providing these services, to rely upon AML checks carried out or adopted by the respondents for which it acted as agent, that it should have applied enhanced due diligence to such relationships and that the policies and procedures set out in its AML handbook should have made this clear.

The penalty imposed was reduced by 30 per cent as TBUK settled at stage

one of the FSA's executive settlement procedures. The level of the penalty also reflected co-operation provided by TBUK and action taken against individuals, including withholding their annual bonus for the year 2011.

Comment

The action is the latest to be concluded by the FSA as the result of its thematic review into banks' management of high money-laundering risk situations, whose findings were released by the FSA in June 2011. This is the first case arising from the review where the FSA has taken action against a firm or individual for breaches of MLR rather than for breaches of its Principles for Businesses ("**the Principles**") or Statements of Principles and Code of Practice for Approved Persons ("**APER**").

This action is the first taken by the FSA in connection with correspondent banking. The FSA has now, through the thematic review concluded in June 2010, previous reviews and associated enforcement action, covered much of the broad spectrum of areas in relation to the AML systems and controls which banks should have in place. Firms and individuals have been disciplined for due diligence failings both at the start of and during customer relationships, with areas of particular focus including sanctions compliance and dealing with politically exposed persons.

The penalty imposed in this case, although significant for the institution concerned, is amongst the smaller fines imposed in this area. However, the FSA attaches significant

importance to the deterrent effect of continuing enforcement action such on AML issues, which remain high on its financial crime agenda.

<http://www.fsa.gov.uk/static/pubs/final/turkish-bank.pdf>

http://www.fsa.gov.uk/static/pubs/other/aml_final_report.pdf

FSA imposes fine and partial prohibition order on sole trader CF10

The FSA has (in a final notice dated 7 June but released last week) imposed a financial penalty of £10,500 and a partial prohibition order on **Adrian Mosley**. It has also withdrawn his approval to fulfil the CF10 (compliance oversight) function and cancelled his Part IV permission. It took action against him for breaches of principles 6 (treating customers fairly) and 9 (suitability) of the Principles through inappropriately

Key issues

- FSA fines bank for money laundering failures
- FSA imposes fine and partial prohibition order on sole trader CF10
- FSA issues guidance on sale and rent back
- FSA consults on data collection on remuneration practices
- FSA makes statement on CRD IV implementation
- Steering group publishes recommendations for "simple" financial products

categorising transactions as execution only, encouraging customers to sign declarations that they had not received poor advice and for failings relating to complaint handling.

Comment

This case relates to a small firm where failings by the individual effectively equated to failings by the firm, as is illustrated by the fact that the FSA chose to pursue Mr Mosley individually for breaches of the Principles (as opposed to breaches of APER).

However, it is the latest illustration of the FSA's commitment to seeking to hold individuals occupying controlled function roles accountable for failings by their firms. The FSA has, with varying degrees of success, sought to take conspicuous action against individuals associated with firms of all sizes, ranging from sole traders such as Mr Mosley to senior executives in large institutions (see, for example, FSA Update - 1 May 2012).

A number of references to the Upper Tribunal concerned with similar points remain outstanding (see, for example, action taken against Timothy Pattison). The outcome of those cases will help to further clarify the boundaries of firms' and approved persons' conduct responsibilities.

<http://www.fsa.gov.uk/static/pubs/final/adrian-mosley.pdf>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbFgNhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALTlyZe%2FxbFDMK7o1LMuA2WitVt5zp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=141846>

<http://www.fsa.gov.uk/static/pubs/decisions/dn-pattison-pave.pdf>

Other Final Notices

The FSA has (on 31 July) cancelled the registration of Riaz Aslam Gul as a small payment institution under the Payment Services Regulations 2009 for non-payment of fees and levies.

<http://www.fsa.gov.uk/static/pubs/final/riaz-gul.pdf>

FSA issues guidance on sale and rent back

The FSA has (on 31 July) issued finalised guidance (FG 12/18) in relation to the sale and rent back market. This follows a thematic review commenced in 2011, which led to action being taken to refer one firm to enforcement and to invite other firms to cancel or vary their permissions. It announced this action in March 2012.

The FSA has now published detailed findings of its thematic review. It found failings in areas including assessments of appropriateness and affordability, disclosure, record keeping and format and content of documentation and sales processes.

<http://www.fsa.gov.uk/static/pubs/guidance/fg12-18.pdf>

<http://www.fsa.gov.uk/library/communication/pr/2012/011.shtml>

FSA consults on data collection on remuneration practices

The FSA has (on 1 August) published a consultation paper (CP 12/18) on its proposed approach to data collection on remuneration practices and reporting requirements for firms, including the draft data templates that firms will be required to complete.

<http://www.fsa.gov.uk/static/pubs/cp/cp12-18.pdf>

FSA makes statement on CRD IV implementation

The FSA has published a statement explaining that it is unlikely, given delays in the EU legislative process, that the legislation to implement CRD IV can take effect on 1 January 2013 as is provided for in the original EU Commission proposal. The statement does not give any amended estimate for when implementation is expected to occur but reminds banks to remain mindful of the directions set out in Basel III and to continue as far as possible with preparations for CRD IV whilst the EU legislative process progresses.

<http://www.fsa.gov.uk/library/communication/statements/2012/crd-iv.shtml>

Further afield: -

Steering group publishes recommendations for "simple" financial products

The independent steering group of industry experts set up by HM Treasury in October 2011 to recommend steps to be taken to develop "simple" financial products has (on 2 August) published its interim report.

The group, composed of representatives of banks, insurers and consumer organisations, has proposed the development of an easy access savings account, a 30 day notice account, and a simple term life insurance product. It has also recommended the establishment of a "Simple Products" accreditation body to ensure that these products are meeting core standards which it has

outlined and the development of an accompanying "kite mark" to identify accredited products to consumers.

HM Treasury has invited interested organisations and parties to respond to the proposals in the group's interim report by 12 October 2012 with a view to the publication of a final report in February 2013.

http://www.hm-treasury.gov.uk/d/sergeant_review_simple_financial_products_interim_report.pdf

FSA Update next week

Due to a software upgrade, next week's FSA Update will be sent on Tuesday 14 August. It will be available at www.cliffordchance.com on Monday 13 August as usual.

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