

FSA Update

Last week at the FSA:-

Adeboli sentenced to seven years for unauthorised trading

On 20 November, **Kweku Adeboli** was sentenced to a total of seven years' imprisonment. He was prosecuted by the Crown Prosecution Service for fraud and false accounting offences in connection with unauthorised trading which saw him amass large trading positions and ultimately sustain significant and well-publicised losses. He was convicted of two counts of fraud by abuse of position but was acquitted of other offences of false accounting in connection with the booking of fictitious orders to seek to hide unauthorised trading.

<http://www.judiciary.gov.uk/Resources/JCO/Documents/Judgments/kweku-adeboli-sentencing-remarks-20112012.pdf>

FSA imposes fine for failure to prevent unauthorised trading

In associated action, the FSA has imposed a financial penalty of £29.7 million on Adeboli's former employers, **UBS AG** ("UBS"). In its Final Notice issued on 25 November, the FSA has set out its findings that UBS breached principles 2 (due skill, care and diligence) and 3 (management and control) of its Principles for Businesses between June and September 2011 through deficiencies in computer systems, levels of

supervision and other policies and procedures.

The penalty imposed, which was calculated as a percentage (15 per cent) of the revenue of the division concerned, was reduced by 30 per cent as UBS agreed to settle at stage 1 of the FSA's executive settlement procedures. The FSA has acknowledged the steps taken by UBS to address issues, including appointing an independent firm to undertake an investigation, which has involved the expenditure of significant resources, and taking disciplinary action against individual employees involved in the breaches.

The Swiss Financial Market Supervisory Authority ("FINMA") has also today announced the findings of an investigation which it has undertaken. It has not imposed any separate penalty. UBS has agreed with FINMA during its investigation to put in place a number of organisational measures to strengthen risk management and control capabilities, and has undertaken to continue doing so and to submit to ongoing monitoring by an independent third party and audit firm.

<http://www.fsa.gov.uk/static/pubs/final/ubs-ag.pdf>

<http://www.finma.ch/e/aktuell/Pages/mm-ubs-london-20121126.aspx>

Tribunal finds no market abuse by coffee futures trader

The Upper Tribunal has (on 22 November) upheld a reference pursued by **David Hobbs** against a decision by the FSA to impose a

financial penalty of £175,000 and a prohibition order for market abuse. The FSA had maintained that Mr Hobbs had engaged in market abuse under section 118(5) of the Financial Services and Markets Act 2000 through an order to buy coffee futures in August 2007. Specifically, the FSA argued that he instructed a broker, **Andrew Kerr**, to place an order to buy futures during a period in which the reference price was set, with the aim of driving up the reference price of those futures. Mr Hobbs rejected the FSA's arguments and referred the Decision Notice it issued to him in June 2010 to the Upper Tribunal. The FSA took action against Mr Kerr in June 2010, leading to the imposition of a financial penalty of £100,000 and a prohibition order.

Mr Hobbs argued, and the Tribunal accepted, that he did not place the order for the purposes of manipulating the reference price, but instead was seeking to bring his positions back within risk limits set by his employer. The Tribunal found that recorded conversations, which included references to "doing the ultimate" and

Key issues

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- Tribunal finds no market abuse by coffee futures trader
- FSA consults on strengthening capital standards for SIPP operators

which the FSA put forward as evidence of Mr Hobbs' involvement in market abuse, did not reflect this but were rather "trader bravado" designed to conceal from Mr Kerr that he was in breach of his internal risk positions.

The Tribunal directed that the FSA should not take any action against him, and it has issued a statement confirming that it has discontinued its action.

<http://www.fsa.gov.uk/library/communication/statements/2012/hobbs>

http://www.tribunals.gov.uk/financeandtax/Documents/decisions/Hobbs_full_decision.pdf

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

FSA consults on strengthening capital standards for SIPP operators

The FSA has (on 22 November) released a consultation paper (CP12/33) on the levels of capital required to be held by Self Invested Personal Pension ("SIPP") operators. It proposes amendments to the Interim Prudential Sourcebook for Investment Businesses ("IPRU(INV)") to increase the minimum level of capital which SIPP operators must hold from £5,000 to £20,000 and to link capital requirements more closely to the amounts and types of assets under administration.

The FSA has invited comments on the proposals by 22 February 2013.

The proposals, which respond to significant growth in the assets under administration by SIPP operators over the five years since the FSA took over responsibility for regulating them, are the latest example of action which it is

taking to address its concerns about consumer protection in the SIPP sector. Last week, consultation ended on separate proposals arising from a thematic review of SIPP operators (set out in Guidance Consultation paper GC12/12) aimed at tightening standards in areas including handling of client assets (see FSA Update – 29 October).

<http://www.fsa.gov.uk/static/pubs/cp/cp12-33.pdf>

<http://www.fsa.gov.uk/static/pubs/guidance/gc12-12.pdf>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbfGnhLNomwBl%2B33QzdFhRQAhp8D%2BxrIGRel2crGqLnALtlyZe2c6Jjh2hRNsJ3UEhV0Y3HDp%0D%0A5mt12P8Wnx03DzsaBGwslB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=134023>

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