

Update

Weekly Financial Services Regulatory Update

Week to 27.01.12

This weekly update from Clyde & Co's Financial Services Regulatory Team summarises new developments as reported by the FSA, the UKLA, the Upper Tribunal, the Financial Ombudsman Service and the London Stock Exchange over the past week, with links to the full documents where these are available.

We hope that you will find this update useful. If you have any queries about any of the information in this update or financial services regulatory matters generally, please contact **James Cooper** (020 7876 6388) or **Abigail Potts** (020 7876 6544).

If you have any comments on the content or format of the update or if you no longer wish to receive it, or have a colleague who would like to receive it, please email financial.services@clydeco.com.

Consultation papers:

26 January: CP12/1: Large Exposures Regime – groups of connected clients and connected counterparties. The FSA is consulting on changes to its large exposures regime applicable to banks, building societies and full scope BIPRU firms. A large exposure is a firm's total exposure to a counterparty, connected counterparties or groups of connected clients, which in aggregate is 10 per cent or more of the firm's capital resources. Under the current regime, a firm must ensure that the total amount of its exposures does not exceed 25 per cent of its capital resources.

The FSA's consultation has three main aims:

- To propose rule changes for:
 - the FSA Handbook definition of "connected counterparties"; and
 - the basis for aggregating exposures to connected counterparties when applying large exposure limits.
- To propose new guidance on the treatment of large exposures to structured finance vehicles
- To propose a change to the FSA Handbook guidance in BIPRU 10.6.33G on the institutional exemption

The deadline for comments is 26 April 2012.

<http://www.fsa.gov.uk/library/policy/cp/2012/12-01.shtml>

26 January: CP12/2: Amendments to the Listing Rules, Prospectus Rules, Disclosure Rules and Transparency Rules. The FSA has published proposals for amendments to the Listing Rules to ensure that they properly reflect recent changes in market practices. It is also taking

the opportunity to invite preliminary views on whether the premium listing standard set out in the Listing Rules remains correctly positioned as a benchmark of high standards.

The proposed amendments to the Listing Rules cover five areas:

- Reverse takeovers. Changes to ensure reverse takeovers cannot be used as a “back-door” route to listing for companies that would otherwise be ineligible by narrowing the exemptions that remove some acquisitions from the reverse takeover requirements
- Sponsor regime. Clarification of the UKLA’s expectations of sponsors, who ensure premium listed companies understand the regulatory framework and provide assurances to the UKLA that the companies are meeting the requirements
- Financial information. Requirements for financial information to be provided by issuers either seeking a premium listing or when, as premium listed issuers, they are circulating or publishing circulars to their shareholders
- Transactions. The codification of existing practice concerning transactions, contained in the FSA’s technical notes
- Externally managed companies. These are companies where the management functions are outsourced to an offshore advisory firm. The FSA proposes to make the management of the advisory company responsible for any prospectus issued by the listed company and subject to existing rules about dealing in the shares of the listed company. In addition, externally managed companies would not be eligible for a premium listing

The deadline for comments is 26 April 2012.

The press release can be found in the relevant section of this update.

<http://www.fsa.gov.uk/library/policy/cp/2012/12-02.shtml>.

25 January: Proposed guidance on Transaction Reporting Strategy Trades. The FSA has published proposed guidance about how to submit required reports to the FSA regarding strategy trades whereby two or more legs that are dependent on each other are executed simultaneously. The guidance states that the individual legs of the strategy trades should be reported with the correctly populated venue identification field for that leg. However, one exception is given: if the trade is a Stock Contingent Trades on the Alternative Instrument Identifier (Aii) exchanges where both the derivative and cash equity legs are executed on the same Aii Exchange, firms should report the ISIN cash equity leg with the venue “XOFF”. Examples are given at the end of the guidance by way of explanation.

The deadline for responses is 22 February 2012.

http://www.fsa.gov.uk/static/FsaWeb/Shared/Documents/pubs/guidance/GC12_01.pdf

Discussion papers:

23 January: DP12/1: Implementation of the Alternative Investment Fund Managers Directive. The FSA has published a discussion paper on the implementation of the Alternative Investment Fund Managers Directive (AIFMD). The AIFMD will have a significant impact on firms that are involved in the running of any kind of collective investment scheme other than a UCITS. It will change how alternative investment fund managers operate their businesses and how they interact with third party service providers, including under outsourcing arrangements. It also means a new set of requirements for listed internally managed alternative investment funds currently subject to the listing rules of the UK Listing Authority.

The discussion paper aims to enable the FSA to develop a well-informed, proportionate and effective regulatory policy and assist stakeholders in their preparation for the AIFMD.

The deadline for comments is 23 March 2012.

<http://www.fsa.gov.uk/library/policy/dp/2012/12-01.shtml>

Policy statements:

No new developments this week.

Press releases:

27 January: Former compliance officer at Greenlight Capital and JP Morgan Cazenove trader fined. The FSA has fined Alexander Ten-Holter, trader and former compliance officer at Greenlight Capital (UK) LLP (Greenlight), £130,000 for failing to make reasonable enquiries before selling Greenlight’s shareholding in Punch Taverns plc (Punch) ahead of an anticipated significant equity fundraising by Punch. Ten-Holter was aware that Greenlight had spoken to Punch management immediately before he received the order to sell and therefore should have been aware that Greenlight may have been in receipt of inside information. However, he took no steps to satisfy himself that the order was not based on inside information.

When Punch announced a fundraising of £375 million, the price of Punch shares fell by 29.9 per cent. Greenlight’s trading had avoided losses of approximately £5.8 million for the funds under its management. At this point, Ten-Holter still failed to take action to satisfy himself that Greenlight’s trading had not been based on inside information in relation to the fundraising.

The FSA has found that Ten-Holter failed to act with due skill, care and diligence despite his knowledge of the suspicious circumstances surrounding Greenlight’s sale of its shares. In addition to imposing a fine of £130,000, the FSA has concluded that he is not fit and proper. Ten-Holter has been prohibited from performing the compliance oversight and money laundering reporting functions.

The FSA has also fined Caspar Agnew, a trading desk director at JP Morgan Cazenove, £65,000 for failing to identify and act on the suspicious order from Greenlight to sell 11.4 million Punch shares. This was despite being aware that major shareholders were likely to have obtained inside information about the fundraising through pre-marketing and were not allowed to trade on receipt of that inside information.

Agnew failed to act with due skill, care and diligence as he failed to identify and alert JP Morgan Cazenove and report it to the FSA. This allowed the firm to be used to facilitate insider dealing or market abuse.

The final notices can be found in the relevant section of this update.

<http://www.fsa.gov.uk/library/communication/pr/2012/007.shtml>

26 January: FSA consults on changes to the Listing Rules.

Requirements for companies listed in the UK are set out in the Listing Rules, which are the responsibility of the UK Listing Authority (UKLA) operating under the FSA. The FSA is consulting on a number of changes to the Listing Rules to take account of market developments. The paper also sets out some wider issues in relation to the premium listing standard on which comment is sought.

The proposals fall into the following four categories:

- Reverse takeovers
- Sponsor regime
- Externally managed companies
- Premium listings

The consultation paper can be found in the relevant section of this update.

<http://www.fsa.gov.uk/library/communication/pr/2012/006.shtml>

25 January: David Einhorn and Greenlight Capital Inc fined £7.2 million for trading on inside information in Punch Taverns Plc.

The FSA has decided to fine David Einhorn, owner of US hedge fund Greenlight Capital Inc (Greenlight), and his fund £7.2 million for engaging in market abuse. In June 2009, Einhorn received inside information through a telephone call that Punch Taverns Plc (Punch) was to progress with a significant equity fundraising. At the time, Greenlight held 13.3 per cent of Punch's issued equity. Immediately following the call, Einhorn gave instructions to sell Greenlight's entire holding in Punch.

By the time Punch announced a fundraising of £375 million, Greenlight had sold 11,656,000 Punch shares, thereby reducing its holding in Punch to 8.89 per cent. Following the announcement, the price of Punch shares fell by 29.9 per cent. Greenlight's trading had thereby avoided losses of approximately £5.8 million.

The FSA has accepted that Einhorn's trading was not deliberate as he did not believe that it was inside information, however this was not a reasonable belief for an investment professional. It has decided to fine Einhorn £3,638,000 and Greenlight £3,650,795 including the disgorgement of profits.

<http://www.fsa.gov.uk/library/communication/pr/2012/005.shtml>

25 January: New orthodoxy for conduct regulation – fair deal for consumers.

The FSA's managing director, Martin Wheatley, has outlined a new orthodoxy and regulatory approach for the future of conduct regulation – getting a fair deal for consumers. Wheatley, who is also CEO designate of the new Financial Conduct Authority (FCA), revealed the new approach in a speech to the British Bankers' Association.

In his speech, Wheatley states that the culture of firms, from product governance to sales, need to be aligned with the best interests of their customers. At the same time, the FCA will aim to strike a balance recognising that the regulator and the consumer also have responsibilities. The FCA's approach will be flexible and proportionate to reflect this.

The speech can be found in the relevant section of this update.

<http://www.fsa.gov.uk/library/communication/pr/2012/004.shtml>

Speeches:

25 January: My vision for the FCA. Martin Wheatley, managing director at the FSA, has delivered a speech on how the FCA will deliver regulation in the future. He states that at the heart of the FCA will be the principle of getting a fair deal for consumers.

Wheatley notes that the standard orthodoxy has always been that people make rational decisions when given sufficient information; that markets are self-correcting organisms; and, from a regulatory perspective, that if you oversee the distribution channels – ie, banks – the right products get to the right people. All three orthodoxies have proven to fail and, in order to move the model forward, the FCA will require firms' cultures to be fully aligned with the best interests of their customers.

However, Wheatley also emphasises that the responsibility does not fall completely on regulated firms – a cultural change is needed from consumers and the regulator as well. For the FCA, this will mean asking tougher questions and making better, bolder and faster decisions. Product intervention powers may be applied in circumstances where products are inherently flawed, where there is widespread promotion or selling to customer groups for whom the product is unlikely to be suitable or where there is a strong incentive for mis-selling.

Greater emphasis by firms on improving the way they design and sell products should mean that bans are relatively rare. When designing and selling products, the FCA will expect firms to complete the following four steps:

- Identify the target audience and design a product that meets their needs
- Test the products to make sure they can deliver fair outcomes
- Have a robust approval process in place before products are on sale

- Monitor the product to see who is buying it and how it is performing

The press release can be found in the relevant section of this update.

<http://www.fsa.gov.uk/portal/site/fsa/>

Bulletins and newsletters:

No new developments this week.

Final notices:

27 January: Alexander Edward Ten-Holter. The FSA has fined Alexander Edward Ten-Holter £130,000 for breaching Principle 6 of the FSA's Statements of Principle for Approved Persons and prohibited him from performing the compliance oversight (CF10) and money laundering reporting (CF11) significant influence functions on the grounds that he is not a fit and proper person. During his employment as a trader at Greenlight Capital (UK) LLP (Greenlight), Ten-Holter failed to question or make reasonable enquiries prior to effecting an order from Greenlight to sell its shares in Punch Taverns Plc (Punch). Ten-Holter effected the order despite being aware that Greenlight had made the decision having just spoken to Punch management and that Greenlight may have been in receipt of inside information. Ten-Holter also failed to make reasonable enquiries when Punch announced, six days later, its intention to start a significant equity fundraising.

The FSA considers this to be particularly serious as detecting and preventing market abuse was a key part of Ten-Holter's compliance role at Greenlight and was approached inadequately. It also took into account his seniority and experience at Greenlight. The FSA concluded that Ten-Holter's actions demonstrate a lack of competence and capability, such that he is not fit and proper to perform the Compliance oversight (CF10) and Money laundering reporting (CF11) significant influence functions.

The press release can be found in the relevant section of this update.

<http://www.fsa.gov.uk/static/pubs/final/ten-holter-greenlight.pdf>

27 January: Caspar Jonathan William Agnew. The FSA has published a final notice, dated 3 October 2011, fining Caspar Jonathan William Agnew £65,000 for failing to exercise due skill, care and diligence in breach of Principle 2 of the FSA's Statements of Principle for Approved Persons. In his role at investment bank JP Morgan Cazenove Limited (JP Morgan Cazenove) Agnew was approved to perform the Customer Function (CF30) and was required to report any suspicious transactions to the compliance department in order to facilitate its filing of suspicious transaction reports with the FSA.

Agnew failed to recognise that there were reasonable grounds to suspect that transactions carried out on behalf of Greenlight Capital (UK) LLP constituted insider dealing or market abuse and, as a consequence, failed to alert the compliance department of JP Morgan Cazenove to the possibility that the transactions were suspicious. The impact of Agnew's failings was that the bank did not consider whether to report the transactions to the FSA.

The press release can be found in the relevant section of this update.

<http://www.fsa.gov.uk/static/pubs/final/caspar-agnew.pdf>

24 January: Great Financial Services Limited. The FSA has cancelled the registration granted to Great Financial Services Limited (Great Financial) as a small payment institution under the Payment Services Regulations 2009. This is because Great Financial has failed to notify the FSA of a change of address, thereby preventing the FSA from regulating its business effectively. The FSA feels it is therefore desirable to cancel Great Financial's registration in order to protect the interests of consumers.

<http://www.fsa.gov.uk/static/FsaWeb/Shared/Documents/pubs/final/gfs.pdf>

24 January: Speedy INTL Limited. The FSA has cancelled the registration granted to Speedy INTL Limited (Speedy) as a small payment institution under the Payment Services Regulations 2009. This is because Speedy has failed to pay fees and levies of £475 owed to the FSA and to respond adequately to the FSA's repeated requests that it do so, and failed to submit the Payment Services Transactions Return for the period ended 31 December 2010 and to respond adequately to the FSA's requests that it do so.

<http://www.fsa.gov.uk/static/FsaWeb/Shared/Documents/pubs/final/speedy-intl.pdf>

Application refusals:

No new developments this week.

Approved person refusals:

No new developments this week.

Research publications:

No new developments this week.

Consumer research:

No new developments this week.

Other FSA publications:

27 January: The Financial Authorities' legal powers in the event of operational disruption. The UK Financial Authorities – the FSA, HM Treasury and the Bank of England – have released a joint note clarifying their legal powers in the event of operational disruption. The note does not make any amendments to those powers but has been released due to an inconsistent understanding across the sector relating to those powers.

Specific to the FSA, the note describes the FSA's powers under the Financial Services and Markets Act 2000 (FSMA) to direct a recognised body to take specified steps for the purpose of securing the body's compliance with the recognition requirements or any obligation imposed on it by, or under, FSMA. Before issuing such a direction, that FSA must give written notice of its intention to do so, take such steps as it considers is reasonably practicable to bring the notice to the attention of the institution's members and consider any representations made.

Under Part 18A of FSMA, the FSA also has the power to suspend trading in financial instruments for the purposes of protecting the interests of investors or the orderly

functioning of the market.

<http://www.fsc.gov.uk/section.asp?catid=688>

UKLA publications:

No new developments this week.

Upper Tribunal (Tax and Chancery Chamber) (formerly Financial Services and Markets Tribunal (FSMT)):

No new developments this week.

**Financial Ombudsman Service (FOS):
27 January: FOS letters regarding
payment protection insurance (PPI).**

The FOS has published letters sent to financial services practitioners and claims management companies detailing preventative steps that could be taken by parties in order to avoid disputes about whether PPI has been sold. These letters, published following discussions between representatives of all parties, come in response to the increasing number of disputes surrounding this area and suggest steps to be taken by all parties to minimise such disputes, to the benefit of all involved.

The suggestions made to financial services practitioners state, amongst

other things, that they should respond in a more detailed manner to requests for clarification of whether PPI was sold, giving evidence of any investigation which has taken place in response to such requests.

The suggestions made to the claims management companies include requesting full details and paperwork from clients before beginning any claim and, in those cases in which full paperwork cannot be located, to discuss the circumstances of the claim with the client to prompt them to disclose as much relevant information as possible. This would include completing a PPI consumer questionnaire, which the FOS publishes on its website.

Both letters also include links to the FOS's website where case studies are published by way of additional guidance.

http://www.financial-ombudsman.org.uk/publications/technical_notes/ppi/ppi-CWletterD.pdf

London Stock Exchange (LSE):

No new developments this week.

Further information

If you would like further information on any issue raised in this update please contact:

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