

Update

Weekly Financial Services Regulatory Update

Week to 17.02.12

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:

No new developments this week.

Discussion papers:

No new developments this week.

Policy statements:

No new developments this week.

Press releases:

17 February: FSA secures €77,000 for victims of boiler room fraud.

The FSA has successfully obtained a court order against Monobank Plc ("Monobank") which paves the way for €77,000 to be paid in compensation to the victims of a boiler room scam.

This sum of money represents an interim payment and the FSA is hoping to secure more through future actions. 20 victims of this particular scam are so far known to the FSA but it believes that there are others who have yet to contact the FSA and who could be entitled to compensation. The FSA first took action against Monobank in August 2011 when it took steps to obtain a freezing injunction from the High Court.

<http://www.fsa.gov.uk/portal/site/menuitem.10673aa85f4624c78853e132e11c01ca/?vgnextoid=fe86805ca0b85310VgnVCM2000004fbc10acRCD&vgnnextchannel=9dc1566b1c8f2310VgnVCM10000013c110acRCRD&vgnnextfmt=default>

16 February: Further arrest in FSA and SOCA insider dealing investigation.

The FSA and SOCA are continuing to work together on a complex insider dealing investigation, with searches conducted this week at one London business address and two domestic premises in London and Kent. A 44 year old man has

been arrested and interviewed under caution but released on bail pending further enquiries. Individuals previously arrested following searches conducted in March 2010 are still under investigation in the FSA's largest ever insider dealing operation.

<http://www.fsa.gov.uk/library/communication/pr/2012/015.shtml>

16 February: Former corporate broker at Merrill Lynch fined £350,000 for disclosing inside information. The FSA has fined Andrew Osborne, former Managing Director in Corporate Broking at Merrill Lynch International, £350,000 for engaging in market abuse by improperly disclosing insider information ahead of a significant equity fundraising by Punch Taverns Plc ("Punch") in June 2009. Osborne acted on behalf of Punch and approached Greenlight Capital Inc ("Greenlight") in connection with a conference call between Punch management and David Einhorn of Greenlight. Others have received FSA fines and been subject to FSA enforcement action in the same matter.

The final notice for Osborne can be found in the relevant section of this update.

http://www.fsa.gov.uk/portal/site/fsa/menuitem.10673_aa85f4624c78853e132e11c01ca/?vgnextoid=67ab408456585310VgnVCM2000004fbc10acRCRD&vgnnextchannel=9dc1566b1c8f2310VgnVCM1000013c110acRCRD&vgnnextfmt=default

15 February: Margaret Cole leaving FSA in 2012. The FSA has announced that Margaret Cole, Managing Director of enforcement and financial crime, is leaving the FSA at the end of March 2012. Cole joined the FSA in 2005 as director of enforcement and was appointed to the FSA Board as managing director of enforcement and financial crime in September 2010. In April 2011, Cole took on the role as the first managing director of what will become the Financial Conduct Authority (FCA) under the new twin peaks model. Cole will remain on the FSA Board until the end of March – before the creation of twin peaks on 2 April – but will be on gardening leave until 31 August 2012. She may continue to represent the FSA during that time, though not on issues relating to individual regulated firms or ongoing investigations.

<http://www.fsa.gov.uk/library/communication/pr/2012/013.shtml>

Speeches:

No new developments this week.

Bulletins and newsletters:

No new developments this week.

Final notices:

15 February: Final Notices served on Greenlight Capital Inc, David Einhorn and Andrew Osborne (former Merrill Lynch corporate broker) for insider dealing. Greenlight Capital Inc ("Greenlight"), David Einhorn and Andrew Osborne have been issued with final notices by the FSA, dated 15 February 2012, for engaging in market abuse by way of insider dealing. Greenlight, on the decision of Einhorn, avoided a loss of £5.8 million by selling

shares in Punch based upon information obtained from Osborne prior to Punch's equity fundraising in June 2009. Specifically, it has been found that:

- Osborne was an insider and improperly disclosed information about Punch shares which was precise enough to indicate that a share issuance was about to occur; and
- Einhorn, whose behaviour was attributable to Greenlight, obtained insider information and dealt on the basis of that information.

Decision notices were issued in respect of Einhorn and Greenlight on 12 January 2012.

Greenlight has been fined £3,650,795, Einhorn has personally been fined £3,638,000 and Osborne has personally been fined £350,000. None of these notices have been referred to the Upper Tribunal (Tax and Chancery Chamber). The FSA announced fines for Alexander Ten-Holter and Caspar Agnew in relation to the same matter on 27 January 2012.

The press release in relation to Osborne's fine can be found in the relevant section of this update.

Final Notices:

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

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

<http://www.fsa.gov.uk/static/pubs/final/david-einhorn.pdf>

Decision Notices:

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

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

13 February: Final Notice Served on Topps Rogers Financial Management for mis-selling UCIS. A financial penalty of £97,600 has been imposed, and permission cancelled under Part IV of the Financial Services and Markets Act 2000, in relation to Topps Rogers (now in liquidation) for mis-selling UCIS. This action by the firm constituted a failure to comply with Principles 3 (Management and Control) and 9 (Customers: relationships of trust) of the FSA's Principles for Businesses. The FSA considers that Topps Rogers' conduct "fell below the standards and requirements of the regulatory system" in relation to its selling of UCIS between May 2004 to June 2010.

According to the FSA, Topps Rogers failed in its duty to ensure that the UCIS, when sold, was suitable for its customers and to check that the s.238 restriction on promoting UCIS was applicable. The firm further failed to explain the associated costs and risks to its customers and relied too heavily on external compliance consultants whilst recommending to customers that they invest heavily in this product.

Mr Rigney, a former adviser and partner of Topps Rogers, who was the only person with significant influence functions, was issued with a decision notice dated 16 November 2011 which he has chosen to refer to the Upper Tribunal (Tax and Chancery Chamber).

<http://www.fsa.gov.uk/static/pubs/final/topps-rogers-financial-management.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:

13 February: Why incoherent preferences do not justify paternalism. The FSA has published a PowerPoint presentation prepared by Robert Sugden for a seminar at the FSA on 5 October 2011. In his talk, he defends the idea of the “invisible hand” as perpetrated by Adam Smith in his work, ‘Wealth of Nations’ and opposes behavioural welfare economics as presented by Richard Thaler and Cass Sunstein.

<http://www.fsa.gov.uk/static/FsaWeb/Shared/Documents/pubs/consumer-research/bob-sugden-incoherent-prefs.ppt>

13 February: Credit Default Swap Spreads and Systemic Financial Risk. The FSA has published a paper by Stefano Giglio of Harvard University, dated March 2011. The paper outlines a novel method to measure the joint default risk of large financial institutions using information in bond and credit default swap prices.

<http://www.fsa.gov.uk/static/FsaWeb/Shared/Documents/pubs/consumer-research/stefano-giglio-credit.pdf>

13 February: High Frequency Trading and its Impact on Market Quality. The FSA has published a paper by Jonathan A. Brogaard of Northwestern University, dated 22 November 2010. The paper analyses the strategies used by high frequency traders, their profitability and their relationship with characteristics of the overall market. The findings of this study suggest that high frequency traders’ activities are not detrimental to non-high frequency traders and that high frequency trading tends to improve market quality.

<http://www.fsa.gov.uk/static/FsaWeb/Shared/Documents/pubs/consumer-research/jonathan-brogaard-hft.pdf>

13 February: Systemic Sovereign Credit Risk: Lessons from the U.S. and Europe. The FSA has published a paper by Andrew Ang and Francis A Longstaff, dated August 2011. The paper analyses systemic sovereign credit risk using CDS spreads and concludes that there is far less systemic risk amongst U.S. sovereigns than Eurozone sovereigns which indicates that systemic risk is not caused directly by macroeconomic integration. The study also lends strong support to the view that systemic risk is strongly related to financial market returns.

<http://www.fsa.gov.uk/static/FsaWeb/Shared/Documents/pubs/consumer-research/francis-longstaff-scr.pdf>

13 February: Making Financial Markets work for Consumers.

The FSA has published a letter of advice written to the first director of the Consumer Financial Protection Bureau, a new US Federal Agency, from John Y. Campbell, Howell E. Jackson, Brigitte C. Madrian and Peter Tufano, four professors of economics, law, public policy and business. The advice provided, although specifically directed, is applicable to financial regulators the world over.

<http://www.fsa.gov.uk/static/FsaWeb/Shared/Documents/pubs/consumer-research/peter-tufano-mfm.doc>

Other FSA publications:

17 February: FSA transaction reporting memo on flex derivatives contracts conducted through Eurex OTC. The FSA has published a memo clarifying the guidance on derivative transaction reporting given in the FSA’s Market Watch 40 publication (September 2011). In particular, it confirms that, up until 31 March 2012, firms are not required to report transactions in flex derivatives contracts conducted through Eurex OTC but provides guidelines on how it should be done if firms choose to do so. The memo also notes that, from 31 March 2012, firms will be required to report transactions in flex derivatives contracts conducted through Eurex OTC by using the respective Aii code issued for those contracts.

<http://www.fsa.gov.uk/static/pubs/other/eurex.pdf>

16 February: FSA progress on delivering 2011/12 Business Plan milestones: February 2012 update. The FSA has published a table to show its progress, as of the end of December 2011, on delivering its 2011/12 Business Plan milestones. The table demonstrates that a number of its milestones have been altered. These alterations include:

- A policy statement on the mortgage market review has been delayed until the second or third quarter of 2012; and
- A consultation paper and policy statement on guidelines on common reporting has been postponed until the next financial year and will then be delivered as part of the wider CRD IV programme (major amendments that are due to be made to the Capital Requirements Directive (2006/48/EC and 2006/49/EC)).

The FSA intends to publish its next update in April 2012.

http://www.fsa.gov.uk/pubs/plan/fsa_milestones11_12.pdf

13 February: Approved persons regime not to be extended to mortgage advisers and arrangers before FCA established. The FSA has provided an update on changes to its approved persons regime. It has announced its intention to prioritise the creation of the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA) over extending the approved persons regime which it will now introduce as soon as practically possible, but not until after the creation of the FCA. When the regime is introduced, the FSA has assured firms that they will have enough time to make the necessary arrangements.

http://www.fsa.gov.uk/smallfirms/updates/persons_regime.shtml

10 February: Supervisory Notice issued against Pritchard Stockbrokers Limited. The FSA issued a supervisory notice against Pritchard Stockbrokers Limited ("Pritchard") dated 10 February 2012 as it has decided to vary the permission granted to Pritchard under Part IV of the Financial Services and Markets Act 2000. The FSA's concerns were that:

- Pritchard had failed to adequately arrange protection for its client's assets; and
- Pritchard had used clients' money on its own account.

Pritchard has consequently, and with immediate effect, had any assets held by other institutions frozen and is restricted from carrying out specified regulated activities.

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

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): 15 February: Technical Note on

Motor Insurance Complaints. David Cresswell of the FOS has reiterated the relevance of its technical note on Motor Insurance Complaints. The note outlines the situations that motor insurance is designed to cover and the most common and likely complaints that arise for the consideration of the FOS. The note also outlines how the FOS reaches decisions in typical cases.

http://www.financial-ombudsman.org.uk/publications/technical_notes/motor-insurance.html

London Stock Exchange (LSE):

No new developments this week.

Further information

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