

WEEKLY FINANCIAL SERVICES REGULATORY UPDATE

Week to 19.02.10

This weekly update from Barlow Lyde & Gilbert LLP's Financial Services Regulatory Team summarises new developments as reported by the FSA, the UKLA, the Financial Services and Markets 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 **Ian Mason** (020 7643 7265, imason@blg.co.uk), head of the Financial Services Regulatory Team.

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 fsu@blg.co.uk

Members of our team regularly write articles on a wide range of financial services regulatory issues covering both legal and industry developments for the legal and business press. A selection of our published material can be downloaded from our website at www.blg.co.uk

Consultation papers:

No new developments this week.

Discussion papers:

No new developments this week.

Policy statements:

No new developments this week.

Press releases:

18 February: Glasgow stock broker firm fined £101,500. The FSA has fined Glasgow-based stock broking firm, Direct Sharedeal Limited (DSL) £101,500 after its appointed representative, First Colonial Investments LLP (FCI), used misleading sales pitches which failed to set out the inherent risks of buying penny shares. DSL, a firm specialising in spread betting and share dealing, had contracted FCI to carry out penny share sales on its behalf and as such, was responsible for ensuring that FCI was compliant with the regulator.

However, an FSA investigation found that FCI used potentially misleading sales pitches, had no regard to the suitability of shares, failed to mention the risks associated with their recommendations and made misleading statements about the companies they were advising people to invest in. FCI also placed its customers' money at risk by holding it in a connected, but unregulated, firm. As a result, DSL was fined £101,500 for failing to monitor FCI's customer treatment, along with that of its other former appointed representatives.

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

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2010/031.shtml>

17 February: Semperian Limited Partnership pleads guilty to change in control offence. Semperian PPP Investment Partners Limited Partnership (Semperian) has pleaded guilty to an offence under section 191(3) of the Financial Services and Markets Act 2000 by acquiring an authorised firm before it had received the necessary FSA approval. Semperian notified the

FSA in December 2008 that it proposed to acquire the authorised firm but failed to wait for FSA approval before completing the deal three weeks later.

The Deputy District Judge imposed a penalty of £1,000, taking into account the fact that Semperian had pleaded guilty at the earliest opportunity and that there had been no adverse impact upon consumers.

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2010/030.shtml>

17 February: FSA takes robust action against Wills & Co to stop it putting customers at risk. The FSA has censured Wills & Co, a London-based stockbroking firm, for poor sales practices and not monitoring its advisers properly, despite a fine and a previous requirement to take remedial action. Wills & Co also failed to handle its customer complaints properly. In addition to the censure, the FSA has stopped Wills & Co from giving investment advice and it is required to write to all of its customers to confirm this change. Wills & Co would have been fined £1.5 million had it not been in the process of winding down its business.

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

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2010/029.shtml>

16 February: Three Turkish oil company executives fined £1.16m for market abuse. The FSA has fined Mehmet Sepil, the Chief Executive Officer of Genel Enerji (GE), a Turkish oil exploration company, £967,005 for dealing in the shares of Heritage Oil Plc (Heritage) on the basis of inside information. This is the largest fine by the FSA against an individual for market abuse. GE's Chief Commercial Officer and its Exploration Manager, Murat Ozgul and Levent Akca, were also fined £105,240 and £94,062 respectively for insider dealing based on information obtained through a joint venture between GE and Heritage.

The FSA fines include the disgorgement of profits that Sepil, Ozgul and Akca made of £267,005, £35,240 and £10,062 respectively. The final notices can be found in the relevant section of this update.

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2010/028.shtml>

15 February: FSA chairman says past assumptions about the benefits of unlimited financial services liberalisation and innovation have to be challenged. The FSA Chairman, Lord Adair Turner, has given a speech at the Reserve Bank of India in Mumbai in which he says that policymakers and regulators have to be prepared to challenge recent assumptions about the unlimited expansion and liberalisation of the global financial services sector. Turner highlighted that the Asian crisis of 1997 and the recent financial crisis had made clear that expansion in the scale and sophistication of financial activity is not always beneficial to the global economy.

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

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2010/026.shtml>

15 February: FSA bans London based mortgage broker for incompetence and failing to prevent mortgage fraud. The FSA has banned Walthamstow mortgage broker Kevin Byrne for lacking the integrity and competence to prevent his business, Forest Financial, being targeted by mortgage fraudsters. An FSA investigation revealed that Byrne accepted mortgage referrals from an introducer without undertaking due diligence or any basic checks on client information supplied by the introducer. Byrne was also found to have certified a number of supporting documents despite never having seen the originals. As a result, he submitted seven mortgage applications containing false and misleading information.

The final notices for Byrne and Forest Financial can be found in the relevant section of this update.

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2010/027.shtml>

Speeches:

15 February: After the crises: assessing the costs and benefits of financial liberalisation. The FSA has published a speech by Adair Turner, Chairman at the FSA, given at the Reserve Bank of India in Mumbai. Turner speaks on the origins of the recent financial crisis and how it should be responded to. In particular, he covers the following areas:

- Contrasting economic theories - the neoclassical and the Keynes/Minsky approach;
- The Asian crisis of 1997 and whether short-term capital flows are economically value-added;
- The developed world crisis of 2007 - 2009 and whether financial innovation of the developed world delivered economic value;
- Possible implications for specific policies that may be used in order to create a more stable financial system for the future; and
- Implications for the FSA's overall approach to financial deepening in terms of increased trading activity and innovation, and liberalisation.

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

http://www.fsa.gov.uk/pages/Library/Communication/Speeches/2010/0215_at.shtml

Bulletins and newsletters:

No new developments this week.

Final notices:

17 February: Direct Sharedeal Limited. The FSA has issued a final notice imposing a financial penalty of £101,500 on Direct Sharedeal Limited (DSL). This is due to a number of failings by DSL in its management and monitoring of its appointed representatives which conducted regulated business on its behalf. In respect of one of DSL's appointed representatives, First Colonial Investments LLP (FCI), this led to a significant risk of unsuitable sales of higher risk shares to customers. As principal, it is DSL's duty to take regulatory responsibility for FCI and its other appointed representatives.

DSL's breaches relate to inadequate systems and controls, inadequate protection of clients' assets and FCI's failure to pay due regard to the interests of its customers and treat them fairly. The FSA considers these breaches to be particularly serious as DSL had a number of appointed representatives and therefore needed to ensure it had adequate compliance resources, and as DSL traded in high risk securities.

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

http://www.fsa.gov.uk/pubs/final/direct_sharedeal.pdf

16 February: Mehmet Sepil. The FSA has published the final notice issued to Mehmet Sepil on 12 February imposing a fine of £967,005 on him for insider dealing. Sepil was Chief Executive Officer at Genel Enerji (GE), a Turkish oil exploration company which had entered into a joint venture agreement with Heritage Oil Plc regarding the exploration of the Miran oil field in Kurdistan. During this joint venture, GE received daily detailed reports on drilling tests being carried out at Miran. Sepil discussed the results of these tests with colleagues Levent Akca and Murat Ozgul and, aware of the forthcoming press release, gave his broker urgent instructions that shares in Heritage must be purchase that same day. Consequently, Sepil

bought 325,000 Heritage shares costing £1,299,994. Ozgul and Akca also placed orders with their brokers to buy shares in Heritage.

The day after purchasing the shares, Heritage announced the results of the drilling tests and share prices rose by approximately 25 per cent. Sepil then sold all of his shares in Heritage making a profit of £265,005.

The FSA has fined Sepil £967,005 consisting of the disgorgement of profits and an additional penalty of £700,000. This is the largest fine by the FSA against an individual for market abuse. Had Sepil not agreed to settle early, the FSA would have imposed a fine of £1,000,000.

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

http://www.fsa.gov.uk/pubs/final/mehmet_sepil.pdf

16 February: Murat Ozgul. The FSA has published the final notice issued to Murat Ozgul on 12 February imposing a fine of £105,240 on him for insider dealing. Ozgul was Chief Commercial Officer at Genel Enerji (GE), a Turkish oil exploration company which had entered into a joint venture agreement with Heritage Oil Plc regarding the exploration of the Miran oil field in Kurdistan. Ozgul bought 50,000 Heritage shares costing £197,485. Sepil and Akca also placed orders with their brokers to buy shares in Heritage.

The day after purchasing the shares, Heritage announced the results of the drilling tests and share prices rose by approximately 25 per cent. Ozgul then sold all of his shares in Heritage making a profit of £35,240.

The FSA has fined Ozgul £105,240 consisting of the disgorgement of profits and an additional penalty of £70,000. Had Ozgul not agreed to settle early, the FSA would have imposed a fine of £100,000.

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

http://www.fsa.gov.uk/pubs/final/murat_ozgul.pdf

16 February: Levent Akca. The FSA has published the final notice issued to Levent Akca on 12 February imposing a fine of £94,062 on him for insider dealing. Akca was Exploration Manager at Genel Enerji (GE), a Turkish oil exploration company which had entered into a joint venture agreement with Heritage Oil Plc regarding the exploration of the Miran oil field in Kurdistan. Akca bought 14,591 Heritage shares costing £58,198. Sepil and Ozgul also placed orders with their brokers to buy shares in Heritage.

The day after purchasing the shares, Heritage announced the results of the drilling tests and share prices rose by approximately 25 per cent. Akca then sold all of his shares in Heritage making a profit of £10,062.

The FSA has fined Akca £94,062 consisting of the disgorgement of profits and an additional penalty of £84,000. Had Akca not agreed to settle early, the FSA would have imposed a fine of £120,000.

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

http://www.fsa.gov.uk/pubs/final/levent_akca.pdf

16 February: Wills & Co Stockbrokers Limited. The FSA has issued a public censure in respect of Wills & Co Stockbrokers Limited (Wills & Co) for failings in its sales practices, compliance monitoring and complaints handling. Wills & Co had been fined £49,000 by the FSA on 31 October 2007 on the basis of failings in its sales practices, the information

provided to its customers and its systems and controls. In addition to the fine, the FSA required the firm to sign an undertaking confirming remedial actions had been implemented. The FSA visited Wills & Co in May 2008 to assess whether it had implemented the remedial actions and found similar failings in the firm's sales practices and compliance monitoring to those revealed in 2007.

The public censure states that the FSA investigation revealed a number of failings which the FSA deemed to be particularly serious due to the previous disciplinary action and the risk that customers may have been given unsuitable advice.

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

http://www.fsa.gov.uk/pubs/final/wills_stckb.pdf

16 February: Darren Lansdown. The FSA has issued a statement of misconduct in respect of Darren Lansdown for breaches of the FSA's Statements of Principle for Approved Persons in his role as Sales Director of Wills & Co.

Wills & Co had been fined £49,000 by the FSA on 31 October 2007 on the basis of failings in its sales practices, the information provided to its customers and its systems and controls. In addition to the fine, the FSA required Wills & Co to sign an undertaking confirming remedial actions had been implemented, of which Lansdown was one of the signatories.

The FSA visited Wills & Co in May 2008 to assess whether it had implemented the remedial actions and found similar failings in the firm's sales practices and compliance monitoring to those revealed in 2007. The FSA found that Lansdown had failed to exercise due skill, care and diligence in managing the business for which he was responsible as Sales Director, and failed to take reasonable steps to ensure that the business complied with the relevant requirements and standards of the regulatory system.

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

http://www.fsa.gov.uk/pubs/final/d_lansdown.pdf

16 February: Katharine Prichard. The FSA has issued a statement of misconduct in respect of Katharine Prichard for breaches of the FSA's Statements of Principle for Approved Persons in her role as Group Compliance Director of Wills & Co.

In addition to the fine imposed on the firm, the FSA required Wills & Co to sign an undertaking confirming remedial actions had been implemented. The undertaking stated that the remedial work had been undertaken to Prichard's satisfaction as Group Compliance Director.

The FSA visited Wills & Co in May 2008 to assess whether it had implemented the remedial actions and found similar failings in the firm's sales practices and compliance monitoring to those revealed in 2007. The FSA found that Prichard had failed to exercise due skill, care and diligence in managing the business for which she was responsible as Compliance Director, and failed to take reasonable steps to ensure that the business complied with the relevant requirements and standards of the regulatory system.

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

http://www.fsa.gov.uk/pubs/final/k_prichard.pdf

15 February: Forest Financial Services Limited. The FSA has published the final notice issued to Forest Financial Services Limited on 10 February cancelling its Part IV permission. The FSA took this decision as it has withdrawn the approval of one of Forest Financial's two directors, Kevin Byrne, for not being a fit and proper person to perform regulated activities. By

virtue of this, the FSA has decided that Forest Financial does not have adequate human resources and had failed to ensure its affairs were being conducted soundly and prudently.

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

http://www.fsa.gov.uk/pubs/final/forest_financial.pdf

15 February: Kevin Byrne. The FSA has published the final notice issued to Kevin Byrne, director of Forest Financial Services Limited, withdrawing his approval and prohibiting him from performing any controlled function.

The FSA found that Byrne had:

- accepted mortgage referrals from an introducer without undertaking adequate due diligence, resulting in Forest Financial submitting seven fraudulent mortgage applications to lenders;
- submitted mortgage applications to lenders on behalf of customers which contained obvious irregularities, in circumstances where there were reasonable grounds to suspect that the applications were based on false and misleading information;
- certified customers' supporting identification documents as true copies of the originals without seeing the originals, resulting in false passports and bank statements being used to support mortgage applications; and
- given false and misleading information to the FSA.

The FSA concluded that Byrne had acted recklessly, lacked integrity, and is not sufficiently competent and capable to perform controlled functions at an authorised firm.

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

http://www.fsa.gov.uk/pubs/final/kevin_byrne.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:

16 February: Update on Lifemark. Lifemark S.A. issued a series of bonds which were used to underpin a number of retail investment products provided and administered by the UK company, Keydata Investment Services Limited, to UK consumers. Keydata was placed into administration by the FSA on 8 June 2009 due to substantial tax liabilities arising from irregularities with its products.

On 18 November 2009, the Luxembourg financial services regulator, the Commission de Surveillance du Secteur Financier (CSSF) applied to the Luxembourg court for Eric Collard of

KPMG Advisory s.a.r.l to be appointed as provisional administrator of Lifemark. The FSA has published an update stating that on 11 February 2010 the CSSF applied to extend the appointment of Collard as provisional administrator. He will remain in place for the next six months and shall control and monitor the activities of Lifemark to objectively look after the interests of the company, its creditors and investors.

<http://www.fsa.gov.uk/pages/Library/Communication/Statements/2010/lifemark.shtml>

15 February: Solvency II - IMAP update. The FSA has published the second in a series of updates to help firms prepare for Solvency II (2009/138/EC) and the internal model approval process (IMAP). Under Solvency II, firms may elect to use an approved internal model to calculate their solvency capital requirement.

The update includes:

- Information on the qualifying criteria which the FSA will use to assess whether firms can start the pre-application process of applying to use an internal model;
- Early conclusions on the progress of pilot exercises testing the FSA's planned approach to pre-application;
- Details of the progress of the FSA's thematic review on risk management and use test, data management and model validation, all of which are significant to the use of internal models under Solvency II; and
- A list of the Solvency II advice given to the European Commission by the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS).

http://www.fsa.gov.uk/pubs/international/imap_update.pdf

UKLA publications:

No new developments this week.

Financial Services and Markets Tribunal (FSMT):

16 February: David John Marriott. The FSMT has published its decision in the case of *David John Marriott and FSA*. Marriott was a Controller and Chief Executive of two insurance intermediary firms that both went into administration in February 2006. He referred to the FSMT a Decision Notice issued by the FSA containing a prohibition order preventing him from performing any function in relation to regulated activities.

The FSMT considered that the FSA was justified in concluding that Marriott was dishonest and lacked integrity. As a result, it considers that a total prohibition order is appropriate and has upheld the FSA's decision.

http://www.tribunals.gov.uk/finance/Documents/decisions/FinancialServicesMarketsTribunal/008_DavidMarriottOliver.pdf

Financial Ombudsman Service (FOS):

17 February: Ombudsman News – Issue 83. The FOS has published the latest issue of Ombudsman News, featuring:

- Complaints involving consumers who are in financial difficulties;
- Insurance complaints concerning domestic plumbing and heating emergencies;
- Paul Kendall, Head of Customer-Contact Division, on handling up to a million calls a year to the ombudsman's consumer helpline; and
- Interim Chief Ombudsman, David Thomas' view on dealing with an increased numbers of complaints.



<http://www.financial-ombudsman.org.uk/publications/ombudsman-news/83/83.pdf>

London Stock Exchange (LSE):

18 February: LSE Group completes turquoise transaction to create new pan-European venture. The LSE Group has completed its acquisition of Turquoise Trading Limited (Turquoise) for the purpose of creating a new pan-European trading venture through a merger of the businesses of Turquoise and Baikal Global Limited (Baikal). The new venture, which will continue to trade under the Turquoise name, aims to drive European trading volume growth and promote venue choice. It will benefit from synergies with LSEG infrastructure and the planned migration to MillenniumIT trading technology. David Lester has been appointed CEO of Turquoise in addition to his role as Director of Information Services for the LSE Group.

<http://www.londonstockexchange.com/about-the-exchange/media-relations/press-releases/2010/lsegcompletesturquoisetransaction.htm>

Barlow Lyde & Gilbert LLP is a leading international law firm. Together with its affiliated undertakings, it has over 300 lawyers in London, Hong Kong, Manchester, Oxford, Sao Paulo, Shanghai and Singapore. The multidisciplinary Financial Services Regulatory Team advises on FSA enforcement and other contentious regulatory matters (both in the UK and internationally) and also provides general compliance and risk management advice. We advise across all sectors including banks, hedge funds, stockbrokers, asset managers, insurance and re-insurance companies, brokers and underwriters and other corporates. We believe that a team dedicated to both 'prevention' and 'cure' enhances our ability to satisfy clients' demands for advice on regulatory disputes and investigations and to assist clients with compliance as a preventative measure.

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