

At the FSA last week: -

Partial prohibition underlines responsibilities of individuals for firms' financial crime systems and controls

The FSA has (on 20 March) banned **Martin Lafrance** from performing any significant influence function. It had previously set out its intention to do so in a Decision Notice dated 4 October 2011. Mr Lafrance had initially referred the matter to the Upper Tribunal, but has now withdrawn his reference.

The FSA has found that Mr Lafrance, who was formerly a director of **General Finance Centre Limited ("GFC")**, did not fulfil the competence and capability requirements of its Fit and Proper Test for Approved Persons ("**FIT**"). Specifically, it found that he failed to establish and maintain adequate systems and controls to prevent financial crime, to adequately supervise or monitor staff or to adequately understand his responsibilities in relation to regulated mortgage business as an approved person. There was no finding by the FSA that Mr Lafrance was involved in the instances of financial crime leading to the action being taken.

The FSA is seeking to take similar action against another of GFC's former directors, **Michael Thommes**, who has referred the matter to the Upper Tribunal. The Tribunal's judgments in that, and a number of other cases (including some involving individuals formerly employed by much larger institutions) are awaited.

In the meantime, the action against Mr Lafrance adds to a growing body of decided cases where individuals occupying controlled functions have been held liable for systems and controls failures by their firms. The action now concluded against him is a reminder that the FSA will not limit enforcement action against individuals to cases where deliberate breaches have occurred.

<http://www.fsa.gov.uk/static/pubs/final/martin-lafrance.pdf>

http://www.fsa.gov.uk/static/pubs/decisions/michael_thommes.pdf

FSA secures £32 million judgment against land banks

The FSA has (on 21 March) released details of orders obtained in the High Court, using its powers of restitution under Part XXV of the Financial Services and Markets Act 2000, against individuals and companies engaged in unauthorised "land banking" activities.

Orders were made (on 2 March) that **Countrywide Land Holdings ("Countrywide")**, **Plateau Development & Land Limited ("Plateau")**, **James Maynard** and **Wasim Minhas** pay a total of over £32 million back to investors.

The FSA has stated that, although efforts are ongoing to trace assets belonging to those against whom the orders have been made, it is unlikely that more than a small proportion of the sums ordered to be paid will be recovered.

<http://www.fsa.gov.uk/library/communication/pr/2012/030.shtml>

FSA sets out regulatory priorities and arrangements for transition to twin peaks in its final

Key issues

- Partial prohibition underlines responsibilities of individuals for firms' financial crime systems and controls
- FSA secures £32 million judgment against land banks
- FSA sets out regulatory priorities and arrangements for transition to twin peaks in its final business plan
- Rockingham Independent Limited to enter liquidation
- FSA publishes finalised guidance on structured products
- FSA publishes policy statement on RDR adviser charging and Solvency II disclosures
- ESMA reports on the supervision of credit rating agencies

business plan

The FSA has (on 22 March) published its final business plan before the transfer of its responsibilities to the Financial Conduct Authority ("FCA") and Prudential Regulation Authority ("PRA") in early 2013.

The business plan reiterates the FSA's priorities across its prudential and conduct supervision and enforcement remits, with particular emphasis laid on consumer protection and maintaining market confidence.

In addition, it sets out how dual-regulated firms will be supervised by the Conduct Business Unit and Prudential Business Unit, the forerunner bodies of the FCA and PRA respectively, after 2 April, when the conduct and prudential supervision functions of the FSA will operate separately in readiness for twin peaks regulation.

<http://www.fsa.gov.uk/library/communication/pr/2012/031.shtml>

Rockingham Independent Limited to enter liquidation

The FSA has (on 19 March) confirmed that Rockingham Independent Limited ("**Rockingham**") has taken steps to appoint liquidators (who are due to be formally appointed on 30 March). This follows action taken by the FSA in September 2011, when it fined Rockingham £35,000 in respect of unsuitable recommendations of unregulated collective investment schemes ("**UCIS**") to consumers approaching retirement age. A consumer redress

exercise followed that enforcement action by the FSA, and has not yet been completed. Consumers may now be entitled to redress under the Financial Services Compensation Scheme ("**FSCS**").

<http://www.fsa.gov.uk/consumerinformation/firmnews/2012/rockinghams.shtml>

FSA publishes finalised guidance on structured products

The FSA has (on 23 March) issued finalised guidance (FG 12/09) in relation to structured products. This follows the guidance consultation issued in November 2011 (GC 11/27) and the previous thematic review involving assessment of seven major providers of structured products between May and November 2011 (which also led to several instances of significant enforcement action in respect of the sales of those products).

The finalised guidance sets out the FSA's expectations in areas including:-

- product design and development (including stress testing and modelling and identification of target markets);
- product approval procedures, marketing and communications (including the selection of and information to be provided to distributors and information to be provided to consumers); and
- providers' post sales responsibilities (including obtaining and analysing appropriate management

information to ensure that products continue to meet the needs of target audiences).

The guidance does not make any new, or amend any existing, rules, but does clarify the application of Principles 2 (due skill, care and diligence), 3 (management and control), 6 (treating customers fairly) and 7 (communications with clients) of the FSA's Principles for Business and various other rules under the Senior Management Arrangements, Systems and Controls ("**SYSC**") section of the FSA's Handbook and the Prospectus Rules.

http://www.fsa.gov.uk/library/policy/final_guides/2012/fg1209

http://www.fsa.gov.uk/library/policy/guidance_consultations/2011/11_27.shtml

FSA publishes policy statement on RDR adviser charging and Solvency II disclosures

The FSA has (on 22 March) issued a policy statement (PS12/5) (further to consultation in November 2011 (CP 11/25) setting out guidance in relation to specific issues including the facilitation of payment of adviser and consultancy charges under the Retail Distribution Review ("**RDR**") and the basis of reporting of amounts of charges.

<http://www.fsa.gov.uk/library/policy/policy/2012/12-05.shtml>

http://www.fsa.gov.uk/library/policy/cp/2011/11_25

Further afield:-

ESMA reports on the supervision of credit rating agencies

The European Securities and Markets Authority ("**ESMA**") has (on 22 March) issued its inaugural report on its findings during its first year of supervision of credit rating agencies ("**CRAs**"). ESMA assumed responsibility for supervising credit rating agencies on 1 July 2011. In its report, it sets out a number of general recommendations in relation to CRAs' internal processes, levels of analytical resources, governance and control functions, disclosure and presentation processes and IT systems.

The report comes in the same week as the agreement of a memorandum of understanding between ESMA and the US Securities and Exchange Commission ("**SEC**") on supervisory co-operation arrangements, which will enable the sharing of information between the authorities and may allow on-site examinations by SEC officials of US registered entities located in Europe.

<http://www.esma.europa.eu/news/ESMA-issues-report-its-first-examinations-credit-rating-agencies?t=326&o=home>

<http://www.sec.gov/news/press/2012/2012-49.htm>

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