

At the FSA last week: - FSA publicly censures Cattles plc and Welcome Financial Services Limited and fines and bans former directors for publishing misleading information

The FSA has publicly censured Cattles plc ("**Cattles**") and Welcome Financial Services Limited ("**Welcome**"), and has banned and imposed fines totalling £600,000 on three former directors for publishing misleading information to investors in relation to the credit quality of Welcome's loan book.

James Corr, former finance director of Cattles and **Peter Miller**, former finance director of Welcome have been fined £400,000 and £200,000 respectively, and have both been banned from carrying out any regulated activities. The financial penalties imposed were reduced from £750,000 and £400,000 respectively as it was found that penalties at those levels would cause serious financial hardship. Both individuals were found to have engaged in market abuse as defined by section 118(7) of the

Financial Services and Markets Act 2000. Mr Corr was found to have breached Listing Rule 13.3R (misleading, false or deceptive information) and Listing Principles 3 (integrity) and 4 (creation of a false market). Mr Miller was found to have been knowingly concerned in a breach by Welcome of Principle 3 (management and control) of the FSA's Principles for Businesses ("**the Principles**").

The FSA has taken action to seek to ban and impose a financial penalty of £100,000 (reduced from £400,000 due to serious financial hardship) on **John Blake**, former managing director of Welcome, for similarly engaging in market abuse and being knowingly concerned in a breach of Principle 3 of the Principles. Mr Blake has referred the proposed action to the Upper Tribunal.

Cattles was found to have engaged in market abuse and breached Listing Rule 1.3.3R (misleading information) and Listing Principles 3 and 4. Welcome was found to have engaged in market abuse and breached Principle 3 of the Principles. The FSA publicly censured both firms rather than imposing substantial financial penalties due to their financial circumstances.

<http://www.fsa.gov.uk/static/pubs/final/cattles-ltd.pdf>

<http://www.fsa.gov.uk/static/pubs/final/welcome-financial-service.pdf>

<http://www.fsa.gov.uk/static/pubs/final/peter-douglas-miller.pdf>

<http://www.fsa.gov.uk/static/pubs/final/james-joseph-corr.pdf>

<http://www.fsa.gov.uk/static/pubs/decisions/john-blake.pdf>

Key issues

- FSA publicly censures Cattles plc and Welcome Financial Services Limited and fines and bans former directors for publishing misleading information
- FSA imposes fine of £8.75 million for anti-money laundering systems and controls issues
- FSA takes action to suspend permission and freeze assets of HD Administrators
- FSA fines and bans mortgage adviser for integrity and oversight failings
- FSA publicly censures two credit unions
- New proposed FSA guidance on anti-bribery and corruption systems and controls
- FSA publishes CASS Resolution Pack
- FSA issues guidance on financial promotions and advertising
- FSA issues guidance on simplified advice
- FSA consults on changes to Financial Services Compensation Scheme

FSA imposes fine of £8.75 million for anti-money laundering systems and controls issues

The FSA has imposed a financial penalty of £8.75 million on **Coutts & Company** ("Coutts") in respect of historic issues identified in relation to anti-money laundering ("AML") systems and controls. The FSA took the action in respect of breaches of Principle 3 (management and control) of the Principles between December 2007 and November 2010. The penalty was reduced by 30 per cent as Coutts agreed to settle at stage one of the FSA's executive settlement procedures.

Specifically, the FSA took the action in respect of the systems and controls in place to assess the level of risk posed by prospective and existing high risk customers (including politically exposed persons ("PEPs")), to conduct due diligence in advance of and at the commencement of customer relationships, and to apply ongoing monitoring during those customer relationships.

The FSA did not find that Coutts had been used for the purposes of money laundering in any of the cases it examined. The FSA has also acknowledged that, in response to its concerns, Coutts engaged a third party consultant to review and change its AML processes and training arrangements, and that a number of improvements have been made or are in the course of being made.

<http://www.fsa.gov.uk/static/pubs/final/coutts-mar12.pdf>

FSA takes action to suspend permission and freeze assets of HD Administrators

The FSA has, through a first supervisory notice dated 22 March (published on 26 March), imposed a requirement that **HD Administrators LLP** ("HDA"), a SIPP administration company based in Nottingham, may not carry out any regulated activities, and freezing its assets.

The action is based upon the FSA's concerns that HDA may not be meeting Threshold Conditions 4 (adequate resources) and 5 (suitability), and specifically that individuals involved in its management may not satisfy fitness and requirements.

The action follows the arrest of approved persons linked with HDA by Nottinghamshire Police in the course of an investigation into allegations of fraud in connection with historic sales of investments by Arck LLP.

<http://www.fsa.gov.uk/static/pubs/final/hd-administrators-llp.pdf>

FSA fines and bans mortgage adviser for integrity and oversight failings

The FSA has (on 27 March) banned and imposed a financial penalty of £95,200 on **Gareth Flanagan** in respect of breaches of Principles 1 (integrity) and 7 (due skill, care and diligence in performance of controlled function) of its Statements of Principle for Approved Persons ("**APER**"), whilst he was the sole owner and director of GMF Marketing Services Limited ("**GMF**").

Mr Flanagan was found to have breached Principle 1 APER by submitting mortgage applications in his own name which contained false information. He was found to have breached Principle 7 APER by failing to take reasonable steps to ensure that GMF did not submit false and misleading information to mortgage lenders about customers' incomes, failing to establish and maintain adequate systems and controls to ensure that GMF made suitable personal recommendations to customers and failing to ensure that the competence and performance of GMF's advisers were adequately monitored.

<http://www.fsa.gov.uk/static/pubs/final/gareth-flanagan.pdf>

FSA publicly censures two credit unions

In separate Final Notices, the FSA has publicly censured **Pollok Credit Union** ("Pollok") and **Shettleston and Tollcross Credit Union** ("STCU"), both of which are based in Glasgow.

Action was taken against Pollok (in a Final Notice dated 22 March, published on 26 March) for breaching its own procedures, Principle 2 (care, skill and diligence) of the Principles, and rule 10.4.2R of the Credit Union sourcebook ("**CRED**") by making a series of loans to a trust which was not a member of the credit union. The FSA found that these loans potentially jeopardised Pollok's solvency.

Action was taken against STCU (in a Final Notice dated 5 January, published on 26 March) as it was found to have breached Principle 6 (treating customers fairly) and CRED10.2.6A(1)(a) in respect of loans offered to seven directors on better terms than were generally available to other members.

<http://www.fsa.gov.uk/static/pubs/final/pollok-cu.pdf>

<http://www.fsa.gov.uk/static/pubs/final/stcu.pdf>

New proposed FSA guidance on anti-bribery and corruption systems and controls

The FSA has (on 29 March) published the results of its thematic review into anti-bribery and corruption systems and controls in investment banks. The review found that the majority of firms did not have in place systems and controls which were, in the FSA's view, sufficiently robust.

It identified limited understanding of applicable legal and regulatory regimes, incomplete or inadequate risk assessments, lack of senior management oversight and failure to monitor implementation of and compliance with anti-bribery and corruption policies and procedures as particular areas of weakness.

As the result of these findings, the FSA proposes to make changes to its regulatory guide, *Financial crime: a guide for firms*, which it published in June 2011, by including examples of good and poor practice. It has set out the proposed amendments and additions in guidance consultation paper GC12/05, and has invited firms to comment on them by 29 April.

<http://www.fsa.gov.uk/static/pubs/other/anti-bribery-investment-banks.pdf>

http://www.fsa.gov.uk/library/policy/guidance_consultations/2012/gc1205

FSA publishes CASS Resolution Pack

The FSA has (on 26 March), in Policy Statement 12/6, set out final rules requiring firms to which Chapters 6 and 7 of its Client Asset Sourcebook ("**CASS**") apply to maintain and be able to retrieve a CASS Resolution Pack consisting of documents and records which would help an insolvency practitioner return client assets more quickly following the failure of an investment firm.

For full details, please see the Clifford Chance briefing note at http://www.cliffordchance.com/publicationviews/publications/2012/03/client_assets_thefacassresolutionpack.html <http://www.fsa.gov.uk/static/pubs/policy/ps12-06.pdf>

FSA issues guidance on financial promotions and advertising

The FSA has, in two separate finalised guidance papers (both published as FG 12/11), set out its expectations of firms in relation to financial promotions, fund performance and image advertising and in relation to advertising ISAs and advertisements targeted at investment professionals.

Reminding firms of their obligations under Principle 7 of the Principles and chapter 4 of the Conduct of Business Sourcebook ("**COBS**") in particular,

the FSA seeks to apply regulatory requirements to commercial situations in particular areas. Generic guidance is given in relation to how firms may present fund performance, the boundaries of "image advertising" and how risks should be presented. More detailed guidance is provided in relation to the presentation of past performance.

The separate paper in relation to advertisements for ISAs and advertisements targeted at investment professionals sets out a list of key questions aimed at assisting firms to ensure that advertisements are clear, fair and not misleading and sufficiently clearly addressed to their intended audience.

<http://www.fsa.gov.uk/static/pubs/guidance/fg12-11-fpia.pdf>

<http://www.fsa.gov.uk/static/pubs/guidance/fg12-11-isa.pdf>

FSA issues guidance on simplified advice

The FSA has (on 29 March) issued finalised guidance (FG 12/10) in setting out what constitutes "simplified advice" and what its expectations are of firms which provide it. This guidance follows consultation in September 2011 (GC11/22).

The guidance makes clear that the FSA's position, having engaged with the industry, remains that simplified advice must comply with the same regulatory requirements as full advice. The guidance also sets out in detail some relevant sections of the regulatory regime contained within the Conduct of Business Sourcebook ("COBS"), specifically in relation to suitability, adviser charging,

disclosure requirements and complaints and redress.

<http://www.fsa.gov.uk/static/pubs/guidance/fg12-10.pdf>

http://www.fsa.gov.uk/library/policy/guidance_consultations/2011/11_22.shtml

FSA consults on changes to Financial Services Compensation Scheme

The FSA has (on 27 March) issued a consultation paper (CP 12/7) in relation to proposed changes to its Compensation Sourcebook ("COMP"), which governs the operation of the Financial Services Compensation Scheme ("FSCS"). It is looking to extend many of the protections which already apply to consumer deposits to other sectors covered by the FSCS.

Specifically, the FSA propose changes to COMP in relation to: -

- quantification of compensation – under the proposed changes to COMP, the FSCS would be able to pay full compensation to consumers in situations where they would otherwise have to wait an excessively long time to receive it. The proposed rule changes would allow the FSCS to take an assignment of investors' rights and to then seek to recover the amount which it has paid to the claimant. COMP as amended would also allow the FSCS to pay full compensation without an investigation if the costs of an investigation are disproportionate

to the benefits. It is proposed that this change would have retrospective effect – i.e. would apply equally to defaults before the rule change comes into effect;

- eligibility criteria and claims handling processes – the FSA proposes a number of amendments aimed at speeding up the process of payment of compensation to consumers. These include the widening of eligibility criteria, the removal of the requirement for application forms to be submitted, the introduction of an automatic assignment of rights to the FSCS and the removal of the current requirement that both the FSA and the FSCS must declare a firm to be in default before compensation can be paid in certain claims.
- disclosure requirements for deposit takers – changes are proposed to the wording of disclosures which firms are required to make, and the frequency at which they are required to make them.

Firms are invited to respond to the FSA by 26 April in relation to the proposed changes to disclosure requirements for deposit takers, and by 26 June in relation to other proposed changes set out in the consultation paper.

In addition to proposing changes to rules, the paper also discusses some issues in relation to insurance, and invites firms' comments in particular in relation to how best to secure continuity of insurance cover in the event of the insolvency of insurers. No new rules are proposed in this area at this stage.

<http://www.fsa.gov.uk/static/pubs/cp/cp12-07.pdf>

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