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Briefing note 16 April 2012

FSA Update 16 April 2012

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Trial of former i–Soft directors commences

The trial of four former directors of iSOFT Group plc alleged to have conspired to mislead the market has commenced (on 11 April) at Southwark Crown Court. The FSA charged Patrick Cryne, Stephen Graham, Timothy Whiston and John Whelan in January 2010 with offences under section 397 of the Financial Services and Markets Act 2000 ("**FSMA**") (misleading the market).

Messrs Graham, Whiston and Whelan have pleaded not guilty to all charges against them. The jury has been told that it need not reach a verdict in respect of Mr Cryne, who is unwell.

The proceedings, which are expected to continue until August, are the first brought by the FSA under section 397 of FSMA since those pursued against Carl Rigby and Gareth Bailey in August 2005, which led to the first convictions secured by the FSA for criminal market manipulation (although the Serious Fraud Office has successfully prosecuted the offence during the intervening time, securing a conviction against Stuart Pearson in June 2011).

http://www.fsa.gov.uk/library/communication/pr/2010/002.shtml

http://www.fsa.gov.uk/library/communication/pr/2005/091.shtml

http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2011/langbar-chief-executive-jailed-for-misleading-the-market.aspx

FSA publishes rates of return for prescribed projections

The FSA has (on 10 April) published a report commissioned by it reviewing the prescribed rates of return which firms must use to calculate the projections of future benefits of products provided to retail customers. Firms are obliged, under section 13 of the FSA's Conduct of Business Sourcebook ("**COBS**"), to use rates prescribed by the FSA when providing projections of future benefits for retail customers. The report is based on a review of academic research, updated market information and broader economic developments and recommends the downward revision of projection rates for retail investment products in order to offer a more realistic picture to investors.

http://www.fsa.gov.uk/static/pubs/other/projection-rates12.pdf

Further afield:

European Commission and European Supervisory Authorities publish reviews of Third Money Laundering Directive

The European Commission has (on 11 April) published a review of the Third Money Laundering Directive ("**3MLD**"), the legislation upon which member states' domestic anti-money laundering ("**AML**") and counter-terrorism financing ("**CTF**") legislation is based. The review proposes some changes, largely to reflect the amendment in February by the Financial Action Task Force ("**FATF**") of its recommendations – see Clifford Chance briefing at http://www.cliffordchance.com/publicationviews/publications/2012/02/the_new_fatf_40_recommendationsaframeworkfo.html). The Commission has invited comments on the proposed changes by 13 June. Subject to comments received, the changes are expected to inform a legislative proposal scheduled to be adopted by the Commission in autumn 2012, which will eventually lead to the passage of the Fourth Money Laundering Directive and to changes to member states' domestic legislation where necessary.

Also on 11 April, the three European Supervisory Authorities (the European Securities and Markets Authority ("**ESMA**"), the European Banking Authority ("**EBA**") and European Insurance and Occupational Pension Authority ("**EIOPA**")) published two

Key issues

- Trial of former i-Soft directors commences
- FSA publishes rates of return for prescribed projections
- European Commission and European Supervisory Authorities publish reviews of Third Money Laundering Directive
- Central Bank of Ireland imposes €3.2 million fine

joint reports into the implementation of certain aspects of 3MLD across Europe. Their reports into the application of (1) customer due diligence in respect of beneficial ownership and (2) simplified due diligence requirements contain findings of inconsistencies in levels and methods of implementation across Europe , and suggestions as to how 3MLD and successor legislation may be clarified and improved.

http://ec.europa.eu/internal_market/company/docs/financial-crime/20120411_report_en.pdf

http://www.esma.europa.eu/news/EBA-ESMA-and-EIOPA-publish-two-reports-Money-Laundering?t=326&o=home

Central Bank of Ireland imposes €3.2 million fine

The Central Bank of Ireland has (on 2 April) issued a reprimand to and imposed a financial penalty of €3.2 million on Alico Life International Limited ("**Alico**"). The action related to failures to enter life assurance receipts into the correct account, to deposit annual returns within the relevant time limits, or to correctly record assets and liabilities relating to its life assurance business, and weaknesses in the firm's administrative and internal control processes.

The action in this instance has been taken in respect of breaches of specific provisions of Irish and European legislation. The action does, however, by analogy, provide an illustration of some remaining questions in relation to supervision and enforcement arrangements for dual-regulated firms under the twin peaks system of regulation, which are likely to continue to arise as we progress towards proposed cutover in early 2013.

Guidance as to the respective responsibilities and intended approaches of the Prudential Regulation Authority ("**PRA**") and Financial Conduct Authority ("**FCA**") has been issued in documents such as the joint Bank of England and FSA Approach Document setting out the PRA's approach to insurance supervision (June 2011) and the Draft Memorandum of Understanding between the FCA and PRA (January 2012).

However, it is not currently clear as to how, for example, the PRA's "judgement based" supervision approach would interact with its or the FCA's responsibility to take enforcement action would operate in practice to prevent and/or deal with actual or potential breaches such as those in this case.

http://www.centralbank.ie/press-area/press-releases/pages/settlementagreementbetweenthecentralbankofirelandandalicolifeinternationallimited.aspx

http://www.bankofengland.co.uk/publications/other/financialstability/uk_reg_framework/pra_approach2.pdf

http://www.bankofengland.co.uk/financialstability/Pages/overseeing_fs/mou.aspx

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