FSA Update

At the FSA last week: -

FSA secures its highest ever sentence for insider dealing

James Sanders, a director of the specialist contract for difference broker Blue Index, has (on 20 June) been sentenced to four years' imprisonment for insider dealing offences under the Criminal Justice Act 1993. His wife **Miranda Sanders** and his co-director **James Swallow** have each been sentenced to ten months' imprisonment for similar offences.

Mr Sanders has also been banned from acting as a director for five years. It is expected that substantial confiscation orders will follow for all three individuals. All three individuals pleaded guilty last month. Two other former employees of Blue Index were acquitted (see FSA Update – 1 June 2012).

The action by the FSA against Mr and Mrs Sanders and Mr Swallow follows corresponding action by US authorities against Annabel McClellan (sister of Mrs Sanders), who passed information about deals on which her husband, a US accountant, was working. In October 2011, the US Securities and Exchange Commission ("**SEC**") reached a US$1 million civil settlement with Mrs McClellan and discontinued the action which it had been pursuing against her husband. In associated action taken by the US Department of Justice and Federal Bureau of Investigation, she was, in November 2011, sentenced to eleven months' imprisonment for obstructing the SEC's investigation.

Comment

The case is the latest milestone for the FSA in its prosecution of insider dealing offences. Since first using its powers to prosecute insider dealing in 2008, the FSA has secured steadily longer sentences in increasingly complex cases.

The sentence handed down to Mr Sanders is the longest yet imposed on an individual in any of the FSA's fourteen successful insider dealing prosecutions to date. The average length of sentence imposed on those convicted in this case is, at 22 months, also the highest yet secured by the FSA in an insider dealing case.

It is also the first example of transatlantic co-operation leading to successful prosecutions of individuals for insider dealing offences. It builds upon previous firsts for the FSA in insider dealing cases, which have included the use of powers to enter into plea agreements with co-operating defendants, the prosecution of individuals for laundering the proceeds of insider dealing and the flexible use of criminal powers in conjunction with regulatory action.

In its Business Plan for 2012/13, it has re-stated the importance of tackling insider dealing to the achievement of its and, after the transition to "twin peaks" regulation, the Financial Conduct Authority's, market integrity and financial crime objectives. Neither the scale nor the complexity of FSA insider dealing prosecutions show any sign of reducing. It is currently prosecuting eleven further individuals in two sets of ongoing proceedings, one of which involves seven former employees of several major institutions.

To date, the FSA's heavily publicised commitment to achieving credible deterrence through the use of its criminal powers has largely translated into successful prosecutions, with a conviction rate of 74 per cent for insider dealing. This case, in addition to continuing the upward trend of lengths of sentences imposed, is also the latest illustration of the FSA's aggressive yet pragmatic and collaborative approach in this area.

http://www.fsa.gov.uk/library/communication/pr/2012/067.shtml

https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWIbFgNhLNomwBl%2B33QzdFhRQAhp8D%2BxrIGReI2crGqLnALtlyZe96MnFmmEUfLDb24p%2Bkv1xrp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=195288

http://www.sec.gov/litigation/litreleases/2011/lr22139.htm

Key issues

- FSA secures its highest ever sentence for insider dealing
- Final notices
- FSA issues final Annual Report

Final Notices

- On 18 June, the FSA withdrew the approval to perform controlled functions held by **Terence Harrop** and prohibited him from performing any function in relation to any regulated activity. The FSA found that he did not have the requisite levels of competence and capability to fulfil its Fit and Proper Test for Approved Persons ("**FIT**"). Specifically, it found that, between 2004 and 2010, whilst chief executive and majority shareholder **of Principal Mortgage Services Limited** ("**PMSL**"), during which time he held controlled functions CF3 (Chief Executive) and CF28 (Systems and controls), he failed to ensure that interest only mortgages recommended to customers were appropriate or that presentations and illustrations were clear, fair and not misleading. The FSA also found that he failed to comply with his regulatory responsibilities by failing to repay a director's loan and failed to ensure that customers' monies held by an associated company, of which he was also a director, and which provided an unregulated mortgage accelerator scheme, were adequately identified and protected.

  http://www.fsa.gov.uk/static/pubs/final/terence-harrop.pdf
- On 18 June, the FSA cancelled the Part IV permission **of David Crew trading as David Crew Associates** for non payment of fees and levies.

  http://www.fsa.gov.uk/static/pubs/final/david-crew.pdf
- On 18 June, the FSA cancelled the registrations of **Easypayment Limited** and **Eagle Exchange Limited** as small payment institutions under the Payment Services Regulations 2009 for non-payment of fees and levies.

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

  http://www.fsa.gov.uk/static/pubs/final/eagle-exchange.pdf

FSA issues final Annual Report

The FSA has (on 19 June) issued its Annual Report, Business Plan and Enforcement Annual Performance Account.

In what is expected to be its last report before the transfer of responsibilities to the Prudential Regulation Authority ("**PRA**") and FCA in 2013, it reviews its performance against its five key objectives of: -

- executing the government's regulatory reform programme;
- continuing to execute the "credible deterrence" approach to enforcement;
- delivering financial stability;
- ensuring that markets are clean, orderly and fair; and
- continuing to develop a new consumer protection strategy.

Its Business Plan for 2012/13, which broadly reflects these key objectives, recognises the continuing turbulence in the macro-economic landscape, and places particular emphasis on delivering financial stability by maintaining ongoing supervision and overseeing the introduction of key consumer protection initiatives.

The statistics included in the Annual Report and in the separate Enforcement Annual Performance Account show a fall in the total level of financial penalties imposed (largely attributable to the record fine of £33.32 million imposed in 2010) both in the number of enforcement cases opened and in the number concluded during the year. The breakdown of enforcement cases by type, between those concerned with systems and controls issues, treating customers fairly, unauthorised activities, misconduct by significant influence function holders and money laundering/fraud controls remained broadly similar compared to 2010/11. However, the trend observed over recent years of increasingly frequent use of the power to appoint skilled persons to conduct a review of firms and individuals continued, with a rise of 17 per cent compared to 2010/11.

http://www.fsa.gov.uk/pubs/annual/ar11-12/ar11-12.pdf

http://www.fsa.gov.uk/pages/Library/Corporate/Plan/bp2011.shtml

http://www.fsa.gov.uk/static/pubs/annual/ar11-12/enforcement-report.pdf

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