

FSA Update

Last week at the FSA:-

FSA imposes first fine and ban for failings connected with the financial crisis

The FSA has (on 12 September) imposed a financial penalty of £500,000 on **Peter Cummings** and has banned him from performing any significant influence function in any bank, building society, investment firm or insurer.

Mr Cummings was Chief Executive of the Corporate Division of Bank of Scotland plc between January 2006 and January 2009. The FSA took action against him for breaches of Principle 6 of APER (due skill, care and diligence in managing the business of the firm for which he was responsible in his controlled function) and for being knowingly concerned in a breach by the firm of Principle 3 (management and control) of the Principles for Businesses ("the Principles") during that time between January 2006 and December 2008.

The FSA based its action on the aggressive growth strategy pursued by the firm under Mr Cummings' direction. Although acknowledging that he did not act deliberately or recklessly, it found that he was or should have been aware of serious deficiencies in systems and controls used to assess, manage and mitigate credit risk, and that the economic cycle was reaching a peak, and should have acted to remediate those deficiencies and pursue a less aggressive strategy.

Further to the conclusion of action against Mr Cummings, the FSA has confirmed that it will start work on a report on the causes of the failure of HBOS plc, which it will aim to publish before the transfer of its functions to the Financial Conduct Authority and Prudential Regulation Authority.

Comment

The FSA has previously taken action against three individual former executives of Northern Rock (Messrs Baker, Barclay and Jones in 2010). However, this is the first occasion on which it has taken action against an individual for conduct directly connected with the financial crisis. The fine is also the largest which the FSA has imposed on a senior executive for management failings.

It does not appear that the FSA will take any further action against any other individuals for similar conduct. This contrasts with the position in the US, where, according to the most recent statistics published by the Securities and Exchange Commission ("SEC"), it has charged 112 entities and individuals with misconduct relating to the financial crisis, of which 55 have been Chief Executive Officers, Chief Financial Officers or other senior executives, and has imposed penalties, disgorgement and other monetary relief of over \$2.2 billion.

However, the issue of individual accountability, both in the contexts of the failure of large institutions, and of the day to day operation of those institutions, remains high on the agendas of the FSA and the UK government. The action against Mr Cummings is likely to inform

responses to HM Treasury's ongoing consultation exercise on proposed new sanctions for directors of failed banks (see FSA Update – 9 July 2012). For the FSA, the action redresses the balance following John Pottage's successful defence of proceedings where it was suggested that he was personally liable for compliance oversight failings earlier this year (see FSA Update – 1 May 2012).

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

<http://www.fsa.gov.uk/library/communication/statements/2012/hbos.shtml>

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

Key issues

- FSA imposes first fine and ban for failings connected with the financial crisis
- FSA imposes £9.5 million fine for client money breaches
- FSA sets out proposed changes to supervision and authorisation under FCA and PRA
- FSA consults on new measures to safeguard deposits with UK branches of non-EEA deposit taking institutions
- FSA sets out advice on final preparations for RDR implementation
- HM Treasury publishes amendments to Money Laundering Regulations 2007

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

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

<http://www.sec.gov/spotlight/enf-actions-fc.shtml>

http://www.hm-treasury.gov.uk/consult_sanctions_directors_banks.htm

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbFgNhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZeyceQir4b0S%2FiF1aekBZQynp%0D%0A5mt12P8Wnx03DzsaBGwslB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=115847>

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FSA imposes £9.5 million fine for client money breaches

The FSA has (on 11 September) imposed a financial penalty of £9,533,100 on **BlackRock Investment Management (UK) Limited** ("BlackRock") for breaches of Principles 3 (management and control) and 10 (client money) of the Principles and associated rules in its Client Assets Sourcebook ("CASS"). Consistent with other recent action by the FSA in this area, the penalty imposed (which was reduced by 30 per cent for settlement at stage one of the FSA's executive settlement procedures) is equal to one per cent of the deposits to which the breaches related.

The action related to failures to put in place trust letters in respect of some money market deposits held by it. It is the latest in a series of instances of enforcement action taken by the FSA to arise from historic industry-wide thematic work focusing on compliance with client money rules. This intensive supervision has involved the issue of Dear Compliance Officer letters in March 2009 and Dear CEO letters (in January and May 2010) to all firms with permission to hold client assets and the publication of its Client Money and Assets Report in January 2010.

The Final Notice issued to BlackRock acknowledges that no clients suffered any losses as the result of the breaches and that BlackRock identified and reported the breaches to the FSA, implemented a remediation programme, fully co-operated with the FSA and has committed significant resources to an internal investigation.

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

http://www.fsa.gov.uk/static/pubs/ceo/ceo_letter0119.pdf

<http://www.fsa.gov.uk/static/pubs/ceo/20may2010.pdf>

Other Final Notices

The FSA has (on 12 September) imposed a prohibition order on **Ian Orbart** for failing to disclose to the FSA or his employer that he was dismissed from an FSA authorised firm for dishonesty, and for obtaining a false reference.

<http://www.fsa.gov.uk/static/pubs/final/ian-orbart.pdf>

FSA sets out proposed changes to supervision

and authorisation under FCA and PRA

The FSA has (on 12 September) issued a consultation paper (CP 12/24), prepared in conjunction with the Bank of England, outlining proposed changes to Handbook provisions dealing with authorisation and supervision of firms.

The paper proposes changes, based upon the provisions of the Financial Services Bill (which will continue its progress through Parliament when the House of Lords resumes consideration of its provisions on 5 October) to the General Provisions ("GEN") and Supervision ("SUP") sections of the Handbook.

Specific proposals have been made in relation to rules in areas including how and when the FSA may commission skilled persons reports under section 166 of the Financial Services and Markets Act 2000 (Chapter 5 of SUP), applications for variation and cancellation of permissions (Chapter 6 of SUP), notifications to the FSA (Chapter 15 of SUP) and reporting requirements (Chapter 16 of SUP).

The FSA has invited firms to respond (to different individuals at the FSA in respect of each of the chapters of the paper dealing with proposed rule changes in different areas) by 12 December 2012. The paper is careful to state that it may be necessary to re-consult if significant changes are made to the provisions of the Financial Services Bill as it progresses through Parliament.

The paper is likely to be the first of a number of consultation papers dealing with changes required to the various sections of the FSA's Handbook as the result of the

transition to twin peaks regulation by the FCA and PRA.

<http://www.fsa.gov.uk/static/pubs/cp/cp12-24.pdf>

FSA consults on new measures to safeguard deposits with UK branches of non-EEA deposit taking institutions

The FSA has (on 11 September) issued a consultation paper (CP 12/23) proposing new rules which would require firms from non-EEA countries that operate national depositor preference schemes to accept deposits using a UK incorporated subsidiary or to make alternative arrangements to ensure that UK depositors are not left in a worse position than depositors in the institution's home country should that institution fail.

The FSA proposes to introduce this requirement by adding new rules to the Senior Management Arrangements Systems and Controls section of its Handbook, and proposes that affected firms would be given two years to make appropriate arrangements before the rules took effect.

The FSA has invited firms to respond to the consultation paper by 11 December 2012.

<http://www.fsa.gov.uk/static/pubs/cp/cp12-23.pdf>

FSA sets out advice on final preparations for RDR implementation

The FSA has (on 12 September) issued a factsheet to assist firms affected by the rules due to be

implemented as part of the Retail Distribution Review ("RDR") with preparing and making necessary changes to their business models and processes.

The publication covers arrangements which firms should make in relation to adviser charging, independent and restricted advice and continual professional development ("CPD") requirements.

<http://www.fsa.gov.uk/static/pubs/other/rdr-make-sure-youre-on-track.pdf>

Further afield

HM Treasury publishes amendments to Money Laundering Regulations 2007

Following an extensive review and consultation process, HM Treasury has published details of the legislation which will amend and update the Money Laundering Regulations 2007.

For full details of which areas will change, which will remain unaltered, how the legislation may change further in the future and how it is being applied by the FSA and other enforcement authorities at present, see Clifford Chance briefing released last month.

http://www.hm-treasury.gov.uk/fin_review_laundering_regs.htm

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbFgNhLNomwBl%2B33QzdFhRQAhp8D%2BxrlGRl2crGqLnALtlyZewQamCIKvsC10HwKgiu2JYPp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=109198>

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