

REGULATION NEWSLETTER FOR INTERMEDIARIES

Monday 17th to Friday 21st August 2009

Welcome to the weekly regulation newsletter designed specifically for intermediaries. This newsletter is compiled by IFact Services and includes regulatory and topical information relating to Independent Financial Advisers, General Insurance and Mortgage and Home Finance Advisers.



Final Notice - FSA bans and fines mortgage broker £70,000 for mortgage fraud

Financial Services Authority

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/109.shtml>

The Financial Services Authority (FSA) has banned a London mortgage broker, Grace Nmadibechi Ada Ukala, and fined her £70,000 for knowingly submitting false and misleading mortgage applications. Ukala was an FSA approved person and the director of Goldsparkle Consulting Services Limited (Goldsparkle), a small mortgage broker firm based in South East London. She submitted five mortgage applications for herself supported by false and misleading income and employment information. She also failed to disclose accurately her earnings from Goldsparkle to Her Majesty's Revenue and Customs (HMRC) and misused funds that belonged to Goldsparkle to meet her personal mortgage repayments.

Margaret Cole, FSA director of enforcement, said: "This fine, which would have been £100,000 had Ukala not settled early, is aimed at deterring approved persons from getting involved in mortgage fraud. Her earnings, as stated in the mortgage applications, were considerably higher than the income she declared to HMRC. By knowingly submitting false and misleading mortgage applications, Ukala acted in a totally unacceptable fashion. Our work on mortgage fraud continues as a priority in our campaign against financial crime. We have banned more than 60 mortgage brokers over the last three years and we will continue to ban such people to reinforce the message that knowingly giving false and misleading information is dishonest and poses a serious risk to prospective lenders. We will continue to ban individuals who demonstrate a lack of integrity."

Supervisory Notice - Michael Robert Cameron trading as Fidelity Corporate Services

Financial Services Authority

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

The FSA has issued a Supervisory Notice to the above varying the permissions granted to them by removing all regulated activities with immediate effect. The FSA has concluded, on the basis of the facts and matters described below, that, by failing to respond adequately, or at all, to the FSA's requests for an explanation of those facts and matters, they are in breach of Principle 11 of the FSA's Principles for Businesses and are failing to satisfy the FSA that they are ready and willing and organised to comply with the requirements and standards under the regulatory system.

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Application Refusal - Evergreen Estates (UK) Ltd

Financial Services Authority

http://www.fsa.gov.uk/pubs/final/evergreen_states_summary.pdf

On 16 July 2009, the FSA decided to refuse an application made by Evergreen Estates (UK) Ltd to carry on various regulated activities listed in the notice. The FSA has concluded that Evergreen cannot demonstrate that it will satisfy and continue to satisfy the threshold conditions in respect of the regulated activities for which Evergreen applied for permission, in that:

- (1) Evergreen's resources will not, in the opinion of the FSA, be adequate in relation to the regulated activities it seeks to carry on.
- (2) Evergreen has not satisfied the FSA that the firm will conduct its business with integrity and in compliance with proper standards, will have a competent and prudent management and can demonstrate that it will conduct its affairs with the exercise of due skill, care and diligence, in relation to the regulated activities it seeks to carry on.

Specifically, Evergreen:

- (1) failed to co-operate with the FSA in responding to requests for information related to the Application; and
- (2) failed to demonstrate that the firm had adequate resources and a competent and prudent management in respect of the regulated activities for which Evergreen applied for permission, because it failed to demonstrate that the sole approved person at Evergreen was competent to perform the relevant controlled functions.

Evergreen did not refer the matter to the independent Financial Services and Markets Tribunal.

FSA Alert - Firms Online electronic reporting system

Financial Services Authority

<http://www.fsa.gov.uk/pages/Doing/Regulated/Firms/index.shtml>

Firms Online, the electronic reporting system is experiencing problems at present. The FSA apologise for any inconvenience caused. This system can normally be used to report the following:

- Approved Persons form C - Ceasing to perform Controlled functions
- Approved Persons form D1 - Changes of Approved Persons Details
- Add/Change/Terminate Appointed Representative forms
- Cancellation of part IV permission
- Changes to Standing Data

During the time that the system is having problems the FSA are requesting that you use the paper reporting system. The FSA confirm that their other electronic reporting systems are working normally.

Memorandum of Understanding between the FSA and the Florida Office of Insurance Regulation

Financial Services Authority

http://www.fsa.gov.uk/pubs/mou/fsa_afm_dnb.pdf

A MoU has been published between the FSA and the Florida Office of Insurance Regulation. Click on the link above to view the memorandum.

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BCOBS Training

Financial Services Authority

<http://www.fsa.gov.uk/Pages/Doing/Regulated/bcobs/index.shtml>

An e-learning module on BCOBS is now available, which provides an overview of the requirements of BCOBS and the broader Banking Conduct Regime. The new Banking Conduct Regime commences from 1 November 2009:

- the full application of the FSA's Principles for Businesses;
- the Payment Services Regulations (PSRs): new UK legislation on payment services that implements the Payment Services Directive, a piece of European Community law; and
- a new Banking Conduct of Business sourcebook (known as BCOBS), which contains rules and guidance.

This webpage focuses on the Principles for Businesses and BCOBS.

Press Release - FSA and CFTC to enhance regulatory cooperation and cross-border surveillance of oil markets

Financial Services Authority

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/111.shtml>

Lord Turner, chairman of the Financial Services Authority (FSA) and Gary Gensler, chairman of the U.S. Commodity Futures Trading Commission (CFTC), announced that they have taken steps to strengthen cross border supervision of the energy futures markets. This action builds upon the existing cooperative efforts by the two authorities to address cross border oversight of US and UK energy markets, and will enhance the ongoing information sharing agreed to in the 2006 CFTC - FSA arrangement on linked contracts. The respective organisations will immediately work toward implementing strengthened surveillance over US-linked energy contracts including, where appropriate:

- enhanced direct access rights to trade execution and audit trail data;
- mutual on-site visits of exchange operators;
- the sharing of exchange regulations and notices;
- the sharing of disciplinary notices; and
- the framework to consider the coordination of taking emergency action.

Lord Turner, FSA chairman, said: "It is important that we continue to pursue all means to maintain fair, orderly and efficient markets, both nationally and internationally. The measures announced will help to facilitate coordinated action, where appropriate. I am pleased that we continue to work collaboratively with the CFTC to achieve our common goals."

Commenting on the latest international arrangement, CFTC chairman Gary Gensler stated: "I believe that we must effectively utilise all existing powers to ensure that futures markets remain free of manipulation, fraud or other market abuses. Achieving this goal requires a coordinated international response. The CFTC will work closely with the FSA to respond to these challenges in a coordinated manner."

In November 2006, the CFTC and FSA signed a Memorandum of Understanding to share information necessary for the respective authorities to detect potential abusive or manipulative trading practices that involve trading in related contracts on UK and US derivatives exchanges. The CFTC and FSA will continue to work together on oversight of related contracts traded in both of their markets and other matters of mutual concern.

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Press Release - FSA provides clarity for activist shareholders

Financial Services Authority

http://www.fsa.gov.uk/pubs/other/shareholder_engagement.pdf

The Financial Services Authority (FSA) has set out how its rules apply to activist shareholders who wish to work together to promote effective corporate governance in companies in which they have invested. The FSA said in a letter sent to trade associations that its requirements do not prevent legitimate activity of this nature. The FSA strongly supports Sir David Walker's proposals to strengthen shareholder engagement with the boards of investee companies aimed at promoting good corporate governance. The letter makes clear that its rules do not stand in the way of Sir David's proposals.

Alexander Justham, FSA director of markets, said: "There is nothing under FSA rules that prevents investors discussing matters when it is for a legitimate purpose. Our letter provides clarity to investors that they are free to engage with the boards of companies as Sir David Walker envisaged." The FSA has set out its approach on the three key areas of its rules:

1. The market abuse rules do not prevent investors from engaging collectively with the management of an investee company. However, trading on the basis of knowing another investor's intentions or working jointly to avoid disclosure of shareholdings could constitute market abuse;
2. FSA rules on disclosure of major shareholdings require that investors who have agreed to pursue the same long-term voting strategy should aggregate their shareholdings when considering whether their shareholdings reach the threshold for disclosure (3% of a company's shares). However, this disclosure would be unlikely to be triggered by ad hoc discussions between investors on particular corporate issues; and
3. Under the EU Acquisitions Directive that was implemented earlier this year, where investors are "acting in concert" they require FSA approval if they reach a controlling shareholding (10% or more of a company's shares) in a regulated firm. "Acting in concert" is not defined in the Directive but the FSA does not view the requirement as preventing ad hoc discussions or understandings between investors that are intended solely to promote generally accepted principles of good corporate governance in firms in which they have invested.

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From PADA - Launches a Myth Busting Programme

Other Items of Interest

<http://www.padeliveryauthority.org.uk/documents/press-release-17-08-09.pdf>

This autumn the Personal Accounts Delivery Authority (PADA) is embarking on a 'myth busting' programme to explain how the personal accounts scheme will fit in to the pension landscape from 2012. The initiative, led by PADA's market engagement team, will consist of an ongoing meetings programme with key audiences including pension advisers, trade bodies and employers to explain the likely features of the pension scheme, clarify misunderstandings about its role and explore how the personal accounts scheme might be used. To support the initiative, updated versions of PADA's Myth buster and Key facts documents are available to download from www.padeliveryauthority.org.uk.

Some of the key misunderstandings surrounding the personal accounts scheme include:

Myth: The personal accounts scheme is a government pension scheme.

Reality: The personal accounts scheme will be an independent pension scheme run by a not-for-profit trustee corporation in the interests of its members. The trustee corporation will be a non-departmental public body (NDPB) and will be accountable to Parliament.

Myth: Personal accounts is the name for the Government's workplace pension reforms.

Reality: The Government is reforming workplace pension provision from 2012. It is placing a duty on employers to automatically enrol eligible workers into a pension scheme that meets certain criteria and to make a contribution into the scheme. The personal accounts scheme will be one of the qualifying schemes on offer to employers to discharge their new duties under the reforms.

Myth: The personal accounts scheme will compete with existing pension schemes.

Reality: The personal accounts scheme is being designed to complement existing workplace pension provision. The scheme is being designed specifically for low-to-moderate earners who don't currently have access to workplace pension provision.

Myth: The personal accounts scheme is only suitable for small companies.

Reality: The personal accounts scheme could be used in a number of ways and by employers of any size. Employers have to decide how they want to comply with the new duties and may decide that different approaches and schemes suit different members of their workforce.

Head of product and market engagement, Paul Gilbody, said: "It's recognised that there is a lack of workplace pension provision for low-to-moderate earners - the personal accounts scheme can fill this gap and will be low cost because of economies of scale which is critical for our target market. There are also other potential uses for larger employers - such as an entry scheme in sectors with high early turnover. We want to talk to the experts in the industry about how the scheme can be best used. We're very clear on our mission - the personal accounts scheme will be designed specifically for its target market; and this will be reflected in its investment strategies (particularly in relation to the default fund), how people access their savings in retirement and how the scheme works for employers. We want to work with the industry to help us achieve the best outcome for our potential members and to help millions save for their retirement."

PADA's market engagement team, headed by Paul Gilbody, has over 80 years combined experience of working in the financial services sector. The team includes IFA specialist Richard Sheppard, employee benefits engagement expert Roy Porter and employer and trade specialist Richard Bartlett.

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From the CML - Gross mortgage lending up 26% in July

Council of Mortgage Lenders

<http://www.cml.org.uk/cml/media/press/2377>

Gross mortgage lending totalled an estimated £16 billion in July, a 26% increase from £12.7 billion in June but down 36% from £24.9 billion in July 2008, according to new data from the Council of Mortgage Lenders. This is further evidence of a modest improvement in the market over the summer after an exceptionally weak winter. However, activity is still subdued on any historic comparison; this is the lowest July lending figure since 2001 and £11 billion lower than the July average over the previous seven years of £27 billion. Lending volumes remain consistent with the CML's forecast for £145 billion in gross mortgage lending this year. Advances have picked up in June and July as anticipated. There is typically a strong seasonal rise over the summer months as a whole. The increase is likely to have been driven mainly by a rise in house purchase activity, rather than remortgaging activity, as low reversion rates continue to limit the attraction of refinancing.

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Complimentary Helpdesk

Should you require further information or have questions relating to this update or any regulatory issues, QBE has arranged for IFACT Services Ltd to provide a complimentary telephone service to assist intermediaries.

IFACT can be contacted at:

Telephone Number: 08456 121211
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