



REGULATORY UPDATE 13/2009

Special Edition: DePfa ACS Bank Settlement Agreement

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Settlement Agreement between the Financial Regulator and DePfa ACS Bank

On 22 December 2009, the Financial Regulator announced a Settlement Agreement with DePfa ACS Bank in relation to breaches of the Asset Covered Securities Act, 2001 (the "Act").

DePfa ACS Bank is registered as a designated credit institution under the Act. This status permits a credit institution to issue asset-backed bonds secured by a ring-fenced pool of assets. Investors in the bonds have a preferential claim over these assets in the event of default. In order to protect the interests of the bond investors, an external, independent Covered Assets Monitor must be appointed to monitor compliance by the credit institution with the Act.

The credit institution is required to obtain the consent of the Covered Assets Monitor prior to making any substitutions in the assets making up the ring-fenced pool. As the credit institution can propose changes to the assets, the Covered Assets Monitor has monitoring and control obligations to ensure the ring-fenced pool continues to comply with duration, value, over-collateralisation parameters and other requirements set out in the Act.

The Settlement Agreement relates to failures on a number of occasions by DePfa ACS Bank to obtain the consent of its Covered Assets Monitor (or the Financial Regulator) prior to making or amending an entry in the register of assets making up the ring-fenced pool.

The Financial Regulator reprimanded DePfa ACS Bank and fined it €250,000. No executives of DePfa ACS Bank were fined or reprimanded in the Settlement Agreement. This brings the amount of penalties levied by the Financial Regulator in Settlement Agreements against firms in 2009 to €3,654,500 comparable to the 2008 total of €3,695,000 levied against firms and (in two instances) named individuals.

Taken together with the fine of €2,750,000 levied against Merrill Lynch International Bank Limited announced in October 2009, this Settlement Agreement demonstrates that the Financial Regulator will take action against IFSC firms as well as domestic firms.

The details in the Settlement Agreement as to the reasons for the action are scant compared to releases from other regulators. Although more detailed background briefing is provided to the press, greater disclosure in the publicly circulated Settlement Agreement would be useful. Apart from 'naming & shaming' deterrent value, a Settlement Agreement is a valuable opportunity for the Financial

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Regulator to signal its compliance expectations to firms and to give those firms insights for improving and correcting areas of their own businesses.

Compliance Ireland Regulatory Services Limited
Lower Ground Floor, 13 Adelaide Road, Dublin 2
Ph + 353 1 425 5962
email@complianceireland.com

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