



REGULATORY UPDATE 1/2009

This newsletter is available online at:
<http://www.complianceireland.com/Newsletter.html>

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Our group websites

Readers will be aware that we run specialist regulatory websites - www.antimoneylaundering.ie and www.mifid.ie. A little while ago we launched www.privacy.ie. Like our other websites, www.privacy.ie has proved quite a success and more content will be added to all these websites in the coming months. Take a moment to visit these sites for specialist information on the topics they cover. These sites complement the extensive data on www.complianceireland.com

Welcome to the **February 2009** regulatory update from **Compliance Ireland**. In this Newsletter:

New subject topics added to www.complianceireland.com/HotTopics.html

- Financial Regulator issues statutory Mortgage Arrears Code and Business Lending Code
- Financial Regulator clashes with Chairman and Board of Irish Life and Permanent (IL&P) and announces investigation into €7billion loan fiasco
- Patrick Neary, former Financial Regulator to receive €630,000 payment
- Chief executive, Financial Regulator steps down unexpectedly / investigation into directors' loans continues / Anglo Irish bank nationalised
- Irish court commences hearing into allegations that father and son laundered some of the proceeds of the £26.5m (€29.4m) Northern Bank robbery
- UK court fines solicitor & MLRO

Updates to our Press Page

The following Press articles, to which we have contributed since November 2008, have been uploaded at <http://www.complianceireland.com/Press.html>

- 15 February 2009 (Sunday Tribune) - Anglo, IL&P face €5m fine over deposits
- 21 December 2008 (Sunday Tribune) - Ireland will become the 'wild west' of European finance?

INDEX OF TOPICS

COMPLIANCE IRELAND BREAKFAST BRIEFING

page 5

- New Q1 2009 MiFID Breakfast Briefing date announced for 27 February 2009
- <http://www.complianceireland.com/publictraining.html>

COMPLIANCE IRELAND TRAINING

page 5

- New 2009 Quarter 1 & 2 training course dates announced

FINANCIAL SERVICES - IRELAND

page 9

- 16 February 2009: New Financial Services law and new Financial Regulator agency on cards / Governance and compliance officers to stand-up for what is right and correct
- 15 February 2009: Financial regulator categorically rejects it knew of 'sweetheart deal'
- 14 February 2009: Financial Regulator issues statutory Mortgage Arrears Code and Business Lending Code. Separate Money lenders Consumer Protection Code issued 3 December 2008
- 14 February 2009: Financial Regulator clashes with Chairman and Board of Irish Life and Permanent (IL&P) and announces investigation into €7billion loan fiasco.
- 11 February 2009: Patrick Neary, former Financial Regulator to receive €630,000 payment
- 5 February 2009: Financial Regulator announces new Directors' Loan Requirements
- 9 January 2009 and on-going: Chief Executive, Financial Regulator steps down unexpectedly / investigation into directors' loans continues / Anglo Irish bank nationalised
- IFSRA – Madoff Collapse
- IFSRA: Thematic Inspection of MiFID firms by Financial Regulator
- IFSRA: Financial Regulator demands special audit of stock-broking firms
- IFSRA - side pockets and fund redemption limits for non-UCITS funds
- IFSRA - MTF Guidance Note
- IFSRA - Review of Intermediary Market
- IFSRA - Financial Regulator Examines Foreign Exchange Charges
- IFSRA - Firms Urged to Improve Sales and Premium Review Processes of Unit Linked Whole of Life policies
- IFSRA - Latest Warning Notices issued
- IFSRA - Mystery Shop and Cost Comparisons show Better Home Insurance Deals

DATA PROTECTION - IRELAND

page 19

- List of recent events

- Data Protection Commissioner free to proceed with criminal action against telecommunications firm
- Article by a reader on proposed Communications (Retention of Data) Bill 2009

FINANCIAL CRIME - IRELAND

page 22

- 16 February 2009: No date, still, for implementation of new money laundering laws
- 13 February 2009: Irish court continues hearing into allegations that father and son laundered some of the proceeds of the £26.5m (€29.4m) Northern Bank robbery
- 13 February 2009: Suspended term for €12,000 bank 'phishing' scam

FINANCIAL SERVICES - UNITED KINGDOM

page 24

- 2 February 2009: Financial Services Authority (FSA) publishes Business Plan for 2009/10.
- 9 February 2009: Financial Services Authority (FSA) publishes Financial Risk Outlook (FRO)
- 27 November 2009 FSA issues Dear CEO letter to the CEOs of mortgage lenders and administrators
- List of recent FSA Enforcement decisions
- UK: FSA consults on stress and scenario testing
- FSA consults on stress and scenario testing
- Solicitor and MLRO fined £5000
- UK FSA - enforcement actions since last newsletter
- UK FSA - financial crime speech to British Bankers Association

FINANCIAL CRIME – UNITED KINGDOM

page 31

- 16 February 2009: FSA bans broker for mortgage fraud
- 9 February 2009: FSA secures over £1 million for victims of share scam
- 4 February 2009: FSA fines AIM company director for market abuse
- 19 January 2009: FSA bans and fines broker £101,106 for mortgage fraud - also bans second broker
- 14 January 2009: Belgian private investor fined £176,254 for market abuse
- 8 January 2009: FSA fines Aon Limited £5.25m for failings in its anti-bribery and corruption systems and controls
- 7 January 2009: Insider dealing & money laundering: FSA prosecutes Mr Neil Rollins
- 19 December 2008: FSA fines two individuals for market abuse
- 8 December 2008: FSA warns shareholders that personal details might be on a database shared by fraudsters
- 4 December 2008: UK court fines solicitor & MLRO
- 13 November 2008: Former UK ambassador and Belgian businessman fined for market abuse

FINANCIAL SERVICES - EUROPE

page 35

- Europe: European Commission proposes amendments to Capital Requirements Directive
- Europe: Commissioner McCreevy announces public consultation on hedge funds

AML – EUROPE

page 36

- Barclays France and Soc Gen found not guilty

COMPLIANCE IRELAND BREAKFAST BRIEFING

Full details of our seminar <http://www.complianceireland.com/seminars.html>.

MIFID UPDATE - THE EXPERIENCE OF 2008 AND THE CHALLENGES FOR 2009:

Speakers: Ann Troy (Financial Regulator), Kevin O'Doherty and Peter Oakes (Compliance Ireland)
8.00am to 9.30am, Friday 27th February 2009 (Clarion Hotel, IFSC, Dublin 1). Cost €40 (no VAT).

Topics:

- o The scope of the current MIFID requirements;
- o Examples of what the Financial Regulator looked for at firms in 2008 and what is likely to be asked for in 2009;
- o Interaction with client asset requirements;
- o Interaction with CRD requirements;
- o Reporting requirements (to Financial Regulator);
- o Client classifications;
- o Internal controls & fraud;
- o Keeping business plans, operational/compliance/risk & internal audit procedures up-to-date;
- o Risk management; and
- o Enforcement and administrative sanctions regime.

Book securely on-line at <http://www.complianceireland.com/MIFIDseminar2009.html>.

COMPLIANCE IRELAND TRAINING

Quarter 1 & 2 2009 training course dates

Full details of all NEW COURSES can be found at <http://www.complianceireland.com/Training.html> or http://www.complianceireland.com/documents/Q1_and_Q2_2009_Training_Programme_Rol_web.pdf

All courses can be tailored for in-house delivery too. Please contact us at +353 1 425 5962 or visit our website for further information. Bookings can be made by email to bookings@complianceireland.com.

CPD Credits/Hours: Our courses are accredited by the Institute of Bankers (QFA, CPD Members, LCOI (i.e. ACOI) and CeB) and Insurance Institute of Ireland (QFA, LCOI (i.e. ACOI), CIP and CFD Members). Solicitors and Accountants may claim CPD hours from their membership bodies as may others with CPD requirements. Formal and informal CPD hours vary depending upon your professional association's rules. Please contact us (email@complianceireland.com) or your professional association if you have any queries on the amount of CPD hours that may be claimed for our courses.

DATA PROTECTION AND HOW TO CONDUCT A DATA PROTECTION AUDIT (FULL DAY) (FINANCIAL INSTITUTIONS)

9.00am to 5.00pm, **Thursday 12th March 2009** (Clarion Hotel, IFSC, North Wall Quay, Dublin 1). Cost: €680 (no VAT)

- "Excellent Day – Taking time out to think about & discuss the issues is very valuable. The day supported, confirmed, gave us confidence with our approach and gave us good pointers for data protection going forward" (Bank – Data Protection attendee)

Webpage: <http://www.complianceireland.com/DP&Audit.html>

DATA PROTECTION AND HOW TO CONDUCT A DATA PROTECTION AUDIT (FULL DAY) (NON-FINANCIAL INSTITUTIONS)

9.00am to 5.00pm, **Thursday 9th April 2009** (Clarion Hotel, IFSC, North Wall Quay, Dublin 1). Cost: €680 (no VAT)

- "Overall I found the course very beneficial; it pointed out a number of areas of the business to be looked at but also gave me a good idea of how to approach looking at these issues. I also have a much better understanding of the legislation behind Data Protection" (Data Protection attendee)

Webpage: <http://www.complianceireland.com/DP&Audit.html>

ANTI MONEY LAUNDERING AND FINANCING OF TERRORISM FOR FINANCIAL INSTITUTIONS (FULL DAY)

9.00am to 5.00pm, **Tuesday 24th March 2009** (Clarion Hotel, IFSC, North Wall Quay, Dublin 1). Cost: €680 (no VAT)

9.00am to 5.00pm, **Tuesday 21st April 2009** (Clarion Hotel, IFSC, North Wall Quay, Dublin 1). Cost: €680 (no VAT)

9.00am to 5.00pm, **Thursday 7th May 2009** (Clarion Hotel, IFSC, North Wall Quay, Dublin 1). Cost: €680 (no VAT)

9.00am to 5.00pm, **Thursday 11th June 2009** (Clarion Hotel, IFSC, North Wall Quay, Dublin 1). Cost: €680 (no VAT)

- "A very well presented course. A complex area that was approached logically. Obviously presenter knew the area extremely well and did not have to hide behind jargon or legislation. His ability to debate the issues was good also. The course was brought to life with real life examples." (Attendee from the Irish Financial Regulator)

Webpage: <http://www.complianceireland.com/AMLDubFIs.html>

MIFID - UNDERSTANDING MIFID AND ITS OPERATIONAL IMPLICATIONS (HALF DAY)

9.00am to 1.00pm **Thursday 5th March 2009** (Jury's Inn, IFSC, Custom House Quay, Dublin 1). Cost: €425 (no VAT)

- "Very well presented, moved at a good pace also excellent notes and extra material provided" (Insurance and Investment Manager – MiFID attendee)
- "Worth attending, worth time spent, worth recommending!" (Bank - MiFID attendee)

Webpage: <http://www.complianceireland.com/MiFIDC1.html>

THE ROLE OF THE COMPLIANCE OFFICER (FULL DAY)

BANKS & INVESTMENT BUSINESS FIRMS:

9.00am to 5.00pm, **Thursday 26th March 2009** (Clarion Hotel, IFSC, North Wall Quay, Dublin 1). Cost: €680 (no VAT)

- *Very informative including blueprints & understanding the role of the Compliance Officer* (Investment Manager – Compliance Officer attendee)

Webpage: <http://www.complianceireland.com/ICONI&I.html>

RISK-BASED COMPLIANCE MONITORING FOR FINANCIAL INSTITUTIONS (HALF DAY)

9.00am to 1.00pm, **Tuesday 19th May 2009** (Jury's Inn, IFSC, Custom House Quay, Dublin 1). Cost: €425 (no VAT)

- *"Really clarified what areas of risk I should be concerned with."* (Financial Institution - Compliance Risk Monitoring attendee)

Webpage: <http://www.complianceireland.com/RBCMP.html>

UK ANTI-MONEY LAUNDERING & FINANCING OF TERRORISM FOR FINANCIAL INSTITUTIONS (FULL DAY) - (BELFAST)

9.00am to 5.00pm **Thursday 19th February 2009** (Europa Hotel, Belfast, Northern Ireland) Cost: £500 (no VAT)

- *An excellent, concise and well thought out AML course that has cleared up many questions* (Bank – AML (UK) course attendee)

Webpage: <http://www.complianceireland.com/AMLUKFI.html>

COMPLAINTS HANDLING AND TREATING CUSTOMERS FAIRLY (HALF DAY)

9.00am to 1.00pm, **Thursday 9th April 2009** (Jury's Inn, IFSC, Custom House Quay, Dublin 1). Cost: €425 (no VAT)

- *"The use of case studies ... sets Compliance Ireland apart. Also the fact that you jump between Irish & UK legislation and regulators continues to be key to us."* (Insurance Firm – Treating Customers Fairly attendee)

Webpage: <http://www.complianceireland.com/TCF.html>

HOW TO HANDLE A FINANCIAL REGULATOR (IFSRA) INSPECTION (HALF DAY)

9.00am to 1.00pm, **Tuesday 3rd March 2009** (Jury's Inn, IFSC, Custom House Quay, Dublin 1). Cost: €425 (no VAT)

9.00am to 1.00pm, **Thursday 18th June 2009** (Jury's Inn, IFSC, Custom House Quay, Dublin 1). Cost: €425 (no VAT)

- *"Extremely useful with good practical tips. I look forward to attending more seminars with Compliance Ireland."* (Financial Company - Financial Regulator Inspection course)

Webpage: <http://www.complianceireland.com/FRInspections.html>

THE ROLE OF THE COMPLIANCE OFFICER (FULL DAY)

INSURANCE FIRMS:

9.00am to 5.30pm, **Tuesday 10th March 2009** (Clarion Hotel, North Wall Quay, IFSC). Cost: €680 (no VAT)

- *"75% of the content of about 60% of training I have attended is 'padding' – this is one of the very few training courses I've attended where I was very impressed. Keep up the good work!"* (Insurance Company – Compliance Officer attendee)

Webpage: <http://www.complianceireland.com/ICONI&I.html>

DIRECTORS' DUTIES AND CORPORATE GOVERNANCE OF CREDIT, FINANCIAL AND INSURANCE INSTITUTIONS REGULATED IN IRELAND (HALF DAY)

9.00am to 1.00pm, **Thursday 2nd April 2009** (Jury's Inn, IFSC, Custom House Quay, Dublin 1). Cost: €425 (no VAT)

- *"Very good training pack, small group worked very well"* (Solicitor – Directors' Duties course attendee)

Webpage: <http://www.complianceireland.com/DirectorsCG.html>

ESTABLISHING THE INTERNAL AUDIT FUNCTION (HALF DAY)

9.00am to 1.00pm, **Thursday 21st May** (Jury's Inn, IFSC, Custom House Quay, Dublin 1) Cost: €425 (no VAT)

Webpage: <http://www.complianceireland.com/InternalAudit.html>

FINANCIAL SERVICES – IRELAND

16 FEBRUARY 2009: NEW FINANCIAL SERVICES LAW AND NEW FINANCIAL REGULATOR AGENCY ON CARDS / GOVERNANCE AND COMPLIANCE OFFICERS TO STAND-UP FOR WHAT IS RIGHT AND CORRECT

Reports in newspapers both today (Monday 16 February) and over the weekend continue their coverage of investigations into both (i) a 'golden circle' of investors who were supported by loans from Anglo Irish Bank (Anglo) to invest in the bank's plummeting stock; and (ii) 'circular transactions' between Irish Life & Permanent and Anglo. One paper even went so far as to run a two page spread titled '*Hall of Shame: The Men who broke Ireland Inc*' in which it plastered the names and salaries of a former bank Chairman, 2 former bank CEOs, former Insurance Company Chairman as well as 3 serving and former government officials.

Other stories in the papers included probable new measures planned by the Minister of Finance, Brian Lenihan, including:

- merging the roles of the Financial Regulator and the governor of the Central Bank under a single financial services body which will lead a reformation of banking regulation over the coming months.
- moving away from what is being perceived as a 'light-touch', principles-based system of regulation to a stronger, more prescriptive based form of regulation

Mr Lenihan announced last month that he intended to reappoint John Hurley, the governor of the Central Bank, to his post when his current term of office expires in March. Mr Lenihan told the Dail last week that: "*The current architecture and system did not serve the country well when it entered this financial crisis.*"

The UK papers, particularly the *Financial Times*, have been scathing in their attacks on Ireland: (a) labeling us a banana republic; (b) implying that a cosy relationship exists between banks, the Finance Department and regulators (including a statement about these parties comparing handicaps in the golf club); and (c) Irish hospitality at the upper echelons of our financial system where no one is being held accountable for a crises of our own doing.

Responsibility of Governance, Risk and Compliance Officers

We need to refute these attacks on Ireland's credibility fast. The crisis in the Irish banking industry is not caused by the international liquidity/credit crunch. Rather the international issues have uncovered underhanded practices at many of our once-leading institutions. These institutions are staffed by our colleagues in governance, risk and compliance. We are not saying that they are to blame. What we are saying is that all of us (regulated persons, directors, risk managers and compliance officers at financial and insurance institutions) must be prepared to say 'enough is enough' and stand up to any culture in our organisations which attempt to presume it OK to hoodwink, defraud and mislead the public, investors and the regulators. Those in the governance and compliance professions who need more encouragement that simply believing in doing the right thing might well consider their wallets. What will you do for a crust should investment, and thus jobs, in our financial markets dry up?

If the governance/risk/compliance officer does not have a board position, then he/she must foster a close relationship with a, preferably independent, non-executive director. If no channel exists to the board, then the whole governance and compliance structure is at risk.

In January 2006 we wrote in a letter published in the *Irish Times* "... **somewhere along the line action will be necessary to prevent confidence dropping in (and capital exiting from) the Irish economy**". It looks like that time has come! As governance and compliance professionals, we owe a duty, far higher than that owed to our employers, to the wider public as well as the markets to react quickly when we spot something wrong. We need to be strong in character to rebuff the pressures

that others (who very often are the most senior persons in our organisations) may place upon us to look the other way. The thing about being a principled profession is that, even where it might adversely affect us, we stick with our principles.

Compliance officers working in certain areas such as investment services firms have an explicit obligation to report independently of management to the board of directors. If we do not form part of the solution, we will just further embed negative values which adds to the problems being experienced now.

Governance and compliance professionals must take the opportunity now to promote further the values of business ethics and compliance within their organisations. We can no longer be kept in the dark about the dodgy deals of co-workers in the more sexy financial areas of our employers. We can no longer allow any culture to succeed which seeks to treat the governance and compliance professionals as mushrooms (i.e. keep them in the dark and feed them the proverbial). If you feel that you are being kept in the dark on a specific issue or being kept out of key decision-making processes, you need to have a 'safety value' reporting line to an independent non-executive director and be prepared to blow the whistle to the Financial Regulator (regardless if you think it will or will not take action) – we do not have the luxury to second guess the regulators in today's environment. Governance and compliance personnel can no longer be subjected to taunts of being the 'Business Prevention Units', because buckling under such pressure means that those in the operational 'Business Destruction Units' will eradicate the future of Ireland and each and everyone of us. Compliance Ireland is not against risk taking: our directors run risk-taking businesses and serve as non-executive directors to financial firms in Ireland. What we, and others are saying, is that risk-taking needs to be promoted but more importantly, risk-taking needs to be assessed, be measured and be monitored at both the macro and micro levels to give us sustainable returns in the long run. And if you spot something unethical, do something about it and do not presume somebody else will. We owe it to Ireland to do better.

See our Press page and take a look at a letter we wrote just over three years ago at http://www.complianceireland.com/downloads/Standards_in_Financial_Regulation.pdf (January 2006).

15 FEBRUARY 2009: FINANCIAL REGULATOR CATEGORICALLY REJECTS IT KNEW OF 'SWEETHEART DEAL'

On 15 February 2009, in response to the front page of The Sunday Times dated same day titled 'Anglo told regulator of share deal' the Financial Regulator categorically rejects claims that it was aware of a 'sweetheart deal' relating to the purchase of Anglo Irish Bank shares in 2008. The Financial Regulator's statement noted that it and other authorities were aware of a large CFD position held in Anglo Irish Bank shares in 2008 and steps being taken to have it unwound. The Financial Regulator stated that its primary concern related to the security of deposit holders with Anglo Irish Bank and stability issues which might arise from the unwinding. The regulator confirms that it was not aware of the identity or the financing arrangements of, what the Sunday Times calls, a 'golden circle' of ten investors.

An investigation is being conducted into all aspects of the unwinding of this large CFD position in Anglo Irish shares. The Financial Regulator said that this investigation will cover the nature of loans to a group of investors, the non-recourse nature of these loans and forming a view to pursuing and/or assisting in legal proceedings. The ODCE is one authority with which the Financial Regulator is working closely.

See also:

<http://www.timesonline.co.uk/tol/news/world/ireland/article5734201.ece>

14 FEBRUARY 2009: FINANCIAL REGULATOR ISSUES STATUTORY MORTGAGE ARREARS CODE AND BUSINESS LENDING CODE. SEPARATE MONEY LENDERS CONSUMER PROTECTION CODE ISSUED 3 DECEMBER 2008

The Financial Regulator today (13 February 2009) published its Code of Conduct on **Mortgage Arrears and its Code of Conduct** (effective 27 February 2009) for **Business Lending to Small and Medium Enterprises**, (effective 13 March 2009) in line with the **Government's announcement** on recapitalisation arrangements. The Financial Regulator says that it worked closely with the Department of Finance and other relevant stakeholders in developing these Codes. A breach of either Code is a breach of Irish law.

On 3 December 2008 the Financial Regulator, published a new statutory **Money Lenders - Consumer Protection Code**, alongside its **Public Response to Consultation Paper 33**. The code is aimed at leading to greater consumer protection. The General Principles of the moneylender's code come into effect on 1 January 2009, with the remainder of the code coming into effect later in 2009.

See also:

http://www.complianceireland.com/Resources.html#Mortgage_Arrears_Code

http://www.complianceireland.com/Resources.html#Business_Lending_to_Small_and_Medium_Enterprises

http://www.complianceireland.com/Resources.html#Money_Lenders_Code

14 FEBRUARY 2009: FINANCIAL REGULATOR CLASHES WITH CHAIRMAN AND BOARD OF IRISH LIFE AND PERMANENT (IL&P) AND ANNOUNCES INVESTIGATION INTO €7 BILLION LOAN FIASCO.

The Board of the Financial Regulator has yesterday, 13 February 2009, **rejected** [<http://tinyurl.com/CIFeb0901>] any suggestion that it encouraged the type of circular transactions that have been referred to in media reports and statements concerning financial transactions between Anglo Irish Bank (Anglo) and Irish Life & Permanent and certain of its subsidiaries (IL&P). The regulator added that 'circular transactions', unlike normal inter-bank lending, do not provide liquidity to financial institutions and are completely unacceptable.

What were the transactions in question?

The transactions, details of which are posted on IL&P's website, at the heart of this matter and the investigation are:

March 2008: On 31 March 2008 IL&P, through its subsidiary Irish Life Assurance (ILA), deposited €750 million overnight on receipt of €1 billion cash (from Anglo) into Permanent TSB being collateral in respect of the deposit.

September 2008:

- 26 - 29 September: IL&P, through its subsidiary ILA, deposited €3.45 billion with Anglo by 5 separate deposits between 26th September and the 29th September. Anglo places €3.45 billion in cash with Permanent TSB. Again this cash deposit by Anglo is collateral in respect of the same value deposits made by IL&P [NB these matured 2nd and 3rd October 2009].
- 29 September: IL&P refuses to advance more money to Anglo in response to requests for further advances. IL&P state that the refusal was due to Anglo having insufficient collateral to lodge with IL&P.

- 30 September: IL&P, through its subsidiary ILA, agreed to place a total of €4 billion on deposit overnight with Anglo. This was done so on the basis the money was fully protected by the introduction of the Government Guarantee Scheme. Notwithstanding the scheme IL&P required the lodgement of €4 billion into Permanent TSB as collateral. These transactions matured on the 1st October.

Separately IL&P engaged in interbank transactions with many institutions including the ECB. These involved the pledging of eligible mortgage assets in exchange for cash with the transactions being accounted for as interbank deposits. Anglo's participation in these transactions amounted to €3.33 billion out of a total outstanding (as at 30 June) of €7.73 billion. By 31 December IL&P stated that they had no material collateralised transactions with Anglo.

It is the transactions with Anglo which have been coined as 'circular transactions'.

Investigations into 'circular transactions'

The regulator confirmed that its investigating officers are on site at both Anglo Irish and IL&P. Its officers in have been instructed to complete their work as a matter of extreme urgency.

The regulator's statement appears quite defensive. This obviously means that (i) it is very concerned that it is being misrepresented in some quarters; and (ii) wants banks to 'come clean' if they too, putting it politely, misunderstood the regulator's expectations. The regulator's statement confirms that institutions should continue to use normal inter-bank funding arrangements but that it did not at any time focus on other types of deposit arrangements, such as those engaged in by Anglo and IL&P. The regulator's opinion is that the Anglo/IL&P transactions were a very different type of transaction to a normal inter-bank arrangement and by their nature had no beneficial effect in terms of providing liquidity. The regulator's statement of 13 February goes onto say "*Financial institutions would have been fully aware that any arrangements made between themselves would have to be in full compliance with all necessary regulations and that all relevant disclosures would have to be made as appropriate*".

The regulator confirmed that it is working with the Office of the Director of Corporate Enforcement and will take all actions necessary and involve other authorities where appropriate. This time the Financial Regulator has not jumped the gun, as it appeared to do so according to media reports (including the **Irish Times** - <http://tinyurl.com/CIFeb0902>) during its investigation of the *Anglo directors' loans scandal* when former CEO, Mr Patrick Neary, announced at a very early stage his office found no evidence of apparent illegality. However today, 14 February 2009, the **Irish Independent reports** (<http://tinyurl.com/CIFeb0903>) that Paul Appleby, Office of the Director of Corporate Enforcement informed the newspaper that he is taking a "good hard look" at what has gone on in Anglo and that his options include making an application to appoint a high court inspector to Anglo Irish Bank and/or to disqualify its directors. Calling in the Garda Bureau of Fraud Investigations, with the power to bring criminal charges, is also another option once the investigation is completed.

The Financial Regulator's statement of yesterday (13 February 2009) and its investigation follows IL&P's placing of funds with Anglo. IL&P stated, on 11 February 2009, that these deposits provided **exceptional support** (<http://tinyurl.com/CIFeb0904>) to Anglo during September 2008 and in particular on 30 September 2008 following the introduction of the Government Guarantee Scheme. In a separate press release on 13 February 2009, IL&P appears to **point the finger** (<http://tinyurl.com/CIFeb0905>) at the Financial Regulator for any confusion; saying that the regulator had in fact communicated in person to the IL&P's non executive directors in May 2008 that the Central Bank and regulator's policy objective was for Irish financial institutions to 'support each other' in the face of the unprecedented destabilisation of the Irish financial system arising from the international credit crisis. One would hope that there could not be too much confusion between the IL&P and the Financial Regulator over whatever are the standards of acceptable practice given that a former chief executive of the Financial Regulator, Mr Liam O'Reilly, is a non executive director of IL&P (appointed September 2008). Separately, Mr O'Reilly is Chairman of the Chartered Accountants Regulatory

Board (CARB) and a director of Merrill Lynch International Bank Ltd. CARB, itself a regulatory body, is **examining the circumstances** (<http://tinyurl.com/CIFeb0906>) around the issue of inappropriate directors loans at Anglo and the role played by any members of the Institute of Chartered Accountants in Ireland.

As the regulator's investigation progresses, we shall see how strongly the Board of IL&P adopts its own internal **business code** (<http://tinyurl.com/CIFeb0907>) - especially Principle 8 - that it "will deal with regulatory authorities in an open and co-operative way" and Principle 4 - "will view compliance as an imperative for the business and central to the decision-making process". You can read IL&P's Code of Business Conduct **here** (<http://tinyurl.com/CIFeb0907>).

IL&P's Chief Executive **Mr Denis Casey** (<http://tinyurl.com/CIFeb0908>), Group Finance Director **Mr Peter Fitzgerald** (<http://tinyurl.com/CIFeb0905>) and Head of Group Treasury, **David Gantly** (<http://tinyurl.com/CIFeb0905>) stepped down this week in the face of the growing controversy and public concern at the 'circular transactions'. All persons, including Mr Casey enjoyed the full support of the Board. *It is important and fair to note that there is no allegation that Messrs Casey, Fitzgerald or Gantly personally behaved in an inappropriate way.* Mr Casey's resignation followed the Minister of Finance's (Brian Lenihan) **intervention** (<http://tinyurl.com/CIFeb0909>) after the Board of IL&P refused to accept Mr Casey's resignation.

No love lost between Anglo Irish Bank and IL&P - even on Valentine's Day!

Perhaps it is apt that today (14 February 2009) being Valentine's Day, according to the **Irish Times** (<http://tinyurl.com/CIFeb0910>), IL&P steadfastly confirms that its 'exceptional support' transactions were loans backed by "collateral" deposits from Anglo Irish. However Anglo states that the transactions were "inter-bank placements" and "not cash collateral for deposits" from ILP. Hopefully the two parties can reconcile this significant difference of fact otherwise at least one of them may be left with holding the parcel when the music stops. One would naturally expect that investigations will cover whether there was a breach of financial services regulations and company accounting laws.

Links to information on Irish Financial Regulator's, IL&P's and Minister for Finance's websites:

- 13/02/2009 - statement by Financial Regulator rejecting claims that it encourage 'circular transactions' and announcing investigation into IL&P and another investigation into Anglo Irish Bank - http://www.complianceireland.com/documents/Statement_Financial_Regulator_ILP_20090213.pdf
- 13/02/2009 - statement by IL&P on why it engaged in transactions following meeting with Financial Regulator - http://www.complianceireland.com/documents/ILP_Statement_Regulator_communicated_to_Non_Executive_Directors_in_person_PressR_20090213.pdf
- 13/02/2009 - statement by IL&P on resignation of Chief Executive, Denis Casey - http://www.complianceireland.com/documents/ILP_Statement_Denis_Casey_CEO_PressR_20090213.pdf
- 13/02/2009 - statement by Minister of Finance on Mr Casey's resignation as CEO - <http://www.finance.gov.ie/viewdoc.asp?DocID=5673>
- 13/02/2009 - statement by IL&P on resignation of Group Finance Director Mr Peter Fitzgerald and Head of Group Treasury, David Gantly - http://www.complianceireland.com/documents/ILP_Statement_Regulator_communicated_to_Non_Executive_Directors_in_person_PressR_20090213.pdf
- 11/02/2009 - statement by IL&P on 'exceptional support' transactions with Anglo Irish Bank - http://www.complianceireland.com/documents/ILP_Statement_exceptional_support_PressR_20090211.pdf

Postscript: The weekend papers (14-15 February) carried further stories and details relating to the circular transactions. See our comments in the Sunday Tribune 15 February at http://www.complianceireland.com/documents/Sunday_Tribune_print_edition_20090215.pdf

11 FEBRUARY 2009: PATRICK NEARY, FORMER FINANCIAL REGULATOR TO RECEIVE €630,000 PAYMENT

The Sunday Business Post (<http://tinyurl.com/CIFeb0911>) and **The Independent** (<http://tinyurl.com/CIFeb0912>) all carry the story of Green Party chairman and Senator Dan Boyle calling as "staggeringly generous" and unacceptable a €630,000 euro payment for the former Financial Regulator Mr Patrick Neary. According to media reports Mr Neary was given a special €202,000 payoff – equivalent to eight months salary – as well as a retirement lump sum of €428,000. He is also entitled to an annual pension of €142,670.

Commentators differ over the reasoning of Mr Neary's departure. Some such as Senator Boyle say Mr Neary's departure should not be viewed as a resignation but rather a "removal from office through demonstrated incompetence" [*Ed - a bit harsh*]. Another view is that Mr Neary was chosen as a scapegoat because his departure would be the least controversial and would have no consequential impact upon the banking industry [*Ed - sounds plausible*]. The conspiracy theorists are also out there - including some highly ranked Irish financial executives - claiming that a campaign was waged within government departments and agencies aimed at discrediting Mr Neary following his perceived poor performance before both the media and government committees, as well as management style [*Ed - makes for interesting speculation but let's not read too much into this one!*].

In response to questions, Finance Minister Brian Lenihan said Mr Neary's settlement terms were agreed upon receipt of independent legal advice. Mr Lenihan was less than supportive of Mr Neary, issuing a **short terse statement** (<http://tinyurl.com/CIFeb0913>) without thanking him for his service, when the former chief executive announced his early retirement in January 2009. Even less supportive was Energy Minister Eamon Ryan who said that he hoped the retirement of the Financial Regulator will **strengthen public confidence** (<http://tinyurl.com/CIFeb0914>) in the banking system.

[Editor – Notwithstanding that many people are suffering out there (losing jobs, struggling with the mortgage etc) who would have thought that compliance and governance would ever be this interesting!]

5 FEBRUARY 2009: FINANCIAL REGULATOR ANNOUNCES NEW DIRECTORS' LOAN REQUIREMENTS

The Financial Regulator announced on 5 February that it proposes to impose a requirement on credit institutions to disclose in their annual accounts, on an individual director basis:

- Details of the maximum amount of loans from that credit institution outstanding at any time during the year to that director (including connected loans)
 - The year-end balance of borrowing by that director (including connected loans)
- It is intended that this requirement will become effective from 1 March 2009.

9 JANUARY 2009 AND ON-GOING: CHIEF EXECUTIVE, FINANCIAL REGULATOR STEPS DOWN UNEXPECTEDLY / INVESTIGATION INTO DIRECTORS' LOANS CONTINUES / ANGLO IRISH BANK NATIONALISED

Patrick Neary, Chief Executive of Financial Regulator steps down unexpectedly. Mr Neary will leave the regulator at the end of January 2009. His earlier than expected departure (early retirement) follows publication of inquiry into Financial Regulator's knowledge of information relating to concealment of loans to former Anglo Irish Bank Chairman. The loans to Mr Sean Fitzpatrick, former Anglo Chairman

were switched from Anglo to Irish Nationwide Building Society shortly before Anglo's year end to keep loan details out of Anglo's annual report. The loans were then switched back to Anglo. This exercise continued over a period of up to 8 years and also involved, on one occasion, another (now former) director of Anglo

The scandal at Anglo Irish Bank has led to the departure of at least 8 executive and non-executive directors from the board of Anglo Irish including its Chairman, Sean Fitzpatrick and Chief Executive, David Drumm.

Rather than repeat the information relating to what is being labelled the 'Anglo Irish Scandal' readers might be interested in reading the following links:

Links to information on Irish Financial Regulator's and Minister of Finance's website:

- 27/01/2009 - Opening Statement by Chairman - Joint Oireachtas Committee on Finance and the Public Service - https://www.financialregulator.ie/data/news_files/Chairman%20Statement.pdf
- 15/01/2009 - Minister of Finance statement on nationalisation of Anglo Irish Bank - <http://www.finance.gov.ie/viewdoc.asp?DocID=5627&CatID=1&StartDate=1+January+2009&m=n>
- 15/01/2009 - Information note by Financial Regulator on nationalisation of Anglo Irish Bank - <http://www.itsyourmoney.ie/index.jsp?1nID=93&2nID=100&3nID=153&nID=569&aID=657>
- 13/01/2009 - Opening Statement by Chairman - Joint Oireachtas Committee on Economic Regulatory Affairs - https://www.financialregulator.ie/data/news_files/Opening%20Statement%20JOC%20130109.pdf
- 09/01/2009 - Statement by Board of Financial Regulator on retirement of Chief Executive - http://www.complianceireland.com/documents/Statement_by_Authority_Retirement_Financial_Regulator_CEO_20090109.pdf
- 09/01/2009 - Statement by CEO of Financial Regulator on his retirement - http://www.complianceireland.com/documents/FinancialRegulator_CEO_Announces_Retirement_20090109.pdf
- 09/01/2009 - Statement by Board of Financial Regulator in Directors' loans at Anglo Irish Bank http://www.complianceireland.com/documents/Statement_by_Authority_Directors_loans_at_Anglo_Irish_Bank_20090109.pdf

IFSRA – MADOFF COLLAPSE

On 7 January, the Financial Regulator issued an [information release](http://tinyurl.com/CIFeb0915) (<http://tinyurl.com/CIFeb0915>) quantifying the exposure of Irish funds to the collapse of Bernard L. Madoff Investment Securities LLC as a result of an alleged fraud. This was part of an EU-wide initiative, co-ordinated by the Committee of European Securities Regulators ("CESR") with Irish and Luxembourg-domiciled UCITS funds found to have been affected.

The Financial Regulator stated that two Irish-domiciled funds, one UCITS and one non-UCITS, had reported exposures to Madoff arising from the appointment of Madoff as sub-custodian to the assets of the funds by the Irish trustee. Both funds suspended dealings with investors. A small number of other funds reported to the Financial Regulator that they have indirect exposures arising from investment by the funds in other collective investment funds with exposure to Madoff. Three of these have suspended dealings with investors, one UCITS and two non-UCITS. The Financial Regulator noted that decisions to suspend dealings had been taken by the Boards of the funds and notified to all investors.

In Luxembourg, the CSSF issued a [press release](http://tinyurl.com/CIFeb0916) (<http://tinyurl.com/CIFeb0916>) stating that UBS (Luxembourg) S.A. and the CSSF met on February 5, 2009 to discuss the circumstances of

LUXALPHA SICAV – American Selection and Luxembourg Investment Fund - US Equity Plus, two Luxembourg funds which have been hit by the Madoff scandal. Subsequent to the meeting the CSSF published a [further press release](http://tinyurl.com/CIFeb0917) (<http://tinyurl.com/CIFeb0917>) stating that "the CSSF has transmitted the results of its enquiry into the binding responsibilities for the credit institution UBS (Luxembourg) S.A. in its capacity as depository of the investment fund LUXALPHA SICAV, pursuant to the legal and regulatory texts. The CSSF requested the bank to take a stand in writing."

This was followed by a [further press release](http://tinyurl.com/CIFeb0918) (<http://tinyurl.com/CIFeb0918>) from the CSSF on 11 February regarding another affected Luxembourg fund – Herald (Lux) SICAV. It stated that "In the context of allocating responsibilities to the various parties in relation to Herald (Lux) and its depository bank HSBC Securities Services (Luxembourg) S.A. and in order to safeguard at best the investors' rights, the CSSF took two decisions on 10 February 2009: first the withdrawal from the official list and second the application for the judicial winding-up of the sicav Herald (Lux)."

In its own [information release](http://tinyurl.com/CIFeb0915) (<http://tinyurl.com/CIFeb0915>), the Financial Regulator noted that the provisions of EU and Irish law set down specific obligations in relation to the safe keeping of the assets of a UCITS and are similarly applicable in the case of non-UCITS. It was highlighted that the ability of a fund's trustee to appoint sub-custodians did not absolve the trustee of responsibility for the custody of the funds' assets.

[Editor Comment: In the relevant Notices governing the duties of trustees, the Financial Regulator sets out a number of actions it feels that a trustee can undertake in order for the trustee to discharge its responsibility under the Regulations for the actions of its sub-custodians. The Financial Regulator did not reference these in its information release.]

At a pan-European regulatory level, [CESR noted](http://tinyurl.com/CIFeb0919) (<http://tinyurl.com/CIFeb0919>) that it is organising regular contacts between its members (the various EU securities regulators) to establish the extent of potential losses of European investors and to coordinate the members' actions. CESR is also engaging in dialogue with the SEC in order to co-ordinate European regulatory efforts. It was stated that concerns have been raised in respect of custody and sub-custody arrangements. For this reason, CESR stated it intends to focus its efforts on establishing how the various rules on depository obligations have been implemented in Member States and will seek to establish if further clarity is needed on an EU-wide basis.

On 27 January, [Motions for Entry to Commercial List and Motions for Interlocutory Injunction](http://tinyurl.com/CIFeb0920) (<http://tinyurl.com/CIFeb0920>) were made in the Commercial Court by Thema International Fund plc and separately by AA (Alternative Advantage) plc against HSBC Security Services (Ireland) Ltd and sister company HSBC Institutional Trust Services (Ireland) Ltd seeking to have monies returned to them, signalling the commencement of legal initiatives by parties affected by the Madoff collapse.

These funds have been joined more recently by Fortis Prime Fund Solutions Custodial Services (Ireland) Ltd making a separate, [unrelated claim](http://tinyurl.com/CIFeb0921) (<http://tinyurl.com/CIFeb0921>) against the first of these HSBC entities, again related to the Madoff collapse.

IFSRA: THEMATIC INSPECTION OF MiFID FIRMS BY FINANCIAL REGULATOR

The Financial Regulator recently undertook thematic inspections of certain investment and stock-broking firms authorised under the MiFID Regulations in the area of client classification. A letter summarising its general findings was subsequently issued to relevant firms as feedback on the Financial Regulator's expectations.

The Financial Regulator found a high level of compliance generally in the area of client classification but raised certain areas of concern for firm's to consider in the light of their own operations:

- There were issues noted with the content of some classification policies and procedures;

- Some firms were found to have failed to inform clients of their classification or had not retained evidence of such notification;
- In some instances clients had not been notified about their right to request a different categorisation or about any limitations as to the level of client protection that changing categorisation would entail;
- There were instances noted where retail clients had not received updated terms of business documentation prior to the provision of investment services
- The Financial Regulator stressed the importance of maintaining adequate and proper records to demonstrate compliance with the MiFID Regulations.

IFSRA: FINANCIAL REGULATOR DEMANDS SPECIAL AUDIT OF STOCK-BROKING FIRMS

The *Sunday Business Post* reported on 16 November that the Financial Regulator has written to all Irish stock-broking firms, requiring a special one-off audit to be carried out by the firms' own independent auditors, and at the firm's own expense.

The terms of reference of the audit were specified by the Financial Regulator to put the Auditors in a position to give the Financial Regulator an opinion on the effectiveness of the Risk Management and Controls operated by the member firms:

- In ensuring that client assets are not being put at risk and inappropriately used and accessed;
- In ensuring that the controls surrounding all trading activity is effective to prevent putting the firm's own funds at risk resulting in the firm not having sufficient funds on an ongoing basis to meet its capital requirements.

An initial procedural review to assess if the member firm's Risk Management and Control procedures conform to best practice was to be followed with a substantive review, separate and apart from the normal annual Client Assets review. The purpose of the substantive review follows on from the themes of the procedural review, but concentrates more closely on areas of key risk:

- Establishing that activity in client accounts is genuine, taking into account the nature of the relationship;
- Assessing the operation of the segregation of duties amongst staff in accessing client accounts and the client assets (e.g. the 4 eye principle) and whether these arrangements are complied with in practice;
- Substantive testing that the assets of one client are not being used for the purpose of another client unless specifically permitted by way of set-off;
- Carrying out an audit of the risk management function and controls in place in each member firm to ensure that the controls surrounding all trading activity are effective and that such trading does not put the firm's own funds at risk resulting in the firm not having sufficient funds on an ongoing basis to meet its capital requirements

The Auditors were required to submit to the Financial Regulator by 19th November 2008 an opinion in a high level report on whether each member firm's risk management and controls conformed to best practice. The finalised report relating to substantive testing is required to be submitted to the Financial Regulator by 5th January 2009.

IFSRA - side pockets and fund redemption limits for non-UCITS funds

Because of current market conditions which have placed great strains on funds and in particular fund of funds or feeder funds (where the underlying funds may have reduced or suspended redemptions), the Financial Regulator has introduced a number of changes to its existing policy in order to address some of these liquidity problems.

The Financial Regulator has announced that it will not limit the amount of assets which might be allocated to a side pocket, partial suspension, or partial redemption arrangement for non-UCITS funds.

The Financial Regulator does not require prior notification of actions taken, but rather that the board of directors and the trustee provide written confirmation to the Financial Regulator that the proposed action takes into account the interests of all investors and is in accordance with the fund rules.

IFSRA - Multilateral Trading Facility (MTF) Guidance Note

The Financial Regulator has issued a Guidance Note on the authorisation process applicable to a proposal to operate an MTF under the Regulations entitled European Communities (Markets in Financial Instruments) Regulations 2007 (MiFID Regulations).

The Guidance Note clarifies what might constitute an MTF under the MiFID Regulations and sets out details of the different authorisation process applicable to a proposal to operate an MTF, depending on whether the proposed MTF operator is an existing authorised investment firm or is applying for authorisation as an investment firm under the MiFID Regulations for the first time.

IFSRA - Review of Intermediary Market

On 10 December 2008, the Financial Regulator published the report of the joint Financial Regulator and industry working group set up to review the intermediary market. The working group was chaired by the Financial Regulator and examined the terms used to categorise insurance and mortgage intermediaries and looked at improving transparency in relation to the services provided to consumers by intermediaries.

The recommendations include:

- New criteria to be used by intermediaries when they use the terms 'broker' and 'independent'
- The ending of the practice whereby insurance companies terminate appointments with intermediaries based solely on target levels of new business
- New disclosure requirements in relation to services provided
- Obligation on non-life insurance intermediaries to provide remuneration details on request*
- Legislative changes to simplify the operation of the intermediary market.

The report also highlights areas that have the potential to create conflicts of interest, such as target-related arrangements, the importance of providing relevant information to customers, and the obligation to act in the best interests of customers and the integrity of the market, and outlines the provisions of the Consumer Protection Code that must be complied with in these situations.

Most of the recommendations in the Report will be implemented through the Financial Regulator's statutory Consumer Protection Code, which will be reviewed in 2009.

IFSRA - Financial Regulator Examines Foreign Exchange Charges

The Financial Regulator has conducted a nationwide examination of foreign exchange charges being imposed by credit institutions and bureaux de change for retail foreign exchange transactions. This examination was carried out through a mystery shopping exercise to confirm whether these providers of foreign exchange facilities imposed these charges in accordance with approved relevant legislation.

The survey focussed primarily on the costs imposed by these financial service providers on consumers when converting euro denominations to Sterling and US Dollars and also when converting these currencies to euro.

The findings showed a high level of compliance among foreign exchange providers. Where issues were identified, the Financial Regulator is following up with the relevant institution to ensure these issues are addressed in an appropriate and timely manner. The issues identified included:

- Foreign exchange rate boards were either not on display, not clearly visible or were not being regularly updated to reflect current exchange rates
- The commission associated with a transaction was not disclosed to the consumer in advance.

IFSRA - Firms Urged to Improve Sales and Premium Review Processes of Unit Linked Whole of Life policies

The Financial Regulator has completed an examination of Unit Linked Whole of Life policies. This examination was undertaken as a result of concerns raised by consumers, particularly regarding the review of their policies and the current sales practices relating to these products.

The inspection found that one of the main reasons for delays was over-reliance on manual processes when conducting policy reviews. The findings of this examination highlight the need to improve the sales and premium review process, an area we will continue to monitor.

IFSRA – Warning Notices issued

London Equities (Ireland, Belgium) (18/02/2009) Guardian Asset Management (Japan) (18/01/2009), Hunter Rowe Financial (Germany) (29/01/2009), Germany Lincoln Ventures (Canada) (03/12/2008),

The Financial Regulator has issued Warning Notices in respect of the above entities offering investment services and/or investment advice to members of the Irish public. It is a criminal offence for an investment firm to operate in Ireland unless it has an authorisation from the Financial Regulator. Clients of unauthorised firms are not eligible for compensation from the Investor Compensation Scheme.

IFSRA - Mystery Shop and Cost Comparisons show Better Home Insurance Deals

The Financial Regulator published new home insurance cost comparisons on its personal finance website, www.itsyourmoney.ie, which show that consumers could make savings on buildings and contents insurance. Consumer Director Mary O'Dea also encouraged consumers to seek discounts on home insurance, following a mystery shopping exercise into the customer experience of shopping around.

DATA PROTECTION - IRELAND

LIST OF RECENT EVENTS

09 February 2009 - Advice issued to job seekers by the Data Protection Commissioner following the receipt of complaints to his Office in recent days from persons who have applied for jobs which turned out to be fake. (see <http://www.dataprotection.ie/viewdoc.asp?DocID=902&m=1>)

02 February 2009 - Data Protection Commissioner wins critical court case: may proceed against telecommunications firms (see http://www.privacy.ie/news_current.html)

01 February 2009 - Irish Sunday Business Post (John Burke) reports that the personal and financial details of almost 1,200 customers of green energy firm Airtricity were posted on the company's

website for six weeks. (see <http://archives.tcm.ie/businesspost/2009/02/01/story39221.asp>)

29 January 2009 - New *Data Protection Audit Resource* issued by Data Protection Commissioner (January 2009, Version 1.0) (see <http://www.privacy.ie/resources.html>)

28 January 2009 - Statement by Declaration of Alex Türk, Chairman of the Article 29 WP on the European Data Protection Day. (see http://ec.europa.eu/justice_home/fsj/privacy/news/docs/pr_27_01_09_en.pdf)

27 January 2009 - *The Basics – What Every Data Controller Needs to Know* (Presentation by Peter Oakes, Compliance Ireland, on 27 January 2009) (see <http://www.privacy.ie/resources.html>)

8 January 2009 - Schedule of Data Protection Laws page added to www.privacy.ie. Go to <http://www.privacy.ie/laws.html>

18 November 2008 - *Dealing with Access Requests: ICS Privacy Forum* (Presentation by Peter Oakes, Compliance Ireland, on 18 November 2008) (see <http://www.privacy.ie/resources.html>)

22 December 2008 - Data Protection Commissioner announces introduction of new Regulations dealing with unsolicited communications in the area of electronic communications networks and services. Statutory Instrument No. 526 of 2008 amends Statutory Instrument No. 535 of 2003 which has been in force since November 2003. (see <http://www.privacy.ie/21122008.html>)

26 November 2008 - Compliance Ireland Newsletter 6/2008 (November 2008) released. [Click here to read](#)

25 November 2008 - Oireachtas laptop stolen after break-in at TD's office. (see <http://www.privacy.ie/25112008.html>)

7 November 2008 - Garda Commissioner requests mobile phone firm to retain web-browsing data. (see <http://www.privacy.ie/07112008.html>)

4 November 2008 - Bank of Ireland customer data on missing device. (see <http://www.privacy.ie/04112008.html>)

DATA PROTECTION COMMISSIONER FREE TO PROCEED WITH CRIMINAL ACTION AGAINST TELECOMMUNICATIONS FIRM

Mr Justice McCarthy (High Court) delivered judgement on January 9th, 2009 in the matter of *Realm Communications Ltd v Data Protection Commissioner*. In summary the Data Protection Commissioner did not act unlawfully in issuing summonses against Realm which had allegedly sent text messages for marketing purposes, without the consent of the recipients, notwithstanding that the Commissioner did at first seek to arrange an amicable resolution between the company and the complainants (i.e. text recipients).

The Commissioner took action under Statutory Instrument 535 of 2003 (now amended by 526 of 2008, see below) which prohibits a person from sending unsolicited communications (such as texts and emails) for the purpose of direct marketing without the consent of the recipient.

The fine for such offence, where tried on summons - up until SI 526 of 2008 which increased the amount - was a fine not exceeding €3,000. Higher penalties exist where tried on indictment, including fines, under amending regulations, up to €250,000 or 10% of the offender's turnover.

The Commissioner received a number of complaints against Realm and in response issued 60 summonses against the company in the District Court. The company sought the quashing of the decision to prosecute it on grounds that Mr Hawkes (Data Protection Commissioner) could only do so if he first complied with section 10(1) of the Data Protection Act which empowers the Commissioner to carry out an investigation.

Realm argued that the Commissioner's own guidelines (published on www.dataprotection.ie) required him to attempt to resolve matters amicably and that this was a precondition to taking a prosecution. The Commissioner refuted this claim, stating that the reference to an amicable resolution solely arose in relation to dealing with a complaint and not to the exercise of his investigative or enforcement powers. This he said was supported by the fact that the EU Directive underpinning SI 535 of 2003 did not require mediation before investigations or enforcement. Furthermore, mediation is not effective in relation to repeat offenders.

Justice McCarthy agreed stating that the EU Directive did not impose any explicit obligation on the State to provide for an attempted amicable resolution prior to enforcement. Disagreeing with Realm the Judge McCarthy said: the EU Directive existed to strike a balance between the legitimate interests of businesses in using electronic communications networks and people's data protection rights; and the wording of the Act did not compel the use of mediation ahead of investigatory powers in all circumstances. Judge McCarthy noted that nothing in Section 10 limited the Commissioner's power to prosecute (or acted as a prohibition on prosecution) unless a resolution had been attempted and failed. Even if an amicable resolution took place, a breach of the law would still exist. There was nothing in the regulations to suggest that a resolution would "expunge" or render inadmissible evidence of the breach.

Judge McCarthy noted that the issue of a criminal prosecution was one between the State and an alleged transgressor. The private interest of a party injured or aggrieved (i.e. a complainant) by the alleged wrongdoing is irrelevant in the case of a criminal prosecution. Any attempt to set a precondition to a prosecution would "uniquely fetter the prosecutor in the exercise of his discretion, and would thus thereby introduce... a question of private interest into the community's right to enforce the law".

Judge McCarthy said it could not have been "in the contemplation of the Oireachtas to place in the hands of a criminal (I speak generally of course) the capacity to delay and perhaps undermine a prosecution by merely ostensibly engaging in an attempt at amicable resolution... Such a provision would introduce an entirely new phenomenon at variance with the nature of criminal prosecutions".

The statutory obligation to seek an amicable resolution was unrelated to prosecution. He also said that a summary prosecution must be begun within 12 months of the date of the offence. If a complaint was made within days of the expiry of this deadline, an obligation to attempt a mediation could delay the prosecution beyond it.

Judge McCarthy refused the reliefs sought by Realm.

See also:
<http://www.privacy.ie/>
<http://www.complianceireland.com/Resources.html#DataProtection>

PROPOSED COMMUNICATIONS (RETENTION OF DATA) BILL 2009 - READER'S OPINION

Over recent years there has been no small degree of change, not to mention confusion, regarding the data that communication companies operating within the State are obliged to retain, disclose when asked and ultimately destroy.

The Data Protection Commissioner determined that data should not be retained for any longer than was necessary – usually accepted to mean six months, after which data must be deleted.

Stories that a secret directive had been issued to communication providers in 2002 mandating them to retain telecommunication data for one year did not help to clear some already muddy waters.

The passing of the Criminal Justice (Terrorist Offences) Act of 2005 provided some clarity by specifying that traffic and location data must be retained by communication companies for a period of three years. Therefore, communication companies knew that the "necessary" retention period was three years, after which data must be deleted. But even this Act was not without its own controversy – Part 7, that part of the Act detailing the data retention requirements, was a last minute addition and the Act was passed with little opportunity for debate in the Dail. Some civil liberty groups were gravely concerned about the provisions of the data retention requirements and one even brought a High Court action against the Government. Their view that such an Act was tantamount to nothing more than mass surveillance was equally as loudly voiced by some elected politicians.

The European Parliament Directive 2006/24/EC, commonly referred to as the Data Retention Directive, mandated that data must be retained for a periods of not less than six months and not more than two years. The conflict regarding retention periods between the 2005 Act and this Directive were obvious.

In July 2006, Ireland, joined by some other Member States, challenged the legal basis on which the Directive was introduced. This challenge was rejected by the European Court of Justice in February 2009 – meaning that little now stands in the way of the immanent transposition of the Directive into Irish law.

However, while this challenge was ongoing, the Department of Justice drafted a Statutory Instrument, via which they intended to introduce the provisions of the Directive should their challenge fail. The Instrument detailed that data relating to Internet access, internet e-mail and Internet telephony should be retained for one year while data relating to both fixed line and mobile telephony should be retained for a period of two years.

Following some lengthy consideration the Attorney General indicated that the introduction of such measures by way of a Statutory Instrument, which does not require Oireachtas debate, could cause Constitutional difficulties.

So, the draftsmen are now back at their desks penning the new Communications (Retention of Data) Bill 2009. This new piece of legislation will detail the precise pieces of data to be retained by communication companies, to who they must disclose such data, how long such data should be retained for and what checks and balances will be implemented to ensure that the process is not abused.

[Editor - This particular article was submitted by a reader with detailed knowledge of the telecommunications industry. See also <http://www.taoiseach.gov.ie/index.asp?docID=2580>

If you would like to contribute an article to the newsletter and our websites, please contact Peter Oakes at peter@complianceireland.com

FINANCIAL CRIME – IRELAND

16 FEBRUARY 2009: NO DATE, STILL, FOR IMPLEMENTATION OF NEW MONEY LAUNDERING LAWS

From various sources, it appears to **Compliance Ireland** that Ireland will publish the proposed Criminal Justice (Money Laundering) Bill in the second quarter of 2009. Of course it is possible that this timetable may be too ambitious should the government's legislative priority be taken-over by the

worsening banking crisis. However we understand that a draftsman, within the Attorney-General's office, is appointed and has been very hard at work on the new Bill, with drafting at a very advanced stage now. Separately, the government is acutely aware of the infringement process available to the European Union Commission and is therefore committed to ensuring the fastest possible passage of the Bill into Irish law.

13 FEBRUARY 2009: IRISH COURT CONTINUES HEARING INTO ALLEGATIONS THAT FATHER AND SON LAUNDERED SOME OF THE PROCEEDS OF THE £26.5M (€29.4M) NORTHERN BANK ROBBERY

As previously report on our [Hot Topics](#) page on 15 January 2009, Timothy "Ted" Cunningham (60) and Timothy John Cunningham (33) have pleaded not guilty to a total of 24 charges of money laundering relating to sums in excess of £3m. The father and son have denied laundering some of the proceeds of the £26.5m (€29.4m) Northern Bank robbery. On 14 February the Cork Circuit Criminal Court was informed by the State Prosecutor Tom O'Connell, SC that Ted Cunningham operated as a money lender with his Cork based business, Chesterton Finance. The State Prosecutor told Judge Cornelius Murphy and the jury that: the case could last up to 12 weeks; jury members will need to be available until Easter; and 250 witnesses will be called.

On 13 February 2009 it was reported in the Irish Times that Ted Cunningham claimed he was fearful of a former chairman of an Irish bank who gardai claimed Mr Cunningham had earlier stated was behind the laundering operation. Lawyers for Mr Cunningham allege that he was coerced into co-operating with gardai after he was arrested on suspicion of IRA membership. The [Irish Times](#) and [The Independent](#) are providing regular coverage of this story.

[Editor – although itself not regulated by the Financial Regulator, Chesterton Finance has appointed a number of Financial Regulator mortgage intermediaries based in Dublin, Limerick, Co Mayo and Galway. Chesterton Finance is a designated body for the purposes of the 1994 Criminal Justice Act, 1994. There is no allegation that the regulated firms are involved in the matters presently before the Court]

Compliance Ireland will follow this story closely.

13 FEBRUARY 2009: SUSPENDED TERM FOR €12,000 BANK 'PHISHING' SCAM

Regular readers will be aware of our reporting of phishing scams occurring in Ireland.

Bank of Ireland has reportedly compensated a customer who freely gave her confidential information to a fraudster.

Eghosa Aigbe (38), Belfry Hall, Citywest, Tallaght, Dublin, pleaded guilty to opening a bank account dishonestly by deception on July 10th, 2006, at Bank of Ireland, Phibsboro. He also admitted stealing €12,000 on August 9th, 2006 at Bank of Ireland, Smithfield, at Inchicore and at an ATM in Clondalkin, all in Dublin.

Judge Hogan imposed a three-year sentence which he suspended on condition that Aigbe perform 240 hours community service and pay Bank of Ireland €5,000 compensation. Garda informed the court that staff at the Kilkenny Bank of Ireland contacted a customer on August 9th to ask if she had transferred €12,000 to another account. The woman confirmed she had not authorised the transaction but it transpired that she had replied to a bogus "phishing" e-mail purporting to be from her bank which asked her to verify her details for anti-fraud purposes.

Mr Aigbe opened his account in the false name of Nosa Peter. It appears that Mr Aigbe he did not know about the e-mail which initiated the fraud and he was not the author but rather was the front man.

See other links on phishing at:

http://www.complianceireland.com/HotTopics.html#Credit_Union_scam,
http://www.complianceireland.com/documents/Credit_Union_Phishing_scam_30102008.pdf
http://www.complianceireland.com/downloads/Phishing_26Aug2006_updated_05092006_.pdf
<http://www.complianceireland.com/Press.html>

FINANCIAL SERVICES – UNITED KINGDOM

9 FEBRUARY 2009: FINANCIAL SERVICES AUTHORITY (FSA) PUBLISHES FINANCIAL RISK OUTLOOK (FRO)

The FSA's FRO published on 9 February 2009, outlines the main risks facing firms, consumers and the regulatory system in the economic downturn, particularly those created by the banking sector and real economy deleveraging.

The FSA believes that banks need to adjust their business models to operate successfully in difficult market conditions and in the real economy. Firms have been reminded not to forget their duty to treat customers, facing financial difficulties, fairly. Equally consumers are to: identify warning signs of financial difficulty quickly to their banks; be cautious of financial deals which seem too good to be true; and know where to go for impartial finance advice.

This year's FRO is divided into three sections:

- Financial and economic crisis sets out an integrated view of the macroeconomic, financial and regulatory developments which lie behind the crisis. It outlines issues relating to the regulation of banks and bank-like institutions which will be covered by the Turner Review and an FSA discussion paper due to be published in March;
- Economic outlook describes a central economic scenario drawn from various forecasts focusing in particular on how deleveraging is likely to affect firms, markets, consumers and the FSA. Three alternative scenarios explore the ways in which the economy and financial sector could plausibly evolve over the medium and long term to highlight the substantial uncertainties that face both firms and consumers;
- Outlook for financial sectors and consumers identifies the risks and implications of the financial and economic environment for firms, market participants and consumers.

By publishing this document, the FSA seeks to raise awareness of the key issues facing it and the regulated industry and to place the actions and decisions the FSA makes in context. The FRO's conclusions are a key element in the FSA's priority-setting arrangements which will be set out in its Business Plan due to be published on 12 February 2009.

For more see <http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/025.shtml>

2 FEBRUARY 2009: FINANCIAL SERVICES AUTHORITY (FSA) PUBLISHES BUSINESS PLAN FOR 2009/10.

The FSA's Business Plan sets out its programme of work for 2009 and addresses the risks highlighted by the Financial Risk Outlook published on 9 February.

In the calendar year 2009, the FSA:

- will focus on ensuring firms are soundly run and in particular that they adjust their business models to ensure they can remain well capitalised and securely funded.
- under its consumer mandate, the FSA will concentrate its resources on helping people cope with the economic downturn and maintaining pressure on firms to treat customers fairly.

The FSA's budget for 2009/10 is £415,000,000 (at the exchange rate of 16/02/2009 this is at least 8 times higher than that of the Financial Regulator's budget). The size of the FSA's budget reflects the cost of carrying out its priorities. Funding for the budget will be met by an increase in the amount raised from firms (the Annual Funding Requirement) by £117m. The largest single component of the increase, approximately £70m, is due to the cost of embedding and delivering higher quality supervision, especially of higher impact firms. To support the enhancement of its supervisory process, the FSA will also be investing an additional £12m in technology and property infrastructure. Fees placed upon firms reflect the amount of resources that the FSA plans to dedicate to different types of firms in the coming year. The largest firms in areas needing most regulatory attention and supervisory activity will be subject to higher fees with over 10,000 small firms paying lower fees than last year.

The FSA also published alongside a 2009/10 consultation paper on regulatory fees and levies. This document explains how the FSA proposes to raise the annual funding requirement from fee payers, and provides an opportunity for comment.

See also:

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/026.shtml>
http://www.fsa.gov.uk/pages/Library/Policy/CP/2009/09_07.shtml

27 NOVEMBER 2009 FSA ISSUES DEAR CEO LETTER TO THE CEOs OF MORTGAGE LENDERS AND ADMINISTRATORS

The FSA's letter to Chief Executives of all mortgage lenders and all mortgage administrators reminded them:

- of their responsibilities under the FSA's mortgage conduct of business rules for ensuring the fair treatment of customers in arrears.
- to have a written policy and written procedures in place setting out how they will deal fairly with customers, and specify that firms should only use repossession as a last resort. (see in Chapter 13 of the Mortgages and Home Finance: Conduct of Business Sourcebook ("MCOB") and annexed thereto for further details).
- to review their own policies and procedures, to ensure they are compatible with both MCOB and the FSA's wider Treating Customers Fairly ("TCF") requirements.
- that Senior Management must take the following actions:
 - critically review current arrears policy;
 - critically review current management practices and procedures; and
 - assess whether, *in practice*, borrowers in arrears are being treated fairly by initiating a review of a sample of cases to assess whether the FSA's requirements are being met.
- that since March 2008 all firms are expected by the FSA to have appropriate management information or measures in place to test whether they are treating their customers fairly (see http://www.fsa.gov.uk/pubs/other/tcf_implementation.pdf).
- firms must be able to establish whether they have any weaknesses in their arrears management policies and practices. Where this is the case firms are to take the necessary steps to address those issues as a matter of urgency.

- that the fair treatment of consumers in arrears will continue to be a priority for the FSA throughout 2009. Where lenders are found not to be complying with our requirements the FSA will make appropriate and properly targeted use of our existing regulatory tools, which may include enforcement action.
- the Chief Executive is responsible for communicating his/her conclusions and any actions that they propose to take to their FSA relationship management team at the FSA by 31 January 2009.

See also http://www.fsa.gov.uk/pubs/ceo/arrears_repossessions.pdf

LIST OF RECENT FSA ENFORCEMENT DECISIONS

27th January 2009 - Darwin Lewis Clifton

See UK Financial Crime section below.

27th January 2009 – Steven Geoffrey Griggs & Pacific Continental Securities UK Ltd

The FSA made a prohibition order (banned) and imposed a penalty on the former chief executive of stockbroking, Mr Griggs and (former finance director) Mr Charles Weston for breaches arising out of failings as director and the chief executive of Pacific Continental Securities UK Limited (PCS). Mr. Griggs & Mr. Weston were also fined £80,000 and £95,000 respectively for serious failures in the company which led to customers buying high risk shares without suitable advice.

Link to Final Notice and Media Release:

http://www.fsa.gov.uk/pubs/final/steven_griggs.pdf
http://www.fsa.gov.uk/pubs/final/pacific_continental.pdf
<http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/018.shtml>

26th January 2009 - Gillen Farrelly independent Mortgage Advisers

The FSA has fined Nottingham mortgage broking firm Gillen Farrelly Independent Advisers Limited ("Gillen Farrelly") £17,500 for failing to ensure it provided suitable advice and failure to conduct sufficient due diligence checks which exposed over 80 customers to the risk of being sold an unsuitable self-certified mortgage.

Link to Final Notice and Media Release:

http://www.fsa.gov.uk/pubs/final/gillen_farrelly.pdf
<http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/019.shtml>

26th January 2009 - Stone Financial Management Ltd. (SFML) & John David Cook

The current director and only approved person within SFML, has agreed to withdraw their individual approvals to perform controlled functions at SFML due to a lack of the requisite level of competence to fulfil the regulatory obligations. Furthermore the FSA concluded that John David Cook, SFML's sole shareholder and senior mortgage adviser, was not a fit and proper person. SFML no longer met the required standards required to perform its duties.

Link to Final Notice:

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

[19th January 2009 - Entertainment Rights plc](#)

The FSA had decided to impose a financial penalty of £245,000 on Entertainment Rights, in relation to breaches of its obligation to disclose inside information to the market as soon as possible (a delay of 78 days to notify of agreement to distribute DVDs in the United States).

Link to Final Notice and Media Release:

http://www.fsa.gov.uk/pubs/final/ent_rights19jan09.pdf

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/015.shtml>

[19th January 2009 - Wolfson Microelectronics Plc](#)

The Financial Services Authority (FSA) today fined Wolfson Microelectronics plc (Wolfson) £140,000 for failing to reveal price sensitive information to the market as soon as possible. The delay led to a false market in Wolfson shares for 16 days.

Link to Final Notice and Media Release:

http://www.fsa.gov.uk/pubs/final/Wolfson_20jan09.pdf

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/011.shtml>

[16th January 2009 - Legacy Financial Planning Limited](#)

The Firm failed to pay due regard to the information needs of its clients, and communicate information to them in a way that is clear, fair and not misleading. The FSA imposed a financial penalty of £28,000.

Link to Final Notice:

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

[16th January 2009 - Cross Country Credit \(Europe\) Limited](#)

Cross Country failed to satisfy the threshold conditions due to the fact that it had ceased trading and failed to respond to FSA requests to submit an application to cancel its permission.

Link to Final Notice:

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

[14th January 2009 - Dynamic Mortgage Brokers Limited \(DMB\) & Richard Kennedy](#)

See UK Financial Crime section below.

[13th January 2009 - Platinum Estates and Mortgages Limited](#)

Platinum has failed to meet its liabilities and its resources are not adequate in relation to the regulated activities it had permission to carry on leading the FSA to cancel its permission.

Link to Final Notice:

http://www.fsa.gov.uk/pubs/final/platinum_13jan09.pdf

[12th January 2009 - Erik Boyen](#)

See UK Financial Crime section below.

[9th January 2009 - Kim Kearney trading as Pen Park Motor Group](#)

The company resources were inadequate in relation to the regulated activities it had permission to carry on in breach of Principle 4, financial prudence leading to cancellation of its permission.

Link to Final Notice:

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

[9th January 2009 - Michael Tomlinson](#)

The FSA deemed Michael Tomlinson not to be a fit and proper person to perform any functions as his conduct demonstrated a lack of honesty and integrity. Specifically, on 30 June 2008, he was convicted of 22 counts of financial crime offences.

Link to Final Notice:

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

[9th January 2009 - Fitzgerald Mortgage Services Ltd.](#)

FSA is not satisfied that the firm was a fit and proper person having regard to all the circumstances, including the need to ensure that its business is conducted soundly and prudently. Therefore, the FSA revoked its permission.

Link to Final Notice:

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

[9th January 2009 - Veritas Wealth Management Ltd.](#)

FSA cancelled its permission on the grounds that Veritas was not a fit and proper person having regard to all the circumstances, i.e. the need to ensure that business is conducted soundly and prudently.

Link to Final Notice:

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

[9th January 2009 - Lynton Jaynes trading as MortgageWize](#)

Failure to comply with the regulatory requirement to submit Retail Mediation Activities Return. The FSA has cancelled the permission granted to carry on regulated activities.

Link to Final Notice:

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

[9th January 2009 - Western County Consultants Ltd. \(WCCL\) & Harry Brian Hopkinson](#)

FSA notified WCCL that it had withdrawn the approval of Harry Brian Hopkinson as an approved person and therefore, it is no longer fit and proper to conduct regulated activities.

Link to Final Notice:

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

9th January 2009 - Aon Ltd.

See UK Financial Crime section below.

9th January 2009 - Peter Richard Hilder formerly trading as Savings Assured Mortgages

The FSA advised of the cancellation of the permission granted to carry on regulated activities but this cancellations was not conveyed to clients as required.

Link to Final Notice:

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

5th January 2009 - First Mortgage Consultancy Ltd.

Failure to comply with the regulatory requirement to submit Retail Mediation Activities Return. The FSA has cancelled the permission granted to carry on regulated activities.

Link to Final Notice:

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

19th December 2008 - Andrew David Bowden trading as Scott Jarrett Bowden & Partners

Prohibition order granted for failure to take reasonable care to organise and control the firm's affairs responsibly and effectively, with adequate risk management systems.

Link to Final Notice and Media Release:

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

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2008/156.shtml>

19th December 2008 – Mr Shaun Lawrence

In his capacity as sole trader, Mr Lawrence provided information to lenders that may have been deliberately misleading in order to facilitate your customers obtaining mortgages.

Link to Final Notice:

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

17th - 18th December 2008- Failures to submit RMAR returns

- [Hakeem Adewetan](#)
- [Fylde Superbikes Limited](#)
- [Finance Loans Solutions Limited](#)
- [Meridian Financial Services](#)
- [One 2 One International Ltd](#)

10th December 2008 - Egg banking Plc

The FSA has imposed a financial penalty of £721,000 on Egg for breaches of the FSA's Principles for Businesses in relation to its telephone sales of credit card payment protection insurance (PPI). Egg failed

to take reasonable care to establish and maintain a sales process which ensured that customers were treated fairly and failing to obtain clear consent to the purchase of the policy;

Link to Final Notice and Media Release:

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

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2008/149.shtml>

5th December 2008 – Cartel (Midlands) Ltd (CML) and Peter Applewhite

The decision to refuse an application made by CML due to the fact it was not satisfied that Peter Applewhite was a fit and proper person to perform the controlled functions of a Director

Link to Final Notice:

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

25th November 2008- Matthew John Green

The FSA cancelled authorised person's permission as Mr Green had failed, during a period of at least 12 months, to conduct any regulated activity for which he has Part IV permission.

Link to Final Notice:

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

UK: FSA CONSULTS ON STRESS AND SCENARIO TESTING

The FSA has published a consultation paper (CP) on stress and scenario testing which sets out proposed changes to its Handbook of rules and guidance on stress and scenario testing. The proposed changes include the following:

- The introduction of a "reverse-stress test" requirement which would require firms to consider the scenarios most likely to cause their current business model to become unviable. This requirement would apply to credit institutions, MiFID firms and insurers. The aim of the "reverse-stress test" is to ensure that (i) firms will more fully explore unlikely but catastrophic "long tail risks" which if they were to crystallise would cause a loss of confidence amongst counterparties and investors; and (ii) firms could survive long enough after risks have crystallised to either restructure the business or permit a more orderly wind-down or transfer of business.
- Changes to the existing Internal Capital Adequacy Assessment Process, or where firms use internal (IRB) models to assess their Pillar 1 capital requirements.

The FSA is encouraging firms to review their existing stress and scenario testing arrangements and to start to identify where improvements can be made. The deadline for comments on the CP is 31 March 2009.

UK FSA - PHILIP ROBINSON BBA FINANCIAL CRIME SPEECH

Philip Robinson spoke at the BBA's 6th Annual Financial Crime Conference, setting out our agenda for fighting financial crime in 2009. In the speech, Philip outlined the financial crime risks that we are seeing in the current economic climate and the subsequent areas of regulatory focus. Philip also emphasised the need for the anti-financial crime community to work together in order to stay ahead of the criminals and the importance of senior management setting the right culture for their organisation:

one which focuses on operational risks such as financial crime, in addition to prudential and financial stability issues.

FINANCIAL CRIME – UK

16 FEBRUARY 2009: FSA BANS BROKER FOR MORTGAGE FRAUD

The Financial Services Authority (FSA) published a Final Notice banning mortgage broker Leo Kusi-Appiah, who was recently jailed after pleading guilty at St Albans Crown Court to obtaining property by deception in connection with mortgage fraud.

See also <http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/027.shtml>

9 FEBRUARY 2009: FSA SECURES OVER £1 MILLION FOR VICTIMS OF SHARE SCAM

The FSA has obtained a Court Order that Mr Aniz Kassamali Dhanji Manji will return £1m to investors and Mr Suresh Maganlal Bhowan will pay £17,233. These investors were victims of a share scam operated by overseas entities which sold shares to UK investors.

Mr Manji was the owner of Bayshore Nominees Limited (Bayshore) and Mr Bhowan was the sole director. Investors were encouraged to buy worthless shares during 'cold call' from unauthorised share sellers (boiler rooms) Gatemore Securities (Gatemore) and Enterprise Analytics Incorporated (Enterprise). Bayshore, which held the shares, sent out confirmation notes requiring payment from the investors and arranged the transfer of the shares to the investors. Bayshore then sent the money received from investors, first to other bank accounts, and then off-shore.

At a hearing held on 5 February 2009 at the High Court, the Honourable Mr Justice Floyd declared that Bayshore had broken the law by acting without authorisation, and that Mr Manji and Mr Bhowan had been knowingly concerned in this. It also declared that Gatemore and Enterprise had illegally promoted the shares. Bayshore, Mr Manji and Mr Bhowan agreed to the making of this Order.

See also <http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/024.shtml>

4 FEBRUARY 2009: FSA FINES AIM COMPANY DIRECTOR FOR MARKET ABUSE

The FSA has fined Mr Darwin Lewis Clifton OBE £59,500 and has fined Byron Holdings Ltd (Byron) £86,030 for dealing in the shares of Desire Petroleum plc (Desire) on the basis of inside information. Desire is an AIM-quoted company of which Mr Clifton is a non-executive director. Mr Clifton is also a director and one-third shareholder of Byron. Between 19 November 2007 and 8 February 2008 Mr Clifton directed Byron to buy shares in Desire on four separate occasions when he had inside information from his position as a non-executive director of Desire.

Mr Clifton did not consider at the time whether the information he was given was inside information and he failed to consider the clear and obvious risk that Byron would be committing market abuse by purchasing the shares before the information was generally available.

Margaret Cole, director of enforcement said: *"Mr Clifton held a position of trust as a non-executive director of Desire, but he fell short of the high standards expected of someone in that position. Senior people at publicly quoted companies should ensure that they understand when material is inside information and do not trade when they have it. If they fail to do this they can expect the FSA to impose substantial financial or other sanctions, even where they have not deliberately set out to commit market abuse."*

In determining the financial penalty, the FSA took into account the fact that Mr Clifton's conduct was not deliberate. He cooperated fully with the FSA's investigation and settled at an early stage of the investigation. In doing so, he qualified for a 30% reduction to his fine which would have otherwise been £85,000. Whilst Byron had been pursuing the strategy of increasing its Desire shareholding over the long-term, the inside information was a material influence on the timing of its share purchases. It has not sold the shares.

See also <http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/021.shtml>

19 JANUARY 2009: FSA BANS AND FINES BROKER £101,106 FOR MORTGAGE FRAUD - ALSO BANS SECOND BROKER

The Financial Services Authority (FSA) has banned a mortgage broker and fined him £101,106 for submitting false mortgage applications.

Richard Kennedy was an FSA approved person and a director of Dynamic Mortgage Brokers of East London. The six figure fine, made up of £100,000 financial penalty and giving up £1,106 illicit profit made on false applications, is aimed at deterring approved persons from becoming involved in mortgage fraud.

In a separate case the FSA has also banned North London broker Moses Luzinda trading as Remos and Co for submitting false mortgage applications.

See also <http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/010.shtml>

14 JANUARY 2009: BELGIAN PRIVATE INVESTOR FINED £176,254 FOR MARKET ABUSE

The FSA has today fined Mr Erik Boyen, a Belgium based private investor, £176,254 for dealing in the shares of Monterrico Metals Plc, an AIM-quoted company, on the basis of inside information.

The financial penalty includes a disgorgement of profit of £127,254 and an additional penalty of £49,000.

This action follows similar fines imposed on Erik Boyen's brother, Mr Filip Boyen, and on Mr Richard Ralph, the former executive chairman of Monterrico, last year for dealing using inside information. This fine concludes the FSA investigation into timely dealing in Monterrico shares.

On or about 28 January 2007, Richard Ralph asked Filip Boyen to buy shares in Monterrico on his behalf. At the time, it was publicly known that the company was in takeover discussions and an offer had been made in principle at a premium to the existing share price. Mr Ralph was actively involved in these confidential and highly sensitive discussions and by asking Filip Boyen to buy the shares passed on inside information.

Following Richard Ralph's request, Filip Boyen asked his brother Erik to buy shares on his behalf, thereby passing on inside information. Erik Boyen, an experienced investor, was aware that the company was in takeover discussions. He also knew that Richard Ralph worked for Monterrico and had asked his brother to buy shares in the company. Between 29 January and 2 February, Erik Boyen bought £16,450 worth of shares for his brother and £332,295 worth of shares on his own account. He later sold all the shares making a personal profit of £127,254 and gave his brother £35,800 as proceeds for the sale of his own shares.

Erik Boyen also encouraged a third party to deal in Monterrico shares.

Margaret Cole, Director of enforcement at the FSA said:

"Erik Boyen used inside information to gain an unfair advantage over other market participants in order to make a substantial profit. Such abuse could damage investors' confidence in the UK financial markets. The fines given to all three individuals in this case show our determination to take action against everyone involved, when inside information is misused."

Mr Erik Boyen settled at an early stage of the investigation and qualified for a 30% discount on the additional penalty element from £70,000 to £49,000. Otherwise, the total fine would have been £197,254.

See also <http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/008.shtml>

8 JANUARY 2009: FSA FINES AON LIMITED £5.25M FOR FAILINGS IN ITS ANTI-BRIBERY AND CORRUPTION SYSTEMS AND CONTROLS

The FSA has today (8 January) fined Aon Limited (Aon Ltd) £5.25 million for failing to take reasonable care to establish and maintain effective systems and controls to counter the risks of bribery and corruption associated with making payments to overseas firms and individuals.

Between 14 January 2005 and 30 September 2007, Aon Ltd failed to properly assess the risks involved in its dealings with overseas firms and individuals who helped it win business and failed to implement effective controls to mitigate those risks. As a result of Aon Ltd's weak control environment, the firm made various suspicious payments, amounting to approximately US\$7 million, to a number of overseas firms and individuals.

Margaret Cole, director of enforcement, said:

"This is the largest financial crime related fine imposed by the FSA to date. It sends a clear message to the UK financial services industry that it is completely unacceptable for firms to conduct business overseas without having in place appropriate anti-bribery and corruption systems and controls.

"The involvement of UK financial institutions in corrupt or potentially corrupt practices overseas undermines the integrity of the UK financial services sector. The FSA has an important role to play in the steps being taken by the UK to combat overseas bribery and corruption. We have worked closely with other law enforcement agencies in this case and will continue to take robust action focused on firms' systems and controls in this area."

Aon Ltd cooperated fully with the FSA and agreed to settle at an early stage of the FSA's investigation. The firm qualified for a 30% discount under the FSA's settlement discount scheme. Without the discount the fine would have been £7.5 million.

Since the discovery of its failings in 2007, Aon Ltd and its current senior management have demonstrated that they treat this matter with the utmost seriousness. The FSA considers that the proactive determination of Aon Ltd's current senior management to identify past issues and improve the firm's systems and controls in this area is a model of best practice that other firms may wish to adopt.

See also <http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/004.shtml>

7 JANUARY 2009: INSIDER DEALING & MONEY LAUNDERING: FSA PROSECUTES MR NEIL ROLLINS

Mr Neil Rollins of Keighley, West Yorkshire, date of birth 11 March 1964, was today charged at City of Westminster Magistrates' Court with 4 counts of insider dealing contrary to section 52(1) of the Criminal Justice Act 1993, 1 count of insider dealing contrary to section 52(2)(a) of the Criminal Justice Act 1993 and 4 counts of money laundering contrary to section 327(1)(d) of the Proceeds of Crime Act 2002.

Mr Rollins has been charged with the following offences:

1. having inside information which related to PM Group plc, disposed of 20,000 shares on 22 August 2006, 10,000 shares on 23 August 2006, 30,000 shares on 6 September 2006 and 13,989 shares on 13 September 2006 in PM Group plc.
2. having inside information which related to PM Group plc, on or before 4 September 2006, encouraged Louisa Rollins to deal in shares in PM Group plc.
3. transferring criminal property, in two separate amounts of £25,000 on 24 November 2006, £50,000 on 27 November 2006 and £20,000 on 28 November 2006, to an account in the name of David Rollins knowing or suspecting it to represent the proceeds of insider dealing.

The Magistrates Court held that the case was suitable for trial on indictment before the Crown Court. Proceedings were adjourned until 18 February 2009 and Mr Rollins was remanded on unconditional bail.

See also <http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/002.shtml>

19 DECEMBER 2009: FSA FINES TWO INDIVIDUALS FOR MARKET ABUSE

The Financial Services Authority (FSA) has fined Mr Stewart McKeeg and Mr Brian Valentine Taylor for market abuse. Mr McKeeg was fined £14,411.25 and Mr Taylor was fined £4,642.50. In both cases this was the disgorgement of profits made on transactions where they had inside information. If it were not for their financial circumstances both would have been fined an additional £20,000.

See also <http://www.fsa.gov.uk/pages/Library/Communication/PR/2008/155.shtml>

8 DECEMBER 2009: FSA WARNS SHAREHOLDERS THAT PERSONAL DETAILS MIGHT BE ON A DATABASE SHARED BY FRAUDSTERS

The FSA has warned about 11,000 UK shareholders that their personal details are on a database shared by fraudsters, which can be used to target people and illegally sell them shares. Share fraudsters (also known as boiler room fraudsters) are often based overseas and use high pressure sales techniques to target investors illegally, offering them non-tradable, overpriced or even non-existent shares.

The FSA wrote to the shareholders after acquiring the fraud database with their personal details including names, telephone numbers and addresses, from Canadian authorities. It is likely that the list – which fraudsters typically call a 'suckers list' - has been sold to a number of 'share fraud' gangs.

See also <http://www.fsa.gov.uk/pages/Library/Communication/PR/2008/148.shtml>

4 DECEMBER 2008: UK COURT FINES SOLICITOR & MLRO

On 4 December 2008, a **United Kingdom solicitor and money laundering reporting officer** was fined £5,000 at Isleworth Crown Court for entering into an arrangement which facilitated the laundering of money.

The solicitor had transferred €14,000 into an Italian bank account for a client only days after receiving a court order outlining a number of offences, including carousel fraud, to which his client was about to plead guilty. The information included in the court order was important evidence in establishing *whether the solicitor knew or suspected that the funds were criminal property*.

Jonathan Krestin (60), the managing partner at Butcher Burns, a commercial and property firm of solicitors, was yesterday fined £5,000 on one count of money-laundering at Isleworth Crown Court. He was convicted on 19 November, after a two and a half week re-trial, of using the firm's client account to launder money belonging to Michel Namer, a French national and convicted fraudster. An investigation by HM Revenue and Customs showed that Krestin transferred 14,000 Euro from Namer to an Italian account of Namer's mistress and former lap dancer, Dzindzer Jeles, knowing or suspecting the monies to be criminal property. He was found not guilty in relation to three other counts.

The sum transferred was part of the proceeds of a 35,000,000 Euro Missing Trader Intra Community Fraud orchestrated by Michel Namer. The 14,000 Euro transfer was made just days after Krestin had been served with a court order cataloguing the criminal offences of which Michel Namer was suspected of and in relation to which he was about to plead guilty.

Namer was introduced to Krestin by a qualified tax advisor, Neil Macpherson. Macpherson was convicted at the first trial and sentenced to 3 years' imprisonment in June 2008. That jury could not agree on verdicts in relation to Krestin and so a re-trial followed.

See also -

http://www.complianceireland.com/documents/UK_Solicitor_and_MLRO_fined_20081204.pdf
www.antimoneylaundering.ie

13 NOVEMBER 2008: FORMER UK AMBASSADOR AND BELGIAN BUSINESSMAN FINED FOR MARKET ABUSE

The FSA has fined Mr Richard Ralph, the former British ambassador to Peru and the former executive chairman of AIM-listed mining company, Monterrico Metals Plc (Monterrico), £117,691.41 and his friend Mr Filip Boyen £81,982.95 for dealing in Monterrico's shares on the basis of inside information. The financial penalties for Mr Ralph and Mr Boyen are made up of the disgorgement of their profits and additional penalties of £105,000 and £52,500 respectively.

On about 28 January 2007, Mr Ralph asked Mr Boyen to buy £30,000 worth of Monterrico shares on his behalf. At this time a takeover offer had been agreed in principle at a considerable premium to the existing share price. Although it was publicly known that the company was in takeover discussions the details of those discussions were confidential and highly sensitive. Mr Ralph was actively involved in the takeover discussions and knew he was not allowed to deal in the company's shares. Mr Ralph asked Mr Boyen to buy the shares to hide the fact that he was dealing and in doing so recklessly disclosed inside information to Mr Boyen about his intention to deal.

See also <http://www.fsa.gov.uk/pages/Library/Communication/PR/2008/133.shtml>

FINANCIAL SERVICES – EUROPE

EUROPE: EUROPEAN COMMISSION PROPOSES AMENDMENTS TO CAPITAL REQUIREMENTS DIRECTIVE

On 1st October 2008, the European Commission put forward proposals for a revision of the existing Capital Requirements Directives.

The main changes proposed are as follows:

- **Improving the management of large exposures:** banks will be restricted in lending beyond a certain limit to any one party. As a result, in the inter-bank market, banks will not be able to lend or place money with other banks beyond a certain amount, while borrowing banks will effectively be restricted in how much and from whom they can borrow.
- **Improving supervision of cross-border banking groups:** 'colleges of supervisors' will be established for banking groups that operate in multiple EU countries. The rights and responsibilities of the respective national supervisory authorities will be made clearer and their cooperation will become more effective.
- **Improving the quality of banks' capital:** there will be clear EU-wide criteria for assessing whether 'hybrid' capital, i.e. including both equity and debt, is eligible to be counted as part of a bank's overall capital – the amount of which determines how much the bank can lend.
- **Improving liquidity risk management:** for banking groups that operate in multiple EU countries, their liquidity risk management – i.e. how they fund their operations on a day-to-day basis – will also be discussed and coordinated within 'colleges of supervisors'.
- **Improving risk management for securitised products:** rules on securitised debt – the repayment of which depends on the performance of a dedicated pool of loans – will be tightened. Firms (known as 'originators') that re-package loans into tradable securities will be required to retain some risk exposure to these securities, while firms that invest in the securities will be allowed to make their decisions only after conducting comprehensive due diligence. If they fail to do so, they will be subject to heavy capital penalties.

EUROPE: COMMISSIONER MCCREEVY ANNOUNCES PUBLIC CONSULTATION ON HEDGE FUNDS

Speaking to the Economic and Monetary Affairs Committee of the European Parliament in Brussels on 1st December Charlie McCreevy, Commissioner for the Internal Market and Services, announced a wide ranging public consultation on Hedge Funds.

He recalled that the leaders of the G20 agreed on the 15th of November that "all financial markets, products and participants should be regulated or subject to oversight, as appropriate to their circumstances". The G20 leaders had also decided that by March 31st 2009 "private sector bodies that have developed best practices for private pools of capital and/or hedge funds should bring forward proposals for a set of unified best practices".

Among the issues to be addressed in the public consultation are:

- Adequacy of transparency measures,
- oversight responsibility,
- risk management practices,
- assessment of systemic risks,
- need for capital requirements and
- supervisory responsibility.

The public consultation was launched with the aim of discussing the results at a high level conference in Brussels in February 2009.

AML – EUROPE

Barclays France and Soc Gen found not guilty

Société Générale and Barclays were cleared of money-laundering charges by a French court on Thursday, while a French regional bank and a Pakistani bank were fined €200,000 after being found guilty on some charges.

Barclays, Société Générale and the French lender's chairman, Daniel Bouton, were found not to be part of a ring that funnelled the equivalent of €82 million, into Israel in the late 1990s, Judge Olivier Leurent said in his summary of the decision.

Leurent did find National Bank of Pakistan, based in Karachi, guilty on some charges, imposing a fine of €200,000. Two of the bank's executives were cleared of all charges, while two others were found guilty on some charges, fined €20,000 each and given two-year suspended sentences. Société Marseillaise de Crédit, in southern France, was fined €100,000.

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