



## REGULATORY UPDATE 3/2008

This newsletter is available online at:

[http://www.complianceireland.com/documents/CI\\_Newsletter\\_July08.pdf](http://www.complianceireland.com/documents/CI_Newsletter_July08.pdf)

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Welcome to the **July 2008** regulatory update from **Compliance Ireland**. In this Newsletter:

### Compliance Document Templates

In response to enquiries, we have created a new webpage on our website listing some of our compliance documents.

Visit <http://www.complianceireland.com/compliancedocs.html> where you will find samples of the contents pages for a MiFID Compliance Manual, MiFID Procedures Manual, MiFID Compliance Monitoring Programme/Plan and an Anti-Money Laundering Manual. Over time we will do likewise for Data Protection Procedures, Consumer Protection Code and other regulatory risk programmes.

- [http://www.complianceireland.com/documents/MiFID\\_Procedures\\_Manual.pdf](http://www.complianceireland.com/documents/MiFID_Procedures_Manual.pdf)
- [http://www.complianceireland.com/documents/MiFID\\_Compliance\\_Manual.pdf](http://www.complianceireland.com/documents/MiFID_Compliance_Manual.pdf)
- [http://www.complianceireland.com/documents/MiFID\\_Risk\\_Based\\_Compliance\\_Monitoring\\_Plan.pdf](http://www.complianceireland.com/documents/MiFID_Risk_Based_Compliance_Monitoring_Plan.pdf)
- [http://www.complianceireland.com/documents/AMLCFTManualContentTemplate20080728\\_version10.pdf](http://www.complianceireland.com/documents/AMLCFTManualContentTemplate20080728_version10.pdf)

**If you would like to know more about these documents please contact us at [email@complianceireland.com](mailto:email@complianceireland.com) or phone +353 1 425 5962 / 5972**

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## COMPLIANCE IRELAND TRAINING

### 2008 Quarter 3 & Quarter 4 training course dates

Full details of all course seminars and workshops can be found at <http://www.complianceireland.com/Training.html> or <http://www.compliancetraining.ie>.

All courses can be tailored for in-house delivery too. Please contact us at the details appearing at the end of this Newsletter for further information. Bookings can be made by email to [bookings@complianceireland.com](mailto: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](mailto: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.

### **ANTI-MONEY LAUNDERING & FINANCING OF TERRORISM FOR FINANCIAL INSTITUTIONS (FULL DAY) - (DUBLIN)**

9.00am to 5.00pm Tuesday 9<sup>th</sup> September 2008 (Clarion Hotel, North Wall Quay, IFSC)  
9.00am to 5.00pm Thursday 9<sup>th</sup> October 2008 (Clarion Hotel, North Wall Quay, IFSC)  
9.00am to 5.00pm Tuesday 9<sup>th</sup> December 2008 (Clarion Hotel, North Wall Quay, IFSC)  
Cost: €680 (no VAT)

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

9.00am to 5.00pm Thursday 6<sup>th</sup> November 2008 (Europa Hotel, Belfast, Northern Ireland)  
Cost: £500 (no VAT)

### **COMPLAINTS HANDLING AND TREATING CUSTOMERS FAIRLY (HALF DAY)**

9.00am to 1.00pm, Thursday 11<sup>th</sup> September 2008 (Jurys Inn, Custom House Quay, IFSC)  
Cost: €425 (no VAT)

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

9.00am to 1.00pm Tuesday 16<sup>th</sup> September 2008 (Jurys Inn, Custom House Quay, IFSC)  
9.00am to 1.00pm Tuesday 18<sup>th</sup> November 2008 (Jurys Inn, Custom House Quay, IFSC)  
Cost: €425 (no VAT)

## [THE ROLE OF THE COMPLIANCE OFFICER \(FULL DAY\)](#)

### [BANKS & INVESTMENT BUSINESS FIRMS:](#)

9.00am to 5.30pm, Tuesday 23<sup>rd</sup> September 2008 (Clarion Hotel, North Wall Quay, IFSC)

Cost: €680 (no VAT)

## [THE ROLE OF THE COMPLIANCE OFFICER \(FULL DAY\)](#)

### [INSURANCE FIRMS:](#)

9.00am to 5.30pm, Tuesday 14<sup>th</sup> October 2008 (Clarion Hotel, North Wall Quay, IFSC)

Cost: €680 (no VAT)

## [DIRECTORS DUTIES AND CORPORATE GOVERNANCE OF CREDIT, FINANCIAL AND INSURANCE INSTITUTIONS REGULATED IN IRELAND \(HALF DAY\)](#)

9.00am to 1.00pm, Thursday 25<sup>th</sup> September 2008 (Jurys Inn, Custom House Quay, IFSC)

Cost: €425 (no VAT)

## [ANTI-MONEY LAUNDERING & FINANCING OF TERRORISM RISK-BASED APPROACH UNDER 3RD EU DIRECTIVE \(HALF DAY\) - \(DUBLIN\)](#)

9.00am to 1.00pm, Tuesday 30<sup>th</sup> September 2008 (Jurys Inn, Custom House Quay, IFSC)

9.00am to 1.00pm, Thursday 30<sup>th</sup> October 2008 (Jurys Inn, Custom House Quay, IFSC)

Cost: €425 (no VAT)

## [ESTABLISHING THE INTERNAL AUDIT FUNCTION \(HALF DAY\)](#)

9.00am to 1.00pm, Tuesday 7<sup>th</sup> October 2008 (Jurys Inn, Custom House Quay, IFSC)

Cost: €425 (no VAT)

## [HOW TO HANDLE A FINANCIAL REGULATOR \(IFSRA\) INSPECTION \(HALF DAY\)](#)

9.00am to 1.00pm, Thursday 16<sup>th</sup> October 2008 (Jurys Inn, Custom House Quay, IFSC)

Cost: €425 (no VAT)

## [RISK-BASED COMPLIANCE MONITORING FOR FINANCIAL INSTITUTIONS \(HALF DAY\)](#)

9.00am to 1.00pm, Tuesday 21<sup>st</sup> October 2008 (Jurys Inn, Custom House Quay, IFSC)

Cost: €425 (no VAT)

## [DATA PROTECTION AND HOW TO CONDUCT A DATA PROTECTION AUDIT \(FINANCIAL INSTITUTIONS\) \(FULL DAY\)](#)

### [Financial Firms:](#)

9.00am to 5.00pm, Tuesday 28<sup>th</sup> October 2008 (Clarion Hotel, North Wall Quay, IFSC)

Cost: €680 (no VAT)

**NEWSLETTER CONTINUES ON NEXT PAGE**

## IRELAND

### **FINANCIAL REGULATOR REGULATIONS AND CODES**

#### **FINANCIAL REGULATOR REVISES QUALIFYING INVESTOR FUNDS REQUIREMENTS**

Following consultation with industry participants, the Financial Regulator has decided to remove requirements for Qualifying Investor Funds ("QIFs") to produce interim accounts. While this reduces the regulatory burden on such funds, it should be noted that listed QIFs will continue to be subject to stock exchange continuing obligations in this area. Indeed, a QIF's own articles of association may require the production of interim accounts, requiring a shareholder meeting to approve changes before the new flexibility can be enjoyed. This has led to an amended Notice NU24 being issued.

The maximum limit which a QIF can invest in any one other collective investment scheme without being considered a feeder scheme has been raised from 40% to 50%. This has led to an amended Guidance Note 1/01 Feeder Schemes and Fund of Funds Schemes being issued.

Amendments have also been made to Guidance Note 1/07 Authorisation of Qualifying Investor Schemes:

- A QIF structured as a variable capital investment company is required under Irish company law to spread investment risk. A paragraph reminding directors of such companies of their responsibilities has been inserted into the Guidance Note.
- The Financial Regulator has published an explicit prohibition on QIFs raising capital from the public through the issue of debt securities. This prohibition is tempered by the permission for collective investment schemes to issue notes on a private basis, to a lending institution to facilitate financing arrangements.
- The wording of paragraphs dealing with limited liquidity and warehousing arrangements have been clarified.

The application form for QIF approval has also been amended in line with the above.

A **Compliance Ireland** briefing note is available from:

<http://www.complianceireland.com/documents/July08QIFregimebriefingnote.pdf>

### **FINANCIAL REGULATOR SETTLEMENT ACTIONS**

The Financial Regulator has entered into a Settlement Agreement with Frank J Murphy Insurance Brokers Limited and Mr Frank Murphy, Director and Mrs Terri Murphy, Director in relation to breaches of regulatory requirements.

Suspected breaches occurred up to 24 October 2006 relating to breaches by the firm and Mr Murphy and Mrs Murphy of their obligations arising under Investment Intermediaries Act, 1995 ("the Act") and the Handbook for Restricted Activity Investment Product Intermediaries ("the Handbook"). These breaches included:

- a failure to lodge cash premiums received from Clients to the firm's client premium account;
- the improper handling and improper withdrawal of client premiums held in the firm's client premium account;
- the improper retention of client premium rebates;
- a failure to notify the Financial Regulator of breaches of the Act and Handbook when the firm became aware of such breaches;

- a failure to adhere to certain requirements contained in the Handbook; and
- a failure to carry out monthly reconciliations of the firm's client premium accounts and to keep proper books and records.

The authorisation (by agreement) of broker Frank J Murphy Insurance Brokers Limited was revoked and the directors Frank J Murphy and Terri Murphy were disqualified (by agreement) for 5 years and 1 year respectively.

A copy of the settlement agreement is available at:  
<http://www.complianceireland.com/Resources.html#Enforcement>

## **FINANCIAL REGULATOR PUBLICATIONS**

### **FINANCIAL REGULATOR HIGHLIGHTS CONCERNS ABOUT SALES OF INVESTMENT PRODUCTS**

The Financial Regulator has written to all intermediaries, banks and insurance companies that sell investment products reminding them of its concerns in relation the sale of investment products regarding:

- the duty of care that all firms have to their consumers;
- the need to provide clear and accurate information;
- and the need to ensure that all advice and recommendations provided must be suitable and based on the information obtained from and provided by the consumer.

Firms were reminded of their important obligations to older and vulnerable consumers and the findings of a sales process review carried out by the Financial Regulator that highlighted the need for firms to have appropriate controls and procedures to deal with them. The Financial Regulator expects firms to bring the above issues to the attention of all staff involved in the sale of investment products to the consumer.

Firms were reminded of feedback which was circulated following a Sales Process Review that was conducted in 2004 and 2005 and are expected to have robust and fair procedures for dealing with older and vulnerable customers. It is the responsibility of senior management and boards of directors to ensure that their firms have the necessary controls, checks and balances in place for selling products.

The Financial Regulator has requested all firms to take immediate action to:

- review their existing sales processes and procedures to ensure they are in full compliance;
- and identify any weaknesses or deficiencies and rectify these immediately.

Link to article:

[http://www.financialregulator.ie/frame\\_main.asp?pg=%2Fnews%2Fnw%5Farticle%2Easp%3Fid%3D380&nv=%2Fnews%2Fnw%5Fnav%2Easp](http://www.financialregulator.ie/frame_main.asp?pg=%2Fnews%2Fnw%5Farticle%2Easp%3Fid%3D380&nv=%2Fnews%2Fnw%5Fnav%2Easp)

### **FINANCIAL REGULATOR ISSUES LETTER ON RISK MANAGEMENT AND INTERNAL CONTROLS TO BANKS AND MIFID FIRMS**

On 6 June 2008 the Financial Regulator wrote to banks and investment firms reminding of appropriate *Risk Management and Internal Controls*. The Financial Regulator has not made its letter, including an

Annex A to the letter, publicly available. **Compliance Ireland** has discussed with the Financial Regulator its decision to not publicise the letter and although we respect its position, we do not agree it. The Financial Regulator has confirmed that the letter and Annex A was issued to relevant firms. Some of our reasons why the letter, or at least Annex A, should be openly published include: (i) that Annex A is an excellent set of standards that should be promoted constantly and be available in a permanent form on its website (as is the case with other financial regulators and indeed other communications of the Financial Regulator); (ii) it could be the case that a firm receives the letter, but it is another thing as to whether risk professionals joining that firm will learn of the details within Annex A and the regulator's expectations; (iii) new investment firms seeking authorisation could be at an information disadvantage; and (iv) even if a firm did receive the letter, will the board of directors be made aware of its importance?

We are hopeful that by further dialogue with the Financial Regulator this letter and similar letters will be made publicly available.

In any event, we have uploaded a copy of a CEBS report dated 18<sup>th</sup> July titled *Reactions to the Société Générale loss event: results of a stock-take* which deal with the issues in Annex A. The CEBS report is located at [http://www.complianceireland.com/documents/CEBS\\_survey\\_Kerviel\\_governance\\_good\\_practice.pdf](http://www.complianceireland.com/documents/CEBS_survey_Kerviel_governance_good_practice.pdf)

So what does the *Risk Management and Internal Controls* letter and Annex A include? Obviously we are not going to publish the letter! However here is a summary of its contents:

- Following discussions with the Committee of European Banking Supervisors (CEBS) on recent events, including **Société Générale** - the biggest fraud investigation in banking history - involving 31-year old Frenchman *Jérôme Kerviel*, European Supervisors agreed that it would be beneficial to firms engaged in trading desk activities to see CEBS's analysis. The analysis is then summarised in Annex A to the letter. [*Ed – the requirements in the letter are not trading specific, except in relation to trading limits. Therefore non-banks and non-MiFID firms (especially their non-executive directors and compliance & risk functions) would benefit immensely from seeing the analysis on Management Information and Governance*].
- The Financial Regulator's letter reminds firms of its expectations that in fulfilling their MiFID obligations firms undertake regular reviews of "the adequacy of existing control policies and procedures, and related verification and compliance systems. The Financial Regulator also expects that all firms will review the adequacy of their current operational framework having due consideration to the recent events and the issues set out in [Annex A]".
- The Financial Regulator required firms to respond by 18 July 2008 confirming that:
  - (i) each firm had conducted a review of the adequacy of current operational risk framework; and
  - (ii) to the extent that the review identifies any control issues or areas that need to be strengthened to outline the firm's plan for remedial action.
- Annex A is comprised of three key sections, A. Internal Controls, B. Management Information and Reporting, C. Governance.
  - A. Internal Controls  
Under this heading firms are to:
    - review their policies, procedures and controls to ensure traders execute transactions only when doing so is in compliance with trading authorities and limits. Enforcing of these limits and monitoring use of limits is vital;

- ensure traders acknowledge limits in writing, with senior and appropriate management appointed to monitor back and front office functions;
- review limits periodically;
- ensure clear audit trails of cash flows;
- analyse impact of trades on P&L accounts;
- adopt rigorous reconciliation systems and controls, to be completed by back or middle office staff independently of front office staff;
- where trades are performed OTC, use standardised contracts (preferably ones developed by professional associations) and review compliance on a regular basis;
- have sufficiently qualified staff to verify conformance of contracts;
- where functions are outsourced, adopt a strengthened control system;
- properly secure information systems and limit employee access on a 'need to know' basis and 'need to do' basis. Stronger controls to be in place where staff move from back office to front office (and visa-versa) roles;
- information systems, through which trading and verification are processed, be subject to regular review.

## B. Management Information

Under this heading firms are to:

- adopt management information reports which are well understood and that reports by different level of the hierarchy do not pose problems in terms of understanding the data created. *[Ed – this was not just an issue in Société Générale. In the case of Barings, a director was unable to define a 'derivative' under examination in court and admitted he did not know how to read reports submitted by the trading and risk departments];*
- *adopt clear reporting lines [Ed - i.e. document apportionment of responsibilities], especially in relation to escalating of breaches of authorities/limits with a firm and following up of counterparty queries;*
- *analyse the root cause of each issue, regardless of the reporting line through which the issue travels, look for and respond to root causes;*
- *adopt well organised function charts particularly in complex organisations [Ed – in our experience from assisting firms in Ireland, the UK and elsewhere, most trading breaches and errors go (collectively) undetected by management because the person who saw the raw data was not sufficiently trained, skilled or confident to raise 'the elephant in the room scenario' and if they were, they did not clearly document the issue in a report. This has then led management to mistakenly overlook the issue because of the poor quality of reporting];*

## C. Governance

Under this heading firms are to:

- ensure that monitoring and control functions have sufficient resources in terms of staff, expertise, systems and authority to carry out their functions effectively *[Ed – in Ireland we have lived with this requirement under the Investment Intermediaries Act 1995 (now joined by MiFID – Regs 35-37), the Consumer Protection Code (both as a General Principle and Common Rule) and forthcoming Solvency II Directive. No matter how often regulators raise this issue, firms generally do not respond in a proper manner purely on the basis that risk management, compliance and internal audit are labelled 'cost centres'. Years ago when yours truly joined as head of legal and compliance of an investment company, a senior trader said it was good to meet the 'business prevention unit' – it was funny at the time, until I thanked the 'head of the business destruction unit' for his valuable*

*input. Subsequently we uncovered a suspected 'front-running' operation. I think that there is a lesson here somewhere?]*

- an independent internal audit function should monitor adherence to and adequacy of policies and procedures, controls and procedures for risk management [*Ed – spotting this as a growing issue under MiFID and Solvency II, we have developed a new ½ day course on Establishing an Internal Audit Function taking place on 7<sup>th</sup> October 2008*];
- front office trading staff should be required to take at least two weeks continuous annual leave during a year [*Ed – this lesson is one we should have learnt two centuries ago!. As reported by Richard Lambert in Financial Times (FT Weekend July 19), one thing to watch out for is employees who never take a holiday. William Pullinger of Union Bank was obliged to attend a funeral in 1860 which lead to his massive embezzlement being uncovered. It was the extended leave of Jérôme Kerviel of Société Générale that led to the uncovering of that fraud. The UK FSA earlier this year suggested two week continuous vacation as good practice following its review of the UK market following the Société Générale fraud. But the UK cannot point fingers either – in 2006 Anshul Rustagi, a derivatives trader at Deutsche Bank was suspected of a £30m (\$53m) overstatement of his trading position. Mr Rustagi was dismissed by his employer following a disciplinary hearing over the alleged overstatement. The overstatement was discovered by a colleague who was looking after Mr Rustagi's trading book while - you guessed it - he was on Christmas/end of year holidays.*]
- depending on the nature, size and complexity of a firm and its business, directors should consider establishing risk, compliance, audit and internal committees comprising [*Ed - but not exclusively!*] of independent directors to ensure that sufficient resources are deployed to the departments charged with monitoring compliance, assessing risk and carrying out independent audits [*Ed – enough said*]

## **FINANCIAL REGULATOR FILES 7 SUSPICIOUS TRANSACTION REPORTS WITH GARDA AND REVENUE COMMISSIONERS IN 2007**

Financial Regulator files 7 Suspicious Transaction Reports with Garda and Revenue Commissioners in 2007

The Financial Regulator is a supervisor for the purposes of the Criminal Justice Act 1994. Under section 57 the regulator, like designated bodies, required to file suspicious of money laundering and financing of terrorism with Garda and Revenue. In the year to December 2007, the Financial Regulator filed 7 reports under section 57. By **Compliance Ireland's** calculation, the Financial Regulator has filed 37 reports since May 2003. It is reasonable to expect that if the Financial Regulator suspected a money laundering offence at a financial institution (including a procedural offence, i.e. failing to meet the requirements of due diligence, record keeping, training, policies and procedures and filing suspicious transaction reports) that so too would Garda and Revenue bringing about separate enquiries.

## **STATEMENT OF INCOME AND EXPENDITURE YEAR ENDED 31 DECEMBER 2007**

The Financial Regulator published its financial review for the year ended 31 December 2007 on 14 July 2008. Total expenditure for the year ended 31 December 2007, which comprises direct and indirect costs, amounted to €49.3 million. This compares with a budgeted figure for the year of €51.6 million. The funding levy raised €22.3 million from industry in 2007 and the balance of the total annual costs was provided by the CBFSAI in accordance with Section 33(L) of the Central Bank Act, 1942 (as inserted by Section 26 of the Central Bank and Financial Services Authority of Ireland Act, 2003)

A copy of the report is available at:

[http://www.financialregulator.ie/data/pub\\_files/7797\\_Regulator%20Accounts%2007.pdf](http://www.financialregulator.ie/data/pub_files/7797_Regulator%20Accounts%2007.pdf)

## **PRELIMINARY REPORT ON FINANCIAL CAPABILITY IN IRELAND**

The Financial Regulator embarked on a major study to assess Irish consumers financial capability in 2007. The objective of the study is to measure the ability of consumers to manage money, plan ahead, assess products and make choices between similar financial offerings and get help and stay informed about financial products and services.

Some of the preliminary findings indicate that:

- over 70% of consumers state that they do some planning for things like utility bills, travel tickets, insurance, etc.
- when it comes to being aware of their rights, 27 per cent say that they have no idea how to make a complaint to a financial services firm and 26 per cent say that they have just some idea of what to do
- broadly speaking, consumers are very risk averse, and that such appetite for investment risk that may exist diminishes noticeably as consumers get older.
- initial data suggests that many consumers have difficulty in understanding the nature of the risks that their savings and investments are subject to

The final report on financial capability will be published towards the end of 2008 and it intended that the survey be repeated every 5 years. In both the United Kingdom and Australia similar surveys have led to major government and industry programmes in financial education.

A copy of the report is available at:

[http://www.financialregulator.ie/data/pub\\_files/Prelim%20Financial%20Capability%2016%20June.pdf](http://www.financialregulator.ie/data/pub_files/Prelim%20Financial%20Capability%2016%20June.pdf)

## **WARNING REGARDING FIRM NOT AUTHORISED TO CONDUCT BUSINESS IN THE STATE**

- 11 June 2008: Bull and Bear Advisory (Ireland)

## **RETAIL CREDIT FIRMS AND HOME REVERSION SCHEMES SUBJECT TO CPC & MCR**

From 1 June 2008, any authorised and all applicant retail credit firms and home reversion firms will be subject to the Consumer Protection Code and the Minimum Competency Requirements. These provide important protections for consumers and are statutory requirements, with which firms must comply. Firms that are already authorised by or registered with the Financial Regulator for other regulated activities do not require a separate authorisation to provide retail credit. The Financial Regulator has written to all such firms to advise them that the Consumer Protection Code and the Minimum Competency Requirements will apply where they provide credit to relevant persons with effect from 1 June 2008.

## **FINANCIAL SERVICES OMBUDSMAN**

### **DAVY WINS COURT CASE AGAINST FINANCIAL SERVICES OMBUDSMAN AND ENFIELD CREDIT UNION**

In a decision released by the High Court today, 30 July 2008, J & E Davy won its case against the Financial Services Ombudsman ('Ombudsman') in relation to his decision stemming from a complaint made by Enfield Credit Union. In a lengthy decision, the High Court quashed by order of *certiorari* the Ombudsman's decision made on the 21st January, 2008 and remitted the matter to the Ombudsman to again be investigated and adjudicated upon.

In his decision, Charleton J. stated that the Ombudsman is obliged to give reasons for any findings and that reasons should be given in terms of every significant decision whereby the Ombudsman makes an adjudication. Charleton J. states that in making an adjudication Ombudsman must have regard to s. 57CL of the Central Bank Act 1942 and is required to stipulate what parts of s. 57CI (2) constitutes his finding, or his findings.

We today contacted the Ombudsman's office for a comment however no one was available to take our call ahead of publication of this Newsletter.

Today's High Court decision is the first of three decisions that Davy has sought in respect of proceedings before the Ombudsman. The other two - a statutory appeal by Davy against the decision and a challenge to the constitutionality of provisions of the Central Bank Act relating to the powers of the Ombudsman - will be heard at a later date.

In the judgement the High Court appeared to call into question the self-appointed expert Robert Moynihan. This person wrote to many of the credit unions in Ireland giving unsolicited opinions that the conduct of J. & E. Davy in advising on these investments was wrong. The High Court also noted that certain statements by Mr. Moynihan adopted 'expert tone' and were condemnatory of every involvement by Davy with Enfield Credit Union concerning perpetual bonds. Yet none of this 'expert' material was provided to Davy. His Honour concluded on such 'experts' by stating "[if] in a rare case, the Financial Services Ombudsman bases his factual decision on expert opinion as to the likelihood of any situation existing in fact, it may be necessary to have a similar hearing concerning experts". [*Ed – clearly an indication that the judge has reservations about self-appointed experts not tested in the courts*].

Looking at recent press it appears that this 'expert' seems to stumble from one disaster to another leading Phoenix Magazine to write an article on Mr Moynihan (in June 2008) reporting upon his actions in supporting a credit union whose accounts were qualified by its then independent auditor as not being in compliance with the Credit Union Act. In these accounts consulting fees of between €23,000-€29,000 depending on which set of accounts you follow – the initial set or, after the independent auditor resigned, the re-stated set - were identified as being payable to Mr Moynihan for "guidance on governance and regulatory issues and to set standards which could be adhered to by officers and staff in the future". In the words of Phoenix Magazine – '*So, now you know*'

See <http://66.102.9.104/search?q=cache:HwQd2QJ58GAJ:www.phoenix-magazine.com/phoenix/subscriber/library/volume-26/issue-12/contents.pdf%3Bjsessionid%3D7B7989B15E62231A3B18897DB3D3ED7F+robert+moynihan+phoenix&hl=en&ct=clnk&cd=2&gl=ie>

We will keep looking at this matter as it develops. In the interim, we have uploaded the judgment in adobe format at [http://www.complianceireland.com/documents/High\\_Court\\_Judgement\\_Davy\\_FSO.pdf](http://www.complianceireland.com/documents/High_Court_Judgement_Davy_FSO.pdf)

## **JANUARY TO JUNE 2008 – TWENTY SIGNIFICANT COMPLAINTS DECISIONS AND 30% INCREASE IN NUMBER OF COMPLAINTS RECEIVED IN FIRST 6 MONTHS OF 2008**

On 03 July 2008 Joe Meade gave details of 20 significant decisions made in the January/June 2008 period -15 complaints upheld and 5 rejected. Some providers reached settlement terms with 10 ISTC investors, after they made complaints to the Ombudsman and where a total of €1.5m was invested.

The Ombudsman expressed serious concern about how the ISTC bonds were sold and their inappropriateness for elderly people. By 31 May 2008 he had received 25 complaints regarding €5.2m of ISTC bonds including sales of two such five year fixed term bonds of €475,000 to 2 people aged 81 and 94.

The Ombudsman also commented that as at 30 June 2008 some 2,700 complaints had been received since 1<sup>st</sup> January 2008– a 30% increase.

A copy of the report is available at:

<http://www.financialombudsman.ie/case-studies/JanJune08cases.pdf>

## **OFFICE OF DIRECTOR OF CORPORATE ENFORCEMENT**

### **HIGH COURT APPOINTS INSPECTOR TO DCC ON SUCCESSFUL APPLICATION BY PAUL APPLEBY, ODCE**

The High Court appointed, on 29<sup>th</sup> July 2008, Bill Shipsey SC as an inspector to examine a number of transactions carried out by DCC in a decision in which the court identified circumstances suggesting unlawfulness in the conduct of DCC's affairs relating to the 1995 transfer of the DCC stake in Fyffes and/or the sale of that Fyffes stake in 2000. His Honour Justice Peter Kelly stated that a "thorough investigation" into the dealings was in the public interest.

A copy of the High Court judgment is here

[http://www.complianceireland.com/documents/ODCE\\_DCC\\_Judgement\\_July08\\_000.pdf](http://www.complianceireland.com/documents/ODCE_DCC_Judgement_July08_000.pdf)

### **CONSULTATION PAPER C/2008/2 - NEW ODCE STATEMENT OF STRATEGY**

The ODCE is seeking comments from the public on the future focus of his office. The scope of the ODCE's strategic review is to cover, ODCE Functions, Present Environment, Compliance, Detection, Insolvent Companies, Enforcement and Customer Services.

The ODCE would like to receive views on the following questions:

- what are the forthcoming market and other challenges that we need to address?
- is our current focus and are our indicated priorities adequate to meet those challenges?
- which aspects of our approach need to be maintained and which need to be dropped, changed and improved?

Closing date for replies is 30<sup>th</sup> September to allow the ODCE to publish a new Strategy Statement by the end of 2008. Submissions should be marked "Strategy Statement", addressed to Marian McDermott and returned to:

- Email: [consultation@odce.ie](mailto:consultation@odce.ie),
- Fax +353-1-8585801 (fax), or

- Office of the Director of Corporate Enforcement, 16 Parnell Square, Dublin 1.

## **NATIONAL IRISH BANK DIRECTOR DISQUALIFICATIONS – PATRICK BYRNE AND MICHAEL KEANE**

26 May 2008 - Director of Corporate Enforcement -v- Patrick Byrne. On 26 May 2008 the former Head of Finance and Planning in National Irish Bank Patrick Byrne was disqualified under Section 160 (2) (e) of the Companies Act 1990. The period of disqualification has yet to be determined.

26 May 2008 - Director of Corporate Enforcement -v- Michael Keane. On 26 May 2008 the former General Manager for Marketing and Distribution in National Irish Bank was disqualified under Section 160 (2) (d) and (e) of the Companies Act 1990. The period of disqualification has yet to be determined.

## **ODCE ISSUES ANNUAL REPORT FOR 2007**

The office of Director of Corporate Enforcement released his Annual Report for 2007 on 28 May 2008. A copy of the Annual Report is available at [www.odce.ie](http://www.odce.ie).

Highlights from the Annual Report include;

- a rise at end-2007 in the number of insolvent companies going into liquidation. (This has continued into 2008. The latest figure of some 40 insolvent companies in April compares with 30 per month in late 2007.);
- 14 disqualifications as a result of ODCE enforcement action. One was for 12 years, the longest period of disqualification secured to date;
- 28 convictions of companies, directors and others for breaches of company law obligations;
- 140 restrictions on the application of the liquidators of insolvent companies; the closure of some 550 other cases following evaluation or investigation;
- expenditure of €4.37 million in support of Office activity (a 30% increase on the outturn of €3.36 million in 2006). Funding of €4.96 million (up 13%) has been made available for 2008 to meet the Office's anticipated costs;
- the decision by the Department of Enterprise Trade and Employment to commit an extra eight staff to the Office, four of whom were provided at year end.

## **UNITED KINGDOM**

### **FSA ARRESTS EIGHT (8) PERSONS AS PART OF INSIDER DEALING INVESTIGATION**

In a large scale operation the 40 FSA officials and City of London arrested eight people and raided premises throughout London and England's south-east as part of "a major ongoing investigation into insider dealing rings".

The FSA suspects that the alleged ring traded on price-sensitive information contained in deal announcements produced at one or both of the banks' printing facilities but which had yet to be made public. Among the firms raided (according to FT.com) were UBS and JPMorgan Cazenove.

UBS has reportedly confirmed that a junior member of UBS's support staff in London was arrested and has been suspended from work while the FSA carries out its investigation. Cazenove reportedly confirmed that a sub-contractor was one of the eight people arrested. All eight people arrested on Tuesday are reportedly men aged between 27 and 48.

The FSA's raids follow last week's charging of Malcolm Calvert of Cobham, Surrey, a former Cazenove partner, of:

- having inside information which related to a proposed takeover of HP Bulmer plc, acquired 110,000 ordinary shares in HP Bulmer plc.
- having inside information which related to a proposed management buyout of Macdonald Hotels plc, acquired 100,000 ordinary shares in Macdonald Hotels plc.
- having inside information which related to a proposed management buyout of Macdonald Hotels plc, acquired 10,000 ordinary shares in Macdonald Hotels plc.
- having inside information which related to a proposed management buyout of Macdonald Hotels plc, acquired 5,000 ordinary shares in Macdonald Hotels plc.
- having inside information which related to a proposed management buyout of Macdonald Hotels plc, acquired 5,000 ordinary shares in Macdonald Hotels plc.
- having inside information which related to a proposed management buyout of Macdonald Hotels plc, acquired 5,000 ordinary shares in Macdonald Hotels plc.
- having inside information which related to a proposed merger between Vernalis plc and British Biotech plc, acquired 30,000 ordinary shares in Vernalis plc.
- having inside information which related to a proposed merger between Vernalis plc and British Biotech plc, acquired 40,000 ordinary shares in Vernalis plc.
- having inside information which related to a proposed takeover of Johnston Group plc, acquired 50,000 ordinary shares in Johnston Group plc.
- having inside information which related to a proposed takeover of South Staffordshire plc, acquired 3,000 ordinary shares in South Staffordshire plc.
- having inside information which related to a proposed takeover of South Staffordshire plc, acquired 27,500 ordinary shares in South Staffordshire plc.
- having inside information which related to a proposed takeover of RAC plc, acquired 40,000 ordinary shares in RAC plc.

Mr Calvert indicated a plea of not guilty. Proceedings were adjourned until 11 September 2008 and Mr Calvert was remanded on conditional bail.

## **Financial Regulator recent action on market abuse**

Back on 20<sup>th</sup> March 2008, the Financial Regulator said it was concerned that false and misleading rumours circulating in financial markets in recent days are connected to unusual trading patterns in Irish shares. The Financial Regulator is examining certain transactions in this regard. Con Horan, Prudential Director of the Financial Regulator confirmed that the Financial Regulator was working closely with other regulators, including the UK's Financial Services Authority in relation to concerns about this type of activity. Market insiders believe that the shares in question are those of Anglo Irish Bank which was hit by heavy selling and which has already led to one UK broker being subject of a court hearing. At the time of his statement, Mr Horan said that market participants who take unfair advantage by spreading false rumours while trading on the basis of those rumours are in breach of market abuse regulations and will be pursued. *[Ed - watch this space]*

## **FINANCIAL SERVICES AUTHORITY ENFORCEMENT ACTIONS**

### **FSA FINES PMSG INSURANCE SERVICES LTD £35,000 FOR MORTGAGE ADVICE BREACHES**

- **Compliance Officer approval removed.**

The FSA announced on 23<sup>rd</sup> July 2008 that it had fined (on 10<sup>th</sup> July 2008) PMSG Insurance Services Ltd £35,000 for failing to ensure advice given to customers was suitable and for not organising its business responsibly with adequate risk management systems.

Then in a move sure to cause consternation amongst Compliance Officers in the UK and Ireland, the FSA withdrew its approval for the firm's compliance officer, Irene Hall. The FSA found the Compliance Officer to lack the competence and capability to ensure that the firm complied with FSA regulations aimed at treating customers fairly.

Jonathan Phelan, FSA head of retail enforcement said:

"It is unacceptable that PMSG exposed at least 620 customers to the risk of being recommended mortgages that they could not afford or did not need. All firms must gather sufficient information from their customers about their needs and must organise and control their business to ensure the advice they give is suitable and customers are treated fairly."

Link to article:

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2008/076.shtml>

[Ed - See our course *Treating Customers Fairly – Complaints Handling (Consumer Protection Code)* taking place on Thursday 11th September 2008 (<http://www.complianceireland.com/TCF.html>)]

## **MORTGAGELAND LIMITED PUBLICLY CENSURED FOR FINANCIAL PROMOTIONS AND SALES-RELATED FAILINGS**

On 22 May 2008 the FSA publicly censured Mortgageland Limited for poor financial promotions, inadequate sales processes and record-keeping failings.

The FSA visited London-based Mortgageland and found that the firm failed to give sufficient prominence to the Annual Percentage Rate in a mortgage promotion aimed at people with County Court Judgments, loan arrears or defaults, failed to indicate the level of fee that customers would be charged or set out that the fee included an amount to cover other fees which were paid by the firm on the customer's behalf and failed to record appropriate details of customers' needs and circumstances including, in some cases, how customers planned to repay the mortgage and their income and expenditure details.

Link to article:

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2008/042.shtml>

## **THREE MORTGAGE BROKERS FINED FOR INADEQUATE SALES PROCEDURES**

On 22 May the FSA fined three mortgage brokers for inadequate sales procedures which meant they could not demonstrate that they had recommended affordable mortgage contracts that met their clients' needs.

Link to article:

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2008/043.shtml>

## **CHEPSTOW MORTGAGE BROKER FINED £10,500 FOR FAILURES RELATING TO SELF CERTIFICATION MORTGAGES**

On 10 June 2008 the FSA fined Andrew Jeffreys (trading as Chepstow Financial Services) £10,500 for failures in the sales process he used for self certification mortgages.

Mr Jeffreys relied too heavily on customers' declarations that they could afford the mortgage contracts and did not satisfy the FSA that he had assessed the affordability of recommended mortgage contracts. He was also not able to demonstrate to the FSA's satisfaction how he carried out the training, supervision and monitoring of advisory staff.

Link to article:

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2008/055.shtml>

## **MORTGAGE BROKER BANNED AND FINED £129,000 FOR INVOLVEMENT IN MORTGAGE FRAUD**

On 7 July 2008 the FSA banned a mortgage broker and fined her £129,000 after finding she had been involved in numerous fraudulent mortgage applications. This is the first time the FSA has both banned and fined a mortgage broker for mortgage fraud. Sadia Nasir was an FSA approved person and the director of a firm based in Ilford called London Mortgage and Financial Services Limited. The firm traded as House of Finance. This six figure fine is aimed at deterring approved persons from getting involved in mortgage fraud and also aimed at taking back illicit profits that she made.

Margaret Cole, Director of Enforcement FSA, said:

"We have banned a number of mortgage brokers and others this year in connection with mortgage fraud but the problem persists. We made a commitment last year to increase fines in the retail sector to act as a deterrent and this case marks a step change in the way we are dealing with mortgage fraud, in line with that commitment.

"We will continue with this new policy and intensify our crackdown on mortgage fraud. Perpetrators will increasingly find themselves facing bans, heavier fines and having to disgorge illicit gains."

Link to article:

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2008/065.shtml>

## **MORTGAGE BROKER FINED £17,500 FOR SERIOUS REGULATORY FAILURES**

On 09 July 2008 the FSA banned and fined North East based mortgage broker Robin Knox after finding he had exposed about 500 of his firm's customers to the risk of receiving unsuitable advice.

Mr Knox, Managing Director of Mortgage and Property Services Limited (MPSL), was banned for lacking competence and capability and for failing to ensure his firm had proper systems and controls in place for the nature of the business it conducted.

Link to article:

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2008/068.shtml>

## **BROKER BANNED AND FINED £16,000 FOR DISHONESTY AND USING HIGH PRESSURE SALES TACTICS**

On 10 July 2008 the FSA banned Mr Baljit Somal, a former broker at Square Mile Securities Limited, and fined him £16,000 for selling high risk shares to customers without their consent and using unacceptable sales tactics.

Link to article:

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2008/069.shtml>

## **MORTGAGE FIRM FINED AND ADVISOR BANNED IN RELATION TO FALSE MORTGAGE APPLICATIONS**

On 15 July 2008 the FSA fined Mortgage Master (Glasgow) Limited £11,900 for failing to adequately supervise an adviser, resulting in applications containing false and misleading information being submitted to lenders.

The adviser, Ian Sanderson, has been banned from the industry for deliberately entering false information on mortgage applications, and the firm must review all of Mr Sanderson's mortgage files and inform all lenders and clients of cases where false information has been included in mortgage applications.

Link to article:

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2008/070.shtml>

## **MORTGAGE PARTNERS BANNED FOR SERIOUS REGULATORY FAILURES**

On 16 July 2008 the FSA banned Derick Whewall and Alan Hewitt, partners of The Mortgage Exchange for failing to meet the standards expected of approved persons in terms of competence and capability. They failed to ensure adequate measures were in place to prevent their partnership from being used to submit potentially false mortgage applications and exposed about 250 customers to the risk of receiving unsuitable advice.

Link to article:

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2008/071.shtml>

## **FSA ANNUAL REPORT 2007/08**

On 30 June 2008 the FSA released its Annual Report for 2007/08. The highlights of the Annual Report include the following:

- The FSA levied £4.45 million in financial penalties during the year compared to £14.66 million last year. This fall reflects the fact that this year we did not bring to final resolution any market conduct cases. Financial penalty levels do not by themselves give an accurate picture of the range of enforcement actions we take. For example we prohibited 30 individuals from carrying out regulated activities compared to ten the year before.
- The number of approved firms increased from 28,281 to 28,325.
- The number of approved persons increased from 167,276 to 172,077.
- The Regulatory Decisions Committee (RDC) considered 20 new cases as opposed to 17 last year.
- The FSA's enforcement division closed 262 investigations during the year resulting in 286 outcomes. Of these, 153 concluded with the use of powers (such as prohibition, financial penalties and variations of permissions) and 133 without the use of powers. 13 of these 133 outcomes were private warnings.

A full copy of the Annual Report is available at:

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2008/062.shtml>

## **FINANCIAL REPORTING COUNCIL – COMBINED CODE**

The Combined Code on Corporate Governance sets out standards of good practice in relation to issues such as board composition and development, remuneration, accountability and audit and relations with shareholders.

At present two versions are in effect: the 2006 edition, which applies to accounting periods beginning on or after 1 November 2006; and the June 2008 edition which applies to accounting periods beginning on or after 29 June 2008

The June 2008 edition incorporates changes made following a review of the impact and effectiveness of the Code held during 2007.

The changes:

- remove the restriction on an individual chairing more than one FTSE 100 company; and
- for listed companies outside the FTSE 350, allow the company chairman to sit on the audit committee where he or she was considered independent on appointment.

The June 2008 edition of the Code took effect at the same time as new FSA Corporate Governance Rules implementing EU requirements relating to corporate governance statements and audit committees. There is some overlap between the Rules and the Code, which is summarised in the Schedule to the Code.

For more information please click here:

<http://www.frc.org.uk/corporate/combinedcode.cfm>

## **THE FINANCIAL SERVICES AUTHORITY (FSA) PUBLISHES AN UPDATE ON DISCLOSURE FOR CONTRACTS FOR DIFFERENCE (CFDS).**

The recent conversion of the Quinn family's interests in Anglo Irish Bank from CfDs to physical shareholdings spurred much media comment regarding the visibility of large stakes held through the medium of CfDs. In this context, it is interesting to note moves underway in the UK to integrate CfD holdings with physical holdings for regulatory disclosure purposes.

After receiving extensive feedback from a broad spectrum of interested parties on its November 2007 CfDs Consultation Paper, the FSA has decided a general disclosure regime for long CfD positions will be implemented as the most effective way of addressing concerns in relation to voting rights and corporate influence. Existing share and CfD holdings, in the same company, should be aggregated for disclosure purposes. The disclosure threshold will be at 3%, in line with the existing disclosure rules. The FSA will publish a Policy Statement in September 2008. Final rules will be issued in February 2009.

## **EUROPEAN UNION**

### **UCITS IV**

On 16 July 2006 the EU Commission's Internal Market & Services Directorate General formally proposed the revision of the UCITS regime to incorporate previously-identified desirable improvements and to consolidate the existing legislation in the area.

This UCITS IV process is hoped to be adopted by the EU Council of Ministers and the European Parliament by the second quarter of 2009, with the provisions entering into force in mid-2011. This initiative follows on from the 2005 "Green paper on the enhancement of the EU framework for investment funds" and an exposure draft discussing possible adjustments to the UCITS Directive published in March 2007.

Proposed changes include:

- New rules on mergers
- Master-Feeder funds
- Key Investor Information
- Marketing in other Member States
- Management Company Passport

A **Compliance Ireland** briefing note is available from:

[http://www.complianceireland.com/documents/UCITS\\_IV\\_briefing\\_note.pdf](http://www.complianceireland.com/documents/UCITS_IV_briefing_note.pdf)

### **MANAGEMENT COMPANY PASSPORT**

A management company passport would allow a UCITS fund to be managed by a management company authorised and supervised in a Member State other than the UCITS home Member State.

The Commission proposals for UCITS IV (see above) did not advance the issue of the Management Passport. Instead, the Commission has asked CESR (The Committee of European Securities

Regulators) to provide advice that will help the Commission to develop proposals which can be integrated into the UCITS IV initiative in due course.

For more information please click here:

[http://www.cesr-eu.org/index.php?page=home\\_details&id=297](http://www.cesr-eu.org/index.php?page=home_details&id=297)

## ANTI MONEY LAUNDERING AND TERRORIST FINANCING

### **IRELAND WARNED ON EU MONEY-LAUNDERING LAWS**

Ireland has been formally warned by the European Commission to implement new money laundering legislation or face legal action. EU Internal Market Commissioner Charlie McCreevy wrote to 15 out of the 27 EU member states instructing these to implement the EU's Third Money Laundering Directive.

For more information see:

<http://www.complianceireland.com/HotTopics.html>

### **FINANCIAL REGULATOR FILES SEVEN (7) SUSPICIOUS TRANSACTION REPORTS WITH GARDA AND REVENUE COMMISSIONERS**

See page 9 above for details on this story

### **FSA DATA ON MONEY LAUNDERING AND FINANCIAL CRIME IN 2007; £1.6M OF FINES ISSUED**

The FSA's Annual Report for 2007 (see page 17 above) contains useful detail, not just for the MLRO but also for other financial regulators, on money laundering and financial crimes. In particular the FSA notes that enforcement remains a useful tool in the fight against financial crime. Over 2007/08 **the FSA closed 13 cases** and issued total **financial penalties of £1.6m** (most of which was accounted for by Norwich Union Life) for issues relating to money laundering controls and financial fraud, and **began a further 18 cases**.

This represents an increase over the year 2006/07 where nine cases opened, four closed and fines of £20,000 were imposed. In May 2007 the FSA fined BNP Paribas Private Bank £350,000 for weaknesses in its systems and controls which allowed a senior employee to fraudulently transfer £1.4m from clients' accounts without permission – the first time the FSA has fined a private bank for weaknesses in its anti-fraud systems. However the FSA did previously fine a fund administrator, Capita Financial Administrators, £300,000 in March 2006 for exactly the same failures.

**Compliance Ireland** recommends all MLROs and risk personnel to read the detailed Final Notices of the following cases especially Irish regulated entities which may learn valuable lessons from the facts in those cases;

- Norwich Union fined £1.26m 17 December 2007 - [http://www.fsa.gov.uk/pubs/final/Norwich\\_Union\\_Life.pdf](http://www.fsa.gov.uk/pubs/final/Norwich_Union_Life.pdf)
- BNP Paribas Private Bank SA London Branch fined £350,000 on 10 May 2007 – [http://www.fsa.gov.uk/pubs/final/bnpp\\_10may07.pdf](http://www.fsa.gov.uk/pubs/final/bnpp_10may07.pdf)
- Capita Financial Administrators Limited fined £300,000 on 26 March 2006 – <http://www.fsa.gov.uk/pubs/final/capita.pdf>
- The Governor and Company of the Bank of Ireland fined £375,000 on 31 August 2004 – [http://www.fsa.gov.uk/pubs/final/boi\\_31aug04.pdf](http://www.fsa.gov.uk/pubs/final/boi_31aug04.pdf)

## DATA PROTECTION

### **REALM COMMUNICATIONS LIMITED –v- DATA PROTECTION COMMISSIONER**

The Commercial Court has reserved judgment on an action by Realm Communications against the Data Protection Commissioner to prevent its prosecution over the alleged sending of unsolicited text messages as direct marketing for commercial purposes.

The central ground of the challenge by Realm Communications, against which 14 complaints have been made, is that the commissioner was obliged to seek an amicable resolution of the complaints between Realm and the complainants before proceeding to prosecution. The commissioner has rejected that claim. Paul Sreenan SC, for the commissioner, argued that sending unsolicited messages was a self-standing criminal offence subject to prosecution. The sending of unsolicited text messages or "spam" created serious hazards for the privacy of people and the operation of communications networks, Mr Sreenan said. The relevant regulations to prevent this were introduced in 2003 and provided for no requirement for mediation or to seek an amicable resolution before proceeding to prosecution, he argued.

The case was initiated by Realm in the High Court, but was admitted to the Commercial Court on the application of the commissioner who said he was concerned to have a speedy court interpretation of the relevant laws as other cases were pending. Sixteen criminal prosecutions over the sending of unsolicited text messages stand adjourned pending the outcome of the proceedings by Realm, while about 200 other applications are also affected.

Realm, with offices at Castle Drive, Citywest Business Park, Dublin, is facing prosecution on some 60 summonses arising from complaints against it by 14 people concerning unsolicited texts. Fines of up to €3,000 for each message can be imposed in the event of conviction. Realm claims it co-operated fully with the commissioner after regulations governing text messaging services came into force in November 2003. It claims it was subject last year to a "totally unnecessary dawn raid" by staff from the commissioner's office in which a significant amount of records and material were removed. In submissions yesterday for Realm, Colm Ó hOisín SC, said the case also raised issues in relation to the length of time in which a person's details may be maintained on a database if they have subscribed to a company's services. The commissioner had taken the view such details may only be kept for 12 months, but there was no statutory basis for that, he said. There was also an issue as to how to treat databases that were operating before the relevant regulations came into effect, he said.

Link to article: <http://www.irishtimes.com/newspaper/ireland/2008/0716/1216073113197.html>

### **STATE ENTITY PROSECUTED UNDER DATA PROTECTION ACTS**

On 10 June 2008 the Dublin Metropolitan District Court fined Iarnród Éireann €500 for its failure to co-operate with an investigation the Data Protection Commissioner was conducting on foot of a complaint received by him in August 2007.

There had been a number of unsuccessful attempts between September and November 2007 by the Data Protection Commissioner to obtain information on a co-operative basis from the company. Iarnród Éireann was convicted for failing to respond and supply information sought in an Information Notice issued by the Commissioner last November.

Under Section 12 of the Data Protection Acts 1988 & 2003, the Data Protection Commissioner is empowered to serve an Information Notice enabling him to obtain the information requested in the Notice which is deemed necessary for the performance of his functions. It is the first time that the Commissioner has had to bring a prosecution against any entity for failing to respond to an Information Notice.

The Data Protection Commissioner, Billy Hawkes indicated: "I am disappointed in any case where my Office has to go to Court to get answers to some questions as part of an investigation. Today's court proceedings demonstrate that I will not hesitate in taking a prosecution against any data controller, from any sector, who fails to comply in full with a legal notice which I may serve upon them. I wish to use my legal powers sparingly, but I will use them when necessary.

Link to press release:

<http://www.dataprotection.ie/viewdoc.asp?Docid=744&Catid=66&StartDate=1+January+2008&m=n>

## **INVESTIGATION INTO THE ILLEGAL ACCESS TO CVs ON JOBS.IE WEBSITE CONCLUDES**

On 22 May 2008 the Data Protection Commissioner concluded his investigation in relation to the illegal access and download of CVs by persons unknown on the website of the online recruitment company - Jobs.ie.

The Investigation has concluded that Jobs.ie did not meet the requirements of Section 2(1)(d) of the Data Protection Acts as elaborated upon in Section 2C of the Acts by not having in place a level of security on part of its system appropriate to the harm that could have resulted from the unauthorised and unlawful access to and downloading of the personal data in its possession. This was accepted by Jobs.ie

The investigation also concluded, in relation to a proportion of the complaints received, that Jobs.ie did not meet the requirements of Section 2(1)(c)(iv) of the Data Protection Acts by continuing to hold personal data for longer than was necessary for the purpose for which it was given.

The Office of the Data Protection Commissioner commended Jobs.ie's response to the investigation. The website immediately implemented additional security measures to minimise the potential for any repetition of the incident and has taken on board all of the Data Protection Commissioners' recommendations.

Link to press release:

<http://www.dataprotection.ie/viewdoc.asp?Docid=741&Catid=66&StartDate=1+January+2008&m=n>

## **STOCKBROKING FIRM FINED £77,000 FOR WEAK DATA SECURITY CONTROLS**

On 17 June 2008 the FSA fined stockbroking firm Merchant Securities Group Limited £77,000 for not adequately protecting its customers from the risk of identity fraud. This is the first time the FSA has fined a stockbroking firm for weak data security controls.

Merchant Securities had inadequate procedures for verifying the identities of customers that contacted the firm by telephone. Instead, the firm relied on being able to recognise customers' voices and talking with them informally about personal matters such as holidays or hobbies. Personal account numbers which could be used, with a customer's name, to access account information were included in routine letters.

Furthermore, back up tapes containing unencrypted customer information were stored overnight in a bag at the home of a member of staff. Merchant Securities did not address the risk involved in its staff being able to use instant messaging and web based email. There was no evidence, during the FSA's investigation, that customer details had been lost or stolen.

Link to article:

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2008/058.shtml>

## **AIB COMPLETES INVESTIGATION OF CUSTOMER DATA FOUND IN LANDFILL IN CORK**

The Irish Times reports today (Thursday 24 July 2008) that AIB has completed its investigation into bank documents found at a former landfill site in Co Cork and is contacting three customers to say it

has disposed of documents discovered at the site containing details relating to them. The bank said its investigation had concluded that while most of the material, which was between 20 and 50 years old, were internal AIB documents containing no customer information, some documents had "customer details comprising either customer names and/or account numbers or partial account numbers or details". AIB has sent a report on the incident to the Data Protection Commissioner.

See full article at:

<http://www.rte.ie/business/2008/0723/aib.html>

## **FRIENDS FIRST ISSUE STATEMENTS TO WRONG CUSTOMERS**

On 16 May 2008 The Irish Examiner and RTE reported that hundreds of people had received the financial statements of others in a major blunder by financial services group Friends First. A company spokesperson asked that annual policy statements sent to the wrong people be returned to the company. The company has informed the Data Protection Commissioner and the Financial Regulator of the mailing error. Friends First have written to more than 500 customers with an apology and an assurance that the risk of fraud is very small. The customers involved had pension and investment funds. The statements would have contained the most private and personal details of customers including names, addresses, policy numbers and the amount of cash balances.

See full article at:

<http://www.rte.ie/business/2008/0515/friendsfirst.html?rss>

## **BANK OF IRELAND ISSUE STATEMENTS TO WRONG CUSTOMERS**

Bank of Ireland is carrying out an investigation after it sent credit card statements to the wrong customers in June 2008. The bank has apologised for the error. The bank confirmed that it was investigating a technical error which led to a batch of credit card statements being posted to the wrong customers on June 19th. The Irish Financial Services Regulatory Authority and the Data Protection Commissioner have been notified of the error.

See full article at:

<http://www.irishtimes.com/newspaper/finance/2008/0627/1214507047185.html>

## **ULSTER BANK JOINS BANK OF IRELAND AS ADMITTING LAPTOPS LOST**

Ten laptop computers were stolen from Ulster Bank over the past year - but the bank has denied that any sensitive customer information was contained on the hard-drives. Eight of the stolen computers were apparently being used for bank training purposes, while two others are understood to have been fully encrypted.

An Ulster Bank spokesperson insisted that no customer data was involved in any of the computer thefts. "Ulster Bank can confirm a small number of training laptops were stolen from an Ulster Bank Group location in Dublin. All of these laptops were used for training purposes and contained no customer information. We can confirm two further separate incidents of laptops being stolen. Both of these laptops were encrypted and contained no customer information," she added.

See full article at:

<http://www.independent.ie/national-news/ulster-bank-admits-to-10-laptop-thefts-in-year-1376525.html>

## **LEEDS BUILDING SOCIETY – MORTGAGE PAPERS FOUND ON STREET**

On 28 May 2008 the BBC news reported that documents containing names and mortgage details of Leeds Building Society customers had been found on a Belfast city centre street. The documents were found by a group of young people waiting for a taxi. The company said it was not possible to identify specific individuals from the papers, but said an investigation has begun.

## DATA PROTECTION COMMISSIONER'S OFFICE TO MERGE WITH EQUALITY AUTHORITY AND HUMAN RIGHTS COMMISSION?

The Irish Times reports today (Thursday 24 July 2008) of proposals by the Department of Finance to the Department of Justice, Equality and Law Reform on the amalgamation of the Equality Authority, the Human Rights Commission and the Data Protection Commissioners Office

The Irish Times reports that the government agencies have until 12 September to respond to the proposal. Apparently no final decision will be taken by the government until 12 September however the agencies have reportedly been told that "there's no point in fighting it, it's going to happen".

See full article at:

<http://www.irishtimes.com/newspaper/frontpage/2008/0724/1216741027971.html>

## Our Services

**Compliance Ireland** is a management consultancy firm specialising in regulatory affairs for financial services and other regulated industries. We provide a wide range of consulting and training services:

- **Authorisation Applications** - project managing your authorisation application to the Financial Regulator.
- **Director Services** – provision of corporate governance specialists to act as non-executive directors for your management company, fund or securitisation vehicle.
- **Board Support Services** – assisting your fund boards to discharge their monitoring and oversight responsibilities over delegated service providers.
- **Risk Management Services** – assisting UCITS 3 fund boards to monitor and control the fund's exposures to Financial Derivative Instruments.
- **Compliance Support Services** – assisting your firm to meeting its initial regulatory compliance requirements and providing ongoing specialist advice and expertise.
- **Managing Regulatory Inspections** - assisting you to manage Financial Regulator regulatory inspections and desk audits.
- **Directors' and Senior Management coaching** - coaching your staff to quickly absorb updated regulatory requirements and expectations.
- **Compliance Manuals & Procedures** - drafting your business orientated compliance and operational procedures and manuals.
- **Anti-Money Laundering** - conducting assessments of your AML controls and systems, assisting you implement remedial action & drafting your AML policies and manuals.
- **Data Protection** - conducting assessments of your Data Protection controls and systems, preparing you for an inspection by the Data Protection Commissioner, assisting you to implement remedial action & drafting your Data Protection policies and manuals.
- **Health Checks** - performing pre-regulatory inspection audits of your business covering general Financial Regulation & Compliance.

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**Compliance Ireland Regulatory Services Limited**  
Lower Ground Floor, 13 Adelaide Road, Dublin 2

E-mail: [email@complianceireland.com](mailto:email@complianceireland.com)

Telephone: +353 1 425 5962 / 5962

[www.complianceireland.com](http://www.complianceireland.com)

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