



REGULATORY UPDATE

Welcome to the 1/2007 (January 2007) regulatory update Newsletter from Compliance Ireland.

In this edition:

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We are delighted to announce details of our Quarter 1 and some of Quarter 2 2007 training courses and workshops. We hope you found our previous emails providing links to slides presented at conferences in October 2006 (Dublin) and November 2006 (Kuwait). If you did not download those presentations previously they are still available at <http://www.complianceireland.com/Download.html> - see second and third icons from the top of web page.

At the bottom of this email you will find a short news update on certain regulatory matters. Given that some regulatory news on which we are currently writing has been

issued today, we have delayed our full newsletter until mid next week to allow us to include commentary those recent developments. The information at the end of this email covers a summary of some recent regulatory news from the Financial Regulator, the Data Protection Commissioner and the Office of the Director of Corporate Enforcement.

To see our training brochure please visit <http://www.complianceireland.com/Training.html> or download a copy in adobe format at <http://www.complianceireland.com/Download.html> - see first icon from top of web page.

As usual, numbers on our training courses are limited to approximately 12 attendees per course to ensure that you receive in-depth and attentive training. Check out our testimonial page to read authentic comments from past attendees at <http://www.complianceireland.com/Testimonials.html>.

You can also claim CPD points by attending our courses. In addition to our usual range of courses we are continuing with our recently launched [‘Treating Customers Fairly – Complaints Handling’ course](#) and we are introducing three new courses: (i) [MiFID – Understanding its Implications](#); (2) [How to Handle a Financial Regulator Inspection](#) and (3) [Directors Duties and Corporate Governance for Credit, Financial and Insurance Institutions regulated in Ireland](#).

Each course is hyperlinked to the relevant training page on *Compliance Ireland*. If

if you have any trouble accessing a link please go directly to <http://www.complianceireland.com/Training.html> from where you can navigate your visit through various training courses. Attached to this email is a pdf version of the upcoming training programme.

Please send bookings for courses to bookings@complianceireland.com. Please include your full name, title and company address plus the full details of the person(s) attending if you are booking on another's behalf. You will receive an automatic response (informing how we treat and respect your personal data protection).

If you have a query about a course, then email email@complianceireland.com or phone us on + 353 (0) 87 273 1434.

[Anti-Money Laundering & Financing of Terrorism for Financial Institutions - \(Dublin\)](#)

Thur 15th February and Tues 10th April 2007

[Make a booking](#)

[The Role of the Compliance Officer \(for Banks & Investment Business Firms\)](#)

Tues 27th February 2007

[Make a booking](#)

[The Role of the Compliance Officer \(for Life, Non-Life & Insurance Firms\)](#)

Tues 6th March 2007

[Make a booking](#)

[Risk based Compliance Monitoring for regulated Financial Institutions](#)

Thur 8th March 2007 (AM only)

[Make a booking](#)

[Treating Customers Fairly – Complaints Handling for Financial Firms](#)

Thur 22nd February and Tues 24th April 2007 (AM only)

[Make a booking](#)

[Data Protection AND How to conduct a Data Protection Audit \(Financial Institutions\)](#)

Tues 20th February 2007

[Make a booking](#)

[Data Protection AND How to conduct a Data Protection Audit \(Corporates\)](#)

Thur 29th March

[Make a booking](#)

[MiFID - Understanding MiFID and its operational implications](#)

Thur 19th April and Wed 16th May (AM only)

[Make a booking](#)

[How to handle a Financial Regulator \(IFSRA\) inspection](#)

(AM only) – Quarter 2 dates to be announced.

[Email us](#) for details of next date

[Directors Duties and Corporate Governance of Credit, Financial and Insurance Institutions regulated in Ireland](#)

(AM only) - (AM only) – Quarter 2 dates to be announced.

[Email us](#) for details of next date

[Anti-Money Laundering & Counter Financing of Terrorism Training for Solicitors - \(Dublin\)](#)

(AM only)

[Email us](#) for details of next date

[Directors' Compliance Statements for Financial Institutions](#)

[Email us](#) for details of next date

[Directors' Compliance Statements for Corporates](#)

[Email us](#) for details of next date

[Anti-Money Laundering & Counter Financing of Terrorism for Financial Institutions - \(Belfast\)](#)

[Email us](#) for details of next date

[Anti-Money Laundering & Counter Financing of Terrorism Training for Solicitors - \(Belfast\)](#)

[Email us](#) for details of next date

News from the Financial Regulator

You may be interested to know that the Financial Regulator:

(1) today (18 January) released a special edition of its Regulatory Connection newsletter focusing on MiFID. Patrick Neary's opening rightly urges firms to "look beyond the implementation of MiFID as just a compliance exercise and to think strategically about the new possibilities it can present". The Regulatory Connection newsletter can be found at www.financialregulator.ie and we have uploaded it (as a courtesy) at <http://www.complianceireland.com/RegulatoryConnection.html>.

(2) released its Strategic Plan 2007-2010 on 16 November 2006, which includes details of the number of inspections to be undertaken and time-lines for the Financial Regulator's work on matters such as the 3rd EU Anti-Money Laundering Directive and MiFID.

(3) announced on 20 December 2006 that it has entered into a Settlement Agreement, effective 14 December 2006, with M.I.S. Financial Services Limited and Mr Stephen Donnelly, Director in relation to breaches of regulatory requirements. In a short release the Financial Regulator stated it has reasonable cause to suspect that breaches of regulatory requirements occurred in relation to M.I.S. Financial Services Limited while Mr Stephen Donnelly was a director. Although we are informed of the high level concerns of the regulator, i.e. suspected breaches of a "failure to act honestly and fairly in conducting business activities in the best interests of clients and the integrity of the market and a failure to take all reasonable steps to ensure that actions in the best advantage of the client were taken" there is no information about the specific nature of the actions or inactions which led the regulator to form its suspicion. In fairness to the regulator, the Settlement Agreement records that (a) from 1 August 2004 to February 2005, M.I.S. Financial Services Limited and Mr Donnelly did not properly inform the four affected clients about the actual terms of the investment policies which they had taken out, (b) the affected clients were led to believe that the terms of the investment policies which they had taken out were more favourable than was in fact the case.

However regulated entities are left none the wiser as to the specifics of what 'affected clients' were not properly informed of. Further we are not informed of what these clients were led to believe. For example, were clients led to believe that performance would be better than what eventuated or perhaps that certain tax advantages applied to the product?

This case, in other jurisdictions, might be labelled a 'treating customers fairly' principle case. We can only speculate as to the precise facts of the case. But such speculation is not helpful to regulated entities which no doubt would prefer clear signalling from regulators of the benchmarks against which they will be judged. This is not a criticism of the regulator, but merely an observation which may be balanced against the fact that the firm does not appear to have contested the Financial Regulators suspicions.

The Settlement Agreement ends in a similar fashion to that in re Broadstone Fund Management Limited (in Voluntary Liquidation) issued in July 2007 – a case where the Financial Regulator stated it had reasonable cause to suspect breaches of regulatory requirements occurred in relation to that company, including questions of adequacy of financial resources, breaches of authorisation requirements and failure to control operational risk – with the regulator confirming that there were no client money concerns devolving from its investigation.

Copies of Settlement Agreements are available at www.financialregulator.ie and can be downloaded at <http://www.complianceireland.com/sanctionsdownload.html>

News from the Data Protection Commissioner (DPC)

Persons operating in the mortgage intermediary and real estate markets received an unwelcome Christmas present on 21 December 2006 from the DPC who fired a shot across the bow of these firms

in the form of a guidance note. The guidance was issued to 1,633 mortgage intermediaries across Ireland and was drafted on foot of a series of investigations and random inspections of mortgage brokers' and estate agents' premises conducted by the DPC. These investigations took place in the wake of the allegations made on the Primetime Investigates Programme of 11th December, 2006. The seriousness of the situation can be summed up in the words of Commissioner Billy Hawkes' press release - "The Prime Time programme and the subsequent investigations which my Office has undertaken have highlighted a sectoral lack of knowledge amongst mortgage brokers in relation to the full extent of their responsibilities under the Acts". *Compliance Ireland* recommends that all financial and insurance firms read the guidance to acquaint themselves with the DPC's general thinking on customer data protection issues. Go to <http://www.dataprotection.ie/viewdoc.asp?DocID=401&m=f> to read more. In the wake of the press release and action by the DPC, *Compliance Ireland* has received many calls from intermediaries and estate agents enquiring as to the compliant nature of their data protection and customer processes and procedures.

An interesting observation by the DPC related to the highlighting of firms which provide leads to mortgage brokers in return for a commission as falling under the definition of a mortgage intermediary in the Consumer Credit Act, 1995 (CCA) and thereby requiring authorisation as a mortgage intermediary. From calls we have taken over the past few weeks a number of estate agents are examining how they comply (or perhaps do not comply) with the CCA. This of course has further

ramification in respect of brokers regulated by the Financial Regulator. The Consumer Protection Code (Code) prohibits payments of commissions, fees, rewards and remuneration by regulated entities (e.g. mortgage brokers) to unregulated persons unless an exemption or exception exists. Looking at the limited range of exemptions and exceptions under Chapter 2, Rule 50 of the Code (see

<http://www.complianceireland.com/CPC.html>) mortgage brokers might be concerned about payments made to estate agents, in respect of referrals, not authorised under the CCA. If an estate agent is so authorised, it follows that it should conform with the Code including the requirement to issue a terms of business (see Chapter 2, Rule 8) to a purchaser. This is interesting for the simple fact that estate agents do not normally view purchasers as their clients for reason being that they act for the vendor. The potential upshot is that mortgage brokers need to ascertain whether they make payments to persons outside the scope of the Code otherwise they risk committing a prescribed contravention. Estate agents need to consider whether their actions bring them under the remit of the CCA (i.e. mortgage intermediary definition). The foregoing is not legal advice or guidance, simply observations of a practical nature based on comments by the DPC and interaction with the provisions of the CCA and the Code.

News from the Office of Director of Corporate Enforcement (ODCE)

It seems nothing can deter Paul Appleby, ODCE, from performing his statutory remit if his interim review of 2006 year-

end figures is anything to go by. The highlights include:

- the issue of fresh Guidance on Audit Committees and on the Governance of Property Management Companies. The latter remains open for public comment until 30 March next;
- the conviction of 48 companies, directors and others for breaches of company law obligations (49 convictions in 2005). In all, 103 charges were determined in 26 cases, a similar result to the previous year's outturn of 112 charges in 19 cases;
- two new offences were successfully prosecuted for the first time:
 - o one involved convictions under section 161 of the Companies Act 1990 of a company director who was disqualified from so acting. His disqualification arose because he failed to disclose his continuing UK disqualification when notifying the Companies Registration Office of his appointment as a director of two companies here. The UK disqualification followed a conviction for forgery and false accounting offences in a UK public limited company listed on the London Stock Exchange;
 - o the second involved the use by a company director of a set of financial statements which were falsely represented to the

company's bank as having been audited for the purpose of renewing an overdraft facility, contrary to section 243 of the Companies Act 1990;

- the disqualification of 14 persons and the restriction of two directors following ODCE proceedings in the High Court (21 disqualifications and no restrictions in 2005). One of the 2006 disqualifications was based on the findings of the High Court Inspectors who examined the affairs of Ansbacher (Cayman) Ltd;

- disqualification proceedings against a further 11 individuals were launched in 2006, including two company directors criticised by the Tribunal of Inquiry into Certain Planning Matters and Payments and a number of other directors whose companies were struck off the Companies Register for failing to file annual returns. In all, disqualification proceedings were ongoing in respect of 20 persons at year-end;

- some 100 directors of insolvent companies were also restricted by the High Court in 2006 on the application of liquidators made with the ODCE's assent;

- over €160 million was repaid by directors and connected persons to their companies after they were informed that excessive use had been made by them of company assets for personal purposes contrary to law. Almost 900 directors were cautioned by the ODCE for this practice. Because of

concerns that this phenomenon could give rise to a tax liability for the beneficiaries, the ODCE referred 86 large cases involving some €48 million in directors' loans to the Revenue Commissioners for the first time;

- traffic to the ODCE's website increased by some 33% to over 220,000 visitors, indicating an increasing interest in corporate governance matters.

Looking forward into 2007, Mr Appleby commented that his plans include:

- improving the day-to-day governance of property management companies in particular. We hope to publish Final Guidance in this area later in the year;

- the introduction of administrative fines as an extra option for dealing with minor company law defaults. We hope to secure Ministerial approval for this shortly;

- the continuing development of our civil and criminal enforcement work. I hope in particular to progress some more of the resource-intensive cases which we have on hands;

- the re-launch later this month of the ODCE website to provide wider accessibility to the available

compliance and enforcement information.

Health Checks - performing pre-regulatory inspection audits of your business covering general Financial Regulation & Compliance.

To read more on this topic visit <http://www.odce.ie/public/pressarticle.asp?NID=521&NCID=28>

Contact Details:

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 IFSRA authorisation application.

Director Service - provision of non-executive directors to funds, UCITS managers and regulated investment intermediaries.

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

Managing Regulatory Inspections - assisting you to manage IFSRA regulatory inspections and desk audits.

Directors' and Senior Management coaching - coaching your staff to quickly absorb 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, assisting you implement remedial action & drafting your Data Protection policies and manuals.



**Compliance Ireland
Regulatory Services Limited**

Mespil House, Sussex Road, Dublin 4

Peter Oakes, Principal

+353 87 2731434

peter@complianceireland.com

Kevin O'Doherty, Principal:

+353 86 8280525

kevin@complianceireland.com

www.complianceireland.com

www.mifid.ie

www.antimoneylaundering.ie