



London Update

UK Financial Services Regulatory Developments

September 2008

This edition of London Update covers UK and EU developments from 1 July to 29 August 2008.

UK Developments

FSA Fines IT Employee for Market Abuse

On July 1, the Financial Services Authority (FSA) announced that it had fined John Shevlin, an IT technician at Body Shop International plc (Body Shop), £85,000 (\$170,000) for market abuse.

The FSA found that, based on inside information, Mr. Shevlin had established a short position on January 10, 2006 equivalent to 80,000 Body Shop shares through a Contract for Difference (CFD). The position was closed out the next day after Body Shop announced trading results that were below market expectations. Mr. Shevlin obtained the inside information by improperly accessing confidential emails containing details of Body Shop's Christmas trading results and a draft announcement that Body Shop had underperformed expectations.

The FSA did not attribute any fault to Body Shop and Mr. Shevlin has ceased to be a Body Shop employee.

www.fsa.gov.uk/pubs/final/john_shevlin.pdf

FSA Announces Disclosure Regime for CFDs

On July 2, the FSA announced its intention to implement a general disclosure regime for long CFD positions. This announcement follows the FSA's CFD Consultation Paper (CP07/20) which closed for comments last February, as reported in the December 2007 edition of *London Update*. The FSA believes that a general disclosure regime is the most effective way of addressing concerns in relation to market failures linked to voting rights and corporate influence. Final rules are expected to be implemented by February 2009.

Under the new regime, any existing share and CFD holdings in the same company over and above 3% must be aggregated for disclosure purposes. The disclosure threshold is in line with the FSA's existing disclosure rules.

www.fsa.gov.uk/pubs/cp/cpo7_20_update.pdf

FSA Consults on Changes to Disclosure and Transparency Rules

On July 21, the FSA began a consultation on its proposal to allow financial institutions in receipt of liquidity support from a central bank to delay the public disclosure of such support. This change is designed to address the concern that, in the past, immediate disclosure has led to a loss of confidence which exacerbated liquidity problems and undermined the firm's solvency.

Under the EU Market Abuse Directive, which the FSA's Disclosure and Transparency Rules implement, disclosure of price-sensitive information is required, but the Directive allows disclosure of such information to be delayed in certain specific circumstances. The FSA proposals do not grant a financial institution an unconditional or indefinite ability to delay disclosure of it receiving liquidity support. Immediate disclosure may still be required in certain circumstances. Accordingly, the FSA considers that they comply with the Directive.

The deadline for comments is September 30.

www.fsa.gov.uk/pubs/cp/cpo8_13.pdf

BVCA Publishes Guidance for Private Equity Firms on FSA Regulatory Reporting

On July 24, the British Venture Capital Association (BVCA) published two legal bulletins to help private equity firms understand the new regulatory capital reporting requirements due to be introduced by the FSA with effect from September. The requirements are set out at SUP 16.12 of the FSA's Rules. The bulletins provide an overview of the changes to the FSA's regulatory capital reporting regime related to private equity firms that are not subject to the EU Markets in Financial Instruments Directive (MiFID) and private equity firms that are categorised as Exempt CAD firms.

www.bvca.co.uk/doc.php?id=913

www.bvca.co.uk/doc.php?id=914

FSA Commences Several Criminal Prosecutions for Insider Dealing

On July 24, Malcolm Calvert, a former partner at a major London stockbroker, was charged with 12 separate offences of insider dealing in breach of Section 52 of the Criminal Justice Act 1993. Mr. Calvert pleaded not guilty and the proceedings were adjourned until September 2008.

On July 28, the FSA filed an indictment against Matthew Uberoi and Neel Uberoi charging 17 counts of insider dealing in relation to trading over a four-month period in 2006. The following day, the FSA arrested eight individuals suspected of insider dealing and executed related search warrants across London and the South East of England in connection with a major ongoing investigation. Among those arrested were junior support personnel at two investment banks.

Prior to the three cases mentioned, the FSA had only commenced a single criminal insider dealing prosecution since being given the power to do so in 2001.

www.fsa.gov.uk/pages/Library/Communication/PR/2008/078.shtml

FSA Concludes HBOS Investigation

On August 1, the FSA announced the results of its investigations into trading in March 2008 in shares of HBOS plc (HBOS). Although no action will be taken against any individuals or firms, the FSA has made a public announcement about its investigation.

The FSA's intention was to determine whether a person or persons had spread misleading, false or deceptive information regarding HBOS to profit from a reduction in its share price. FSA staff from its Enforcement, Markets, Supervision and Intelligence departments analysed trading in HBOS and contacted market participants and news organisations to determine whether this had occurred.

The FSA concluded that despite the likelihood that the rumours contributed to the fall in HBOS's share price, the investigation did not find sufficient evidence that they were spread as part of any concerted attempt to profit by manipulating the market.

The FSA stated that it is following up various wider issues that this rumour case has highlighted through its ongoing thematic and supervisory work. The FSA's Markets Division has launched a review of the systems and controls at regulated firms for dealing with rumours. There will be a particular focus on what policies are in place and how firms ensure compliance with them; whether and how rumours are verified; whether traders are permitted to pass on or trade on rumours; and how firms ensure staff do not initiate or spread false rumours.

www.fsa.gov.uk/pages/Library/Communication/PR/2008/086.shtml

EU Developments

European Parliament Proposes Enhanced EU Regulatory and Supervisory Framework for Financial Services

On June 25, the European Parliament's Committee on Economic and Monetary Affairs published a draft report including detailed recommendations for measures to improve EU regulatory and supervisory arrangements. The report includes recommendations covering capital adequacy, transparency, corporate governance, financial stability and systemic risk.

The draft report is scheduled for adoption on September 10.

www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-407.901+01+DOC+PDF+Vo//EN&language=EN

UK Government Opposes Greater Role for EU Supervisory Committees

In May 2008, the European Commission launched a consultation on possible amendments to the structures of each of the EU Level Three Committees—the EU Committee of European Securities Regulators (CESR), the Committee of European Banking Supervisors (CEBS) and the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS)—as reported in the July 2008 edition of *London Update*.

On July 9, the UK Treasury and the FSA issued a joint response to the European Commission's consultation, which was also agreed to by the Bank of England and the UK Pensions Regulator. The UK considers that the existing arrangements have made a positive contribution to the EU's regulatory and supervisory framework. The UK supports amendments that reduce unnecessary divergences or duplication in EU markets and their regulation and supervision. However, the UK authorities do not support a wider coordination role for the existing committees nor do they agree that differences in supervision by various supervisors result in a material obstacle to a single EU financial services market.

www.hm-treasury.gov.uk/media/2/A/consultation_cesrcebsceiops_response.pdf

CESR Consults on Fair Value Measurement and Related Disclosures

On July 11, CESR launched a consultation on a draft statement for fair value measurement and related disclosures of financial instruments in illiquid markets.

The purpose of the draft statement is to help EU financial services regulators ensure that issuers fulfil all information obligations under the requirements of the EU Transparency Directive and the EU Market Abuse Directive.

The consultation will close on September 12.

http://www.cesr-eu.org/index.php?page=consultation_details&id=113

European Commission Publishes “UCITS IV” Proposals

On July 16, the European Commission published its long-awaited legislative proposals for reforming the EU legislative framework for Undertakings for Collective Investment in Transferable Securities (UCITS) funds. The draft “UCITS IV Directive” will replace 10 existing directives with a single text. The Commission intends to establish a more efficient framework by allowing UCITS managers to develop cross-border business to achieve savings consolidation and economies of scale.

The proposals also call for improving retail investor protection by ensuring that investors in UCITS funds receive clear and easily understandable information. This includes “key investor information” documents that would replace the current simplified prospectuses for UCITS funds. Specific measures are designed to reduce barriers to cross-border marketing by streamlining notification procedures and requirements.

Concurrently, the Commission has asked CESR to examine the possibility of establishing an effective management company passport as part of its package of targeted legislative amendments to be included within the UCITS IV Directive. 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 Member State in which the fund is established.

ec.europa.eu/internal_market/investment/docs/legal_texts/framework/ia_report_en.pdf

Commission Clarifies MiFID Exemption Rules

On August 7, the European Commission published the latest version of its questions and answers database on MiFID. Among the added questions and answers are clarification that firms providing investment services to non-group as well as group companies are subject to MiFID in relation to their whole business, not just non-group services. There are also clarifications on the treatment of offshore funds, the status of third parties in outsourcing arrangements, best execution obligations and securities lending, and the scope of post-trade transaction reporting.

The European Commission's database is not formal, legally binding guidance; however, it reflects the "considered views" of the Commission.

ec.europa.eu/internal_market/securities/docs/isd/questions/questions_en.pdf

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