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FINANCIAL  
SERVICES:  
ENFORCEMENT  
& DISCIPLINE



# FINANCIAL SERVICES: ENFORCEMENT & DISCIPLINE

**The FSA regulates almost all financial services firms operating in the UK market. It is also responsible, in its capacity as the UK Listing Authority, for policing compliance by publicly quoted companies, their directors and sponsors, with the Listing Rules.**

In 2013, the FSA's powers will be transferred to the Financial Policy Committee, the Prudential Regulation Authority and the Financial Conduct Authority (FCA). The FCA will take over much of the FSA's enforcement and disciplinary powers against regulated firms and individuals as part of its core purpose of making sure that markets "function well" so consumers get a fair deal.

## Enforcement and discipline

*"The job of enforcement is to help the FSA change behaviour by making it clear that there are real and meaningful consequences for those firms or individuals who don't play by the rules"*

Tracey McDermott, Director of Enforcement and Financial at the FSA

In recent years the FSA has pursued an increasingly forthright and proactive approach to enforcement and discipline. At the same time there has been a huge increase in the financial sanctions sought by the FSA's enforcement team and imposed by the FSA's Regulatory Decisions Committee. Both the rigour of this approach and the escalation and sanctions are likely to increase as the FCA continues the FSA's policy of "credible deterrence", which is all about the FSA taking tough, targeted, effective public enforcement action against firms' and individuals' misconduct as a way of changing market behaviour. The enforcement environment is likely to become ever more challenging for both firms and individuals.

## So what action can the FSA take against firms?

The FSA's enforcement powers range from informal requests for information and the appointment of Skilled Persons, through to detailed investigations and full-blown disciplinary action.

Punishments for rule breaches include:

- fines (sometimes of many millions of pounds);
- public censure;
- paying compensation to customers (FSA has secured hundreds of millions of pounds in customer redress); and
- varying or cancelling a firm's permission to carry on regulated business.

The FSA knows that enforcement action can generate negative publicity for a firm. It uses individual cases to send a message to the broader regulated community.

The FCA will acquire new powers to act faster and take action when it sees firms behaving in a way that doesn't promote "good outcomes" for consumers. It seems likely that the FCA will have powers relating to product intervention, warning notices, "super" complaints and financial promotions.

## And what action can the FSA take against individuals?

And where the FSA's rules are broken, it's not just the firms who can be penalised. Executives and senior managers who are persons approved by the FSA can expect to have their conduct closely scrutinised and, if appropriate, face disciplinary action. The FSA has the power to impose fines and to permanently prohibit individuals from acting as directors of authorised firms.

It has said that policing senior management is one of its top priorities recognising the need to "go after bigger fry, not because they're wealthy or high profile-we want to go after the people we actually think are causing the most damage to the market." The FCA is expected to maintain this approach.

The FSA has completed significant criminal cases against individuals for market misconduct. It has also imposed fines totalling millions of pounds on individuals whose conduct has fallen below expected standards. That includes directors of quoted plcs who have been "knowingly concerned" in the company's breaches of the Listing Rules.

## How we can help?

When any firm or individual is confronted with an enforcement investigation or charge, it is at the very least disruptive, costly and stressful. In extreme cases, it can threaten to take away a firm's good reputation or an individual's livelihood. It is therefore vital to manage the process properly and minimise the damage.

Getting ***early advice from experienced lawyers*** in this area will help in seeing a clear route through the regulatory minefield and minimising the risk/disruption that comes with involvement in an FSA enforcement action.

At Squire Sanders, our team has long-standing experience when it comes to helping clients who find themselves on the receiving end of enforcement action by regulators across the world.

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Our presence in 37 offices in 18 countries across the globe also means we can deal with cross border regulatory issues which could involve clients responding to investigations or proceedings by a number of different regulators, as well as dealing with related white collar crime and corporate compliance issues and defending class action, shareholder and customer claims.

Our lawyers have recently:

- represented parties in the recent Cattles Plc FSA enforcement action.
- advised parties in the recent Einhorn and Keydata FSA investigations.
- acted for a household name insurer in an enforcement action concerning mis-selling of structured capital at risk products (precipice bonds).
- advised an AIM market maker in an FSA enforcement market abuse case, the first ever market abuse case to be considered by the Court of Appeal (2010).
- represented and advised the audit committee of a public company in US Department of Justice and Securities and Exchange Commission investigations regarding bribes in Asia.
- advised several independent financial advisers being investigated by the FSA for failings in respect of the Pension Review.
- represented groups of banks in the defence of four putative class actions pending in the United States District Court for the Northern District of Ohio relating to an investment scheme and claims against depository and drawee banks.
- helped a FTSE 250 plc client accused by the FSA of failing to issue price sensitive information to the market in a timely fashion.

- advised IFAs on their exposure to disciplinary action by the FSA following mis-selling of investments in unregulated collective investment schemes.
- represented the US subsidiary of a Korea based publicly traded company in response to a multijurisdictional investigation by the US DOJ and Internal Revenue Service
- helped a high street bank to mitigate its liability in relation to numerous customer claims and complaints alleging mis-selling of payment protection insurance.
- assisted several firms who are subject to FSA's ARROW visits, Skilled Persons reports and FSA Risk Mitigation Programmes.

We can:

- help clients head off formal disciplinary action. This includes help with responding to informal inquiries and formal investigations appropriately, and negotiating with the FSA and other regulators where appropriate.
- defend regulatory 'proceedings' before the FSA's Regulatory Decisions Committee, the Upper Tribunal (formerly the Financial Services and Markets Tribunal) and other professional disciplinary bodies.
- assist clients with identifying and managing other issues arising out of disciplinary action. For example, we can deal with civil liability to shareholders, customers and other third parties, or undertake reviews of past business. We can also advise on enforcement issues related to senior managers' D&O insurance cover.

## What they say about us

For the second year running, in 2011 Squire Sanders was top ranked in *Legal Week's Annual Client Satisfaction Report* and was selected as "go to" law firm for litigation matters by in house legal departments at *Fortune 500* Companies.

Many of our lawyers are also listed as leaders in their field in banking and finance, banking litigation and dispute resolution by both *Chambers Global 2012: The World's leading Lawyers* and by *Legal 500: 2012*.

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