SQUIRE SANDERS

"YOU HAVE BEEN WARNED": MARTIN WHEATLEY SPEAKS ABOUT SENIOR MANAGEMENT RESPONSIBILITY

Martin Wheatley, Head of the Financial Conduct Authority (FCA) has vowed to focus on the conduct of senior management when the FCA becomes responsible for market conduct next year. This comes in the wake of widespread criticism for the FSA for its perceived failings in not having held to account sufficient numbers of senior figures in the wake of the financial crisis.

In an interview on 1 October 2012, Mr Wheatley was quoted as saying that "*if there are failures in the future we want individuals held to account*"

It is likely that the FCA will inherit the majority of the FSA's existing enforcement and disciplinary powers and tools, including naming and shaming, fining and banning both firms and individuals. And it has already been confirmed that the FSA will continue to pursue the "*credible deterrence*" policy which has underpinned the FSA's approach to enforcement since 2008 (what the FSA describes as tough, targeted, effective public enforcement action against firms and individual's misconduct as a way of changing market behaviour).

However, Mr Wheatley's comments strongly suggest that FCA will have the issue of senior management responsibility far higher up its regulatory agenda than previously. Mr Wheatley is quoted as having admitted that naming and fining firms may not be a significant enough deterrent; *"ultimately the shareholders pay and it gets written off*". Mr Wheatley has also pledged that the FCA will go beyond committee decision making which has often made it hard in the past to apportion individual blame.

But the truth is that the FSA has not exactly been passive when it has come to enforcing senior management responsibility and taking disciplinary action against individuals in the industry. In the past 2 ½ years alone it has fined individuals guilty of misconduct over £29million, banned over 130 people from working in the industry and secured some high profile criminal convictions for insider dealing and other marketing offences committed by individuals. Last month, the FSA imposed the largest ever fine (£1/2 million) for management failings on Peter Cummings, the former HBOS executive.

The FSA has also highlighted the role of professionals in clamping down on market misconduct. It should be remembered that earlier on in the year, in the *Greenlight* case, the FSA not only took action against David Einhorn who directed the trading, but also against Alexander Ten Holter, the compliance officer who failed to recognised the risk that inside information had been disclosed, Andrew Osborne of Merrill Lynch who had improperly disclosed information and Casper Agnew of JP Morgan who failed to recognise and report the trading a suspicious.

So it looks likely from its recent public pronouncements that the FCA will shine it's enforcement light on senior managers who fail to recognise and manage risks that the firm is running, who fail to control the way in which products are sold and who fail to put customers interests first when working on issues such as product design. Mr Wheatley has sounded a declaration of the FCA's intent and it would be unwise to ignore him; clearly there is the regulatory will and the way to pursue senior managers and that chimes with a sense of public outrage at a failure to attribute individual blame at the most senior levels in the past.

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