Scientia Compliance Ltd
Compliance & Risk Management Services

COMPLIANCE NEWS

January Newsletter
Issue 1/2010

Editorial

So what are the duties of a director? Is it just looking after your own area of expertise? We all should know by now that this is not the case and the banning of Stephen Allen demonstrates this. He was not responsible for handling the firm's client money accounts and he had minimal involvement in their operation. He had no knowledge and, in particular, no insight of the banking arrangements. There is no issue of wrong doing here but as a result of his shortcomings in overseeing what was going on, he has been banned for life from holding any management position of a regulated firm. Therefore any director that says 'it's not my job' needs to think about the words 'oversight' and 'challenge' and ask themselves whether they are comfortable with the information that they are receiving from other areas of the firm.

In this issue:

Further information on the issues in this newsletter, or any other issues which concern your business, can be obtained from Chris Keene on 020 7369 5375 / 07775 610006

FSA bans insurance broker for failing in his duties as a director

The FSA has banned Stephen Allen, a director of insurance broker, Fabien Risk Services Ltd, for failing in his duties as a director of a regulated firm.

Allen's ban means he is prohibited from holding any management role in the UK financial services industry and any role that requires FSA approval.

The action follows an investigation by the FSA that also resulted in the banning in 2007 of Allen's co-director Shane Garvey and Fabien office manager Lee Goddard.

In late 2005 when Fabien was placed in creditors' voluntary liquidation, the firm had suffered £700,000 in losses, of which £470,000 was owed to insurers, brokers and underwriters.

An FSA investigation revealed that Garvey authorised the withdrawal of client funds and Goddard complied with instructions to use the money to keep Fabien trading without Allen's knowledge. The FSA therefore found that Garvey and Goddard lacked integrity.

Allen accepted that his lack of knowledge of Fabien's bank accounts was a neglect of his duties and that he had failed in his duty as a director. As a result, it was concluded that, although Allen did not lack honesty or integrity, he lacked the competence to run a regulated firm.

Margaret Cole, director of enforcement and financial crime at the FSA, said:

"As a director there is an expectation that you are competent enough to look after client money; Allen did not fulfil this role as he failed to exercise closer scrutiny over Fabien's accounting processes.

As is reported in the Tribunal decision it turns out that Messrs Goddard and Garvey are now estate agents.

HOWEVER the Tribunal judgement provides some further information. It turns out that as well as banning his ex colleagues the FSA tried to ban Mr Allen on the basis that he lacked honesty and integrity, which resulted in the decision going to a Tribunal. The Tribunal found that on the basis of the evidence presented it could not reach a conclusion that he was dishonest or he lacked integrity and that his actions prior to the firm going into liquidation were not reckless. Mr Allen freely admitted that he had failed in his duty as a director and therefore rather than getting him banned from all regulated activities the FSA had to settle with the lesser outcome of prohibiting him from performing any management or controlled function.

BIBA issues manifesto for 2010

The British Insurance Brokers' Association has launched its 2010 manifesto outlining its priority lobbying issues for the year ahead.

BIBA's key focus will be on the changing environment that brokers operate within, particularly the potential change of Government and regulation structure that a new Government may implement.

The manifesto highlights five key lobbying themes: suitable insurance protection, driving change, regulation and consumer protection, and the UK and Europe.

In particular BIBA will be looking at the following:

1) New regulatory regime

BIBA is calling for future regulation to be appropriate and proportionate. Brokers do not present a systemic risk to UK plc and it will lobby for appropriate regulation for insurance brokers and intermediaries – particularly with potential changes in Government arising from the General Election in 2010.

2) Revision of the EU Insurance Mediation Directive (IMD)

BIBA is seeking a competitive business environment for its members and will work with the European Commission to achieve this during all stages of the IMD revision.

3) Level playing field

BIBA will continue to work with BIPAR (the European Federation of Insurance Intermediaries) and the WFII (World Federation of Insurance Intermediaries) to achieve a level playing field for insurance brokers, both in the UK and worldwide.

Insurance fraudster banned by FSA for deceiving customers out of almost £400k

The FSA has banned an insurance company director for lying to his customers, lying to the FSA and failing to pass on insurance premiums.

Mark Hazelwood operated Synergys Ethical Limited from Whitwell in Hertfordshire, which focused on arranging locum insurance for doctors. Synergys was referred to Enforcement when the FSA became aware that one of Hazelwood's customers had attempted to make a claim on their policy, but received no payment. The FSA found that he had not passed on almost £360,000 to insurers.

Search warrants executed at Hazelwood's residential and business addresses uncovered documents regarding a new unauthorised business called Aquote. Evidence showed that Hazelwood had failed to pass on a further £25,000 of customers' premiums to insurers.

Hazelwood has now been banned from performing any regulated activity in the financial services industry as he lacks the honesty and integrity required to hold this type of position.

Client Money and Asset Report

The FSA has just released its report after reviewing firms in 2009. The report covered investment firms and insurance brokers. In brief their findings for insurance brokers are as follows:

- **Management oversight and control** – breaches were normally the direct result of inadequate senior management and control. An unclear allocation of duties by senior management led to confusion between staff and teams and lack of accountability for performing basic client money processes.
- **Documentation** – quality of TOBA's were variable and were not always consistent with how client money calculations were performed, leading to over or under segregation of client money.
- **Acknowledgement of trust status** – some firms could not locate the trust acknowledgement documents and they had not checked that the content was correct.
- **Due diligence of banks** - Due diligence and review of banks was limited to relying on the credit rating of the bank. There was inadequate documentation of the rationale for choosing a particular bank.
- **Performance of client money calculations** – several issues were noted including insufficient consideration of the frequency of the calculation, commission being withdrawn before it was due and payable, the calculation and transfer of funds not occurring promptly and a lack of evidence of the review and sign-off process.
- **Segregation** – firms were co-mingling client money with non-client money. Also firms failed to consider the appropriateness of taking commission on unallocated cash.
- **Legacy balances and credit write-backs** – firms had not allocated sufficient resources to reducing the amount of unallocated cash.
- **Client money audits** – there was a wide variance in quality of CASS audit reports. In certain cases where breaches had been highlighted these had not been rectified.

In future the FSA will be increasing the number of CASS visits, which will continue through 2010. It will be consulting on the use of title transfer arrangements. It will also be scrutinising more closely the use of buffers in client money accounts.

Also as part of its role to target risks it will be reintroducing client money reporting. It is planning to roll out an interim solution in 2010 with a view to rolling out the full system in 2011.