

## THE FSA RAMPS UP ITS EFFORTS TO CRACK DOWN ON INSIDER DEALING

22 March 2010

To Our Clients and Friends:

Over the last two months, the Financial Services Authority (the “FSA”) has shown an increasingly aggressive approach to enforcement. This approach can be seen as led by the U.S. both in style and, on occasion, in substance.

In one notable instance, the Amro International case,<sup>1</sup> the FSA has clearly demonstrated the extent of its willingness to carry out with minimal interference requests made by the U.S. Securities and Exchange Commission (the “SEC”) to secure evidence from the UK in support of investigations in the U.S. (see below for further details of this case).

At the same time, we are seeing the emergence of a U.S.-style enforcement programme in insider dealing investigations, in which cooperation may lead to leniency – the alternative being likely prosecution. In the same vein, the FSA is pursuing prosecutions for insider dealing for the first time with sustained vigour.

The FSA’s appetite for prosecuting allegations of insider trading has shown no signs of abating this month. On 15 March 2010, a senior investment banker and his wife were charged with 13 counts of insider dealing.

This case is also significant as it reflects the FSA’s clear intention to request international cooperation to assist in bringing individuals to the UK to face charges. As a result of the FSA successfully applying for a European Arrest Warrant, a 33-year-old Singaporean national was arrested by the French authorities in Mayotte. This is the first time the FSA has sought the extradition of a suspect from abroad to face charges in the UK.

The general observations above are further illustrated by the following recent key cases:

**Malcolm Calvert.** The former Cazenove partner was sentenced on 11 March 2010 at Southwark Crown Court to 21 months imprisonment for insider trading. The confiscation and costs hearing is due to take place on 23 April 2010. Bertie Hatcher, Calvert’s friend who

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<sup>1</sup> R (*Amro International SA and another*) v *Financial Services Authority and others* [2010] EWCA Civ 123.

placed the trades, received immunity<sup>2</sup> from prosecution in return for agreeing to testify and paying a £56,000 civil fine.

**Sepil, Ozgul and Akca.**<sup>3</sup> Three Turkish oil executives self reported for insider trading on shares of Heritage Oil, and were not prosecuted for insider dealing. However they did receive a combined fine of £1,166,307, including a 30 per cent reduction because of their cooperation with the FSA. The FSA noted that Mehmet Sepil's fine of £967,005 is the largest yet imposed by the FSA on an individual for market abuse.

**Amro International and Others.** In August 2009, the High Court quashed (i) the FSA's decision to appoint investigators, and (ii) the investigators' decision to require the claimants' UK accountants to produce documents, both taken in support of a civil claim brought by the SEC in the U.S. The SEC's action, which related to irregular short selling, was in fact against a New York corporation, Rhino Advisors Incorporated, and its employees, who had acted as investment advisors to the claimants. The claimants were not defendants to the SEC's action or the subject of investigations by either the SEC or the FSA. They claimed that, notwithstanding this, their interests and rights were directly affected by the FSA's and the investigators' decisions to compel production of confidential and privileged documents, and that the scope of the document request was oppressively wide. On 24 February 2010, the Court of Appeal reversed the High Court's decision and stated that cooperation between national financial regulators was of the greatest importance, particularly where there were suspicions or allegations of fraud. It is not for the English courts to determine whether an SEC request will result in documents being obtained that would be useful in U.S. proceedings. As such, the FSA was right and entitled to assist the SEC without subjecting the SEC's request for assistance to critical examination.

Clearly the FSA is ramping up its efforts to crack down on insider trading. On 6 March 2010, a new penalties policy<sup>4</sup> came into force which introduced a minimum starting point of £100,000 for individuals in cases of serious market abuse. The FSA believes the new regime could see fines treble in size.

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<sup>2</sup> The FSA currently retains common law powers to grant individuals immunity from prosecution. However, the FSA will be granted statutory authority to grant immunity from prosecution in accordance with section 113 of the Coroners and Justice Act 2009 on 6 April 2010.

<sup>3</sup> See: Final Notices relating to Mehmet Sepil, Murat Ozgul and Levent Akca of 12 February 2010 (available on the website of the FSA: [www.fsa.gov.uk](http://www.fsa.gov.uk)).

<sup>4</sup> The FSA published PS10/04 "Enforcement financial penalties" (available at [www.fsa.gov.uk/pubs/policy/ps10\\_04.pdf](http://www.fsa.gov.uk/pubs/policy/ps10_04.pdf)).

Increasingly, investigations will be conducted across borders with a trend towards maximum mutual assistance among foreign regulators. Cooperation with investigating authorities at an early stage may become increasingly important for directors and other senior officers to reduce or avoid the substantial fines and other penalties which now form part of the FSA's armoury.

Please feel free to contact us with any questions.

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