



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Settlement Agreement between the Central Bank and Lambay Capital Limited t/a MKW Futures

Central Bank of Ireland imposes fine of €49,000 on Lambay Capital Limited t/a MKW Futures in respect of breaches of its obligations under the Capital Requirements Regulations and the MiFID Regulations

The Central Bank of Ireland (the “Central Bank”) fined Lambay Capital Limited t/a MKW Futures (“Lambay” or the “Firm”) €49,000 and reprimanded it in relation to breaches of its obligations under Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 (the “CRR”) and the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007) (“MiFID Regulations”).

The Central Bank found that Lambay overstated its own funds position by including unaudited profit in its quarterly returns and further that it failed to implement adequate accounting procedures and internal control mechanisms specifically in relation to the production of its regulatory returns.

These findings have been accepted by Lambay as part of the settlement agreement concluded between the Central Bank and the Firm on 1 December 2015.

Derville Rowland, the Central Bank’s Director of Enforcement, said:

“Between 1 January 2014 and October 2015, in breach of the MiFID Regulations, Lambay failed to implement administrative and accounting procedures and internal control mechanisms that were sufficiently sound to enable it to comply with its risk reporting obligations to the Central Bank. Lambay submitted four regulatory returns to the Central Bank that included inaccurate capital calculations as a result of the Firm repeatedly including unaudited profit in its own funds figures. The fourth incorrect calculation occurred despite the Central Bank having reminded the Firm of its CRR risk-reporting obligations. In light of that warning the Central Bank pursued the provision of the most recent inaccurate return as a breach of the CRR.

This settlement also highlights an ongoing key issue for the Central Bank, namely the importance of providing accurate and complete information to us. Effective prudential supervision of firms is heavily dependent upon the flow of accurate and complete information from those firms to the Central Bank whether as a result of on-going reporting obligations, specific Central Bank requests or spontaneous reporting of issues by a firm to its supervisors. Submitting inaccurate information to the Central Bank is a serious failing which severely inhibits it in the performance of its regulatory functions.

The Central Bank expects regulated financial service providers to be sufficiently well controlled to deal with their supervisors in an open and informed manner. We also expect firms to have regard to previous regulatory engagements and to take all necessary steps to avoid repeated regulatory failings. Lambay’s breaches were caused in large part by a failure of institutional memory at the Firm which forgot about the Central Bank’s prior warnings in relation to the inclusion of unaudited profit

in its COREP returns. Firms must organise themselves in a manner that ensures they understand fully their regulatory obligations, are aware of their own regulatory history and make certain that when officers and employees engage with the Central Bank they do so with access to and knowledge of that history.

The Central Bank's letter to investment firms, fund service providers and stockbrokers on 12 September 2014 clearly set out that we expect those firms to include only audited profit in their own funds figures when submitting capital returns. That letter also recommended firms to document procedures for the production of regulatory returns including: (i) calculation methodologies for each data field; (ii) reconciliation processes for all regulatory returns, against the data contained in audited financial statements and management accounts, where appropriate; and (iii) a checklist to ensure that the firm's capital is calculated in accordance with regulatory requirements. These procedures should be approved by the Board and reviewed at least annually.

Lambay is classified as a Low Impact Firm under the Central Bank's PRISM system of supervision. We expect Low Impact Firms to ensure they comply fully with all regulatory requirements in the same fashion as higher impact firms notwithstanding that the regularity and method of direct engagement may differ. The Central Bank cannot countenance a situation where, despite repeated engagements on an issue the firm continues to be deficient in meeting its obligations."

BACKGROUND

Lambay's status as a CRD IV Exempt FOR Firm

Lambay is authorised by the Central Bank under the MiFID Regulations to perform the investment services of receipt and transmission of orders, execution of orders on behalf of clients, foreign exchange services and portfolio management. In light of the limited scope of its authorisation Lambay is a "CRD IV Exempt Firm." As such, Lambay is not, *prima facie*, subject to the full range of EU risk reporting requirements.

However, Article 95(2) of the CRR assigns to the Central Bank a discretion to continue to set the own funds requirements for a subset of CRD IV Exempt Firms as the own funds requirements that were binding on those firms at national level immediately prior to the coming into force of the CRR on 1 January 2014. Lambay is a member of this subset of firms, known as "CRD IV Exempt FOR Firms" because it is authorised to provide execution services and portfolio management. The Central Bank has exercised its Article 95(2) discretion and communicated this to firms.

As a result of the Central Bank's exercise of its discretion, CRD IV Exempt FOR Firms' risk reporting obligations continue to reflect the requirements of Regulation 11(1) of the European Communities (Capital Adequacy of Investment Firms) Regulations 2006 S.I. No. 660 of 2006 (the "Capital Adequacy Regulations 2006") which required a firm's own funds to be determined in accordance with Directive 2006/48/EC. Article 57 of Directive 2006/48/EC permitted own funds to include final profit and loss but made it clear that *profit* figures should only be included in own funds calculations to the extent that the profit has been verified by a firm's auditor.

Lambay's history of inaccurate COREP reporting

Lambay is required to submit COREP returns that include its own funds position on a quarterly basis via the Central Bank's online reporting system¹.

The Central Bank examined Lambay's COREP returns in the context of its thematic review of data integrity of regulatory returns submitted to the Central Bank by investment firms and others (conducted in the first quarter of 2014) and, subsequently, as a result of an automated alert generated by the Central Bank's online reporting system.

Lambay incorrectly overstated its own funds position to the Central Bank on four separate occasions between 31 December 2013 and 8 May 2015. This occurred despite the following:

- On 24 December 2013 the Central Bank published a preliminary implementation Notice clearly setting out the fact that it had exercised its discretion regarding CRD IV Exempt FOR Firms.
- In March 2014 the Central Bank required Lambay to alter its written procedures to ensure that there was no further reporting of unaudited profit in its own funds and the Firm confirmed it had done so.
- Lambay submitted an April 2014 board minute to the Central Bank confirming that the Firm's procedures had been updated to reflect the fact that unaudited profit would not be included in its own funds figures for submission to the Central Bank.
- In May 2014 the Central Bank published a final implementation Notice regarding the exercise of its Article 95(2) discretion.
- The Central Bank's 12 September 2014 letter to industry sent in light of the thematic review of data integrity and emailed to Lambay in October 2014 made it clear that the Central Bank expects investment firms to refrain from including unaudited profit in own funds figures.
- In March 2015 the Central Bank wrote to Lambay reminding the Firm of the exercise of its Article 95(2) discretion.

Lambay's mis-reporting of own funds resulted in the Firm repeatedly giving the Central Bank an inaccurate impression of its capital. The issue was not adequately remediated until October 2015 despite repeated supervisory engagement on the matter.

PRESCRIBED CONTRAVENTIONS

Breach of Article 95(2) of the CRR

As a result of the Central Bank's exercise of its discretion pursuant to Article 95(2) of the CRR, Lambay remains subject to the obligation initially set out in Regulation 11(1) of the Capital Adequacy Regulations 2006 to calculate its own funds in accordance with Article 57 of Directive 2006/48/EC: any profit figure that Lambay includes in its quarterly COREP returns must be audited profit.

¹ COREP, or Common European Regulatory Reporting, is a Basel III European framework for the reporting of risk by financial institutions.

On 8 May 2015, Lambay submitted a COREP return for the quarter ended 31 March 2015 that included in the calculation of its own funds figures interim profits of €46,000 which had not been independently verified by the Firm's auditors in breach of the Central Bank's requirements communicated to the Firm pursuant to Article 95(2) of the CRR.

The breach occurred notwithstanding the Central Bank having specifically reminded Lambay of the exercise of its discretion pursuant to Article 95(2) prior to the Firm's submission of its COREP return for the quarter ending 31 March 2015.

Breach of Regulation 33(1)(f) of the MiFID Regulations

Regulation 33(1)(f)(i) of the MiFID Regulations requires firms to have in place and implement sound administrative and accounting procedures and internal control mechanisms.

Prior to May 2014, the Firm had no written procedures in place regarding the submission of COREP returns. Despite Central Bank intervention and the Firm's attempts to correct its procedures with regard to the calculation of own funds, it continued to submit inaccurate returns and the corrections it made to its written procedures were not adequate to remediate its failings.

Lambay accepted in interview with Enforcement that its regulatory breaches occurred as a result of a failure of institutional memory at the Firm.

PENALTY DECISION FACTORS

This case and the sanctions imposed reflect the importance to the Central Bank of firms having adequate administrative and accounting procedures and internal control mechanisms in place to ensure the production of accurate prudential regulatory returns.

In deciding the appropriate penalty, the Central Bank has taken the following into account:

1. With regard to Lambay's breach of Article 95(2), the Firm engaged in prior conduct of a similar type: it submitted three inaccurate COREP returns prior to the breach which occurred despite the Central Bank's repeated reminders to the Firm of its regulatory obligations.
2. While the conduct did not result in a capital breach, it did result in the Firm over-reporting its capital to the Central Bank on four occasions.
3. Throughout the period of the breaches, the overstatement of own funds could have resulted in a capital breach being undetected.
4. The Firm's systems and controls breach continued for over eighteen months and was only resolved following Central Bank intervention on a number of occasions and, in particular, the commencement of enforcement activity.
5. The conduct occurred because the Firm was not sufficiently well controlled to comply with its regulatory returns obligations. In particular:
 - a. There were certain failures of institutional memory at the Firm; and

- b. In March 2014, the Firm provided inaccurate information to the Central Bank concerning when it had updated its written procedures for the submission of COREP returns. This was a result of Lambay's failure to understand the full extent of the requirement to have written procedures in place to comply with its MiFID obligations.
6. Lambay is a Low Impact Firm under the PRISM system of supervision. The Central Bank nevertheless places reliance on smaller firms to be well controlled. When regulatory intervention is required, it is essential to the functioning of PRISM that Low Impact Firms respond proactively and adequately remediate in a timely manner through the supervisory process.
7. The need to have an appropriate deterrent impact.
8. The cooperation of the Firm during the investigation and in settling at an early stage in the Central Bank's Administrative Sanctions Procedure.

The Central Bank confirms the matter is now closed.

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NOTES TO EDITORS

1. On 8 December 2015 the Central Bank entered into a settlement agreement with Octagon Online Services Limited regarding a breaches of the MiFID Regulations. An aggravating feature of that case was a failure of institutional memory. The Public Statement is [here](#).
2. The Central Bank's reporting requirements for MiFID Firms are explained on the Central Bank's website ([here](#)). A tabulated guide for investment firms is [here](#) and a Central Bank Guidance Note on completion of COREP templates for CRD IV Exempt FOR Firms is [here](#).
3. A link to the Central Bank's Notice, "Implementation of Competent Authority Discretions and Options in CRD IV and CRR" is [here](#).
4. On 12 September 2014 the Central Bank issued a letter to industry regarding the outcome of its thematic review of data integrity. A link to that letter is [here](#).
5. A link to the Central Bank publication "PRISM Explained" is [here](#).
6. The fine imposed by the Central Bank was imposed under Section 33AQ of the Central Bank Act 1942. The maximum penalty was €10,000,000.
7. The fine reflects the application of the maximum percentage settlement discount of 30%, as per the Early Discount Scheme set out in the Central Bank's "Outline of the Administrative Sanctions Procedure" which is [here](#).
8. This case involves a number of cross sectoral Enforcement priorities for 2015: (1) prudential requirements, (2) systems and controls; and (3) the submission of timely, complete and accurate information to the Central Bank. Further, those priorities stressed that the Central Bank has specifically allocated resources for enforcement actions against firms with a low impact PRISM rating on the Bank's risk assessment framework. The Central Bank's Enforcement priorities for 2015 are available on the Central Bank website ([here](#)).