

# FSA Update

## At the FSA last week:

### ■ Upper Tribunal hears challenge to fine for inadequate supervision

In a case which may help to define the standards of supervision expected of individuals by the FSA, and the penalties which it feels able to pursue for breaches of those standards, John Pottage, former Head of Wealth Management at UBS, is challenging the £100,000 financial penalty imposed on him by the FSA in 2009 before the Upper Tribunal.

In proceedings arising from the same investigation as resulted in a financial penalty of £8 million being imposed on UBS in 2009, the FSA has alleged that Mr Pottage failed to properly supervise staff or put in place adequate systems to prevent fraud. Mr Pottage's argument is that whilst a number of control failures occurred in the back office of the business, he was not said to have been in any way responsible for those control failures and took prompt and effective steps to ensure that each of them was properly investigated and rectified. UBS's counsel argued that the FSA's action seeks to impose a far higher standard of conduct than what could reasonably be expected from any large financial institution or CEO, and that an enforcement action is not the right mechanism for doing so.

Hearings are scheduled to run until 2 December.

### ■ Five individuals arrested in land banking investigation

In a joint operation between the FSA and City of London Police, search warrants were executed at nine premises and five individuals in London and Kent arrested on 16 November in connection with an investigation concerning an alleged unauthorised collective investment scheme.

No further details have yet been released by the FSA.

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2011/097.shtml>

### ■ Final Notices

- **McInroy & Wood**, a discretionary investment management firm based in East Lothian, has been fined £15,050 for breaching Principle 10 (Clients' assets) and associated rules set out in the Client Assets sourcebook ("CASS") by failing to obtain an appropriate trust letter in respect of 22 segregated offshore accounts containing, on average, £666,000 each. Although the Final Notice does not provide specific details of the formula used to calculate the financial penalty imposed in this case as a proportion of the average amounts of client money involved (0.15%), is less than in other recent action taken by the FSA for similar breaches.

<http://www.fsa.gov.uk/pubs/final/mcinroy-and-wood.pdf>

## Key issues

- Upper Tribunal hears challenge to fine for inadequate supervision
- Five individuals arrested in land banking investigation
- Final Notices
- FSA consults on arrangements for treatment of 'legacy assets' under Retail Distribution Review charging rules (CP11/26)

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### ■ Final Notices (continued)

- **John Folan**, an insurance and mortgage broker, has been banned (with effect from 30 September 2011) and fined £195,117 (reduced from £225,117 for settlement at Stage 1) for breaching Principle for Approved Persons (APER 2.1.2P) (integrity). The financial penalty imposed included (under the pre-March 2010 penalty regime) the disgorgement of £125,117 received by him in respect of the commission paid to him in connection with the applications. Mr Folan was found to have submitted 54 applications, both in his own name and in the names of others without their consent, for life assurance and protection products for the purposes of obtaining commission payable to him as an intermediary. He was also found to have falsified some signatures and to have deliberately failed to keep and/or destroy records.

[http://www.fsa.gov.uk/pubs/final/john\\_paul\\_folan.pdf](http://www.fsa.gov.uk/pubs/final/john_paul_folan.pdf)

### ■ FSA consults on arrangements for treatment of 'legacy assets' under Retail Distribution Review charging rules (CP11/26)

The FSA has issued a consultation paper inviting firms to comment on its proposed approach to the payment of commission in respect of 'legacy assets' – i.e. where advice is provided after the entry into force of the provisions of the Conduct of Business Sourcebook ("**COBS**") as amended by the Retail Distribution Review ("**RDR**") (i.e. after 31 December 2012) on assets originally purchased prior to those amendments. The guidance confirms that the FSA does not propose to further amend the provisions of COBS 6.1A.4R and 6.1B.5R, so the ban on 'legacy commission' remains, but provides clarification on when this ban will apply.

[http://www.fsa.gov.uk/pages/Library/Policy/CP/2011/11\\_26.shtml](http://www.fsa.gov.uk/pages/Library/Policy/CP/2011/11_26.shtml)

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