

FSA Update

At the FSA last week: -

- **FSA fines and bans hedge fund compliance officer for CF10 failings**

The FSA has imposed a financial penalty of £14,000 on Dr Sandradee Joseph, the former Compliance Officer of Dynamic Decisions Capital Management ("**DDCM**"), a hedge fund management company domiciled in the Cayman Islands but based in London and Milan, in connection with the failure of a fund originally worth approximately \$550 million. The financial penalty imposed was reduced from £20,000 for settlement at stage 1 of the FSA's executive settlement procedures. Dr Joseph has also been banned from performing any significant influence function with immediate effect.

The action was taken by the FSA in respect of breaches by Dr Joseph of Principle 6 (due care, skill and diligence in the management of a firm) of the FSA's Statements of Principle for Approved Persons ("**APER**").

The failings occurred in the context of significant losses in the aftermath of the collapse of Lehman Brothers in 2008. In order to conceal these losses, a senior employee of DDCM entered into a number of contracts for the purchase and resale of a bond. A number of investors raised concerns as to the provenance and legitimacy of this bond, leading to the resignation of DDCM's prime broker.

The issues identified by the FSA relate to the failure of Dr Joseph to investigate the concerns raised by investors before the resignation of the prime broker, or the reasons for that resignation and the placement of excessive reliance on other employees and external advisers. The FSA found that these failings amounted to a failure by Dr Joseph to act with due care and skill in fulfilling the compliance oversight (CF10) function which she held and caused her to breach Principle 6.

Interestingly, although Dr Joseph held both CF10 and CF11 functions at the time when the employee entered into contracts in relation to the bond to conceal losses, the action taken by the FSA relates only to failures to properly

fulfil the CF10 function, and the penalty and prohibition imposed are not stated to be based on failures to fulfil the CF11 (money laundering reporting) function. This decision by the FSA not to take action in respect of failure to identify as suspicious and report through the appropriate anti-money laundering channels the transactions alleged to have been entered into to conceal losses is surprising, particularly given the FSA's focus on preventing and deterring financial crime.

The circumstances of the collapse of DDCM has previously been the focus of an investigation (which was closed in July 2010) by the Serious Fraud Office in the UK and, are now reported to be the subject of an investigation by Italian Police (<http://www.ft.com/cms/s/0/f1500b36-14fd-11e1-b9b8-00144feabdc0.html#axzz1ekQks5uT>).

http://www.fsa.gov.uk/pubs/final/dr_sandradee_joseph.pdf

- **FSA makes more unauthorised business arrests**

The FSA, working with West Midlands Police, has executed search warrants and arrested two individuals in the West Midlands in connection with allegations of unauthorised provision of financial advice and making misleading statements to investors.

These arrests are the latest in a period of activity for the FSA's Unauthorised Business Division, which (as reported in *FSA Update* last week), in a large operation stated to have involved up to ninety members of FSA staff, recently arrested three individuals and searched premises in connection with alleged unauthorised land banking activities.

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2011/101.shtml>

Key issues

- FSA fines and bans hedge fund compliance officer for CF10
- FSA makes more unauthorised business

• Other Final Notices

- In Final Notices dated 11 November 2011, the FSA has imposed a financial penalty of £28,000 (reduced from £40,000 for early settlement) on **Fastmoney.co.uk Limited ("Fastmoney")**, a small mortgage broker based in Staffordshire, has prohibited Stuart Mason (former Chief Executive Officer and director) from fulfilling any significant influence function and has imposed a financial penalty of £17,500 (reduced from £25,000 for early settlement) on Simon Latham (owner of Fastmoney) and banned him from fulfilling any significant influence function. The action was taken in respect of breaches of Principle 3 (management and control) of the FSA's Principles for Businesses by Fastmoney and breaches by Messrs Mason and Latham of Principles 6 (due care, skill and diligence in the management of a firm) and 7 (compliance with regulatory standards) of APER. These related principally to failures in sales and training processes.

<http://www.fsa.gov.uk/pubs/final/fastmoney.pdf>

http://www.fsa.gov.uk/pubs/final/simon_latham.pdf

http://www.fsa.gov.uk/pubs/final/stuart_mason.pdf

- In the latest of an increasing number of decisions to strike off firms under the nascent payment services regime, the FSA has cancelled the registration of **Farook Shuhaimy** and **Kebba Jaiteh** as small payment institutions. It is likely that the steady stream of cancellations similar to these, which concerned failure to provide prescribed information to the FSA and to pay registration fees, will continue as enforcement cases begin to emerge under the relatively new regime implemented under Payment Services Regulations 2009 (which only entered into full force in May 2011).

http://www.fsa.gov.uk/pubs/final/farook_shuhaimy.pdf

http://www.fsa.gov.uk/pubs/final/kebba_jaiteh.pdf

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

© Clifford Chance LLP 2011

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street, London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh* ■ Rome ■ São Paulo ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

*Clifford Chance has a co-operation agreement with Al-Jadaan & Partners Law Firm in Riyadh.

Contacts

Roger Best
Partner

T: +44 20 7006 1640
E: roger.best@cliffordchance.com

Matthew Newick
Partner

T: +44 20 7006 8492
E: matthew.newick@cliffordchance.com

Martin Saunders
Partner

T: +44 20 7006 8630
E: martin.saunders@cliffordchance.com

Carlos Conceicao
Partner

T: +44 20 7006 8281
E: carlos.conceicao@cliffordchance.com

Luke Tolaini
Partner

T: +44 20 7006 4666
E: luke.tolaini@cliffordchance.com

Chris Stott
Professional Support Lawyer

T: +44 20 7006 5918
E: chris.stott@cliffordchance.com