

## At the FSA last week: -

### FSA imposes financial penalty for disclosure of confidential information

The FSA has (on 13 March) imposed a financial penalty of £210,000 on **Nicholas Kyrios**, a senior trader based in London, for breaches of Principles 2 (due skill, care and diligence) and 3 (market conduct) of its Statements of Principle for Approved Persons ("**APER**"). The penalty was reduced from £300,000 as Mr Kyrios agreed to settle at Stage 1 of the FSA's executive settlement procedures.

The FSA found that Mr Kyrios breached Principle 3 by disclosing information which was being treated within his organisation as inside information without authority and in breach of wall crossing procedures. He had been wall crossed, provided with information on a confidential basis and instructed not to disclose that information to third parties. The FSA found that he did not explicitly disclose, but did allow a third party to deduce, the information, which related to an imminent bond issue, during a telephone conversation.

The Final Notice issued to Mr Kyrios makes no criticism of his employer in relation to the disclosure of the information.

<http://www.fsa.gov.uk/library/communication/pr/2012/026.shtml>

### Other Final Notices: -

Further to the dismissal by the Upper Tribunal (in a written decision dated 10 January) of a reference of the FSA's earlier decision to refuse applications, made respectively by **Elmswood EU Limited ("Elmswood")** and **David Sime** for Part IV permission and for approval to perform various controlled functions, the FSA has (on 16 March) issued Final Notices to Elmswood and Mr Sime confirming the refusal of those applications. The Upper Tribunal had previously agreed with the FSA that, due to shortcomings in the manner in which his application was completed, Mr Sime did not (in the context of this application) meet its Fit and Proper Test for Approved Persons ("**FIT**"). The FSA has refused the application made by Elmswood as it has found that, as a consequence of Mr Sime not being approved, Elmswood did not satisfy its Threshold Conditions ("**COND**").

[http://www.tribunals.gov.uk/financeandtax/Documents/decisions/sime\\_v\\_fsa\\_decision.pdf](http://www.tribunals.gov.uk/financeandtax/Documents/decisions/sime_v_fsa_decision.pdf)

<http://www.fsa.gov.uk/static/pubs/final/david-sime.pdf>

<http://www.fsa.gov.uk/static/pubs/final/elmswood-eu.pdf>

### FSA identifies retail risks for 2012

In what is likely to be the final **Retail Conduct Risk Outlook ("RCRO")** before responsibility for retail conduct regulation shifts to the Financial Conduct Authority in early 2013, the FSA has (on 13 March) set out what it considers to be the most significant areas of risk facing retail customers.

The RCRO is useful in gauging the FSA's attitude towards various product areas and elements of firms' businesses, and in assessing the likelihood of it undertaking thematic reviews in particular areas and/or taking enforcement action in respect of certain types of conduct.

In addition to providing an overview of current market conditions in some key retail areas and assessing trends in the distribution of financial products across different consumer groups, the RCRO sets out the top 15 specific areas where the FSA perceives risk for consumers. Its concerns can be broadly categorised by reference to: -

- particular product groups (including mortgages, pensions and retirement planning and general insurance);
- commonly encountered features of firms' sales (and after-sales) processes (including, in addition to continuing concerns expressed by the FSA in relation to the

### Key issues

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- FSA agrees undertaking with Cheshire Mortgage Corporation Limited
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- FSA consults on regulation of bidding for emissions allowances

complexity of some retail products and services, specific concerns in relation to product bundling, investment propositions, investment risk profiling, governance of funds in life offices, investor compensation protection and inadequate complaints handling);

- elements of firms' business and governance models (including firms' responses to regulatory and/or legislative developments, host authorised corporate directors systems and controls issues in the network model).

Many of the current and emerging risks detailed in this year's RCRO have been identified in previous editions and have, in some cases, led to specific guidance being issued by the FSA (see, for example, the statements issued in relation to Traded Life Policy Investments in November 2011 and since).

However, the RCRO also sets out some new areas of potential concern, including its perception of a high proportion of many UK lenders' mortgage books composed of interest only mortgages due to reach maturity relatively imminently. The FSA has indicated that it proposes to embark upon thematic work in this area. In contrast, the development and marketing of structured products and advice in relation to UCITS IV are amongst areas identified by the FSA as no longer amongst its highest priorities.

The FSA is holding a series of roadshows to further brief firms on the key risk areas and steps which they should take to protect their customers from them. Details are available on the FSA's website here.

<http://www.fsa.gov.uk/static/pubs/other/rcro12.pdf>

<http://www.fsa.gov.uk/doing/events/rcro>

## Hector Sants to stand down as FSA CEO

The FSA has (on 16 March) announced that its CEO, Hector Sants, will leave the organisation on 29 June after eight years in various posts. He has been CEO of the FSA since July 2007 Hector Sants, and is also currently the CEO designate of the Prudential Regulation Authority ("PRA"). After his departure, Andrew Bailey will assume control of the Prudential Business Unit of the FSA, the predecessor body for the PRA. The FSA has not made any announcement at this stage as to how the departure may affect the proposed longer term management structure of the PRA when it receives responsibility for prudential regulation from the FSA in early 2013.

<http://www.fsa.gov.uk/library/communication/pr/2012/028.shtml>

## FSA agrees undertaking with Cheshire Mortgage Corporation Limited

The FSA has agreed an undertaking with **Cheshire Mortgage Corporation Limited** ("CMCL") under the Unfair Terms in Consumer Contracts Regulations 1999 in connection with terms and conditions set out in historic (2004 and 2006) editions of mortgage conditions which did not define the reasons for which

interest rates could be changed. CMCL has offered to amend these terms and conditions to list the reasons for which variable interest rates may change, and to provide customers with at least 14 days' notice of any changes to variable interest rates. The FSA has agreed to these proposed changes to the wording of the terms and conditions, and no regulatory action has been taken by the FSA.

<http://www.fsa.gov.uk/static/pubs/other/cmc-undertaking.pdf>

## WorldSpreads Limited enters Special Administration Regime

The spread betting company **WorldSpreads Limited** ("WorldSpreads") has (on 18 March) entered the FSA's Special Administration Regime. A brief statement issued by the FSA states that the appointment of joint special administrators followed the discovery of accounting irregularities on 16 March, following which WorldSpreads' directors and advisers concluded that the best course of action, to mitigate clients' losses, was to place the company into the special administration regime.

The entry of WorldSpreads into the Special Administration regime, closely follows that of **Pritchard Stockbrokers Limited**, which was announced on 9 March. It becomes the third entrant to the regime, which came into effect in February 2011.

<http://www.fsa.gov.uk/library/communication/pr/2012/029.shtml>

## FSA consults on regulation of bidding for emissions allowances

The FSA has (on 16 March) issued a consultation paper (CP12/6) setting out how it proposes to authorise and supervise firms intending to bid for emissions allowances when the proportion of allowances which EU member states are permitted to auction increases from 2013.

HM Treasury has, through the Recognised Auction Platforms Regulations 2011, created a new type of body, a Recognised Auction Platform ("**RAPs**"), which may participate in the UK national auctions, and is currently consulting on amendments which would make bidding in such auctions a regulated activity in some circumstances. The FSA (and in due course its successor bodies) will be required to specifically authorise and supervise certain firms intending to bid.

Firms have been invited to submit any comments on the consultation paper to the FSA by 19 April.

<http://www.fsa.gov.uk/library/policy/cp/2012/12-06.shtml>

## Authors



**Roger Best**  
Partner

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



**Matthew Newick**  
Partner

T: +44 20 7006 8942  
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 4231  
E: chris.stott  
@cliffordchance.com

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