

## At the FSA last week:-

### FSA arrests three individuals in insider dealing investigation

The FSA, with assistance from Lancashire and Cheshire Constabularies, has (on 1 March) arrested three individuals and executed search warrants at three addresses in Northwich and Rossendale in connection with an investigation into alleged insider dealing.

The FSA has not released any further information in relation to these arrests or the investigation.

The FSA has made prolific use of its criminal investigation powers in 2012 to date. Although the investigations are unconnected, these arrests follow the arrest of a further individual several weeks ago in connection with the long-running Operation Tabernula, the FSA's largest ever investigation into alleged insider dealing, which it is conducting in co-operation with the Serious Organised Crime Agency.

<http://www.fsa.gov.uk/library/communication/pr/2012/020.shtml>

### CPP agrees to undertake review of sales of card protection and

### identity protection insurance

Further to the announcement on 20 February of the suspension of the listing of shares in CPP Group plc ("**CPP**"), the FSA has announced (on 27 February) that CPP has agreed in principle to review the way in which card protection and identity protection insurance products were sold to customers, and to offer redress where appropriate. The FSA has indicated that its investigation is ongoing.

<http://www.fsa.gov.uk/consumerinformation/firmnews/2012/cpp>

### Upper Tribunal upholds prohibition order

The Upper Tribunal has upheld the FSA's decision (communicated in a Decision Notice dated 23 February 2011) to make a prohibition order in respect of Mr Derek Wright, the former controller of a small insurance broker, **Moorgate Insurance Agencies Limited ("Moorgate")** (whose Part IV permission had previously been varied and subsequently cancelled voluntarily in 2008).

The FSA decided, and the Upper Tribunal agreed, that Mr Wright lacked fitness and propriety on the basis of:

- previous disciplinary action taken against Mr Wright by the Lloyd's Disciplinary Tribunal for dishonest conduct (which led to him being publicly censured and suspended in 2001)
- his performing controlled functions without approval

- submission by him of Retail Mediation Activities Returns containing material inaccuracies
- misleading information provided by him to the FSA in respect of an increase in Moorgate's capital; and

### Key issues

- FSA arrests three individuals in insider dealing investigation
- CPP agrees to undertake review of sales of card protection and identity protection insurance
- Upper Tribunal upholds prohibition order
- Final Notices
- FSA enters into Memorandum of Understanding with Department of Enterprise, Trade and Investment in Northern Ireland
- FSA agrees undertaking with AXA in relation to contents and buildings insurance
- FSA publishes responses to most commonly asked RDR questions
- FSA publishes finalised guidance on transaction reporting
- FSA issues policy statement on treatment of legacy assets
- Other policy documents published by the FSA last week
- PRA approach to consultation announced
- Supreme Court judgement opens door for return of unsegregated client assets
- Treasury Committee calls for further changes to Financial Services Bill

- failures by him to disclose information in relation to his employment status and failure to co-operate with the FSA in relation to the provision of information.

[http://www.fsa.gov.uk/static/pubs/decisions/derek\\_wright.pdf](http://www.fsa.gov.uk/static/pubs/decisions/derek_wright.pdf)

## Final Notices

The FSA has issued Final Notices confirming the cancellation of the Part IV permission of **The Portobello Partnership** (on 27 February), **Alasdair Munro** (on 1 March), **Paul Tonks trading as Paul Tonks Mortgage Sourcing** (on 1 March), **Philip Bealing** (on 2 March) and **Malcolm Shapcott trading as Independent Solutions** (on 2 March) following non-payment of fees and levies.

<http://www.fsa.gov.uk/static/pubs/final/the-portobello-partnership.pdf>

[http://www.fsa.gov.uk/static/pubs/final/paul\\_william\\_tonks.pdf](http://www.fsa.gov.uk/static/pubs/final/paul_william_tonks.pdf)

<http://www.fsa.gov.uk/static/pubs/final/aldasair-samuel-munro.pdf>

<http://www.fsa.gov.uk/static/pubs/final/philip-bealing.pdf>

<http://www.fsa.gov.uk/static/pubs/final/independent-solutions.pdf>

## FSA enters into Memorandum of Understanding with Department of Enterprise, Trade and Investment in Northern Ireland

Ahead of the transfer of responsibility for the regulation of credit unions in Northern Ireland from the Department of Enterprise, Trade and Investment ("DETI") to the FSA on 31 March, the FSA and DETI have published a Memorandum of Understanding ("MoU") signed on 7 February.

The MoU sets out transitional and ongoing arrangements in areas including intelligence and information sharing (including confidential information and the transfer of personal data), requests and referrals between the FSA and DETI, relationship management with credit unions and access to supervisory and historic records.

<http://www.fsa.gov.uk/static/pubs/mou/fsa-detini.pdf>

## FSA agrees undertaking with AXA in relation to contents and buildings insurance

Following a review under the Unfair Terms in Consumer Contracts Regulations 1999, the FSA has agreed an undertaking with Axa Insurance UK plc ("AXA") in relation

to the specific wording of terms in buildings and contents insurance policies marketed by it and a number of third party organisations. AXA has agreed with the FSA to change particular wording relating to the circumstances in which customers will be offered a cash settlement rather than repairs to or replacement of lost or damaged property and amend contracts with partner organisations, and has fully co-operated with the FSA.

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

## FSA publishes responses to most commonly asked RDR questions

Further to recent the recent Retail Distribution Review ("RDR") roadshows held by the FSA, it has (on 27 February) published a summary of the most commonly asked questions and its responses to them.

The questions deal with areas including the activities which individuals will be able to carry out without qualifications after 31 December 2012, the circumstances in which advice will be "independent" and "restricted" (see also details of guidance consultation published last week on this area), and charging arrangements.

The full list of questions and answers is available at: -

[http://www.fsa.gov.uk/library/policy/final\\_guides/2012/fg1205](http://www.fsa.gov.uk/library/policy/final_guides/2012/fg1205)

## FSA publishes finalised guidance

## on transaction reporting

Further to a consultation paper published on 3 November 2011, the FSA has (on 1 March) issued finalised guidance (FG 12/07) in relation to firms' transaction reporting obligations under chapter 17 of the FSA's Supervision manual ("SUP").

The version of the Transaction Reporting User Pack ("TRUP") (version 3) contained in this finalised guidance is effective immediately.

In addition to reflecting some comments made during the consultation exercise, amendments have been made to incorporate guidance from the Committee of European Securities Regulators and others issued since version 2 was issued in 2009.

[http://www.fsa.gov.uk/library/policy/final\\_guides/2012/fg1207](http://www.fsa.gov.uk/library/policy/final_guides/2012/fg1207)

## FSA issues policy statement on treatment of legacy assets

Further to a consultation paper published on 16 November 2011, and ahead of the implementation of new rules on 31 December 2012, the FSA has (on 27 February) issued a policy statement (PS 12/3) in relation to the treatment of legacy assets (i.e. retail investment products bought by a retail client before the rules come into force and which are still held after 31 December 2012).

Guidance is given in particular in relation to the circumstances in which trail commission can continue to be

paid. Additional guidance has also been added to various of the new provisions of Chapter 6 of the FSA's Conduct of Business Sourcebook ("COBS") which are due to come into force on 31 December 2012 as the product of the RDR.

[http://www.fsa.gov.uk/library/policy/policy/2012/12\\_03.shtml](http://www.fsa.gov.uk/library/policy/policy/2012/12_03.shtml)

## Other policy documents published by the FSA last week: -

- Finalised guidance on collateral upgrade transactions  
[http://www.fsa.gov.uk/library/policy/final\\_guides/2012/fg1206](http://www.fsa.gov.uk/library/policy/final_guides/2012/fg1206)
- Finalised guidance on distributor-influenced funds  
[http://www.fsa.gov.uk/library/policy/final\\_guides/2012/distributorinfluenced-funds](http://www.fsa.gov.uk/library/policy/final_guides/2012/distributorinfluenced-funds)
- Consultation paper on proposals to change calculation of pension transfer value  
<http://www.fsa.gov.uk/library/communication/pr/2012/019.shtml>
- Guidance consultation on independent and restricted advice  
[http://www.fsa.gov.uk/library/policy/guidance\\_consultations/2012/1203](http://www.fsa.gov.uk/library/policy/guidance_consultations/2012/1203)

## PRA approach to consultation announced

The Bank of England and the FSA have published a note which provides Parliament with an explanation of how the future Prudential Regulation Authority (PRA) will consult. The

document has been published for consideration alongside scrutiny of the Financial Services Bill, and will be reviewed by the PRA Board once the PRA is established.

Amongst other things, the note indicates that:

- the PRA will give the firms it regulates, their representatives and other interested parties the opportunity to express views and, in particular, it will look to expert practitioners to offer technical and detailed feedback on the different means to achieve the PRA's aims;
- the PRA will not establish a standing practitioner panel comprising a fixed group of practitioners;
- the timing and nature of the PRA's engagement with firms and other interested parties will depend on the complexity of the particular issue, its likely effect and its scope – the more complex the issue, the earlier the PRA will generally seek to engage; consultation will take place among all firms likely to be affected by any proposed rule changes;
- given that many rules will be determined at EU level, the PRA's role will be to support the UK's engagement in those discussions; and
- the PRA will publish an annual report, including on the way in which it has discharged its functions during the previous year, the extent to which it has advanced its objectives and, in doing so, has had regard to the regulatory principles set out in the Bill and satisfied its general

duty to consult, and it will invite public comment on this report.

[http://www.bankofengland.co.uk/publications/Documents/other/financialstability/prc\\_consultation120227.pdf](http://www.bankofengland.co.uk/publications/Documents/other/financialstability/prc_consultation120227.pdf)

## Further afield:- Supreme Court judgement opens door for return of unsegregated client assets

In the final chapter of protracted proceedings arising from the collapse of Lehman Brothers International (Europe) Limited ("LBIE"), the UK Supreme Court, interpreting Chapter 7 of the FSA's Client Assets Sourcebook ("**CASS**"), has ruled on what constitutes client money, and which monies are required to be returned in the event of the failure of a firm. Upholding the decision of the Court of Appeal, the court has held that client money is held on trust immediately upon receipt and that, in the event of a firm's failure, client money held in a firm's own accounts is available for return to clients, even if it has not been segregated.

For our full briefing note, please go to [http://www.cliffordchance.com/publicationviews/publications/2012/03/supreme\\_court\\_decisiononlehmanclientmoney.html](http://www.cliffordchance.com/publicationviews/publications/2012/03/supreme_court_decisiononlehmanclientmoney.html)

The Supreme Court's judgment, and accompanying press summary, can be found at: -

[http://www.supremecourt.gov.uk/decided-cases/docs/UKSC\\_2010\\_0194\\_Judgment.pdf](http://www.supremecourt.gov.uk/decided-cases/docs/UKSC_2010_0194_Judgment.pdf)

[http://www.supremecourt.gov.uk/decided-cases/docs/UKSC\\_2010\\_0194\\_Press\\_Summary.pdf](http://www.supremecourt.gov.uk/decided-cases/docs/UKSC_2010_0194_Press_Summary.pdf)

[http://www.supremecourt.gov.uk/decided-cases/docs/UKSC\\_2010\\_0194\\_Press\\_Summary.pdf](http://www.supremecourt.gov.uk/decided-cases/docs/UKSC_2010_0194_Press_Summary.pdf)

## Treasury Committee calls for further changes to Financial Services Bill

The House of Commons Treasury Select Committee has (on 28 February) published a short report identifying some concerns held by it in relation to the proposed structure and objectives of the Financial Conduct Authority ("**FCA**"). The report, which supplements an earlier report detailing the committee's views on the provisions of the Financial Services Bill ("**the Bill**") relating to the FCA, contains replies to the government's comments on that earlier report. Specifically, the latest report sets out the committee's continuing concerns:

- 
- that the proposed arrangements to ensure the accountability of the FCA should be strengthened (including a suggestion that it should be able to request retrospective reviews of the FCA's work);
- at what it perceives as a lack of clarity in the FCA's strategic objective in the Bill as currently drafted;
- that the Financial Policy Committee rather than the Prudential Regulation Authority should hold the power to veto FCA decisions in areas relating to financial stability;

- that there should be greater provision in the Bill requiring the FCA to enter into more extensive cost-benefit analysis and greater consultation with firms prior to introducing new regulations.

The Bill is currently being considered at Committee stage in the House of Commons. Its provisions are expected to come into force in early 2013.

<http://www.parliament.uk/business/committees/committees-a-z/commons-select/treasury-committee/news/treasury-committee-calls-for-further-changes-to-rectify-shortcomings-of-legislation-on-the-fca/>

## 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

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](http://www.cliffordchance.com)

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ  
© Clifford Chance LLP 2012

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](mailto: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 ■ Casablanca ■ 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.