

February 2011

*This edition covers UK and EU developments between 1 and 31 January 2011.*

## UK DEVELOPMENTS

### FSA Announces Three Plead Guilty to Insider Dealing

On January 10, the UK Financial Services Authority (FSA) announced a guilty plea by three people accused of insider dealing. Christian Littlewood, a senior investment banker, his wife, Angie Littlewood, and a family friend, Helmy Sa'aid, pleaded guilty to the eight counts of insider dealing alleging that they had made almost £590,000 profit from trades in a number of London Stock Exchange and Alternative Investment Market listed shares between 2000 and 2008.

Mr. Littlewood worked at Dresdner Kleinwort until 2007 and at Shore Capital from 2008 to 2009. His wife was a qualified barrister who had also worked as an investment banker. Mr. Sa'aid, a Singaporean national, was returned to the UK in March 2010 after being extradited from Mayotte, one of the Comoros Islands in the Indian Ocean.

Margaret Cole, the FSA's Managing Director of Enforcement and Financial Crime, said: "It seems that the penny is beginning to drop. These guilty pleas show that our strategy of a tough approach to insider dealing—and, in particular, demonstrating that we are prepared to fight difficult criminal prosecutions to trial—is paying off. Dedicated hard work, bold and innovative use of the tools at our disposal and close seamless cooperation between our markets, enforcement and intelligence functions underpin our successful track record in this complex area."

UPDATE: On February 2, the FSA announced the custodial sentences imposed on Christian and Angie Littlewood and Helmy Sa'aid. The sentences given are the longest so far awarded for insider dealing.

To read more, click [here](#).

### FSA Fines and Bans Firm and Its Partners for Improperly Promoting Unregulated Funds

On January 19, the FSA published final disciplinary notices to Clark Rees LLP (CR) and its two partners, Ceri Rees and Paul Clark. Mr. Rees was fined £17,500, and Mr. Clark was fined £10,500. Both partners were banned for two years from performing customer functions in relation to unregulated collective investment schemes (a category of fund products which includes almost all private funds including all hedge funds other than those established within the EU Undertakings for Collective Investment in Transferable Securities framework), and both were permanently banned from carrying out senior management functions in a regulated firm. The FSA revoked CR's permission to carry on investment business.

The FSA found that both Mr. Clark and Mr. Rees had failed to educate themselves about the statutory and regulatory provisions relating to the marketing of unregulated collective investment schemes and in particular the limited circumstances in which they can be promoted to retail customers. Promotion of such funds is permitted only to retail investors when they meet specific qualifying criteria primarily in relation to investment experience. Neither partner of CR was aware of these restrictions, and as a result, promoted and recommended unregulated collective investment schemes to ordinary retail investors.

This specific disciplinary action by the FSA follows from its general announcement on the sale of private investment funds, as reported in the 13 August 2010 edition of [Corporate and Financial Weekly Digest](#).

To read Paul Clark's final notice, click [here](#).

To read Ceri Rees's final notice, click [here](#).

To read Clark Rees LLP's final notice, click [here](#).

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## FSA Fines City Index for Transaction Reporting Failures

On January 20, the FSA published a final notice announcing that it had fined City Index Limited £490,000 for failing to provide accurate transaction reports.

Between November 2007 and September 2009, City Index submitted inaccurate reports for about 2 million transactions (nearly 60% of its reportable transactions for that period). It failed to send any reports for around 55,000 reportable transactions and submitted incorrectly completed reports for a further 1.97 million transactions.

In addition, City Index was found to have breached FSA principles. It failed to put in place a mechanism for ensuring the accuracy and validity of its transaction reports, and failed to identify fundamental errors in its transaction reporting process upon the implementation of a new trading platform. These breaches occurred despite the FSA sending repeated reminders to firms of their obligations to provide accurate data and of the importance of compliance with the FSA rules on transaction reporting.

As it had agreed to settle at early stage, City Index qualified for a 30% discount from the original fine of £700,000. Further, the penalty took into account the fact that City Index had taken steps to address the concerns raised including the retention of independent consultants to conduct a formal review of its transaction reporting and starting a project to remedy the transaction reporting issues.

To read the final notice, click [here](#).

## Jail Sentence Imposed for Insider Dealing

On January 21, Neil Rollins, a former senior manager of PM Onboard Limited, a waste industry firm, was sentenced to a prison term of 27 months for insider dealing and money laundering. Mr. Rollins was also ordered to pay £197,000 in confiscation.

This case is the fifth successful prosecution brought by the FSA as part of its ongoing drive to promote efficient, orderly and fair markets and to tackle market abuse. The sentence follows Mr. Rollins's trial which ended in late November 2010 with guilty findings on five counts of insider dealing and four counts of money laundering after he traded on the basis of information he obtained as a result of his senior position and laundered the proceeds.

Margaret Cole, Managing Director of Enforcement and Financial Crime at the FSA, said: "By pursuing a criminal prosecution in this case, the FSA has shown that it will take tough action against those who abuse positions of trust by dealing on the basis of inside information. Rollins' crime was aggravated by the fact that he sought to hide his conduct from the FSA by laundering the proceeds. The guilty verdicts and sentence in this case send a message, loud and clear, that insider dealing and money laundering are serious crimes."

[Read more.](#)

## FSA Fines JJB Sports PLC for Disclosure Failings

On January 25, the FSA issued a Final Notice to JJB Sports plc that detailed a fine of £455,000. The FSA found that JJB had failed to disclose information to the market about the true cost of two acquisitions. These failings had led to a false market in JJB shares for over nine months.

On December 18, 2007, JJB announced its purchase of Company A for £5 million. JJB failed to disclose that in addition to that purchase price it had also paid approximately £10 million for in-store stock.

In a second announcement, on May 22, 2008, JJB disclosed a £1 purchase consideration paid for Company B. JJB failed to disclose that it had also agreed to pay off Company B's overdraft of £6.47 million.

At the relevant time, the cash positions of listed companies were the subject of increasing investor focus, and JJB's failure to give proper disclosure about the purchase price of the two companies gave a false impression of the costs of the two acquisitions and their impact on JJB.

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The FSA found that the true costs of the two acquisitions were not disclosed until the publication of JJB's 2008 Interim Results on September 26, 2008. On that day, JJB's share price fell by 49.5%.

In fixing the amount of JJB's penalty, the FSA took into account JJB's cooperation, and the fact that since the date of the non-disclosure both the executive board and the non-executive directors had been replaced.

As JJB agreed to settle at an early stage, it had qualified for a reduction of the original fine of £650,000 by 30%. The fine imposed on JJB is the second largest ever imposed by the FSA on a company for breach of the Disclosure and Transparency and Listing Rules.

To read the FSA's final notice to JJB, click [here](#).

## FSA Issues Discussion Paper on Product Intervention

On January 25, the FSA published DP11/1, a discussion paper on Product Intervention. DP11/1 considers how the FSA and its successor (the planned Consumer Protection and Markets Authority (CPMA)) should pursue consumer protection and sets out initial proposals for comment.

As part of its new consumer protection strategy introduced in 2010, the FSA has adopted a more interventionist approach with the aim of anticipating consumer detriment where possible and thereby preventing it. This approach aims to scrutinise the whole of the product life cycle from start to finish rather than just focusing on issues arising at the point-of-sale.

As part of this strategy, the key proposals set out in DP11/1 suggest:

- **More prescriptive rules**—The FSA is minded to introduce greater prescription in the current regulatory framework to help improve customer outcomes and strengthen its ability to hold firms to account for product governance failings. This may include changing some of the FSA's regulatory guide on the responsibilities of providers and structures into rules.
- **Product intervention**—When the FSA identifies products with features that it considers have the potential to cause detriment to consumers, it suggests that it should have the power to require, for example, product pre-approval, mandatory product features, price intervention, increasing prudential requirements on providers, consumer and industry warnings, preventing non-advised sales, imposing additional competence requirements for advisers or even giving the FSA the power to ban the product at issue.

In the foreword to the discussion paper, FSA Chairman Lord Turner said: "The crucial issue is how far along this spectrum of earlier and more intense interventions we should progress. This debate comes at a critical time as the scope and powers of the CPMA are being discussed by the government, parliament and stakeholders. It is fundamental to shaping the regulatory philosophy of the new organisation."

The deadline for responses to DP11/1 is April 21. The responses will be taken into account in the consultation papers that the FSA intends to publish during the first half of 2011 on its approach to the transition to regulation by the CPMA.

To read the discussion paper, click [here](#).

## EU DEVELOPMENTS

### ESMA Holds Initial Board Meeting

On January 11, the newly established European Securities and Markets Authority (ESMA) announced that its Management Board had held its first meeting.

At the meeting, the first six members of the Management Board were elected, including nominees from six EU national regulators, one of whom was the FSA's Director of Markets.

The Board also announced the adoption of internal rules for ESMA, including terms of reference for its decision-making process for the adoption of technical standards and guidelines. The Board also confirmed that all Level 3 measures previously issued by its predecessor entity, the Committee of European Securities Regulators (CESR), remain valid.

To read more, click [here](#).

## ESMA Publishes Responses to CESR's Call for Evidence on AIFMD Implementing Measures

On January 18, the ESMA published the responses to the CESR's December 2010 call for evidence on the Alternative Investment Fund Managers Directive (AIFMD) implementing measures. (ESMA replaced CESR on January 1, 2011.)

The call for evidence (see the December 10, 2010 edition of *Corporate and Financial Weekly Digest*) requested input regarding CESR's technical advice to the European Commission on the implementing measures for the EU AIFMD. This input will be taken into account by ESMA in the development of its draft advice on the content of the AIFMD implementing measures, which will be published for consultation in 2011. The published responses came from a variety of trade associations and individual firms.

To view the responses, click [here](#).

## ESMA Updates Table of Short-Selling Measures

On January 31, the ESMA published an updated version of its table of EU member states' short-selling measures showing new measures by France and Germany.

France: With effect from February 1, the short positions disclosure regime developed by ESMA will be effective for all French shares admitted to trading on Euronext Paris and Alternext Paris. The French emergency measures adopted in September 2008 will cease to apply.

Germany: BaFin extended its net short-selling position notification and publication requirements in respect of 10 financial stocks. These requirements will continue to apply through 25 March.

To view the updated ESMA table, click [here](#).

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