Financial crisis claims: insurance coverage issues

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In the current economic climate, with the increased scope for litigation and regulatory action, policyholders should carefully review their Professional Indemnity (PI) insurance (known in the US as Errors & Omissions (E&O) insurance) and Directors & Officers (D&O) liability insurance policies and take appropriate steps to maximise their potential insurance recoveries.

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The sub-prime mortgage crisis has already triggered a wave of litigation and regulatory action in the US involving not only lenders that sold sub-prime mortgages, but also issuers, underwriters and other financial institutions that participated in the securitisation of mortgages and the sale of securities backed by sub-prime loans. The ensuing financial crisis has exacerbated the situation, by increasing both the number of claims and the number of targets (to include investment advisers, brokers, intermediaries, rating agencies, and other professional advisers).

These targets may well have Professional Indemnity (PI) insurance (known in the US as Errors & Omissions (E&O) insurance) covering the significant defence costs likely to be incurred in defending such claims, as well as potential settlements and judgments. They may also have Directors & Officers (D&O) liability insurance which could be triggered.

In the face of claims and potential claims, policyholders should carefully review their insurance policies and take appropriate steps to maximise their potential insurance recoveries (*see Checklist: Recommended action for companies in relation to PI/E&O and D&O policies*).

Against this background, this article considers:

- The types of claims that have arisen to date in the US.
- Whether such claims are likely to spread to the UK.
- Potential coverage under PI or E&O policies.
- Potential coverage under D&O policies.
- Claims notification requirements under PI or E&O, and D&O policies.

US claims

In the US, an increasingly wide range of companies from various industries are defending claims related to the sub-prime and financial crises. In addition to the initial claims against companies that issued sub-prime mortgages and companies that participated in the securitisation of such mortgages, there have also been lawsuits against:

- Mortgage insurers, alleging in part that they failed to make appropriate disclosures about the risks of

Option ARM loans.

- Banks that have failed or are in distress, alleging in part that they (and/or their directors and officers) made false or misleading statements about their financial situations.

- Companies that were not directly involved with sub-prime issues but that invested heavily in companies whose stock has plummeted in recent years (for example, Lehman Brothers, Fannie Mae, AIG, and so on), alleging in part that they (and/or their directors and officers) failed to make appropriate disclosures about the risks associated with their investment portfolios.

- Companies that accepted money from the federal government under the Troubled Asset Relief Program, alleging in part that they failed to disclose certain conditions that they had to meet to receive federal money.

In addition to these lawsuits, the financial crisis arguably has contributed to the discovery and disclosure of alleged fraudulent schemes, including the Ponzi Scheme of Bernard Madoff. The Madoff scandal has already prompted dozens of US investor lawsuits against Madoff, feeder funds that invested with Madoff's firm, and others that invested directly or indirectly. Some of these allege breach of fiduciary duty or other errors made in failing to detect the fraudulent scheme. While it is anticipated that the defendants will vigorously deny these charges (pointing to extensive internal due diligence procedures and/or the SEC's failure to detect Madoff's alleged fraud), there is a possibility that more lawsuits will be filed as investors look for some means to recover their losses.

The subject matter of current claims in the US varies widely in terms of factual allegations and legal theories, and it is likely that the subject matter and targets of such lawsuits will continue to expand. For purposes of this article, it is important to note that most of these lawsuits include allegations that potentially trigger coverage under PI/E&O and/or D&O policies, such as breach of duty, misrepresentation or misstatement, fraud, and so on.

The likelihood of UK claims?

The tide of litigation in the US has not yet crossed the Atlantic. Reasons for this may include:

- The US lawsuits were prompted initially by the sub-prime mortgage crisis and were already well underway when the follow-on impact of the credit markets began to take effect.

- In the US, proceedings may be issued within a matter of days of any problem or scandal emerging, even before the likely quantum of the claim has been properly assessed. In the UK, the Civil Procedure Rules and the requirement for pre-action correspondence require a considerable amount of pre-action preparation and investigation before proceedings can be started.

- There are a number of factors present in the US legal system that facilitate the widespread use of litigation, but which are not matched in the UK. For example, the existence of contingency fees, civil jury trials, the absence of the "loser pays the winner's costs" principle, and the prospect of punitive damages awards are all factors which make US litigation potentially very lucrative. There is also an established class action procedure in the US which enables proceedings to be brought on behalf of a group of claimants who will benefit from a favourable judgment, unless they "opt out" of the class. There is no equivalent to this in the UK (*see box, Group actions in the UK*).

For these reasons, potential litigants may chose to issue proceedings in the US rather than in the UK. One example is HSH Nordbank which issued proceedings in the US against UBS, said to be the first European Bank to be sued by an investor over the sale of financial products that collapsed as a result of the meltdown in sub-prime mortgages. Another recent example is the securities class action lawsuit filed by British pension funds against Royal Bank of Scotland and its directors, including Sir Fred Goodwin (which, despite the fact that both claimants and defendants are UK based, is being brought in the US).

However, some expect to see similar claims in Europe. In the UK, there have been a number of changes in recent years, which may promote such claims (*see box, Potential drivers of litigation in the UK*). Also, economic crises tend to lead to an increase in litigation - and this financial crisis looks to be worse than most. The size of losses incurred and the sheer number of institutions affected may mean that the scale of legal action is greater than in previous financial scandals.

In short, it seems likely that the claims and investigations already seen in the US will spread to the UK - particularly if tough economic conditions prevail - but possibly not on the same scale and at a slower pace.

Potential coverage under PI or E&O policies

Many of the lawsuits and regulatory claims currently underway allege conduct that potentially triggers coverage under PI or E&O policies. As with any coverage claim, the extent of coverage will depend on the specific policy language and the specific allegations in the lawsuit or claim. The terms of PI and E&O policies vary, particularly in the US where insurers not only start with standard-form policies using materially different terms, but also may negotiate modifications during the policy renewal process.

Most PI and E&O policies are written on a "claims made" basis and are designed to cover third party claims made against the policyholder during the period of insurance (and/or any extended reporting period):

- In the UK, a typical insuring clause will cover "loss" resulting from "civil liability" arising out of any "wrongful act" which gives rise to a "claim" made against the "insured" during the policy period.

- In the US, E&O policies similarly often cover “all sums” that the insured becomes liable to pay resulting from “claims” alleging “wrongful acts” that occur in the process of providing “professional services.”

The terms highlighted in the above bullet points are often expressly defined, and the availability of coverage may depend on the precise wording of the definitions.

Policy definitions

Professional services. Many PI and E&O policies define "wrongful act" to include any actual or alleged act, error or omission arising out of the provision of (or failure to provide) professional services.

The term "professional services" requires careful consideration. In some cases, the policy includes a detailed definition that is specifically tailored to the industry of the policyholder. In other policies, the definition incorporates a description of the services provided by the policyholder in the proposal form. In the latter case, policyholders should take care during the renewal process to provide an appropriate description of the services to counter potential insurers’ arguments that they were unaware of certain business activities undertaken.

Claim. The definition of "claim" can vary (particularly in the US) and may include some or all of the following:

- Written demand for monetary damages or other relief.
- Court or arbitration proceedings, including third party proceedings or counterclaims.
- Administrative or regulatory proceedings or investigations.
- Certain investigations by self-regulatory organisations.

Policyholders should not assume that coverage is limited to actual lawsuits. It may be triggered by a wide range of other demands, particularly in the US where some policies also cover certain types of criminal proceedings and requests to toll or waive a statute of limitations relating to a potential claim.

Regulatory proceedings and investigations. The cover provided for regulatory investigations varies widely. This coverage is particularly important as the costs incurred in these types of investigations can be considerable, particularly in the US.

Some policies include detailed provisions within the definition of claim addressing coverage for regulatory investigations; others do not. For example, some policies cover regulatory investigations that have been commenced by a formal order of investigation. However, many regulators, including the SEC and the FSA, regularly conduct investigations on an informal basis and never actually reach the stage of issuing a formal order. Despite this, policyholders often are forced to incur substantial legal costs in responding to such investigations. Indeed, they often are advised by counsel to cooperate with the regulators by producing documents and providing testimony on a voluntary basis instead of forcing the regulators to issue a formal order (as part of a strategy to reduce the scope for adverse findings and to mitigate potential losses/damages).

In this context, disputes frequently arise between policyholders and insurers on when coverage is triggered. From the policyholder's perspective, it is inequitable for insurers to argue that policyholders should take steps to mitigate by cooperating with regulators, but then deny coverage because this strategy results in the regulator agreeing not to issue a formal order.

There are a number of examples where the US courts have been required to consider such disputes and opinions typically turn on the precise policy language and specific facts of the case. For example, in relation to policies that generally afford coverage for “any demand for non-monetary relief,” certain US courts have held that such language should be construed broadly and that coverage is afforded when a regulator issues a subpoena to the insured (*Minuteman Int’l Inc. v. Great American Insurance Co., 2004 WL 603482 (N.D. Ill. 2004) (holding that SEC investigation was a claim); Polychron v. Crum & Forster Ins. Co., 916 F.2d 461 (8th Cir. 1990) (holding that grand jury subpoena and investigation was a claim)*). Other courts have held that a subpoena seeking documents alleges wrongful acts for the purposes of triggering coverage (*Jemmco Partners v. Executive Risk Indemnify, Inc., No. L-486-07 (N.J. Super. Ct., filed March 22, 2007)*).

Other policies expressly expand coverage in the regulatory context, either within the definition of claim or by means of an express extension of cover. For example, some policies are expressly triggered when a regulator sends a subpoena or identifies an insured as a person or entity against whom a formal proceeding may be brought in the future.

In short, policyholders should carefully review their policies and not assume that coverage is limited to formal

regulatory proceedings.

Loss. The term "loss" is typically defined as including defence costs, settlement payments and various types of damages. Many policies also expressly cover punitive damages and multiplied damages, where permitted by law. In addition:

- In the UK, policies exclude criminal fines and penalties on public policy grounds, and many policies also exclude regulatory fines and penalties.

- In the US, some insurers agree to afford coverage for certain fines and penalties, where permitted by law.

Mitigation loss. Policies also differ in relation to the coverage afforded for sums spent to mitigate a loss or avoid a potential claim. Notably, some policies expressly extend coverage to include loss mitigation (commonly referred to in the US as "cost of correction" cover). This form of cover can prove invaluable where there are reputational issues at stake or where there is a prospect that the insured will avoid further claims by settling early on. Without this cover, insurers may attempt to contest claims for mitigation losses, even if the insured has avoided a much larger insurance claim by mitigation.

Policy exclusions

There are a number of exclusions which are common in PI/E&O policies, but the precise wording and the scope of their application can vary. Insurers may attempt to rely on a number of exclusions in the context of claims or investigations arising from the financial crisis, including the fraud and dishonesty exclusion. The scope of fraud and dishonesty exclusions can vary:

- Some do not apply unless there has been a final adjudication establishing dishonest or fraudulent conduct. In the US, there have been a number of court decisions holding that this language refers to a final adjudication in the underlying proceeding for which coverage is sought (as opposed to the ensuing coverage litigation). As such, as a practical matter, if the policyholder settles the underlying case without an admission of liability, the insurer should not be able to rely on the fraud exclusion to deny coverage.

- Other policies bar coverage when the conduct at issue “in fact” occurred. Based on this language, insurers may attempt to re-litigate whether fraud “in fact” occurred, even when the insured settles the underlying litigation without an admission or finding of liability. In the US, the law governing an insurers’ ability to re-litigate this issue is mixed. What is clear in both the UK and the US is that the insurers bear the burden of proving the applicability of any exclusion.

- Many policies restrict the circumstances in which the fraud or dishonesty of an employee can be attributed to the company or to other insured parties. Some policies prohibit the insurer from attributing the conduct of one bad actor to any other insured, including the insured entity. Other exclusions only permit the insurer to attribute fraud or dishonest conduct to the company where the conduct in question has been authorised or condoned by senior management.

Potential cover under D&O policies

The terms of D&O policies vary greatly and are frequently negotiated. Many policyholders review their policy language during renewal negotiations to ensure that the cover still meets the needs and expectations of the

company, and its officers and directors.

That being said, most D&O policies are written on a claims made basis and cover any claim made against any insured for any wrongful act in the insured's capacity as a director or officer.

As with PI/E&O cover, the availability of coverage may depend on how these terms are defined. In addition, D&O policies in the US (but less so in the UK) often add “entity coverage” for claims against the insured entity itself. In some cases, this entity coverage is limited to certain types of claim such as “securities claims” or to when there is a pending action against an insured director or officer as well. In other cases, there are no such restrictions on the entity coverage.

In the US, securities class actions are a common source of claims against directors, with directors often being sued alongside the company. While class actions are not currently a feature of the litigation landscape in the UK, any company with securities (including ADRs) listed and traded in the US has a potential exposure to securities class action lawsuits in the US courts.

In the US, securities class actions are often accompanied by shareholder derivative actions under which shareholders seek redress on behalf of the company. Even assuming that derivative claims fall within the scope of the so-called “insured versus insured exclusion” (which bars coverage for certain claims by one insured against another), most D&O policies contain a carve-out restoring coverage for derivative claims brought without the active assistance of any insured.

In the UK, the Companies Act 2006 removed some of the restrictions under the existing law to enable shareholder derivative actions to be brought against directors on the grounds of negligence, default, breach of trust or breach of duty. However, permission of the court is required to continue a derivative action. To date, only two actions have been reported, both of which failed to make it beyond the permissions stage (*Mission Capital plc v Sinclair [2008] EWHC 1339; Franbar Holdings Ltd v Patel [2008] EWHC 1534*).

Under English law, the duties imposed on directors (now codified in the Companies Act 2006) are owed mainly to the company, which makes the company the most obvious source of claims against directors. In the case of Northern Rock, the new board ruled out legal action against Chief Executive, Adam Applegarth, and the other directors on the basis there were insufficient grounds to show negligence. In practice, such claims are more likely to be brought where the company is insolvent and this could prove to be the most obvious source of claims against directors outside the US.

Regulatory investigations

D&O cover for regulatory investigations is potentially very important, as significant costs may be incurred by directors (and/or insured entities) caught up in these type of investigations. In many cases, individual directors and officers wish to seek independent legal advice and this increases the costs involved.

As with PI/E&O policies, the cover for regulatory investigations can vary enormously, and may be subject to sub-limits and other restrictions.

Defence issues

D&O policies typically provide that the policyholder has the right and duty to defend any claim. In other words, they normally do not impose any obligation on the insurers to defend the claim, but instead require them to reimburse (or preferably advance) defence costs to the policyholder. In many policies, the insurer must pay defence costs as they are incurred rather than when the underlying claim is resolved. This is

particularly important if the claim is covered under Side A (where the company is not indemnifying an individual insured) as the individual insured may not have funds readily available to meet these defence costs.

Although there is some variation, most D&O policies permit the insured to choose its own lawyer for the conduct of the defence (typically subject to the insurer's prior consent, not to be unreasonably withheld). In some cases, the insurer seeks to add a list of approved counsel to the policy when it is issued (and any deviations from this list must be negotiated). Most directors are unhappy about having an unknown lawyer forced on them and prefer to select their own.

Many policies also provide for the retention of separate lawyers should a conflict of interest arise between any insured parties. Conflicts of interest often arise in the D&O context, particularly where one or more directors are accused of dishonest or fraudulent conduct. This is one of the reasons why it is important to obtain adequate policy limits because, with several law firms involved, these can quickly be exhausted by defence costs alone. If the company is insolvent, with the result that there is no prospect of company indemnification, it will be left to the individual directors to pick up the bill for any defence costs or other loss in excess of available policy limits.

Rescission/avoidance issues

Under English law, an insurance contract is a contract of the utmost good faith. This means that there is a duty on the insured to disclose and not to misrepresent any facts which are material to the risk. In the event of a non-disclosure or misrepresentation before the inception of the policy, the insurers will be entitled to avoid the policy if they can demonstrate that:

- The relevant facts were material; and
- They were induced by the non-disclosure or misrepresentation to accept the risk.

While the position is similar in the US, most US courts view rescission as a draconian coverage defence and have imposed a high burden on insurers attempting to avoid coverage.

The issue of non-disclosure or misrepresentation can prove problematic where numerous insured parties are covered under the same policy, as in the case of a D&O policy. Many D&O policies include a severability clause which seeks to ensure that statements in the application or proposal form, or knowledge possessed by any one director, cannot be attributed to any other director for the purpose of determining the availability of cover. Some D&O insurers may also agree to the inclusion of an innocent non-disclosure clause, which expressly states that insurers cannot avoid cover for any non-disclosure or misrepresentation which is free from any dishonest or fraudulent intent.

Other policies contain non-avoidance clauses (commonly referred to in the US as anti-rescission provisions) that prevent an insurer from seeking avoidance or rescission of the policy in relation to some or all of the insured parties. In addition, many US courts have required that such insurers continue to provide coverage and advance defence costs until they obtain a court order rescinding the policy (in whole or with respect to particular insured parties).

Policy exclusions

As in the case of PI/E&O cover, there are a number of exclusions which could potentially be triggered by claims and investigations arising from the financial crisis. However, the precise wording and scope of their

application can vary.

Claims against directors may well involve allegations of fraud or dishonesty and, as in the PI/E&O policy, the availability of coverage may turn on the precise terms of the exclusion in question. Some exclusions apply only when there has been a final adjudication establishing the barred conduct in the underlying claim for which coverage is being sought; other exclusions apply when the barred conduct “in fact” occurred. Finally, many exclusions include severability provisions that seek to preserve coverage for those directors not involved in the alleged fraudulent conduct.

Claims notification under PI/E&O and D&O policies

PI/E&O policies, being written on a "claims made" basis, will often impose strict requirements in relation to the notification of claims and/or circumstances which may give rise to a claim during the policy period.

Giving timely notice

The notice provision will normally provide the period within which notice must be given. This can vary from a specified time period to "immediately" or "as soon as practicable".

Policyholders should be aware of the notification requirements and ensure that notice is given in a timely manner. This is particularly important where compliance with the claims notification provisions is stated to be a condition precedent to insurers' liability under the policy:

- Under English law, if the court accepts that the requirement to give timely notice should be construed as a condition precedent, failure to comply may enable insurers to deny liability for the claim in question, even if they have not suffered any prejudice as a result (*Pioneer Concrete (UK) Ltd v National Employers Mutual General Insurance Association Ltd [1985] 1 Ll Rep 274*).

- Under US law, a late notice defence will turn on the specific facts and policy language, as well as the law in the relevant state (state law varies widely in relation to the timeliness of notice and/or prejudice requirements).

Even if the notice provisions are not expressly described as conditions precedent, they may still be construed as such. Harsh as it may seem, the English Courts may hold that the requirement to give valid notice is a condition precedent, even though not referred to as such in the policy. This is exactly what happened in the recent Court of Appeal case involving notification by accountancy firm, Kidsons, of circumstances which might give rise to a claim under its professional indemnity policy (*HLB Kidsons v Lloyd's Underwriters [2008] EWCA Civ 1206*).

The English courts may also conclude that "sweep up" clauses, which provide that compliance by the insured with all provisions in a policy is a condition precedent to insurers' liability, may be effective to make compliance with the requirement for immediate notice a condition precedent to insurers' liability (*Aspen -v- Pechtel [2008] EWHC*).

It is important to ensure awareness of the claims-notification requirements and to set up and maintain proper internal lines of communication to ensure early identification of any errors or problems which may require notification. This is especially relevant to businesses with global operations, particularly those based in jurisdictions where less importance is placed on the need for early notification.

Content of the notification

The content of any notification also requires careful consideration. It is particularly important that the notice is sufficiently broad to cover all potential losses or claims regarded as real risks.

Many policies provide the insured with the option of providing “notice of circumstances” that may or are likely to result in a claim in the future. If an insured provides such notice, and a claim is later brought which relates to or arises from such circumstances, the claim will be treated as if it was made on the date that the insured provided notice of circumstances.

Policyholders may elect to provide notice of circumstances for various reasons, including to preserve the limits of a policy that would otherwise expire and/or because they anticipate that insurers will, on renewal of the policy, impose additional exclusions or restrictions that could limit or eliminate coverage for an anticipated claim. Disputes often arise when an insured seeks coverage under a policy for a claim filed after the policy period, as insurers often dispute whether the claim in fact relates to or arises from the circumstance originally notified during the policy period. As such, policyholders need to draft correspondence providing such notice carefully to mitigate the insurer’s ability to contest coverage if the claim expands into something much wider than suggested in the original notification.

If the matter is subject to further investigation or dependent on future developments, policyholders may wish to qualify their initial notification and provide updated information as appropriate. It is also important to review and update the notification before renewal.

Notification to all insurers

Notification should be given to all insurers (including Lloyd's Underwriters and Co-Insurers) and to any excess layer insurers if there is any possibility that the claim will impact on those layers. The excess layer policies may not necessarily have the same notice provisions as the primary layer, and notice to the primary layer insurers alone may not be sufficient. This could prove catastrophic for high-value claims, where the excess layer insurance may prove essential.

Advance consent

The importance of prompt notification cannot be over-emphasised. Even if prompt notification is not a condition precedent to insurers' liability, most policies specify that advance consent from insurers is required in relation to any defence costs and to the incurring of any mitigation losses. Although the law in the US is mixed in relation to pre-notice defence costs, policyholders can remove this risk by seeking the insurers’ advance consent.

Coverage under multiple policies

The same claim may have the potential to be covered under more than one policy. Some claims arising from the financial crisis may implicate both the E&O/PI and D&O policies. Policyholders should take a pro-active approach and consider carefully what type of coverage might potentially be relevant and give notice accordingly.

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Checklist: Recommended action for companies in relation to PI/E&O and

D&O policies

In the current economic climate, with the increased scope for litigation and regulatory action, policyholders would be well advised to review their PI/E&O and D&O policies and procedures in light of the following issues:

Coverage

- Review key policy definitions, clauses and exclusions in light of the types of claims currently being brought, to assess the extent to which you would be covered.
- Does your insurance coverage afford the best protection and is there any scope to negotiate improvements to policy terms?

Notice

- Check the policy provisions relating to claims notification and consider whether there is any scope for improvement.
- Make sure that any notice of claims and circumstances is given in a timely manner. The notice provision will normally provide the period within which notice has to be given. This can vary from a specified time period to "immediately" or "as soon as practicable".
- Do not assume that the absence of the words "condition precedent" means that the notice provision will not be construed as such.
- Set up and maintain proper internal lines of communication to ensure early identification of any errors or problems which may require notification.
- Make sure the notice of any claim or circumstance is sufficiently detailed. Insurers may attempt to argue that an incomplete or vaguely-worded preliminary notice - perhaps to avoid higher premiums at renewal − is inadequate for claims notification purposes.
- If the matter is subject to further investigation and/or dependent on future developments, make this clear and update the notification as the additional information becomes available.
- Make sure the notice of any circumstance is sufficiently broad to cover all potential claims regarded as real risks. The policy will usually provide that any claim arising from a circumstance notified to insurers will be deemed to have been made within the policy period. If additional claims materialise which are not anticipated in the original notification, the insurer may attempt to argue that the policy should not respond.
- Review and update the notification before renewal.
- Make sure notification is given to all insurers (including Lloyd's Underwriters and Co-Insurers). Some policies provide for notice to be sent to a broker or solicitor but, unless they are authorised by the insurers to act as their agents for claims notification purposes, notice to a broker or solicitor may not be sufficient.

- Make sure notification is also given to any excess layer insurers, where there is any possibility that the claim will impact on those layers. The excess layer policies may not have the same notice provisions as the primary layer, and notice to the primary layer insurers alone may not be sufficient.

- Consider the need to give notice under more than one policy. Some claims arising from the financial crisis may implicate both E&O/PI and D&O policies.

Group actions in the UK

The class action procedure in the US enables proceedings to be brought on behalf of a group of claimants who will benefit from a favourable judgment, unless they "opt out" of the class.

In the UK, the Group Litigation Order (GLO) introduced in 2000 enables a group of common claims to be managed as a single case where there are common issues of fact or law, but any claimant wishing to participate in the group action must "opt in" by a date specified by the court. The GLO procedure is designed primarily as a way of managing group actions rather than specifically promoting such claims.

The take up of GLOs has been fairly modest since they were first introduced. They appear to have been used primarily for product liability and personal injury claims.

Potential drivers of litigation in the UK

Although the vast majority of claims to date arising from the sub-prime mortgage and ensuing financial crises have been being brought in the US, some believe that similar claims may occur in Europe. In the UK, there have been a number of changes in recent years, which may promote the bringing of such claims. These include:

- The introduction of litigation funding. This essentially involves a third party financier (for example, a bank, private equity firm or hedge fund) paying the claimant's legal costs in exchange for a share in the proceeds of the litigation. There is a growing number of specialist funders (Smith & Williamson, Calinius Capital and more recently Allianz) who are willing to provide third party funding. Also, if the current financial crisis prompts a surge of legal disputes, investing in litigation itself may prove a rare growth area in a time when the value of other investments is falling.

- The growing “claims culture” and an increasing awareness of legal rights and remedies.

- The increased availability of internet access and the ability to share information about possible claims and grievances. The internet is being used increasingly to set up internet action groups to encourage individuals to pool resources to fund a claim. A recent example is the AIG Victims Action Group which set up a website encouraging investors who lost money through the AIG Premier Access Enhanced Fund to share information and contribute towards the costs of obtaining legal advice regarding possible claims against various banks (HSBC, Barclays Wealth, Coutts and UBS).

- The encouragement of whistle blowing, which may lead to more scandals emerging. In the wake

of the financial crisis, the Serious Fraud Office has appealed directly to accountants, lawyers and bankers for information about financial irregularities and bad practice, and has set up an online reporting form on its website to encourage whistleblowers (known as "Reporting a City Fraud" form).

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