Financial Services Authority

FINAL NOTICE

To: **Mr David Gerrard Thornberry**

Individual Reference Number: **DGT00008**

Address: 4th Floor
42 Moorgate
London
EC2R 6EL

Date: 29 March 2012

ACTION

1. For the reasons given in this notice, the FSA hereby:

    i. imposes on David Thornberry ("Mr Thornberry") a financial penalty of £11,550 under section 66 of the Financial Services and Markets Act 2000 (the "Act"), for failing to comply with the Statements of Principle 5 and 7 of the Statements of Principle for Approved Persons;

ii. makes an order, pursuant to section 63 of the Act, to withdraw the approval given to Mr Thornberry under section 59 of the Act to perform the compliance oversight function CF10. This order takes effect from 29 March 2012; and

iii. makes an order, pursuant to section 56 of the Act, prohibiting Mr Thornberry from performing the compliance oversight functions (CF10 or CF10a) in relation to any regulated activities carried on by any authorised, exempt persons, or exempt professional firm (the "Prohibition Order"). This order takes effect from 29 March 2012;.

2. Mr Thornberry agreed to settle at an early stage of the FSA's investigation and qualified for a 30% (Stage 1) discount under the FSA's executive settlement procedures. Were it not for this discount, the FSA would have imposed a financial penalty of £16,500.

SUMMARY OF REASONS

3. During the period between 1 November 2007 and 2 March 2011 (the "Relevant Period") Mr Thornberry was approved as the person to perform the compliance oversight controlled function, CF10, with specific responsibility for client money at Christchurch Investment Management Limited ("Christchurch"). On the basis of the facts and matters set out below, the FSA considers that Mr Thornberry failed to comply with Statements of Principle 5 and 7 during the Relevant Period until May 2010, when the FSA visited the Firm. After the FSA visit, and with the assistance of the skilled persons report, Mr Thornberry worked positively and co-operatively to improve compliance in the Firm and implement remedial steps.

4. When carrying out compliance oversight functions for Christchurch's regulated business before the FSA visit in May 2010, Mr Thornberry failed to take reasonable steps to ensure that Christchurch complied with the relevant requirements of the regulatory system (as required under Statement of Principle 7). In particular, Mr Thornberry failed to:

   i. ensure client assets were managed appropriately given that he was responsible for the generation of client money internal reconciliation;

   ii. demonstrate an appropriate knowledge of the CASS Rules to enable him to adequately perform his compliance oversight controlled function;

   iii. ensure the Firm applied the correct standard method of daily client money internal reconciliations;

   iv. ensure the Firm conducted sufficiently frequent client money reconciliations with external records; and

   v. have adequate client trust status letters for the Firm's client bank accounts for which compliance was responsible.

5. Prior to the FSA visit, while acting as compliance officer Mr Thornberry failed to take reasonable steps to organise Christchurch so that it could be controlled effectively (as required by Statement of Principle 5). He delegated much of the responsibility for

compliance oversight to a compliance manager, without having or putting in place adequate or appropriate systems and controls, and then he had very little input into or supervision over the compliance manager's work in respect of client money, and failed to take reasonable steps to monitor compliance. In particular, Mr Thornberry failed to:

i. ensure adequate division of duties concerning the handling of client money to prevent the risk of fraud;

ii. implement sufficient internal or external checks on the compliance manager's handling of client money; and

iii. oversee appropriate systems and controls in relation to client money arrangements.

6. The FSA views Mr Thornberry's failings as serious because:

i. the FSA places great importance on the responsibilities of compliance officers to ensure the business overseen complies with regulatory requirements and standards;

ii. the failings placed Christchurch's client money at risk, although no clients suffered any losses as a result;

iii. Christchurch's client money deficiencies were not identified through its own compliance monitoring but by the FSA;

iv. Mr Thornberry's conduct fell far below the standard which would have been reasonable in all the circumstances; and

v. the requirements of CASS have been the subject of various publications from the FSA setting out the practical measures a firm should take to safeguard client assets.

7. The FSA has taken into account the following factors which have served to mitigate the seriousness of Mr Thornberry's failings:

i. there was no actual client loss;

ii. he accepted at an early stage that he had not discharged his responsibilities for client money to an appropriate standard;

iii. he has co-operated fully with the FSA's investigation; and

iv. he has implemented changes to the Firm's handling of client money**.**

DEFINITIONS

8. The definitions below are used in this Final Notice.

"the Act" means the Financial Services and Markets Act 2000;

"CASS Rules" means the Client Assets sourcebook;

"Christchurch" or "the Firm" means Christchurch Investment Management Limited;

"Dear CEO letter" means a letter issued by the FSA to the Chief Executive Officers of authorised firms holding client money in January 2010;

"Dear CO letter" means a letter issued by the FSA to the Compliance Officers of authorised firms holding client money in March 2009;

"DEPP" Decision Making Procedures and Penalties Manual;

"the FSA" means the Financial Services Authority;

"Mr Thornberry" means Mr David Thornberry;

the "Relevant Period" means the period between 1 November 2007 until 2 March 2011; and

"the Tribunal" means the Upper Tribunal (Tax and Chancery Chamber)

FACTS AND MATTERS

9. Mr Thornberry was approved by the FSA to perform the following controlled functions at Christchurch during the Relevant Period:

    i. CF1 (Director) from 26 August 2004;

    ii. CF10 (Compliance Oversight) from 17 September 2007;

    iii. CF11 (Money Laundering Reporting) from 17 September 2007; and

    iv. CF30 (Customer) from 1 November 2007.

10. Christchurch has been an authorised firm since 1 December 2001. Christchurch specialises in financial planning and portfolio management. In the course of its business, Christchurch received money on behalf of clients for investment. Christchurch calculated that between 30 November 2007 and 28 February 2011 it held an average of £1,242,466 of client money. The Firm's handling of client money was subject to the relevant requirement and standards set out in the CASS Rules.

11. During the Relevant Period Christchurch had 8 investment advisers (CF30), three of whom were directors (CF1), including Mr Thornberry.

Client money thematic project

12. In March 2009, the FSA issued a "Dear CO" letter to all large firms and posted a copy for all firms on its website. The Dear CO letter reminded firms that they should make adequate arrangements to protect client money. The letter highlighted issues for firms to consider and warned firms that visits focusing on client money controls would follow during 2009.

13. In January 2010, the FSA issued a Dear CEO letter and published a Client Money and Asset Report notifying firms of failings identified during work conducted by the FSA in 2009. The letter warned firms that client money visits would continue through 2010. Small firms, including Christchurch, were notified of the Dear CEO letter and the report in a monthly update sent to firms by email in February 2010.

14. In addition to enhanced supervision of client assets, the FSA has conducted a thematic project into the management of client money held by small firms. The aim of the project was to:

    i. assess whether client money held by firms was safe and would be returned within a reasonable time in the event that a firm became insolvent; and

    ii. ensure that firms take their responsibilities for client money seriously with regard to client money and had appropriate controls in place to mitigate any risks.

15. On 25 and 26 May 2010, the FSA visited Christchurch to review its client money arrangements. During the visit the FSA identified a number of issues, including:

    i. an inappropriate division of duties for client money processes at Christchurch with a high concentration of risk given the range and responsibilities of one individual, namely the compliance manager;

    ii. inappropriate systems and controls to oversee the handling of client money;

    iii. failing to perform internal reconciliation of client money in line with the standard method;

    iv. ensuring sufficiently frequent client money reconciliations with external records; and

    v. inadequate client trust status letters for each of the 227 client bank account opened.

16. As a result the FSA required Christchurch to provide a skilled person's report, involving a remedial review of the Firm's systems and controls and including a report satisfying the FSA that the Firm was compliant with the FSA's Principles for Businesses in respect of the CASS Rules.

17. On 27 November 2010 the skilled person issued a report that focussed on the FSA's concerns from the visit about Christchurch's ability to comply with the CASS Rules as at October 2010, in particular, the client money internal reconciliation calculation, reconciliations with external records, trust status letters, compliance oversight/segregation of duties/conflicts of interest, and client assets. Its purpose was to provide assurance that the firm was conducting its business in compliance with Principle 10 and provide the FSA with assurance that the Firm has taken the necessary steps to remedy the concerns and mitigate the risks identified as a result of the May 2010 visit. Since the FSA visit, the skilled person noted that Christchurch has made "significant progress in improving its controls around client money and assets".

18. The principle objective of the CASS Rules is to ensure that client assets are adequately protected by requiring the firm to take various steps to prevent the crystallisation of risk to client assets. Failure to comply with the CASS Rules exposes clients to a significant risk if a firm holding client money becomes insolvent. A firm holding client money is required by the CASS Rules to obtain acknowledgements in writing from all its banks that hold money on behalf of its clients. This is achieved by the firm giving written notice to the bank where the client money is deposited, requesting the bank acknowledge in writing (through a client trust status letter) that:

    i. All money standing to the credit of the account is held by the firm as trustee and that the bank is not entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against money in that account for any amount owned to it on any other account of the firm;

    ii. The title of the account sufficiently distinguishes that account from any other account containing money that belongs to the firm; and

    iii. The bank may not exercise any lien or set off in respect of balances on the client money account

19. If the bank in the United Kingdom does not provide the required acknowledgement within 20 business days of the notice, the firm is required to withdraw all the money standing to the credit of the account and to deposit it elsewhere.

20. By issuing notification and obtaining an acknowledgement of trust in the form of a trust letter from the bank holding the client money, the firm is taking reasonable steps to ensure that, in the event of its insolvency, client money is:

    i. ring-fenced from the firm's own assets;

    ii. readily identifiable; and

    iii. promptly returned to clients without incurring an undue risk of litigation between competing creditors or claims for rights of set-off and consequential delay.

Compliance oversight

21. During the period from 1 November 2007 until December 2008, there was an internal and external element to compliance oversight at Christchurch. However, from December 2008 the Firm decided to reduce its expenditure on external compliance consultants. Between 2007 and 2011 there were no external advisers providing compliance oversight of the Firm's compliance with the CASS Rules on client money.

22. During the Relevant Period and before the FSA visit the internal compliance function was divided between two people: Mr Thornberry and the compliance manager. In Mr Thornberry's role as compliance oversight officer and director of Christchurch, he was responsible for its compliance monitoring duties in handling client money. The

evidence gathered during the investigation demonstrated, and Mr Thornberry accepted during interview, that he:

i. had no formal training for his CF10 role;

ii. was not aware of the CASS Rules relating to trust status letters before the FSA visit;

iii. failed to review and test the existing system and controls relating to CASS (or otherwise);

iv. relied on the compliance manager to raise any discrepancies or deficiencies in client money reconciliations rather than proactively monitoring the compliance manager's work;

v. is a director of Christchurch and a member of the Board which, in 2008, resolved to reduce the services of its external compliance consultants; and

vi. placed unreasonable reliance on external compliance consultants to ensure compliance, when the decision had been made to reduce services and they had not visited the Firm to audit CASS compliance since 2007.

23. During the period from 1 November 2007 until July 2010, Mr Thornberry failed to provide the Board with sufficient information to monitor and assess the adequacy of its client money systems and controls. He failed to have adequate oversight of the potential risks posed by the lack of division of duties. During the FSA interview, Mr Thornberry admitted that the Firm did not fulfil its obligations under the CASS Rules before the FSA visit.

Lack of division of duties

24. Prior to the FSA visit on 25 May 2010 Mr Thornberry failed to ensure that the responsibilities for client money were apportioned appropriately, with adequate oversight, between staff. He delegated all responsibility for client money to a compliance manager. The roles and responsibilities of the compliance manager for the handling of client money were extensive. Prior to the FSA's visit, the extent of the compliance manager's role led to an increased concentration of risk, without adequate checks on the compliance manager's actions. The compliance manager:

i. provided compliance support to Mr Thornberry and staff;

ii. maintained the internal compliance records and registers;

iii. monitored activities of the staff to ensure the Firm's procedures were complied with and staff training was up to date;

iv. conducted a daily review of the clients' balances on the Firm's operating systems and the six- monthly custody reconciliations;

v. was responsible for the day to day management of accounts;

vi. was a signatory for client accounts, which needed two signatories;

vii. as a joint signatory could open client accounts;

viii. received investment cheques;

ix. had verification and update access on the Firm's system and verification authorisation for its Bank's payment system;

x. was also able to authorise online payments;

xi. held the key to the safe which held the Firm's chequebooks, share certificates and register of holdings;

xii. received advanced notification of any BACS receipts and payments; and

xiii. covered for the administration manager and paraplanners in their absence.

25. Whilst it is not possible in a small firm to always achieve a full division of duties, in this case there was a concentration of duties because of the range of responsibilities of the compliance manager. Mr Thornberry failed to identify the potential risks posed by the concentration of duties.

26. Mr Thornberry relied on the skills and honesty of the compliance manager in handling client money compliantly.

27. Where one individual has such an extensive range of responsibilities in relation to client money, the FSA considers that there is an increased concentration of risk of:

    i. fraud;

    ii. mistake; and consequently

    iii. client loss.

    For this reason in the FSA's view it was unreasonable to rely on one person to handle so many of the tasks in relation to its client money without sufficient systems to control or check their activities.

Internal reconciliations and calculations

28. During the period from 1 November 2007 to the FSA visit in May 2010 the Firm did not conduct a daily internal reconciliation as required by the CASS Rules. The skilled person's report found that from the date of the visit until 15 November 2010 the Firm did not apply the standard method as required by the CASS Rules. The Firm appeared to be using a hybrid of the separate client balance and client bank account methods described in CASS 7 Annex 1. Therefore, until 15 November 2010, Mr Thornberry failed to ensure that Christchurch was applying the standard method of internal client money reconciliation to daily reconciliations as set out in the Annex to the CASS Rules. The Firm is required to make a record sufficient to show and explain the method used to perform the internal reconciliation of client balances and

calculate the requirement using either the client balance or the client bank account method.

Reconciliations with external records

29. During the period from 1 November 2007 until 24 October 2010, Mr Thornberry failed to ensure the Firm conducted sufficiently frequent client money reconciliations with external records: the Firm conducted them on a quarterly basis. However, from 24 October 2010 the Firm started to do daily external reconciliations.

30. Mr Thornberry failed to ensure that the Firm's books and records were up-to-date and accurate in that the Firm did not record transactional flows on trade dates or recognise dividend receipts until the Firm received a tax voucher. Mr Thornberry failed to ensure a sufficiently accurate forward position on client money.

31. The Firm did not have records of client money that it expected to receive on a future date which would have provided the Firm and its clients with an accurate reflection of its clients' forward position. The Firm needed to do so to ensure any client money that arrives can be immediately and properly identified as client money. During the period from 1 November 2007 until 25 May 2010 the Firm failed to post transactions on the day that the transaction occurred and instead delayed in posting transactions until after receipt of contract notes or tax vouchers. Therefore Mr Thornberry failed to ensure a sufficiently accurate forward position on client money. The Firm is required to maintain its records and accounts in a way that ensures their accuracy, and in particular to ensure they correspond to the client money held for clients, as is required by CASS 7.6.2. Had the Firm become insolvent it would have been unable to distinguish client money held for one client from client money held for another.

Trust Status Letters

32. During the Relevant Period the Firm operated a number of client money bank accounts. For most of the Relevant Period the Firm failed to have any client trust status letters. It is important that firms put adequate trust acknowledgement documentation in place for their client money bank accounts to ensure that client money within the accounts is properly protected in the event of the firm's insolvency. The FSA views these failings as serious because they create a risk that, in the event of insolvency, the client would face difficulties and delay in recovering his money and would be exposed to the risk of diminution or loss of money.

33. In response to the Dear CEO letter in January 2010, the Firm contacted its bank on 18 March 2010. However, Mr Thornberry failed to ensure adequate trust status letters for any of the 227 accounts. On 7 and 13 April 2010 the Firm opened two new client bank accounts. Again the Firm did not obtain a trust letter or withdraw all money standing to the credit of the accounts within 20 business days (as required by CASS 7.8.1(2)). The client money held in these accounts was at risk until the Firm received adequate letters from the Bank on 17 August 2010 in respect of the client accounts; and on 13 October 2010 in respect of the settlement account (which was used as a client bank account).

34. During this time the Firm failed to obtain trust status letters and subsequently left the client money in these Bank accounts despite the requirement under the CASS Rules to withdraw the money after 20 business days if the firm has not received adequate trust status letters.

Remedial steps

35. As a result of the FSA communications, FSA visit and the skilled persons' report, Mr Thornberry and the Firm have undertaken the following remedial steps:

    i. in March 2010 contacted the Bank to request proper trust status letters in response to the Dear CEO letter;

    ii. since July 2010 altered the focus on the CASS Rules and included an individual section on compliance with the CASS Rules in the monthly Board meetings;

    iii. since 17 August 2010 and 13 October 2010 respectively, ensured that there are appropriate trust status letters in place for each client account and for each settlement account;

    iv. since 24 October 2010, increased external reconciliations with individual bank accounts to a daily basis;

    v. since 15 November 2010, altered the method of daily reconciliation in line with the standard approach outlined in the CASS Rules;

    vi. made changes so that in November 2010 the skilled person concluded they had seen "sufficient controls in place to prevent any one individual completing the whole process" and that Christchurch has "made significant progress in improving its controls around client assets and money";

    vii. since the May 2010 FSA visit, and since the skilled persons report in November 2010, changed the role of the compliance manager so that the compliance manager no longer provides cover for authorisation of payments and cannot release payments on the online system; and

    viii. since the May 2010 FSA visit, changed the role of the compliance manager so that there is greater division of duties, sufficient for the skilled person to conclude that in October 2010 there is "adequate segregation of duties".

FAILINGS

36. The statutory and regulatory provisions relevant to this Final Notice are referred to in Annex A.

Breach of Statement of Principle 7

37. Mr Thornberry failed to take reasonable steps to ensure that Christchurch complied with the relevant requirements of the regulatory system, as required under Statement of Principle 7. In particular, Mr Thornberry failed to:

    i. demonstrate an appropriate knowledge of the CASS Rules to enable him to adequately perform his compliance oversight controlled function;

    ii. ensure the Firm applied the correct standard of daily reconciliations of client money; and

    iii. obtain adequate client trust status letters for the Firm's client bank accounts.

Breach of Statement of Principle 5

38. Mr Thornberry failed to take reasonable steps to organise Christchurch so that it could be controlled effectively, as required by Statement of Principle 5, in particular, Mr Thornberry failed to:

    i. ensure adequate division of duties concerning the handling of client money to prevent the risk of fraud;

    ii. implement sufficient internal or external checks on the compliance manager; and

    iii. oversee appropriate systems and controls in relation to client money arrangements.

39. The FSA's regulatory objectives to maintain confidence in the financial system and the protection of consumers, together with the facts and matters described above, lead the FSA to conclude that Mr Thornberry has failed to satisfy Statement of Principle 5 and Statement of Principle 7. While acting as compliance officer Mr Thornberry failed to take reasonable steps to organise Christchurch so that it could be controlled effectively and failed to monitor Christchurch's client money processes to ensure that they complied with its regulatory obligations.

40. Having regard to the facts and matters, the FSA considers it appropriate and proportionate in all circumstances to take disciplinary action against Mr Thornberry for the breaches.

41. In addition, as a result of the breaches outlined above, the FSA has concluded that Mr Thornberry's conduct as compliance oversight officer fell short of the minimum regulatory standards in terms of his competence and capability. He is not a fit and proper person to carry out any controlled function involving compliance oversight of a regulated firm.

42. The FSA considers that Mr Thornberry would pose a serious risk to consumers and to confidence in the financial system if he were involved in compliance oversight at an authorised firm in the future. The FSA therefore considers it necessary to prohibit Mr

Thornberry under section 56 of the Act on the grounds that he is not a fit and proper person to perform the CF10 and CF10a compliance controlled function.

SANCTION

Financial Penalty

43. The FSA's policy on the imposition of financial penalties is set out in Chapter 6 of the Decision Making Procedures and Penalties Manual ("DEPP") which forms part of the FSA Handbook. The relevant sections of DEPP are set out in more detail in the Annex.

44. The majority of Mr Thornberry's failings occurred before the change in regulatory provisions governing the determination of financial penalties on 6 March 2010. Therefore the FSA has applied the penalty regime that was in force before 6 March 2010. All references to DEPP are to the version that was in force up to 5 March 2010.

45. The principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour. A financial penalty is a tool used by the FSA to help achieve its regulatory objectives.

46. In determining whether a financial penalty is appropriate, and if so its level, the FSA is required to consider all the relevant circumstances of a case. Applying the criteria set out in DEPP 6.2.1G (regarding whether or not to take action for a financial penalty or public censure) and 6.4.2G (regarding whether to impose a financial penalty or a public censure), the FSA considers that a financial penalty is an appropriate sanction, given the serious nature of the breaches.

47. DEPP 6.5.2G sets out a non-exhaustive list of factors that may be of relevance in determining the level of a financial penalty. The FSA considers the following factors are relevant.

Deterrence (DEPP 6.5.2G(1))

48. Penalties act as a deterrent, and the FSA must ensure that those who are approved person exercise compliance functions with an appropriate level of competence and capability and in accordance with regulatory requirements and standards. In this case, the FSA considers the imposition of a financial penalty is appropriate to demonstrate to Mr Thornberry and others the seriousness with which the FSA regards such behaviour.

The nature, seriousness and impact of the breach (DEPP 6.5.2G(2))

49. The FSA will consider the seriousness of the breaches in relation to the nature of the requirements breached and the impact.

50. The FSA has concluded that Mr Thornberry exercised inadequate compliance oversight and control over the conduct of Christchurch's business, which resulted in

Christchurch failing to comply with the CASS Rules during the Relevant Period. Christchurch's breaches were not identified through Mr Thornberry's own compliance monitoring, but by the FSA's visit. The breaches exposed clients to the potential risk of financial loss in the event of Christchurch's insolvency.

The extent to which the breach was deliberate or reckless (DEPP 6.5.2G(3))

51. In the FSA's view Mr Thornberry's breaches were neither deliberate nor reckless.

Whether the person is an individual (DEPP 6.5.2G(4))

52. The FSA recognises that the financial penalty imposed on Mr Thornberry is likely to have a significant impact on him as an individual. However, it considers a fine is proportionate given the seriousness of the misconduct and his position as an approved person.

The size, financial resources and other circumstances of the person on whom the penalty is imposed (DEPP 6.5.2G(5))

53. The FSA considers the financial penalty of the level proposed is appropriate, having considered all relevant factors, including the impact such a penalty might have on Mr Thornberry's financial resources.

Conduct following the breach (DEPP 6.5.2G(8))

54. Mr Thornberry has co-operated fully with the FSA's investigation. From the outset he acknowledged his lack of knowledge and failure to ensure the Firm was compliant with the CASS Rules.

Other action by the FSA (DEPP 6.5.2G(10))

55. In determining the level of the penalty, the FSA has had regard to penalties imposed by the FSA on other approved persons with similar behaviour. This is considered alongside the deterrent purpose for which the FSA imposes sanctions.

Prohibition

56. The FSA has had regard to the guidance in Chapter 9 of the Enforcement Guide in imposing the Prohibition Order on Mr Thornberry. The FSA has power to prohibit individuals under section 56 of the Act. The Act states that the FSA may make a prohibition order if it appears to the FSA that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person.

57. Given the nature and serious failures outlined above, the FSA considers that Mr Thornberry's conduct demonstrated a lack of competence and capability and he is therefore not fit and proper to perform the compliance oversight controlled function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. The FSA recommends a Prohibition Order against Mr Thornberry to stop him carrying on any CF10 or CF10a controlled function in relation

to any regulated activities carried on by any authorised, exempt persons, or exempt professional firm.

PROCEDURAL MATTERS

Decision maker

58. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.

59. This Final Notice is given to Mr Thornberry under, and in accordance with, section 390 of the Act. The following statutory rights are important.

Manner of and time for Payment

60. The financial penalty must be paid in full by Mr Thornberry to the FSA by no later than 12 April 2012, 14 days from the date of the Final Notice.

If financial penalty is not paid

61. If all or any of the financial penalty is outstanding on 13 April 2012, the FSA may recover the outstanding amount as a debt owned by Mr Thornberry and due to the FSA.

Publicity

62. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.

63. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

64. For more information concerning this matter generally, contact Kate Tuckley of the Enforcement and Financial Crime Division at the FSA (direct line: 020 7066 7086/ fax: 020 7066 7087).

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Tom Spender
Head of Department
FSA Enforcement and Financial Crime Division

ANNEX A

STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY

STATUTORY PROVISIONS

1.1. The FSA's statutory objectives are set out in section 2(2) of the Act and include the protection of consumers.

1.2. Section 56 of the Act states that the FSA may make a prohibition order if it appears to the FSA that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person. The FSA may make an order prohibiting the individual from performing a specified function, any function falling within a specified description or any function.

1.3. Section 66 of the Act states that the FSA may take action to impose a penalty on an individual of such amount as it considers appropriate where it appears to the FSA that the individual is guilty of misconduct and it is satisfied that it is appropriate in all the circumstances to take action. Misconduct includes failure, while an approved person, to comply with a statement of principle issued under section 64 of the Act or to have been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under the Act.

2. REGULATORY PROVISIONS

2.1. In exercising its power to impose a financial penalty, the FSA has had regard to the relevant regulatory provisions and policy published in the FSA Handbook. The main provisions that the FSA considers relevant to this case are set out below.

Statements of Principle and the Code of Practice for Approved Persons ("APER")

2.2. APER sets out the Statements of Principle as they relate to approved persons and descriptions of conduct which, in the opinion of the FSA, do not comply with a Statement of Principle. It further describes factors which, in the opinion of the FSA, are to be taken into account in determining whether or not an approved person's conduct complies with a Statement of Principle.

2.3. APER 2.1.2P provides that an approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function:

(1) is organised so that it can be controlled effectively (Statement of Principle 5); and

(2) complies with the relevant requirements and standards of the regulatory system (Statement of Principle 7).

2.4. APER 3.1.3G provides that when establishing compliance with or a breach of a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, including the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour to be expected in that function.

2.5. APER 3.1.4G provides that an approved person will only be in breach of a Statement of Principle where he is personally culpable, that is in a situation where his conduct was deliberate or where his standard of conduct was below that which would be reasonable in all the circumstances.

2.6. APER 3.1.6G provides that APER (and in particular the specific examples of behaviour which may be in breach of a generic description of conduct in the code) is not exhaustive of the kind of conduct that may contravene the Statements of Principle.

2.7. Statement of Principle 7 which provides that an approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system.

2.8. APER 3.3.1E provides that in determining whether or not the conduct of an approved person performing a significant influence function complies with Statements of Principle 5 to 7, the following are factors which, in the opinion of the FSA, are to be taken into account:

(1) whether he exercised reasonable care when considering the information available to him;

(2) whether he reached a reasonable conclusion which he acted on;

(3) the nature, scale and complexity of the firm's business;

(4) his role and responsibility as an approved person performing a significant influence function; and

(5) the knowledge he had, or should have had, of regulatory concerns, if any, arising in the business under his control.

2.9. APER 4.7 lists types of conduct which, in the opinion of the FSA, do not comply with Statement of Principle 7.

2.10. APER 4.7.3E provides that failing to take reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems of control to comply with the relevant requirements and standards of the regulatory system for its regulated activities is conduct that does not comply with Statement of Principle 7.

2.11. APER 4.7.4E provides that failing to take reasonable steps to monitor (either personally or through a compliance department or other departments) compliance with the relevant requirements and standards of the regulated system for its regulated activities is conduct that does not comply with Statement of Principle 7.

Fit and Proper Test for Approved Persons ("FIT")

2.12. The FSA has issued specific guidance on the fitness and propriety of individuals in FIT. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function and FIT is also relevant in assessing the continuing fitness and propriety of approved persons.

2.13. FIT 1.3.1G provides that the FSA will have regard to a number of factors when assessing a person's fitness and propriety. One of the most important considerations will be a person's competence and capability.

2.14. FIT 1.3.3G provides that it would be impossible to produce a definitive list of all the matters which would be relevant to a determination of a particular person's fitness and propriety.

2.15. FIT 1.3.4G provides that if a matter comes to the FSA's attention which suggests that the person might not be fit and proper, the FSA will take into account how relevant and how important it is.

2.16. FIT 2.2.1G(2) provides that in determining a person's competence and capability, the FSA will have regard to all relevant matters including, but not limited to, whether the person has demonstrated by experience and training that the person is suitable to perform the controlled function.

3. Decision Procedure and Penalties Manual ("DEPP")

3.1. The FSA's policy in relation to the imposition and amount of penalties that applied during the majority of the Relevant Period was set out in Chapter 6 of DEPP that was in force prior to 6 March 2010.

3.2. DEPP 6.1.2G provides that the principal purpose of imposing a financial penalty is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches, and demonstrating generally the benefits of compliant behaviour. Financial penalties are therefore tools that the FSA may employ to help it to achieve its regulatory objectives.

3.3. DEPP 6.5.1G(1) provides that the FSA will consider all the relevant circumstances of a case when it determines the level of financial penalty (if any) that is appropriate and in proportion to the breach concerned.

3.4. DEPP 6.5.2G sets out a non-exhaustive list of factors that may be relevant to determining the appropriate level of financial penalty to be imposed on a person under the Act. The following factors are relevant to this case:

Deterrence: DEPP 6.5.2G(1)

3.5. When determining the appropriate level of financial penalty, the FSA will have regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business.

The nature, seriousness and impact of the breach in question: DEPP 6.5.2G(2)

3.6. The FSA will consider the seriousness of the breach in relation to the nature of the rule, requirement or provision breached, which can include considerations such as: the duration and frequency of the breach; whether the breach revealed serious or systemic weaknesses in the person's procedures or of the management systems or internal controls relating to all or part of a person's business; and the loss or risk of loss caused to consumers, investors or other market users.

The extent to which the breach was deliberate or reckless: DEPP 6.5.2G(3)

3.7. The FSA will regard as more serious a breach which is deliberately or recklessly committed, giving consideration to factors such as whether the person has given no apparent consideration to the consequences of the behaviour that constitutes the breach. If the FSA decides that the breach was deliberate or reckless, it is more likely to impose a higher penalty on a person than would otherwise be the case.

Whether the person on whom the penalty is to be imposed is an individual: DEPP 6.5.2G(4)

3.8. When determining the amount of penalty to be imposed on an individual, the FSA will take into account that individuals will not always have the resources of a body corporate, that enforcement action may have a greater impact on an individual, and further, that it may be possible to achieve effective deterrence by imposing a smaller penalty on an individual than on a body corporate. The FSA will also consider whether the status, position and/or responsibilities of the individual are such as to make a breach committed by the individual more serious and whether the penalty should therefore be set at a higher level.

The size, financial resources and other circumstances of the person on whom the penalty is to be imposed: DEPP 6.5.2G(5)

3.9. The purpose of a penalty is not to render a person insolvent or to threaten a person's solvency. Where this would be a material consideration, the FSA will consider, having regard to all other factors, whether a lower penalty would be appropriate.

The amount of benefit gained or loss avoided: DEPP 6.5.2G(6)

3.10. The FSA may have regard to the amount of benefit gained or loss avoided as the result of the breach, for example the FSA will impose a penalty that is consistent with the principle that a person should not benefit from the breach, and the penalty should also act as an incentive to the person (and others) to comply with regulatory standards and required standards of market conduct.

Conduct following the breach: DEPP 6.5.2G(8)

3.11. The FSA may take into account the degree of co-operation the person showed during the investigation of the breach by the FSA.

Other action taken by the FSA (or a previous regulator): DEPP 6.5.2G(10)

3.12. The FSA seeks to apply a consistent approach to determining the appropriate level of penalty. The FSA may take into account previous decisions made in relation to similar misconduct.

Enforcement Guide ("EG")

3.13. The FSA's approach to exercising its power to make a prohibition order under section 56 of the Act is set out in Chapter 9 of the EG.

3.14. EG 9.1 provides that the FSA's power under section 56 of the Act to prohibit individuals who are not fit and proper from carrying out controlled functions in relation to regulated activities helps the FSA to work towards achieving its regulatory objectives. The FSA may exercise this power to make a prohibition order where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities, or to restrict the functions which he may perform.

3.15. EG 9.4 sets out the general scope of the FSA's power. The FSA has the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant.

3.16. EG 9.5 provides that the scope of the prohibition order will depend on the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk which he poses to consumers or the market generally.

3.17. EG 9.9 provides that when deciding whether to make a prohibition order against an approved person, the FSA will consider all the relevant circumstances of the case. These may include, but are not limited to, the following:

(1) whether the individual is fit and proper to perform the functions in relation to regulated activities. The criteria for assessing the fitness and propriety of approved persons are set out in FIT 2.1 (honesty, integrity and reputation), FIT 2.2 (competence and capability) and FIT 2.3 (financial soundness) (EG 9.9(2));

(2) whether, and to what extent, the approved person has failed to comply with the Statements of Principle issued by the FSA with respect to the conduct of approved persons, or been knowingly involved in a contravention by the relevant firm of a requirement imposed on the firm by or under the Act (including the Principles and other rules (EG 9.9(3)(a) and (b));

(3) the relevance and materiality of any matters indicating unfitness (EG 9.9(5));

(4) the length of time since the occurrence of any matters indicating unfitness (EG 9.9(6));

(5) the particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates (EG 9.9(7)); and

(6) the severity of the risk which the individual poses to consumers and to confidence in the financial system (EG 9.9(8)).

3.18. EG 9.12 provides a number of examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order. The examples include:

(1) serious lack of competence (EG 9.12(4)); and

(2) serious breaches of the Statements of Principle for approved persons (EG 9.12(5)).

3.19. EG 9.23 provides that in appropriate cases the FSA may take other action against an individual in addition to making a prohibition order, including the use of its power to impose a financial penalty.

4. Senior Management Arrangements, Systems and Controls ("SYSC")

4.1. SYSC 3.2.8R(1) states that a firm which carries on designated investment business with or for retail clients or professional clients must allocate to a director or senior manager the function of having responsibility for the oversight of the firm's compliance and reporting to the governing body in respect of that responsibility.

4.2. SYSC 3.2.8R(2)(c) states that "compliance" means compliance with the rules in CASS (Client Assets).

4.3. SYSC 3.2.9G(2) provides that the rules referred to in SYSC 3.2.8R(2) are the minimum area of focus of the firm's compliance oversight function.

5. Client Assets sourcebook ("CASS")

5.1. CASS 7.3.2R states that a firm must introduce adequate organisational arrangements to minimise the risk of the loss or the diminution of client money, or of rights in connection with client money, as a result of misuse of client money, fraud, poor administration, inadequate record keeping or negligence.

5.2. CASS 7.4.7R states that a firm that does not deposit client money with a central bank must exercise all due skill, care and diligence in the selection, appointment and periodic review of the credit institution, bank or qualifying money market fund where the money is deposited and the arrangements for the holding of this money.

5.3. CASS 7.4.11R states that a firm must take the necessary steps to ensure that client money deposited in a central bank, a credit institution, a bank authorised in a third country or a qualifying money market fund is held in an account or accounts identified separately from any accounts used to hold money belonging to the firm.

5.4. CASS 7.6.2R states that a firm must maintain its records and accounts in a way that ensures their accuracy, and in particular their correspondence to the client money held for clients.

5.5. CASS 7.6.7R states that a firm must make records, sufficient to show and explain the method of internal reconciliation of client money balances under CASS 7.6.2R used, and if different from the standard method of internal client money reconciliation to show and explain that the method used affords an equivalent degree of protection to the firm's clients to that of the standard method.

5.6. CASS 7.6.8R states that a firm that does not use the standard method of internal client money reconciliation must first send a written confirmation to the FSA from the firm's auditor that the firm has in place systems and controls which are adequate to enable it to use another method effectively.

5.7. CASS 7.6.9R states that a firm must conduct, on a regular basis, reconciliations between its internal accounts and records and those of any third parties by whom client money is held.

5.8. CASS 7.6.14R states when a discrepancy arises as a result of the reconciliation between a firm's internal records and those of third parties that hold client money, the firm must identify the reason for the discrepancy and correct it as soon as possible.

5.9. CASS 7.8.1R states that when a firm opens a client bank account the firm must give written notice to the bank requesting the bank to acknowledge to it in writing that all money is held by the firm as trustee and that the bank is not entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against money in that account in respect of any sum owed to it on any other account of the firm. In addition, the title of the account must sufficiently distinguish that account from any account containing money that belongs to the firm, and is in the

form requested by the firm. In the case of a client bank account in the United Kingdom, if the bank does not provide the required acknowledgement within 20 business days the firm must withdraw all money in the account and deposit it with another bank as soon as possible.