
FINAL NOTICE

To: **Specialist Solutions Public Limited Company (“Specialist Solutions” / “the Firm”)**
Of: **Arle Court, Hatherley Lane, Cheltenham, GL51 6PN**
Date: **14 April 2011**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the “FSA”) gives you final notice about a requirement to pay a financial penalty:

1. THE PENALTY

- 1.1. The FSA gave you a Decision Notice on 28 March 2011 which notified you that, pursuant to section 206 of the Financial Services and Markets Act 2000 (the “Act”), the FSA had decided to impose on you a financial penalty of £35,000 for breaches of Principles 3 and 9 of the FSA’s Principles for Businesses (the “Principles”) arising from the promotion of unregulated collective investment schemes (“UCIS”) between 1 January 2008 and 31 December 2009 (the “relevant period”).
- 1.2. You confirmed on 23 March 2011 that you will not be referring the matter to the Upper Tribunal (Tax and Chancery Chamber).
- 1.3. Accordingly, for the reasons set out below, the FSA imposes a financial penalty on you in the amount of £35,000.
- 1.4. You agreed to settle at an early stage of the FSA’s investigation and therefore qualified for a 30% (stage 1) discount under the FSA’s executive settlement procedures. The FSA would have otherwise imposed a financial penalty of £50,000.

2. REASONS FOR THE PROPOSED ACTION

Introduction

- 2.1. On the basis of the facts and matters described below, the FSA proposes to impose a financial penalty on Specialist Solutions for breaches of the Principles within the relevant period. In summary, the FSA has concluded that Specialist Solutions failed to:
 - (1) consider and correctly apply the relevant legislative and regulatory provisions governing the promotion of UCIS to retail customers;
 - (2) implement adequate systems and controls and training and competence procedures to ensure that UCIS were not promoted to customers in breach of the regulations governing their promotion;
 - (3) undertake adequate due diligence into UCIS prior to recommending to customers that they invest in those funds; and
 - (4) ensure that customers were given suitable advice to invest in UCIS.
- 2.2. Consequently, Specialist Solutions promoted UCIS to 101 retail customers in breach of the restrictions on promotion pursuant to section 238 of the Act during the relevant period and exposed those customers to the risk of receiving unsuitable advice.
- 2.3. The FSA regards these failings as particularly serious because:
 - (1) the number of retail customers affected and the amount of money invested by certain customers in UCIS is significant; and
 - (2) the skilled person has to date reviewed 20 customer files for suitability. In nearly 50% of the customer files reviewed, the advice given by Specialist Solutions to customers to invest in UCIS was found to be unsuitable.
- 2.4. The FSA considers that the failings identified have been mitigated to a considerable extent by the significant changes Specialist Solutions has implemented to its sales processes and compliance arrangements since the failings were identified, including the replacement of the independent external compliance consultant referred to below. Specialist Solutions has also undertaken a past business review and has agreed, in principle, to contact customers who may have been unsuitable to invest in UCIS with a view to providing redress to those customers, if any, who have suffered detriment. The FSA has also taken into account the fact that the two individuals responsible for the large majority of the UCIS sales/promotions are no longer at the Firm.
- 2.5. In addition, Specialist Solutions voluntarily applied to the FSA for an immediate change to its permissions. As a result, the Firm has not promoted or given any advice on UCIS since June 2010.

3. RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND FSA GUIDANCE

- 3.1. The relevant statutory provisions, regulatory requirements and FSA guidance are set out at Annex A to this notice.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. Specialist Solutions is a firm of independent financial advisors based in Cheltenham and Exeter currently retaining the services of eight self-employed customer advisers approved to carry out controlled function CF30 (customer function).
- 4.2. The firm has been authorised by the FSA since 21 December 2004 to undertake the following regulated activities: advising on Pension Transfers and Pension Opt Outs; advising on investments (except on Pension Transfers and Pension Opt Outs); advising on regulated mortgage contracts; agreeing to carry on a regulated activity; arranging (bringing about) deals in investments; arranging (bringing about) regulated mortgage contracts; making arrangements with a view to regulated mortgage contracts; and, making arrangements with a view to transactions in investments.
- 4.3. Potential issues regarding Specialist Solutions' recommendations to invest in UCIS came to the FSA's attention following a visit by the FSA to the Firm on 25 February 2010. The visit was undertaken as part of the FSA's thematic review into the promotion of UCIS.
- 4.4. Specialist Solutions started promoting and advising on investments into UCIS in 2007. During the relevant period, Specialist Solutions advised approximately 3,000 customers. Of those customers, Specialist Solutions recommended UCIS to 101 customers who invested a total of £11,244,923 in one or more of three UCIS funds and generated gross commission for the firm of £321,827 by these investments. Approximately 98% of the firm's UCIS business was invested through a product wrapper (e.g. SIPP or bond).
- 4.5. The FSA's visit to Specialist Solutions in February 2010, and its review of nine customer files in which UCIS were recommended, highlighted a number of causes for concern regarding the Firm's failure to comply with the promotional restrictions pursuant to section 238 of the Act, the suitability of advice given to customers by the firm in relation to UCIS, the Firm's monitoring and compliance functions and the Firm's training and competence procedures. These concerns were explained to Specialist Solutions in a post visit letter from the FSA dated 9 June 2010, by which time Specialist Solutions had already reviewed and amended its internal procedures regarding UCIS, as communicated to the FSA at the end of April 2010.
- 4.6. On 28 October 2010, the FSA required Specialist Solutions to appoint a skilled person pursuant to section 166 of the Act to review the Firm's promotion of UCIS and advice given to customers about UCIS. The skilled person reviewed all files for customers who were recommended UCIS by Specialist Solutions during the relevant period. The findings of the skilled person are referred to below.

Conduct in issue

Breach of Principle 3

- 4.7. Specialist Solutions has breached Principle 3 in that it did not take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. Specifically, during the relevant period Specialist Solutions breached Principle 3 in the following ways:
- 4.8. Failure to comply with the promotional restrictions for UCIS:
- (1) Section 238(1) of the Act generally prohibits the promotion of UCIS by authorised firms. However, an authorised firm may promote UCIS to customers in certain circumstances where there is an exemption to section 238(1) provided in the Promotion of Collective Investment Schemes (Exemptions) Order 2001 (“the PCIS Order”) and/or the Conduct of Business Sourcebook (“COBS”) 4.12.
 - (2) The skilled person reviewed all 101 customer files in which UCIS were promoted by Specialist Solutions to customers during the relevant period to determine whether the promotions complied with the relevant legislation and regulations. The skilled person found that Specialist Solutions promoted UCIS to all 101 customers without first adequately assessing whether the customer was eligible to receive such promotions pursuant to an exemption contained in the PCIS Order and/or COBS 4.12. The skilled person found that, for 55 of those 101 customers, a relevant exemption to section 238 of the Act could have potentially applied (for example, because a customer was a high net worth individual) but for 46 customers out of 101, there was no applicable exemption. The Firm failed to demonstrate that the exemptions were applicable to the respective customers.
- 4.9. Failure to implement and maintain adequate compliance procedures
- (1) Specialist Solutions’ internal compliance procedures did not refer specifically to UCIS or contain any guidance or procedure specific to the promotion of UCIS. The Firm’s Compliance Plan for the relevant period was high level and did not detail any procedures for the promotion of UCIS.
 - (2) During the relevant period, all suitability reports were checked by Specialist Solutions’ internal compliance function. In addition, from June 2009 (following discussions with the FSA), Specialist Solutions sent 10% of its customer files to the compliance consultant for review. Despite this, the individual advisers’ failure to assess whether UCIS could be promoted to customers pursuant to the relevant legislation was not identified.
- 4.10. Failure to implement and maintain an adequate training and competence programme
- (1) During the relevant period, Specialist Solutions’ training and competence scheme did not include any specific training tailored to UCIS business. The firm’s advisers attended some presentations from UCIS fund managers, but

advisers were not tested to assess their understanding of the funds' nature, structure or risk profile prior to promoting UCIS.

- (2) During the UCIS Project visit, the FSA interviewed a customer adviser who had sold UCIS to customers since 2008 and found that he was not familiar with the regulations governing or the risks associated with UCIS. This was indicative of the Firm's failure to provide adequate training for advisers in relation to the promotion of UCIS.

4.11. Failure to undertake adequate due diligence

- (1) Specialist Solutions' due diligence on the three UCIS funds it promoted included receiving presentations from those funds and reviewing the product literature produced by the funds. The due diligence was inadequate in that the promotional literature provided by each of the UCIS promoted by Specialist Solutions specifically referred to the funds being UCIS and to there being provisions in the Act which restricted the promotion of UCIS to certain categories of investors. Specialist Solutions did not appreciate that, as UCIS, the funds were subject to a particular regulatory regime.
- 4.12. Specialist Solutions has accepted in correspondence with the FSA that *"many of [our] systems and controls were somewhat inadequate in relation to the advice and promotion of Unregulated Collective Investment Schemes"* and that *"[we] didn't have a clear understanding of the financial promotion of UCIS"*.

Breach of Principle 9

- 4.13. Specialist Solutions breached Principle 9 in that it did not take reasonable care to ensure the suitability of its advice to customers.
- 4.14. The skilled person conducted a detailed review of 20 customer files in which Specialist Solutions had recommended to its customers that they invest in UCIS. Of these 20 customer files, exemptions to the section 238 restriction could have been applied to 13 customers. The skilled person found that, of the 20 files, only three files demonstrated suitable advice, nine files demonstrated unsuitable advice and in the remaining eight files it could not be determined whether the advice was suitable (i.e. because the documentation on the files was not sufficient).
- 4.15. The basis for determining the advice to be unsuitable in most cases was the inconsistency between the customer's stated attitude to risk, where this was recorded as being low/medium, and the risk profile of the UCIS investment, coupled with the fact that in some cases a significant proportion of the customer's investment portfolio was transferred to a UCIS. For example, Specialist Solutions advised a customer aged 60 to invest 35% of his portfolio in a UCIS by transferring funds from his existing pension plan incurring a 4% penalty charge, despite his attitude to risk being recorded as low/medium.

5. ANALYSIS OF BREACHES

- 5.1. As a result of the facts and matters set out in paragraphs 4.7 to 4.15 above, the FSA considers that Specialist Solutions did not take reasonable care to organise and control

its affairs responsibly and effectively, with adequate risk management systems, in breach of Principle 3, and did not take reasonable care to ensure the suitability of its advice to customers to invest in UCIS, in breach of Principle 9.

6. ANALYSIS OF PROPOSED SANCTION

- 6.1. The FSA's policy on imposing a financial penalty is set out in Chapter 6 of the Decision Procedures and Penalties Manual ("DEPP"), which is part of the FSA Handbook. In addition, the FSA has had regard to Chapter 7 of the Enforcement Guide ("EG").
- 6.2. The principal purpose of imposing a financial penalty is to promote high standards of conduct by deterring persons who have committed regulatory breaches from committing further breaches, helping to deter others from committing similar breaches and demonstrating generally the benefits of compliant behaviour.

Financial penalty

- 6.3. In determining whether a financial penalty, or a public censure, is appropriate, the FSA is required to consider all the relevant circumstances of the case. Applying the criteria set out in DEPP 6.2.1 and 6.4.2, the FSA considers that a financial penalty would be an appropriate sanction in this case, given the serious nature of the breaches, the risks created for customers of Specialist Solutions and the need to send out a strong message of deterrence to others.
- 6.4. DEPP 6.5.2G sets out a non-exhaustive list of factors which may be relevant to determining the appropriate level of financial penalty. The FSA considers that the following factors are particularly relevant in this case.

Deterrence (DEPP 6.5.2(1))

- 6.5. Imposing a financial penalty will deter firms which have committed breaches from committing further breaches and deter others from committing similar breaches, as well as demonstrating generally the benefits of compliant behaviour.

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

- 6.6. In determining the appropriate sanction, the FSA has had regard to the seriousness of the breaches, the duration and frequency of the breaches, and whether the breaches revealed serious failings in Specialist Solutions' systems and controls. The FSA considers the breaches are serious as they:
 - (1) affected a significant number of retail customers who invested significant sums in UCIS; and
 - (2) arise from a fundamental lack of awareness of the regulatory regime governing the promotion of UCIS.
- 6.7. In determining the appropriate sanction, the FSA has had regard to the following mitigating factors:

- (1) UCIS were promoted to a small proportion (approximately 3%) of the Firm's customers.
- (2) Approximately 94% of the turnover derived from the promotion of UCIS was produced by two individuals who are no longer at the Firm (having left in May and November 2010).
- (3) The FSA acknowledges that Specialist Solutions did carry out some investigations into the assets underlying the UCIS funds into which it advised customers to invest and the skilled person found that the UCIS chosen by Specialist Solutions were relatively "mainstream" rather than "exotic" in terms of the underlying investment(s).
- (4) The Firm retained an independent compliance consultant to conduct quarterly client file reviews. From June 2009, Specialist Solutions sent 10% of its customer files to the compliance consultant for review. These included three UCIS files. On reviewing these files, the compliance consultant did not identify that UCIS had been promoted to retail customers without consideration of the relevant regulations. (However, the fact that the consultant failed to identify that UCIS potentially had been incorrectly recommended does not absolve Specialist Solutions from failing to make itself aware of and ensure compliance with the relevant regulation.)

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

- 6.8. The FSA has found no evidence that the breaches were deliberate or reckless.

Conduct following the breach (DEPP 6.5.2(8))

- 6.9. The FSA has taken into account that Specialist Solutions has cooperated fully with the FSA's investigations and has implemented, and continues to implement, changes to its procedures to ensure that similar issues do not arise in the future. It has conducted a past business review and has agreed, in principle, to undertake a customer contact exercise in relation to those customers who were sold UCIS in breach of the relevant regulations. The FSA also notes that the Firm has replaced the independent compliance consultant referred to above.
- 6.10. Specialist Solutions voluntarily applied to the FSA for an immediate change to its permissions. As a result, the Firm has not promoted or given any advice on UCIS since June 2010.

Disciplinary record and compliance history (DEPP 6.5.2(9))

- 6.11. Specialist Solutions has not been the subject of any previous FSA investigations.

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

- 6.12. In determining the level of financial penalty, the FSA has taken into account penalties imposed on other authorised firms for similar behaviour.
- 6.13. Having regard to all the circumstances, the FSA considers the appropriate level of financial penalty is £50,000 before discount for early settlement.

7. DECISION MAKER

- 7.1. The decision which gave rise to the obligation to give this notice was made on behalf of the FSA by the Settlement Decision Makers.

8. IMPORTANT

- 8.1. This Final Notice is given to you in accordance with section 390 of the Act.

Manner of and time for payment

- 8.2. The financial penalty must be paid in accordance with the terms agreed in the settlement agreement.

If the financial penalty is not paid

- 8.3. If all or any of the financial penalty is not paid in accordance with the terms of the settlement agreement, the FSA may recover the outstanding amount as a debt owed by you to the FSA.

Publicity

- 8.4. Sections 391(4), 391(6) and 391(7) 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.

FSA contacts

- 8.5. For more information about this matter, you should contact Anna Hynes at the FSA (direct line: 020 7066 9464 /fax: 020 7066 9465).

.....

Tom Spender
FSA Enforcement and Financial Crime Division

ANNEX A

RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND FSA GUIDANCE

1. Statutory provisions

- 1.1. The FSA's statutory objectives are set out in section 2(2) of the Act. In this case, the most relevant statutory objective is the protection of consumers.
- 1.2. Section 138 of the Act provides that the FSA may make such rules applying to authorised persons as appear to it to be necessary or expedient for the purpose of protecting consumers.
- 1.3. The FSA has the power, pursuant to section 206 of the Act, to impose a financial penalty of such amount as it considers appropriate where the FSA considers an authorised person has contravened a requirement imposed on him by or under the Act.
- 1.4. Section 238(1) of the Act provides that an authorised person must not communicate an invitation or inducement to participate in a collective investment scheme. Section 238(4) provides that certain authorised schemes are exempted from this prohibition.
- 1.5. UCIS is defined in the glossary to the FSA Handbook of Rules and Guidance as "*a collective investment scheme which is not a regulated collective investment scheme*". Unless a collective investment scheme ("CIS") falls within the narrow definition of a regulated CIS¹, it will be a UCIS.
- 1.6. The PCIS Order and COBS 4.12 provide for circumstances when UCIS may be promoted to customers without the promoter falling foul of section 238 of the Act. There are a number of exemptions that may be applied to the section 238 restriction. For example, under the PCIS Order, UCIS may be promoted to persons defined as 'certified high net worth investors' and 'sophisticated investors'.
- 1.7. Section 4.12 of COBS defines eight categories of persons to whom an authorised person may promote UCIS. These include:
 - (1) Category 2: a person for whom a firm has taken reasonable steps to ensure that investment in a collective investment scheme is suitable and who is an "established" or "newly accepted" client of the firm; and
 - (2) Category 8: a person to whom the firm has undertaken an adequate assessment of expertise, experience and knowledge and to whom the firm has provided certain written warnings.

¹ A CIS is defined in the Handbook Glossary as follows: (a) an investment company with variable capital; or (b) an authorised unit trust scheme; or (c) a recognised scheme, (ie a CIS constituted overseas and formally recognised under sections 264, 270 or 272 of the Financial Services and Markets Act 2000); whether or not the units are held within an ISA or personal pension scheme.

- 1.8. An authorised firm must take reasonable steps to ensure that its personal recommendations to customers are suitable in compliance with the rules in Chapter 9 of COBS and Principle 9.

2. Handbook provisions

- 2.1. In exercising its power to impose a financial penalty, the FSA must have regard to relevant provisions in the FSA Handbook of rules and guidance (“the FSA Handbook”). The main provisions relevant to the action specified above are set out below.

Principles for Businesses

- 2.2. Under the FSA’s rule-making powers as referred to above, the FSA has published in the FSA Handbook the Principles for Business (“Principles”) which apply either in whole, or in part, to all authorised persons.
- 2.3. The Principles are a general statement of the fundamental obligations of firms under the regulatory system and reflect the FSA’s regulatory objectives. A firm may be liable to a disciplinary sanction where it is in breach of the Principles.
- 2.4. The Principles relevant to this matter are:
- (1) Principle 3 (management and control) which states that “a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.”
 - (2) Principle 9 (customers: relationships of trust) which states that “a firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.”

3. Other relevant regulatory provisions

Enforcement Guide (“EG”)

- 3.1. The FSA’s policy on exercising its enforcement power is set out in the EG, which came into effect on 28 August 2007.

Decision Procedure and Penalties Manual (“DEPP”)

- 3.2. Guidance on the imposition and amount of penalties is set out in Chapter 6 of DEPP.

- 3.3. 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 tools that the FSA may employ to help it to achieve its regulatory objectives.
- 3.4. DEPP 6.4.1G provides that the FSA will consider all the relevant circumstances of the case when deciding whether to impose a penalty or issue a public censure.
- 3.5. 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.
- 3.6. DEPP 6.5.2 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)

- 3.7. 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)

- 3.8. 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, the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the breach 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)

- 3.9. 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)

- 3.10. 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)

- 3.11. The FSA may take into account whether there is verifiable evidence of serious financial hardship or financial difficulties if the person were to pay the level of penalty appropriate for the particular breach.

Conduct following the breach: DEPP 6.5.2G(8)

- 3.12. 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)

- 3.13. 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.

FSA guidance and other published materials: DEPP 6.5.2G(12)

- 3.14. The FSA will consider the nature and accessibility of the guidance or other published materials when deciding whether they are relevant to the level of penalty and, if they are, what weight to give them in relation to other relevant factors.