
FINAL NOTICE

To: **Santander UK plc**

Firm Reference Number: **106054**

Address: **2 Triton Square
Regent's Place
London
NW1 3AN**

Date: **24 March 2014**

1 ACTION

- 1.1 For the reasons given in this Notice the Authority hereby imposes on Santander UK plc ("Santander") a financial penalty of £12,377,800.
- 1.2 Santander agreed to settle at an early stage of the Authority's investigation. Santander therefore qualified for a 30% (stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £17,682,730 on Santander.

2 SUMMARY OF REASONS

- 2.1 It is of fundamental importance that firms providing investment services to retail customers take reasonable care to ensure that:
- a) they give suitable advice;
 - b) where they promote and agree to provide an ongoing review service to check that investments continue to meet customers' needs, including where firms

- hold themselves out as providing discretionary management services, that adequate steps are taken to ensure that the service promised is provided; and
- c) financial promotions and communications with customers in relation to investments are fair, clear and not misleading.
- 2.2 Santander's provision of investment advice was subject to examination in 2012 during the Authority's mystery shopping review of retail investment advice and Phase 2 of the Wealth Management thematic review. These thematic reviews gave rise to significant concerns about the quality of Santander's advice and communications with its retail investment customers.
- 2.3 The Authority has found that there were significant deficiencies in Santander's processes for ensuring that:
- a) customers received suitable advice;
- b) in relation to its Premium Investments, regular reviews were carried out to check that investments continued to meet customers' needs and that the service promised to customers was actually provided; and
- c) financial promotions and communications with customers were fair, clear and not misleading.
- 2.4 These deficiencies affected the sales of retail investment products by its Bancassurance business in the period 1 January 2010 to 31 December 2012 and some of its financial promotions and communications with customers in the period 1 April 2004 to 31 December 2012. As a consequence Santander breached Principles 7 (Communications with clients) and 9 (Customers: relationships of trust) of the Authority's Principles for Businesses and related Rules. In particular, it breached Principle 7 by failing:
- a) to ensure that during the investment sales process appropriate disclosure about Santander, its products and services was provided to customers and that its communications with customers were fair, clear and not misleading; and
- b) to ensure that certain of its financial promotions and communications in relation to its Premium Investments were fair, clear and not misleading.
- 2.5 Santander breached Principle 9 by failing to ensure that:

- a) it had an adequate process in place to ensure that its advisers gathered and took into account all information that was necessary to establish the suitability of investment recommendations;
- b) it had an adequate process in place for establishing the level of risk its customers were willing and able to take;
- c) customers received adequate explanations of why investment recommendations were suitable for them;
- d) there was an adequate process in place, in relation to its Premium Investments, to ensure that regular reviews were carried out to check that investments still met customers' needs;
- e) it had implemented adequate procedures for monitoring the quality of investment advice and remedial action taken where advice had been found to be unsuitable or unclear; and
- f) new advisers received adequate training before they started to give advice to customers.

2.6 Santander's failures gave rise to a significant risk of customers being recommended, making and remaining in investments that were not suitable for them.

2.7 Details of the relevant Principles and Rules breached by Santander (and any other relevant regulatory provisions) are set out in Annex A to this Notice.

2.8 The Authority considers Santander's failings to be serious because:

- a) they were systemic and related to a large number of customers (including some who may have been vulnerable due to age, their ability to replace capital, medical or other personal circumstances);
- b) the Authority has repeatedly stressed in its publications the importance of firms acting in a manner consistent with the points set out at a paragraph 2.1 above;
- c) Santander's response to the Authority's letter to Wealth Management Chief Executive Officers dated 14 June 2011 was too positive and misleading in relation to its description of its tools and processes and the quality of outcomes they produced for customers; and

d) on 16 February 2012 the Authority fined Santander £1.5 million for providing customers with unclear information in relation to the scope of cover for certain structured products under the Financial Services Compensation Scheme ("FSCS").

2.9 The Authority recognises that Santander proactively made a number of improvements to its investment sales process between 1 January 2010 and 31 December 2012.

2.10 The Authority also recognises that during the period 1 January 2010 to 31 December 2012 customer complaints in relation to Santander's retail investment sales were low and customer detriment identified by Santander's monitoring and follow up work was low.

2.11 For those customers who invested from January 2010, detriment may also be low as at the date of this Notice, due to increases in the value of most stock markets since the start of 2010. However, although the current level of detriment may be low, there is potential for this to change and for customers to suffer losses on their investments in the future during downturns in the markets. In view of this, the Authority has acted to ensure that Santander takes appropriate action. Following discussions with the Authority in relation to the form of that action, Santander proposed and has agreed to:

a) conduct a customer contact exercise writing to all affected customers highlighting the risks and objectives of their investments and, depending on the investment and whether the customer remains invested or has exited the investment, offering customers the opportunity to withdraw from their investment or have a review of the sale;

b) conduct a redress exercise for both past and current Premium Investments customers in relation to services promoted and charged for that differed from the services customers received; and

c) design and implement a new annual review process which complies with all the Authority's Principles and Rules, for all customers who remain invested in Premium Investments following the customer contact exercise.

2.12 Santander has also agreed to compensate any customers who, during these exercises, are found to have suffered losses as a result of any failings on its part. These exercises will be overseen by an independent third party.

2.13 Customers who made investments in Portfolio Investments, Structured Investments and Investment Bonds in the period 1 January 2010 to 31 December 2012, and Premium Investments customers who made investments in the period 1 April 2004 to 31 December 2012 and have any questions relating to the advice or service they received can get further information by visiting the following website:

Website: www.santander-products.co.uk/investments

2.14 This action supports the Authority's operational objectives of securing an appropriate degree of protection for consumers, and promoting effective competition in the interests of consumers.

3 DEFINITIONS

3.1 The definitions below are used in this Final Notice:

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

"advisers" means Santander's Customer Relationship Managers and Financial Planning Advisers;

"the Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;

"Bancassurance" means the selling of insurance, banking and investment products through the same sales channel;

"COB" means the Authority's Conduct of Business in force prior to 1 November 2007;

"COBS" means the Authority's Conduct of Business Sourcebook in force from 1 November 2007;

"Dear CEO Letter" means the Authority's letter sent to CEO's or other senior management of Wealth Management firms on 14 June 2011. In Santander's case, the letter was not addressed to Santander's CEO, but to another member of senior management;

"DEPP" means the Authority's Decision Procedure & Penalties Manual;

"FSCS" means Financial Services Compensation Scheme;

“Investment Advice Thematic Review” means the Authority’s thematic review to assess the quality of lump-sum investment advice within the retail banking sector between March and September 2012;

“Non-Premium Investments”, for the purpose of this Notice, means Portfolio Investments, Investment Bonds and Structured Investments, as detailed in paragraph 4.2 below;

“Premium Investments” means a range of risk-rated portfolios (consisting of up to eight sub-funds) typically offered to customers with funds in excess of £50,000, as detailed in paragraph 4.2 below. Prior to November 2007 Premium Investments were known as Inscape Investments;

“the Principles” means the Authority’s Principles for Businesses;

“Santander” means Santander UK plc;

“Santander Group” means the global financial services group of companies of which Santander is a member;

“the Thematic Reviews” means the Investment Advice Thematic Review and the Wealth Management Thematic Review; and

“Wealth Management Thematic Review” means the Authority’s thematic review to assess the suitability of advice/discretionary investment management decisions, systems and controls and strategies of the wealth management arms of six major retail banks in 2012.

4 FACTS AND MATTERS

A. Background

- 4.1 Santander operates primarily in the UK as part of a major global services group offering a wide range of personal finance products and services. It has been authorised by the Authority to provide investment advice to retail customers since 1 December 2001. Santander operates a network of 1,200 branches through which its historic Bancassurance business provided retail investment advice to approximately 295,000 customers in relation to 349,000 investment products, with investments totalling in the region of £7 billion in value during the period 1 January 2010 to 31 December 2012.

- 4.2 Santander's advisers would meet with customers on a face-to-face basis and would generally adopt a two-stage fact-finding and advice process. Between 1 January 2010 and 31 December 2012 advisers used the same investment sales process to sell the following investment products:
- a) Portfolio Investments: a range of open-ended investment funds for growth and income, with varying asset mix depending on the fund;
 - b) Investment Bonds: a single premium insurance-based investment with five year and six year guarantee options;
 - c) Structured Investments: fixed-term investments which generally offered 100% capital protection at maturity with a minimum return (subject to solvency of Santander), with additional returns linked to the performance of a specific index (for example FTSE 100 index or inflation linked); and
 - d) Premium Investments: a range of risk-rated portfolios (consisting of up to eight sub-funds) typically offered to customers with funds in excess of £50,000. The portfolios were designed to align with the specific risk appetite and return characteristics of segmented customer groupings. Selection of the investment managers and the asset allocation decisions for each portfolio was made in line with a house model and there was no capacity to tailor the portfolios to an individual's needs.
- 4.3 The investment funds underlying these products were predominantly managed by members of the Santander Group.
- 4.4 Santander marketed Premium Investments as if they were akin to a traditional wealth management service, charging customers for asset allocation and active management of portfolios. Customers who invested in Premium Investments were offered a range of ancillary services including a dedicated Customer Relationship Manager and support team, monthly statements, automatic ISA-wrapping services, quarterly performance reports and regular reviews.
- 4.5 Some of Santander's failings, as detailed in this Notice, expressly relate to the promotion and provision of its Premium Investments only. However, as Santander used the same investment sales process for Premium and Non-Premium Investments, all other failings relate to sales or potential sales of both.
- 4.6 Santander's own assessment of its retail investment customers was that they tended to have 'very low' to 'medium' risk appetites. Its customers had an average

age of 60 years. Approximately 30% of Santander's customers were over 65 years of age. The majority of customers invested in either Santander's Portfolio Investments or Structured Investments and the average investment per customer was in the region of £24,000.

- 4.7 Santander's advisers were provided with tools, template documents and guidelines covering the end-to-end investment sales process, including the following key stages:
- a) disclosure;
 - b) fact-finding;
 - c) investment returns forecasting;
 - d) risk profiling; and
 - e) suitability reports.

B. Reviews of Santander's Investment Sales Processes

(a) Investment Sales Process Gap Analysis

- 4.8 In March 2011 the Authority published Finalised Guidance '*Assessing Suitability: Establishing the risks that a customer is willing and able to take and making a suitable investment selection*' which confirmed pre-existing standards, but did not create any new obligations for firms. Following this, Santander conducted a gap analysis between its retail investment sales process and the Authority's requirements ("Investment Sales Process Gap Analysis" or "Gap Analysis"). The results were reported internally on 13 June 2011. The Gap Analysis identified that Santander's investment sales process '*did not*', or '*did not fully*' meet the Authority's requirements in some respects. In particular, there were deficiencies identified in Santander's fact-finding process, and its risk profiling questionnaires (the "Risk Profiling Questionnaire") and consideration of a customer's capacity for loss. High priority recommendations were made to address these deficiencies.

(b) Wealth Management Review – Response to Dear CEO Letter

- 4.9 Following the issues identified by Phase 1 of the Wealth Management Thematic Review in 2009/2010, a Dear CEO Letter was sent to the industry on 14 June 2011, requesting that each firm satisfy itself that it was:

'... meeting our suitability requirements and to mitigate the risk of future non-compliance, we expect that you will want to consider the client information contained in your client files and if it is likely to satisfy your obligations regarding customers' desired investment portfolios.'

4.10 Santander recognised that although Premium Investments were sold using the same process as its other retail investment products, they could be aligned with the wealth management market and so fell within the ambit of the Dear CEO Letter. Accordingly, Santander instructed external consultants to review a sample of sales files in the preparation of its response to the letter. The external consultants' review of 50 of the 70 Premium Investments sales which had been made in the first half of 2011 concluded that only 58% of the sales were suitable, 12% were unsuitable and, for 30% of sales it was not clear that they were suitable. High-level trends were identified including:

- a) recommendations to customers with insufficient capacity for loss;
- b) recommendations to customers where there were insufficient details of the term of the investment; and
- c) inadequate customer risk profiling, due to conflicting facts about a customer's attitude to risk.

4.11 The external consultants identified that in more than half of the files the regular reviews promoted and offered by Santander as a benefit of Premium Investments had not been booked and there was no clear process for ensuring that a regular review actually took place.

4.12 In respect of their comments in relation to insufficient capacity for loss and inadequate risk profiling, the external consultants recommended that Santander's investment sales standards and processes be reviewed and updated to ensure that they were *'clear, robust, fit for purpose'* and drove the right solutions for end users.

4.13 Santander responded to the Authority's Dear CEO Letter on 10 August 2011 stating:

'... we have reflected on the "key concerns" highlighted in your letter.

Our "Business as Usual" management information in respect of Maturities & Re-investments, Cancellations, Encashments, Customer Complaints and Advice Quality has been internally reviewed, and has not highlighted any areas of concern.

To support our response to your enquiry we have undertaken a focussed sampling of an appropriate number of customer files based on our proposition. This assessment focussed on the "key areas of concern" in your letter and has supported that our tools and processes work well delivering appropriate outcomes for the great majority of customers.

We will take the lessons we have learnt from this exercise and build these into our ongoing review of our sales process and suitability guidelines.'

4.14 This response was too positive and misleading in the light of the results of Santander's Investment Sales Process Gap Analysis and the findings of the external consultants. Santander should have informed the Authority that it had identified that its investment sales process did not fully meet the Authority's requirements, the outcome of the file review exercise and the steps that it proposed to take to remedy the issues highlighted. Santander informed the Authority in early 2012 that in response to the Authority's papers on risk and suitability, it was making '*ongoing improvements and enhancements*' in relation to suitability and conduct risk. Santander did not however make the Authority aware of the extent of the issues that had been identified and the details of the work that Santander had undertaken to remedy them until October 2012. In early 2012, Santander introduced a new process in respect of its communications with the Authority.

(c) Retail Sales Process Review

4.15 In November 2011 Santander's internal audit conducted a retail sales review which included detailed testing of a sample of 147 investment sales files to assess advisers' compliance with the investment sales process. This identified issues in relation to:

- a) the minimum sum or cash reserve that a customer should retain in deposit based savings to balance the risk of investments rising or falling in value. In 15% of the files reviewed these were not being calculated properly, although in those files the customers retained more capital than was required by Santander's internal policy;

- b) the system-generated investment returns forecaster (the "Forecaster") used by advisers to show customers the potential returns on investments compared to cash deposits. The Forecaster did not contain details of the individual fund being recommended and calculated forecasts for a single term greater than 5 years. This resulted in 44% of the forecasts reviewed not reflecting the customer's investment, which was potentially misleading to customers;
- c) Risk Profiling Questionnaires not being on file or not being fully completed, such that there was no evidence to support the risk profile documented in the customer fact-finding in 14% of cases reviewed; and
- d) suitability reports not matching the information recorded in customer fact-finding in 16% of cases reviewed.

(d) Investments Health Check

4.16 Santander took steps to remedy the deficiencies identified by its Investment Sales Process Gap Analysis, internal audit and external consultants during 2011. However a second review conducted by different external consultants in the fourth quarter of 2011, reported in early 2012 that:

- a) in 39% of a sample of 59 investment sales from 2011, including '*high risk*' sales, the suitability of the recommendation was unclear, highlighting similar issues to those highlighted in the review of Premium Investment sales in mid-2011, in particular, inadequate risk profiling and a failure to consider capacity for loss;
- b) there were '*significant issues in relation to sales processes weaknesses*' that had been highlighted in the Authority's publications in early 2011, including the finalised guidance, '*Assessing Suitability*'. These weaknesses included the fact-finding process; the Risk Profiling Questionnaires and consideration of a customer's capacity for loss; as well as weaknesses with the Advice Quality Department's ("Advice Quality") sampling; and
- c) some of the work to address the weaknesses was not progressing quickly enough and needed to be prioritised, including the roll out of new Risk Profiling Questionnaire and capacity for loss questions, and changes to the fact-finding process and suitability reports. The external consultants advised Santander that the weaknesses needed to be addressed immediately because they would be of significant concern to the Authority.

4.17 Prior to the external consultants' involvement, Santander had already commenced a project dedicated to addressing these investment sales process deficiencies and further improvements were made in the first half of 2012. However, it was not until June 2012, over a year after Santander conducted its Investment Sales Process Gap Analysis that a new Risk Profiling Questionnaire and other key steps to remedy the investment sales process deficiencies were rolled out to advisers.

(e) Santander's Mystery Shops

4.18 In addition to the reviews outlined in paragraphs 4.8 - 4.17 above, between August 2011 and August 2012 Santander used an external third party to conduct 66 mystery shops of its investment sales process. While Santander issued communications in relation to some of the issues seen in the mystery shops and took steps to develop, discipline, and, in appropriate cases, de-authorise advisers whose mystery shopping results evidenced investment sales process failings, Santander did not aggregate the results of its mystery shops to provide senior management with a holistic view of the issues identified. Had Santander aggregated the results it would have found that:

- a) over 60% of advisers who were subject to mystery shops failed the assessment so far as Santander's sales process was concerned;
- b) only 65% of the mystery shop recommendations were suitable;
- c) in 18% of the mystery shops recommendations were unsuitable;
- d) in 17% of the mystery shops the suitability of the recommendation was unclear; and
- e) the mystery shops highlighted potentially wider, underlying issues in relation to the investment sales process and its implementation by advisers.

4.19 Nine of Santander's mystery shops took place between August and September 2012 following the introduction of the new Risk Profiling Questionnaire and other process changes designed to remedy the deficiencies highlighted in 2011. Despite these changes and associated training, little improvement in the results of the mystery shopping was seen, with many of the same issues arising as were seen in the earlier mystery shops.

(f) The Thematic Reviews

Investment Advice Thematic Review

4.20 The quality of Santander's investment advice was tested by mystery shopping as part of the Authority's thematic review to assess the quality of lump-sum investment advice within the retail banking sector. Between March and September 2012 a market research firm conducted mystery shops of Santander's lump-sum investment advice process. The Authority reviewed a significant sample and found that:

- a) only 63% of the mystery shop recommendations were suitable;
- b) in 11% of the mystery shops recommendations were unsuitable;
- c) in 26% of the mystery shops the suitability of the recommendation was unclear; and
- d) in 48% of the mystery shops disclosure was unacceptable.

Wealth Management Thematic Review into Premium Investments sales

4.21 Santander's Premium Investments sales were also reviewed by the Authority as part of Phase 2 of the Wealth Management Thematic Review. This review assessed the suitability of advice/discretionary investment management decisions, systems and controls and strategies of the wealth management arms of six major retail banks. The review, which considered a small sample of files, gave rise to significant concerns in relation to the records demonstrating the suitability of Santander's Premium Investments; the financial promotions for Premium Investments; fees and charges relating to the services provided to customers, and the effectiveness of controls in relation to the provision of on-going reviews and advice. As part of this review Santander's Compliance Department ("Compliance") assessed the suitability of recommendations in a sample of Premium Investments sales. They found that 5% of the recommendations in the sample were unsuitable and in 30% of cases the suitability of the recommendation was unclear.

(g) Overall

4.22 The results of the Investment Advice Thematic Review were communicated to Santander in December 2012. Santander promptly took the decision to suspend its advisers from providing investment advice and in early 2013 it ceased to offer retail investment advice to customers, save for those with maturing investments.

4.23 The Thematic Reviews, along with the reviews conducted by Santander, its external consultants and its internal audit, all highlighted significant deficiencies in Santander's investment sales process and its implementation during the period 1 January 2010 to 31 December 2012. These deficiencies gave rise to a significant risk of customers being recommended, making and remaining in investments that were not suitable for them.

4.24 Significant changes to Santander's senior management meant that responsibility for the investment sales process lay with a large number of different Significant Influence Function Holders, some of whom were in role for a very limited period of time. In the circumstances, the failures are Santander's rather than the personal responsibility of any individual.

C. Deficiencies in Santander's Investment Sales Processes

(a) Disclosure: Deficiencies in disclosure and communications with customers

4.25 Providing clear information up front about the service to be provided, what it is going to cost and the main features and risks of a product is essential to delivering fair outcomes for customers. However, Santander failed to ensure that appropriate disclosure about Santander, or its products and services, was provided to customers and that its communications with customers were fair, clear and not misleading. Both Santander and the Authority's mystery shops highlighted significant issues with the disclosure provided by advisers and their communications with customers during the investment sales process.

4.26 In Santander's mystery shops:

- a) although customers may have been provided with documentation setting out the scope of FSCS cover, 14% of advisers failed adequately to explain FSCS protection;
- b) 33% of advisers failed adequately to explain the cooling off period and implications of cancellation;
- c) 32% of advisers failed adequately to explain key documentation including the Cost of Sale, Terms and Conditions and Key Features documents;
- d) 44% of advisers gave a poor explanation of Santander, products and/or market risks; and

- e) 94% of advisers failed to provide customers with adequate disclosure and/or all of the documents required in accordance with Santander's own process.

4.27 The Authority's own mystery shops revealed a similar picture. In 48% of these, advisers breached COBS Rules relating to disclosure and communications with customers. The majority of the breaches were driven by advisers failing to provide customers with appropriate information in a durable medium about the firm and its services. The Authority also found instances of advisers providing information verbally which was incorrect or misleading in that:

- a) 15% failed to provide a balanced explanation of the investment's returns;
- b) 22% provided misleading information about the product; and
- c) 28% made a misleading or unclear cost disclosure, and/or failed to provide disclosure about costs.

4.28 This included:

- a) making statements suggesting that an investment '*will likely double*' and incorrectly stating that the '*FTSE was 8000-9000 in 2008*';
- b) saying '*so in ten years it will beat cash by 87%*' even though the customer's investment term was only for five years and returns were not guaranteed;
- c) telling the customer that commission was irrelevant and that the customer would not be paying commission when, in fact, commission was 7.75% for one of the products; and
- d) saying that Santander's recommendations were '*backed by the regulator*', thereby giving the customer a misleading impression of the level of regulatory oversight or vetting of the advice.

4.29 Santander remedied the deficiencies highlighted by the Authority's earlier Enforcement action in relation to unclear information provided to customers about the scope of FSCS cover for certain structured products and provided training to new advisers in relation to the scope of FSCS protection. However, the Authority found that in 15% of mystery shops, advisers made misleading statements, did not explain and/or did not provide documents in relation to FSCS protection. Some advisers suggested that FSCS protection was available for all of Santander's investment products. Given the monetary and product-related limitations of FSCS protection, these sorts of statements were misleading.

(b) Fact-finding: Deficiencies in relation to gathering and taking into account information from customers

4.30 It is essential to gather and take into account all relevant information in relation to a customer's financial situation, needs and objectives in order to provide customers with suitable advice. However, Santander failed to have an adequate process in place to ensure that advisers gathered and took into account all of the information they needed to obtain from customers prior to recommending investment products or when conducting regular reviews to assess whether Premium Investments continued to meet customers' needs.

Design of fact-finding process

4.31 The fact-finding stage of Santander's investment sales process was designed to gather sufficient hard facts (e.g. age and financial situation) and soft facts (e.g. opinions and views) about a customer in order to formulate a suitable investment recommendation. Santander's advisers were provided with a number of different templates and an online tool in order to gather all relevant information during the fact-finding process. However, advisers were not prompted by those tools to gather and document the following information that was necessary to establish the suitability of the advice given to customers:

- a) the customer's knowledge and experience of investments;
- b) the customer's current and future objectives; and
- c) expected future changes in circumstances.

4.32 The guidance and training provided to advisers did not effectively mitigate the lack of prompts in the templates. Guidance was very high level, did not cover all necessary information and while advisers were told to record 'soft facts', what was meant by that term was not defined.

4.33 Santander's Investment Sales Process Gap Analysis also found that advisers were not prompted to record details of a customer's health or whether the customer was potentially vulnerable and, therefore, whether additional care should be exercised to ensure they were provided with suitable advice. Santander did not define vulnerability and advisers had full discretion to determine if a customer was vulnerable. As a result, there was no consistency in the treatment of vulnerable customers (if they were identified as vulnerable at all).

4.34 Santander took steps to address the deficiencies by increasing the space available for recording hard and soft facts, introducing a life plan, introducing guidance in relation to elderly and vulnerable customers and providing training on fact-finding which included highlighting the need to consider an investor's previous investment experience and knowledge. However, it was not until June 2012 that Santander rolled out a new fact-find addendum tool (the "Fact-Find Addendum"), which provided automated prompts to advisers to record all soft facts about a customer and which did not have a character limit. The Fact-Find Addendum was designed to sit alongside the fact-finding tool and the two documents together constituted the complete fact-finding record (the "Fact-Find"). However, despite the fact that these documents constituted the basis for the suitability report and the Fact-Find Addendum was designed to remedy the deficiencies in gathering information about customers, the Fact-Find Addendum was not a mandatory part of the process.

Use of fact-finding process

4.35 Santander's mystery shops highlighted the impact of the deficiencies in Santander's guidance and process relating to gathering and taking into account information from customers:

- a) 35% of advisers failed to gather or take into account information in relation to customers' current and future objectives including the term of the investment;
- b) 41% of advisers failed to gather or take into account information in relation to a customer's health; and
- c) 48% of advisers demonstrated general weaknesses in gathering or taking customer information into account.

4.36 The mystery shops also highlighted issues in relation to gathering information about customers' previous investment experience and adequate consideration of the repayment of debt. These findings were mirrored in the reviews conducted by the Authority and Santander's external consultants.

4.37 The deficiencies in Santander's fact-finding process meant that there was an unacceptable risk of advisers failing to gather and take into account sufficient information about a customer to enable a suitable recommendation to be made. Santander was also unable to demonstrate that its recommendations were suitable.

(c) Investment Returns Forecasting: Deficiencies in Santander's use of the Investment Returns Forecaster

- 4.38 A mandatory part of Santander's investment sales process involved the use of the Forecaster, which was a third party stochastic forecast tool. The Forecaster produced a forecast showing potential returns available by investing in one of Santander's investment products versus retaining the capital in a cash account.
- 4.39 Santander identified the need to review how the Forecaster was used in its Investment Sales Process Gap Analysis in June 2011. Santander's external consultants also noted a risk that the Forecaster, by showing a default period of ten years, would present a different (and likely more positive) outcome than if based on a five year analysis. Despite this, the Forecaster in use remained largely the same until 31 December 2012.
- 4.40 The Authority's review identified significant deficiencies in the use of the Forecaster in that it:
- a) did not confirm the assumptions used for inflation or the assumed investment returns used to generate the figures provided to the customer; and
 - b) used a cash rate for comparison (the Bank of England base rate minus 0.5%) which was misleading in that it was not representative of the actual returns available in the market at the time (which were often significantly better than the Bank of England base rate) for customers who were willing to leave their money on deposit for a fixed term. The use of such a low cash rate underplayed the returns which could be provided by retaining the capital in a cash account and therefore made investments appear more attractive.
- 4.41 In November 2011 Santander's internal auditors found that 44% of a sample of investment sales files contained a forecast which did not reflect the details of the customer's investment. The Authority's mystery shops also found instances where advisers:
- a) emphasised the average or the 'highest' return suggested by the Forecaster without providing sufficient information to the customer on the potential downside risk attached to the investment. Without a balanced explanation, there was a danger, particularly when dealing with inexperienced investors, that the results provided by the Forecaster would be misunderstood or viewed over-positively; and

- b) extended the customer's required investment term, thereby making potential returns look far more attractive, particularly when compared to the cash rates.

4.42 The deficiencies in the use of the Forecaster meant that there was an unacceptable risk of customers being misled about the potential benefits of investments versus retaining their capital in a cash account and of misunderstanding the potential for loss associated with the investments recommended to them.

(d) Risk Profiling: Deficiencies in relation to establishing the risk a customer is willing and able to take

4.43 Santander used Risk Profiling Questionnaires as part of its investment sales process in order to establish the risk a customer was willing and able to take. However, there were significant deficiencies with the design and use of the Risk Profiling Questionnaires which meant that Santander failed to have an adequate process in place for determining the risk a customer was willing and able to take.

Design of the Risk Profiling Questionnaires prior to June 2012

4.44 The Investment Advice Thematic Review identified significant deficiencies in the design of Santander's manual Risk Profiling Questionnaires. In particular that:

- a) the three key questions (and one sub-question) used to determine the level of risk customers were willing to take (correlated to the six risk profiles for non-Premium Investments) made the output of the questionnaire overly sensitive to the answers to individual questions;
- b) they contained questions that were both open to interpretation and too complex for Santander's target market to understand and answer correctly. For example, one question asked customers to indicate the period after which they would consider an '*alternative investment solution*' if their investment started to fall in value by '*as much as 3% each month.*' This question required customers to calculate a 3% month on month fall in the value of their investment and then determine how long the fall could continue before they would consider moving to another investment. The Authority's mystery shops showed that this question was not well understood by customers as they did not appreciate the extent of the potential losses implied by their initial answer to the question;
- c) the risk categories generated by the Risk Profiling Questionnaires did not clearly quantify the level of risk that investors would take, creating a risk that

customers, particularly those with little investment experience, were unable to understand the level of risk to which they would actually be exposed;

- d) risk categories that the Risk Profiling Questionnaires produced needed to be checked against the customer's knowledge and experience. However, advisers did not in all cases check whether customers understood the risk categories or confirm that they reflected the level of risk they were willing to take with their investments; and
- e) Risk Profiling Questionnaires did not adequately address a customer's ability to financially bear the risks associated with the investment products recommended to them (i.e. their capacity for loss) even though it was critical to the suitability of a recommendation to be able to demonstrate that this was the case.

4.45 Santander's own Investment Sales Process Gap Analysis in June 2011 had identified that the Risk Profiling Questionnaires *'did not'* or *'did not fully'* meet the Authority's requirements, with the Risk Profiling Questionnaires posing a risk of *'being too simplistic and aligning customers with a profile'* that was *'more adventurous than they expect'*.

Use of the Risk Profiling Questionnaires prior to June 2012

4.46 Santander's internal audit and mystery shops highlighted issues with the use of the Risk Profiling Questionnaires, with nearly a quarter of advisers who were subject to mystery shops failing to complete a Risk Profiling Questionnaire fully and/or inappropriately leading customers toward certain answers. The Authority's mystery shops also revealed instances of advisers failing to use the Risk Profiling Questionnaire properly, or, in some cases, at all.

4.47 Santander's external consultants also found evidence of unclear and/or unsuitable recommendations due to customers having insufficient capacity for loss, noting that the risk profiling process did not include any consideration of a customer's capacity to bear loss, or examination of the risk profiling outcome and other information viewed in the round to determine whether a recommendation was suitable overall.

4.48 The inherent limitations of the Risk Profiling Questionnaires placed significant onus on individual advisers to check whether customers understood the output from the questionnaire and that this reflected the level of risk they would be willing to take

with their investments. However, the Authority's mystery shops showed that Santander's advisers often failed to do this and, in a number of cases, the output from the Risk Profiling Questionnaire was clearly at odds with wider statements the customer had made about their risk appetite. For example:

- a) in one case the Risk Profiling Questionnaire assessed the customer as a '*high risk*' investor when the customer had said that they '*did not want anything risky*'; and
- b) in another case, the adviser placed too high a reliance on the automated output which assessed the customer as '*high risk*'. The adviser failed to properly challenge the '*high risk*' outcome after the customer stated that they were only comfortable with a '*medium*' level of risk.

Design and Use of the Risk Profiling Questionnaire post June 2012

4.49 During 2011 and the first half of 2012, Santander implemented improvements to its process for establishing the risk appetite of customers. This included issuing guidance to all advisers to ensure that any inconsistencies between customer discussions and risk profiling responses were explained and clarified within the paperwork. However, despite having recognised the limitations of the Risk Profiling Questionnaires, it was not until June 2012 that Santander rolled out a new system based Risk Profiling Questionnaire.

4.50 The new Risk Profiling Questionnaire remedied many of the inherent weaknesses in the old questionnaires in that there were:

- a) 15 questions correlated to six risk profiles;
- b) each risk profile was accompanied by a description which contained the key relevant risks (including the need to hold an investment for the medium term), thereby assisting the customer to validate the output from the Risk Profiling Questionnaire; and
- c) specific capacity for loss questions.

4.51 However, the Authority's mystery shops:

- a) found instances where, despite the introduction of the new Risk Profiling Questionnaire, the advice was unsuitable in whole or in part due to its use; in

particular, advisers failed to check whether the output from the Risk Profiling Questionnaire was correct; and

- b) called into question whether the newly added questions to establish a customer's capacity for loss were being used appropriately by advisers. For example, in one case the adviser increased the customer's risk profile after the customer's answers to the capacity for loss questions suggested they could afford to take more risk. Capacity for loss should not be used to increase a customer's attitude to risk.

4.52 The deficiencies in Santander's processes for establishing the risk that a customer was willing and able to take gave rise to an unacceptable risk of customers being aligned to a risk profile that did not match their attitude to risk and being recommended investments that were unsuitable for the level of risk they were willing and able to take.

(e) Suitability reports: Deficiencies in Santander's suitability reports

4.53 Santander's advisers usually presented and explained recommendations to customers during a second meeting. Suitability reports setting out their recommendations were provided to customers at or after these meetings. Santander failed to ensure that customers received adequate explanations of why investment recommendations were suitable for them in the suitability reports they received.

Design of suitability reports

4.54 Advisers were provided with system-based templates to allow them to write a detailed suitability report of their recommendations for individual customers in a consistent and efficient fashion. There were deficiencies in Santander's templates which did not prompt advisers to:

- a) as appropriate address a customer's:
 - i. recent and/or future changes in circumstances;
 - ii. relevant existing or previous investments;
 - iii. source of funds; and
 - iv. capacity for loss;

b) describe a customer's attitude to risk. It simply confirmed the customer's risk profile (e.g. low, medium, high) without explaining what that meant.

4.55 Guidance and sales manuals provided to advisers did not effectively mitigate the deficiencies in the templates. While advisers were told in guidance that a suitability report should cover a customer's needs, priorities, attitude to risk and financial situation, the guidance did not address these in any detail.

4.56 Santander took steps to mitigate the deficiencies in the suitability report templates by providing advisers with training, increasing the space available to advisers and issuing a communication in April 2012 reminding advisers of the need to explain a recommendation in full. However, it was not until June 2012 when the new fact-finding process was rolled out that new suitability report templates were provided to advisers.

Use of suitability reports

4.57 The reviews by Santander's external consultants and internal audit all identified issues with the quality of the suitability reports. One external consultant noted that:

- a) the rationale for the investment products selected was often weak, such that it was not always clear why one product had been selected over another;
- b) the reports used overly standardised paragraphs;
- c) there was a need to build '*reason why*' information into the reports; and
- d) in 17% of files reviewed there was insufficient explanation in relation to why a move from cash to equities had been recommended.

4.58 A number of the Authority's mystery shops did not proceed to the stage of suitability reports. Where suitability reports were produced, issues were identified, including reports which were misleading because they did not reflect what the customer had said during their meetings with the adviser. This included reports which:

- a) mis-represented the nature of the customer's objectives and discussions by stating, '*you told me that you did not miss the money and you wanted something long term*' when in fact, the customer had repeated on a number of occasions that the term for their investment was 3 years;

- b) misrepresented the customer's desired term stating '*You want to invest a sum of £24,000 for the long term i.e. no specific need for this capital within that period. Your need is to produce growth on this capital sum as you are not happy with the current level of return as you are looking to buy a property in future that is after 5 year'* when in fact the customer had stated they wanted to buy a house in 5 years; and
- c) failed to reflect that a customer had outstanding car finance when the customer had stated this during the meeting with the adviser.

(f) Recommendations: Unsuitable or unclear recommendations for customers

4.59 The reviews conducted by Santander, its external consultants and the Authority all found that a significant proportion, between 35 and 42% of recommendations in the sales or mystery shops reviewed were unsuitable or the suitability of the recommendations were unclear.

4.60 The Authority's mystery shops included instances where:

- a) advisers ignored the customer's desired term of investment. For example, one adviser recommended that the customer invest £30,000 in a medium to long term investment despite the customer indicating a short investment term of 3-4 years. The adviser had even acknowledged that the product did not meet the customer's requirements during the meeting, saying that the product was '*a medium-term investment, it's not short term'* and that he '*would have to technically recommend that [the product was invested] for 5 years'*;
- b) advisers did not adequately consider the repayment of debt before recommending an investment. For example, one adviser recommended that a customer invest £40,000 in a high risk investment without gathering full information on the customer's assets and outgoings; without recommending that the customer consider repayment of credit card debt before investing; and without confirming the customer's understanding of the risks associated with the product despite highlighting the benefits of the product to the customer; and
- c) advisers did not gather sufficient information about customers before making recommendations. For example, one adviser recommended that a 71 year old customer invest £35,000 into a product with a 6 year term and which

contained penalties for early encashment. This was without determining the customer's income, expenditure, debts, or liabilities; without requiring the customer to complete the Risk Profiling Questionnaire; and without determining whether the customer had any health issues.

4.61 The unclear and unsuitable recommendations highlighted by the various reviews conducted in 2011 and 2012 were intrinsically linked to the deficiencies in Santander's investment sales process.

(g) Training: Inadequate training of advisers

4.62 Santander provided training to new advisers and all existing advisers in relation to new products, initiatives and changes in process. It also committed significant resource in 2011 and 2012 to ensuring advisers obtained the minimum Retail Distribution Review professionalism requirements. However, in addition to the weaknesses in the guidance, documents and tools provided to advisers highlighted above, there were deficiencies in the training provided to new advisers which impacted upon their ability to provide suitable advice to customers.

4.63 The course for new advisers required a significant amount of pre-course learning, which was tested by an assessment on the first day of the course. While the pre-course assessment pass mark did not impact on whether advisers ultimately passed their final assessments (which took place at the end of the course), this pre-course assessment acted as a gateway to enable Santander to establish whether advisers had completed the pre-course learning to an acceptable level. During a review carried out by Compliance in December 2011, it was discovered that the pass rate had been set at 70% by Human Resources without seeking Compliance's sign off. The pass rate was set below the normal 80% pass mark which was in place for other courses. It was noted that if the pass rate had been 80%, 41% of advisers who completed the training during the third quarter of 2011 would have failed the assessment and may not have been able to attend the training course at that time.

4.64 Santander's reliance on pre-course learning and the assumption that this had been understood and absorbed by advisers impacted upon the content and pace of the face-to-face training. Compliance concluded that the training was rushed and did not provide advisers with sufficient time to ensure that they fully embedded the investment sales process. Limited time was spent on key parts of the investment sales process, with insufficient time spent on the Suitable Advice Manual, the

principle guidance for advisers. This was reflected in some of the feedback received from advisers, such as:

'[I]n reality we do a demanding job that has a lot of detail and very little detail was given on the course.'

'I felt the suitable advice manual was very rushed in the pre-course work and also on the course and as this is a major part of our day to day business activity more time should be spent on this.'

4.65 The most significant issue for new advisers was that they received no training on the systems they would use during the investment sales process prior to their first meeting with customers. 80% of advisers, who were asked how well the training prepared them for their role, said this lack of training left them unprepared for the 'real world'. Feedback from advisers highlighted the difficulties they faced as a result:

'To not have access to the actual system which we would be using during the client meetings was frankly ridiculous so [the] training world and real world were on opposite sides of the spectrum.'

'... [A]t times I am having to call other experienced advisers and bother other staff constantly to find out key things that I need to do my job. Simple things like... how to actually complete a fact find on the system and complete a sale.'

4.66 Santander took steps to remedy the weaknesses in its training. The pass rate for pre course learning was increased to 80% and from March 2012 Santander introduced a process to ensure advisers received training on relevant systems before their first customer meeting. In mid-2012, Santander provided training for all its advisers in relation to the new Risk Profiling Questionnaire and on assessing suitability, and again in preparation for the changes required by the Retail Distribution Review in late 2012.

(h) Monitoring: Inadequate Compliance monitoring of investment sales

4.67 Santander's Advice Quality assessed the quality of investment advice and the completeness of the paperwork provided to customers. The number of investment sales failed by Advice Quality between 1 January 2010 and 31 December 2012 was generally low. However, the department's monitoring was inadequate due to weaknesses in the:

- a) approach used to review investment sales;
- b) sampling methodology used to select sales for review;
- c) management information produced; and
- d) tracking of remedial action.

Review approach

- 4.68 Until August 2011, when Santander began to conduct small waves of mystery shops, the quality of advice was typically assessed through a desk-based review of the paperwork produced during an investment sale and/or customer-contact calls. There were weaknesses in both the paperwork and customer contact review processes.
- 4.69 Prior to the fourth quarter of 2011, Advice Quality's approach to the paperwork review was inadequate. It was largely a 'tick box' exercise to establish if the correct sales process had been followed, rather than a holistic review of each sale to form an opinion on whether the sale had resulted in a suitable recommendation for the customer. Advice quality failure rates increased in the months following the move to a more holistic review, changes to the sales process and the introduction of a new investment product by Santander, which all took place at around the same time.
- 4.70 A review by Santander's external consultants in late 2011 highlighted the inadequacy of the reviews being conducted by Advice Quality. 41 of the files reviewed by the external consultants had also been reviewed by Advice Quality. The external consultants disagreed with Advice Quality's findings in 37% of those cases.
- 4.71 There were also weaknesses in the customer contact calls. The guidance provided to Advice Quality did not set out the aims and objectives of the customer contact calls or explain how the overall grading of a review was determined. Further, until the fourth quarter of 2012, customer contact scripts were not aligned to the Authority's Treating Customers Fairly outcomes and did not sufficiently capture the customer's perception and understanding of the product because they relied on closed questions (which have a tendency to lead to yes or no answers).
- 4.72 While improvements to the scripts used by Advice Quality were made in the fourth quarter of 2012, the scripts remained focussed on discussing a customer's

understanding of the products recommended and the documentation issued to them. However, the scripts failed to focus on whether advice was actually suitable for customers. A customer's understanding of the product they invested in is important, but it does not in and of itself establish that the product was suitable for them. It is necessary to confirm that key information recorded is correct including, for example, the customer's investment objectives; the desired term of investment; tax status; details of any outstanding debt; and the customer's risk profile.

Sampling methodology

4.73 Advice Quality reviewed a random sample of three cases per adviser per quarter. This was increased by a further three cases for advisers who were perceived to be a greater risk and, if customer detriment was identified, an additional three cases were requested. In addition, thematic reviews to monitor specific risks (adviser risk or product/customer risk) were also conducted.

4.74 There were, however, deficiencies in this sampling approach in that:

- a) it did not ensure that appropriate coverage of all products across the adviser and customer population was being obtained; and
- b) there was no defined risk-assessment methodology to determine what constituted a 'high risk' product or customer.

4.75 Santander identified in May 2010 that Advice Quality's sampling methodology did not allow for sufficient coverage of all investment products sold by Santander. This was noted again by Santander's external consultants in January 2012 who advised Santander to consider whether it was running risks with its processes until a new sampling methodology was in place. However, it was not until the fourth quarter of 2012 that a new sampling methodology was approved, which prioritised the checking of sales of higher risk products or to higher risk customers.

Management Information

4.76 Until the third quarter of 2012, management information produced by Advice Quality did not facilitate effective management action to address any issues identified by monitoring because it was:

- a) quantitative in nature and did not include commentary on trends or root causes; and

- b) not aggregated with other management information to present an overall assessment of current and emerging regulatory risks.

Remedial action

4.77 Until the fourth quarter of 2012, the process for monitoring remedial action taken in cases where a risk of customer detriment had been identified was weak in that it:

- a) did not include a defined process for reporting and escalating cases where remediation had been delayed; or
- b) involve monitoring and tracking of such cases through regular management information.

4.78 Further, Santander also failed to follow up on the Premium Investments sales that had been identified as unclear or unsuitable by external consultants in June 2011 in a timely manner. It was not until October 2012 that remedial action was taken. Two customers were found to have suffered financial detriment and they were appropriately compensated.

4.79 The weaknesses in Santander's compliance monitoring of investments sales gave rise to an unacceptable risk that poor sales behaviours, practices and any resulting customer detriment would not be identified and remediated in a timely manner.

D. Premium Investments – Deficiencies in the process for arranging regular reviews

4.80 Santander promoted and offered regular reviews as one of the benefits of its Premium Investments. Despite this, Santander failed to have an adequate process to ensure that Premium Investments customers received a regular review of their investments to check that the investments continued to meet their needs.

4.81 Customer statements recommended that Premium Investments customers review their investments on an annual basis. However, there was no set process to ensure that customers received regular reviews. Until 2008 the guidance provided to advisers made clear that reviews were '*an important part of the advice process*' and '*should generally be on an annual basis*'. However, the guidance provided to advisers from December 2008 made no reference to the need to conduct reviews over and above the fact that regular reviews were one of the services for Premium

Investments customers. Santander's external consultants noted in August 2011 that:

- a) in more than half of the files they reviewed, regular reviews had not been booked; and
- b) there was no clear process for ensuring a regular review actually took place.

4.82 The sample of Premium Investments files reviewed during the Wealth Management Thematic Review also revealed that reviews had not been booked and in some cases customers had not received a review of their investments for a number of years. Santander took steps to remedy the deficiencies in its process from June 2012 and has agreed to re-design its annual review process for customers who continue to be invested in Premium Investments.

E. Premium Investments – Financial Promotions

4.83 The Authority identified that from April 2004 Santander issued a range of promotional material and communications in relation to its Premium Investments and in doing so failed to ensure that they were fair, clear and not misleading. Promotional brochures suggested that:

- a) Santander would build a portfolio '*tailored*' to customers' '*precise requirements*', '*personal circumstances*' or '*specific needs*', and that customers would receive a '*truly individual service*'; and
- b) customer's portfolios would be subject to '*regular reviews*' with a dedicated personal adviser to make sure portfolios always matched their needs as they changed over time, with some versions of the brochures suggesting that these reviews would take place on an annual basis.

4.84 Further, customers who went on to invest:

- a) were charged a Portfolio Management fee which was said to include a sum for '*asset allocation and active management of your investment positions to achieve your objectives*'; and
- b) signed terms and conditions which included a clause relating to '*Discretionary Investment Management*' which was defined as authorising the manager to '*exercise any degree of discretion in buying or selling the investments which make up a client's portfolio at any time.*'

4.85 These promotions and communications were not clear or fair and had the potential to mislead in that they gave the impression that the service a customer who invested in Premium Investments would receive was bespoke or akin to traditional wealth management services, when it was not. Customers who went on to invest in Premium Investments were provided with other documents which may have meant that they were not ultimately misled in relation to the nature of the portfolio in which they invested. They may also have received some of the ancillary services promoted as a benefit of Premium Investments. However, the Authority found that, in practice, some of the services promoted or charged for, for example regular reviews (see paragraphs 4.80 - 4.82 above) or asset allocation and active management of investment positions may not have been received. Powerful messages are left by advertising, and from a perspective of consumer protection and fair competition between firms, it is important that consumers' expectations are met by reality, which is why all financial promotions must be stand-alone compliant.

4.86 Apart from a rebranding exercise in late 2007, there were minimal changes to the text of the Premium Investments promotional brochures between 1 April 2004 and 31 December 2012. The changes that were made went through Santander's Financial Promotions process and received appropriate sign-off. However, the process focussed on proposed changes in isolation, without a holistic assessment of whether the brochures as a whole were fair, clear and not misleading in relation to the nature of the portfolios in which customers would invest and the service they would receive. If Santander's processes had included such an assessment, this may have led to the proactive identification of the issues identified by the Authority.

5 FAILINGS

5.1 Based on the facts and matters described above, the Authority concludes that Santander has failed to satisfy Principles 7 and 9 and associated COBS Rules (see Annex A).

5.2 Specifically, on the basis of the facts and matters set out at paragraphs 4.1 - 4.86 above Santander breached:

- a) Principle 7 (Communications with clients) by failing to pay due regard to the information needs of its clients, and by failing to communicate information to them in a way which was fair, clear and not misleading; and

- b) Principle 9 (Customers: relationships of trust) by failing to take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who was entitled to rely upon its judgment.

5.3 Santander breached Principle 7 by failing to:

- a) ensure that its advisers provided customers with appropriate disclosure about Santander, its products, services and associated costs (paragraphs 4.25 - 4.29 above); and
- b) pay due regard to the information needs of its Premium Investments customers by producing financial promotions, namely Premium Investment Brochures, that did not satisfy the requirement to be fair, clear and not misleading (paragraphs 4.83 - 4.86 above).

5.4 These failings meant that Santander also breached a number of the Authority's rules namely COB 2.1.3 R, 3.8.4(1) R and COBS 4.2.1 R, 6.1.4 R, 6.1.9 R and 6.1.13 R.

5.5 Santander breached Principle 9 by failing to:

- a) ensure that its advisers gathered all necessary information from customers to enable suitable recommendations to be made, in particular:
 - i. advisers were not prompted to gather and record key pieces of information including a customer's knowledge and experience of investments and their investment objectives;
 - ii. relevant information about customers was missing from sales files reviewed by Santander and its external consultants; and
 - iii. both Santander's and the Authority's mystery shops found that advisers failed to gather sufficient information about customers prior to making investment recommendations in over 30% of shops (paragraphs 4.30 - 4.37 above);
- b) ensure there was an adequate process in place for assessing the risk that a customer was willing and able to take: in particular, until June 2012 Santander:
 - i. used Risk Profiling Questionnaires to assess the risk profiles of customers which had significant weaknesses including:

- a. the use of a very limited number of questions which made the output of the questionnaire overly sensitive to customer's answers to individual questions;
 - b. questions which were open to interpretation and too complex for the firm's target market to understand and answer correctly; and
 - c. risk category descriptions that did not clearly quantify the level of risk that the investor would be taking;
- ii. did not require advisers to check whether customers understood the output from the Risk Profiling Questionnaire and confirm this reflected the level of risk they would be willing to take with their investments; and
 - iii. did not address a customer's ability to bear the risks associated with the investment products recommended to them (i.e. their capacity for loss) (paragraphs 4.43 - 4.52 above);
- c) ensure its advisers obtained all necessary information before making personal recommendations to customers (paragraphs 4.30 - 4.37 above);
 - d) ensure that it provided customers with suitability reports which adequately specified their demands and needs, justified why Santander had concluded its recommendations were suitable for them by reference to the customer's objectives, and explained any possible disadvantages of the investments recommended (paragraphs 4.53 - 4.58 above);
 - e) ensure that there was an adequate process in place to check that Premium Investments continued to meet customers' needs (paragraphs 4.80 - 4.82 above);
 - f) implement adequate procedures for monitoring the quality of investment advice and remedial action taken where advice had been found to be unsuitable or unclear; and
 - g) ensure new advisers received adequate training before they started to give advice to customers.

5.6 These failings meant that Santander also breached a number of the Authority's rules namely COBS 2.1.1 R, 9.2.1 R, 9.2.2 R, 9.2.3 R, 9.2.5 R, 9.2.6 R and 9.4.7 R.

5.7 Having regard to the issues above, the Authority considers it appropriate and proportionate in all the circumstances to take disciplinary action against Santander for its breaches of the Principles and associated Rules.

6 SANCTION

6.1 For the reasons set out in this Notice, the Authority considers that Santander breached Principles 7 and 9 along with the relevant Rules in COBS. The Authority has considered the disciplinary and other options available to it and has concluded that a financial penalty is the appropriate sanction in the circumstances of this particular case.

6.2 The principal purpose of a financial penalty is to promote high standards of regulatory conduct by deterring firms who have breached regulatory requirements from committing further contraventions, helping to deter other firms from committing contraventions and demonstrating generally to firms the benefits of compliant behaviour.

6.3 The Authority's policy on the imposition of financial penalties is set out in Chapter 6 of the Authority's Decision Procedure & Penalties Manual (DEPP). In determining the financial penalty, the Authority has had regard to this guidance.

6.4 The conduct at issue took place both before and after 6 March 2010. As set out at paragraph 2.7 of the Authority's Policy Statement 10/4, when calculating a financial penalty where the conduct occurred during both penalty regimes, the Authority must have regard to both the penalty regime which was effective before 6 March 2010 ("the old penalty regime") and the penalty regime which was effective after 6 March 2010 ("the current penalty regime").

6.5 The Authority has calculated the financial penalty as follows:

- a) In relation to Santander's failure to pay due regard to the information needs of its Premium Investments clients by producing financial promotions that did not satisfy the requirement to be fair, clear and not misleading (Principle 7), the Authority:
 - i. calculated a pre-discount financial penalty of £1,000,000 by applying the old penalty regime to the Firm's breach during the period 1 April 2004 to 5 March 2010; and

- ii. calculated a pre-discount financial penalty of £518,760 by applying the current penalty regime to the Firm's breach during the period 6 March 2010 to 31 December 2012.

b) In relation to Santander's failure during the investment sales process:

- i. to ensure that appropriate disclosure about Santander, its products and services was provided to its customers and that its communications with customers were fair, clear and not misleading (Principle 7); and
- ii. to take reasonable care to ensure that it gave suitable investment advice to its customers (Principle 9);

the Authority calculated a pre-discount financial penalty of £16,163,970 by applying the current penalty regime to the Firm's breach during the period 1 January 2010 to 31 December 2012.

6.6 The Authority added the penalties calculated at paragraph 6.5 a) and b) above to produce a total pre-discount financial penalty of £17,682,730.

6.7 Santander agreed to settle at an early stage of the Authority's investigation. The Firm therefore qualified for a 30% (Stage 1) discount under the Authority's executive settlement procedures. The Authority therefore imposes on Santander a financial penalty of £12,377,800.

**Breach of Principle 7 during the period 1 April 2004 to 5 March 2010
(Financial promotion failings in relation to Premium Investments)**

6.8 All references to DEPP in this section are references to the version of DEPP in force prior to 6 March 2010.

6.9 In determining whether a financial penalty is appropriate, and if so, the appropriate level of financial penalty the Authority is required to consider all the relevant circumstances of a case. DEPP 6.5.2 G identifies a non-exhaustive list of factors that may be relevant in determining the level of financial penalty. The Authority considers that the following factors are particularly relevant in this case.

Deterrence (DEPP 6.5.2 G (1))

6.10 The Authority considers that the financial penalty imposed on Santander will promote high standards of regulatory conduct by deterring firms which have breached regulatory requirements from committing further contraventions, helping

to deter other firms from committing contraventions and demonstrating generally to firms the benefit of compliant behaviour.

- 6.11 It strengthens the message to the industry that it is of fundamental importance that firms providing investment advice to retail customers take reasonable care to ensure that financial promotions and communications with customers in relation to investments are fair, clear and not misleading.

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

- 6.12 The Authority considers Santander's breach of Principle 7 during the period 1 April 2004 to 5 March 2010 to be serious for the following reasons:

- a) the failings continued undetected for a number of years;
- b) the failings were not identified by the Firm, but by the Authority as part of Phase 2 of the Authority's Wealth Management Thematic Review; and
- c) the failings occurred in a period during which the Authority brought and published other Enforcement cases against a number of firms for misleading financial promotions. As such, Santander ought to have been aware of the need to ensure that financial promotions were not misleading.

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

- 6.13 The Authority does not consider that Santander committed the breach deliberately or recklessly.

The size, financial resources and other circumstances of the firm (DEPP 6.5.2 G (5))

- 6.14 The Authority has considered Santander's size and its financial resources.

- 6.15 The Authority has no evidence to suggest that Santander is unable to pay the financial penalty.

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

- 6.16 It is not practicable for the Authority to quantify any financial benefit that Santander may have derived directly from its breach at this stage.

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

6.17 As set out at paragraph 2.11 above Santander will conduct a redress exercise for both past and current Premium Investments customers for services promoted by Santander that differed from the services customers in fact received.

Other action taken by the Authority (DEPP 6.5.2 G (10))

6.18 In determining whether and what financial penalty to impose on Santander, the Authority has taken into account action taken by the Authority in relation to other authorised persons for comparable behaviour.

Conclusion

6.19 The Authority considers that Santander's breach of Principle 7 during the period 1 April 2004 to 5 March 2010 merits a financial penalty of £1,000,000.

6.20 Santander agreed to settle at an early stage of the Authority's investigation. The Firm therefore qualified for a 30% (Stage 1) discount under the Authority's executive settlement procedures. The Authority therefore imposes on Santander a financial penalty of £700,000 for its breach of Principle 7 in the period prior to 6 March 2010.

**Breach of Principle 7 during the period 6 March 2010 to 31 December 2012
(Financial promotion failings in relation to Premium Investments)**

6.21 All references to DEPP in this section are references to the version of DEPP implemented as of 6 March 2010 and currently in force.

6.22 In respect of conduct occurring on or after 6 March 2010, the Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5A sets out the details of the five-step framework that applies in respect of financial penalties imposed on firms.

Step 1: disgorgement

6.23 Pursuant to DEPP 6.5A.1 G, at Step 1 the Authority seeks to deprive a firm of the financial benefit derived directly from the breach where it is practicable to quantify this.

6.24 It is not practicable for the Authority to quantify any financial benefit that Santander may have derived directly from its breach at this stage. However, as set

out at paragraph 2.11 above Santander will carry out a redress exercise for both past and current Premium Investments customers in relation to services promoted and charged for by Santander that differed from the services customers received.

6.25 Step 1 is therefore £0.

Step 2: the seriousness of the breach

6.26 Pursuant to DEPP 6.5A.2 G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. Where the amount of revenue generated by a firm from a particular product line or business area is indicative of the harm or potential harm that its breach may cause, that figure will be based on a percentage of the firm's revenue from the relevant products or business area.

6.27 The Authority considers that the revenue recognised by Santander during the period 6 March 2010 to 31 December 2012 in respect of sales made during the same period of Premium Investments is indicative of the harm or potential harm caused by its breach in this case. The Authority therefore considers Santander's relevant revenue to be £10,375,210.

6.28 In deciding on the percentage of the relevant revenue that forms the basis of the Step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 20%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on firms there are the following five levels:

Level 1 – 0%

Level 2 – 5%

Level 3 – 10%

Level 4 – 15%

Level 5 – 20%

6.29 In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly. DEPP 6.5A.2 G (11) lists factors likely to be considered 'level 4 or 5 factors'. The Authority does not consider that any of these factors apply.

6.30 DEPP 6.5A.2 G (12) lists factors likely to be considered 'level 1, 2 or 3 factors'. Of these, the Authority considers the following factors to be relevant:

- a) there was no risk of loss to consumers, investors or other market users individually and in general;
- b) there was no actual or potential effect on the orderliness of, or confidence in, markets as a result of the breach;
- c) there is no evidence that the breach indicates a widespread problem or weakness at the Firm; and
- d) the breach was committed negligently or inadvertently.

6.31 The Authority also considers that the following factors are relevant:

- a) the failings continued undetected for a number of years;
- b) the failings were not identified by the Firm, but by the Authority as part of the second phase of the Authority's Wealth Management thematic review; and
- c) the failings occurred in a period during which the Authority brought and published other Enforcement cases against a number of firms for misleading financial promotions. As such, Santander ought to have been aware of the need to ensure that financial promotions were not misleading.

6.32 Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 2 and so the Step 2 figure is 5% of £10,375,210.

6.33 Step 2 is therefore £518,760.

Step 3: mitigating and aggravating factors

6.34 Pursuant to DEPP 6.5A.3 G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breach.

6.35 The Authority considers that the Firm's previous disciplinary history aggravates the breach. In February 2012, the Authority imposed a financial penalty of £1.5 million on Santander for breaches of Principles 2 and 7 and COBS 6.1.16. Between 1 October 2008 and 6 October 2010, Santander failed to confirm under which circumstances its structured products would be covered by the FSCS.

6.36 The Authority considers that the following factors mitigate the breach:

- a) As set out at paragraph 2.11 above Santander will conduct a redress exercise for both past and current Premium Investments customers for services promoted by Santander that differed from the services customers in fact received; and
- b) Santander has co-operated fully with the Authority throughout its enforcement investigation.

6.37 Having taken into account these aggravating and mitigating factors, the Authority considers that the Step 2 figure should remain unchanged.

6.38 Step 3 is therefore £518,760.

Step 4: adjustment for deterrence

6.39 Pursuant to DEPP 6.5A.4 G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the firm who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.

6.40 The Authority considers that the Step 3 figure of £518,760 represents a sufficient deterrent to Santander and others, and so has not increased the penalty at Step 4.

6.41 Step 4 is therefore £518,760.

Step 5: settlement discount

6.42 Pursuant to DEPP 6.5A.5 G, if the Authority and the firm on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the firm reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

6.43 The Authority and Santander reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.

6.44 Step 5 is therefore £363,100.

Breaches of Principles 7 and 9 during the period 1 January 2010 to 31 December 2012 (Investment sales process failings)

6.45 All references to DEPP in this section are references to the version of DEPP implemented as of 6 March 2010 and currently in force.

6.46 Where the gravamen of the conduct occurred on or after 6 March 2010, the Authority applies a five-step framework to determine the appropriate level of financial penalty to all of the conduct in question. DEPP 6.5A sets out the details of the five-step framework that applies in respect of financial penalties imposed on firms.

Step 1: disgorgement

6.47 It is not practicable for the Authority to quantify any financial benefit that Santander may have derived directly from its breach at this stage. However, as set out at paragraph 2.11 above Santander will carry out a customer contact exercise which will provide customers with an opportunity to withdraw from their investment or have the sale reviewed.

6.48 Step 1 is therefore £0.

Step 2: the seriousness of the breach

6.49 The Authority considers that the revenue recognised by Santander during the period 1 January 2010 to 31 December 2012 in respect of sales made during the same period of Premium Investments and Non-Premium Investments is indicative of the harm or potential harm caused by its breach in this case. The Authority therefore considers Santander's relevant revenue to be £107,759,803.

6.50 In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly. DEPP 6.5A.2 G (11) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factor to be relevant:

The breach revealed serious and systemic weaknesses in Santander's investment advice process. Its failings were serious and a large number of customers, including customers who may have been vulnerable were potentially exposed to a significant risk of being recommended investments

that were unsuitable for them and of not being adequately informed about their features and risks.

6.51 DEPP 6.5A.2 G (12) lists factors likely to be considered 'level 1, 2 or 3 factors'. Of these, the Authority considers the following factors to be relevant:

- a) there was no actual or potential effect on the orderliness of, or confidence in, markets as a result of the breach; and
- b) the breach was committed negligently or inadvertently.

6.52 Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 3 and so the Step 2 figure is 10% of £107,759,803.

6.53 Step 2 is therefore £10,775,980.

Step 3: mitigating and aggravating factors

6.54 The Authority considers that the following factors aggravate the breach:

- a) Santander's response to the Dear CEO Letter in August 2011 was too positive and misleading. Santander should have informed the Authority that it had identified that its sales process did not fully meet the Authority's requirements, the outcome of the file review exercise and the steps that it proposed to take to remedy the issues highlighted. Santander informed the Authority in early 2012 that in response to the Authority's papers on risk and suitability, it was making '*ongoing improvements and enhancements*' in relation to suitability and conduct risk. Santander did not however make the Authority aware of the extent of the issues that had been identified and the details of the work that Santander had undertaken to remedy them until October 2012.
- b) The Authority has repeatedly stressed in its publications the importance of firms taking appropriate steps to ensure that suitable investment advice is given to customers and, where ongoing investment services are provided, that investments remain suitable for customers' circumstances on an ongoing basis.
- c) The Authority imposed a financial penalty of £1.5 million on Santander in February 2012 for breaches of Principles 2 and 7 and COBS 6.1.16. Between 1 October 2008 and 6 October 2010, Santander failed to confirm under which circumstances its structured products would be covered by the FSCS.

- d) Santander remedied the deficiencies highlighted by the Authority's earlier Enforcement action in relation to unclear information provided to customers about the scope of FSCS protection. However, the Authority found that in 15% of mystery shops, advisers made misleading statements, did not explain and/or did not provide documents in relation to FSCS protection. Some advisers suggested that FSCS protection was available for all of Santander's investment products. Given the monetary and product limitations of FSCS protection, these sorts of statements were misleading.

6.55 The Authority considers that the following factors mitigate the breach:

- a) As set out at paragraph 2.11 above Santander will conduct a customer contact exercise in respect of relevant customer sales. Santander will contact all affected customers offering them the opportunity to withdraw from their investment or have their sale reviewed. In order to demonstrate its commitment to treating customers fairly, the option to withdraw from investments will be available to all affected customers regardless of whether or not the investment sale was suitable for them.
- b) Santander proactively made a number of improvements to its sales process. This included reviewing its investment sales processes in response to the Authority's Finalised Guidance of March 2011 titled '*Assessing Suitability: Establishing the risks that a customer is willing and able to take and making a suitable investment selection,*' together with the Dear CEO Letter. Santander also instructed external consultants to review parts of its investment sales process and samples of sales files. Santander committed time and resource to remediating the deficiencies that were highlighted by these reviews and provided training and support for advisers as changes were introduced relating to minimum Retail Distribution Review professionalism requirements. This was during a period when a significant proportion of senior management resigned and moved to positions at other firms.
- c) After receiving the results of the Investment Advice Thematic Review, on 14 December 2012 Santander promptly took the decision to suspend its advisers from providing retail investment advice to new customers.
- d) Santander has co-operated fully with the Authority throughout its Enforcement investigation, including being open in sharing the results of its own initiative investigation into the response to the Dear CEO Letter which noted that the response was misleading. It concluded that at the time of the response to the

Dear CEO Letter there were weaknesses in its process for communicating with the Authority and there were also significant changes occurring within Santander. The Authority notes that Santander has since implemented a new process in respect of its communications with the Authority.

6.56 Having taken into account these aggravating and mitigating factors, the Authority considers that the Step 2 figure should be increased by 50%.

6.57 Step 3 is therefore £16,163,970.

Step 4: adjustment for deterrence

6.58 The Authority considers that the Step 3 figure of £16,163,970 represents a sufficient deterrent to Santander and others, and so has not increased the penalty at Step 4.

6.59 Step 4 is therefore £16,163,970.

Step 5: settlement discount

6.60 The Authority and Santander reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.

6.61 Step 5 is therefore £11,314,700.

Conclusion as to financial penalty

6.62 The Authority therefore imposes on Santander a financial penalty of £12,377,800 (£17,682,730 pre-discount).

7 PROCEDURAL MATTERS

Decision maker

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

7.2 This Final Notice is given under, and in accordance with section 390 of the Act.

Manner of and time for Payment

7.3 The financial penalty must be paid in full by Santander to the Authority by no later than 7 April 2014, 14 days from the date of the Final Notice.

If the financial penalty is not paid

- 7.4 If all or any of the financial penalty is outstanding on 8 April 2014, the Authority may recover the outstanding amount as a debt owed by Santander and due to the Authority.

Publicity

- 7.5 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 Authority must publish such information about the matter to which this notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
- 7.6 The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contacts

- 7.7 For more information concerning this matter generally, contact Guy Wilkes (direct line: 020 7066 7574) of the Enforcement and Financial Crime Division of the Authority.

Jamie Symington

Project Sponsor

Financial Conduct Authority, Enforcement and Financial Crime Division

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1 RELEVANT STATUTORY PROVISIONS

1.1 The Authority's operational objectives are set out in section 1B (3) of the Financial Services Act 2012 and include the consumer protection objective and promoting effective competition in the interests of consumers.

1.2 Section 206(1) of the Act provides:

'If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act... it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate.'

2 RELEVANT REGULATORY PROVISIONS

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

Principles for Businesses ("Principles")

2.2 The Principles are a general statement of the fundamental obligations of firms under the regulatory system and are set out in the Authority's Handbook. They derive their authority from the Authority's rule-making powers set out in the Act. The relevant Principles are as follows.

2.3 Principle 7 (Communications with clients) provides that:

'A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is fair, clear and not misleading.'

2.4 Principle 9 (Customers: relationships of trust) provides 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.'

Conduct of Business (“COB”)

- 2.5 The Authority’s Conduct of Business Rules (COB) applied to authorised firms prior to 1 November 2007.

Clear fair and not misleading communication

- 2.6 Chapter 2 of COB sets out the Authority’s rules governing communicating with clients.

- 2.7 COB 2.1.3 R provides:

‘When a firm communicates information to a customer, the firm must take reasonable steps to communicate in a way which is fair, clear and not misleading.’

Form and content of financial promotions

- 2.8 COB 3.8.4 R (1) provides:

‘A firm must be able to show that it has taken reasonable steps to ensure that a non-real time financial promotion is fair, clear and not misleading.’

Conduct of Business Sourcebook (“COBS”)

- 2.9 The Authority’s Conduct of Business Sourcebook (COBS) has applied to authorised firms since 1 November 2007.

Conduct of business obligations

- 2.10 COBS 2.1.1 R (1) provides:

‘A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client’s best interests rule).’

Communicating with clients

- 2.11 Chapter 4 of COBS sets out the Authority’s rules governing communicating with clients, including those relating to financial promotions.

- 2.12 COBS 4.2.1 R provides:

‘(1) A firm must ensure that a communication or a financial promotion is fair, clear and not misleading.’

(2) This rule applies in relation to:

(a) a communication by the firm to a client in relation to designated investment business other than a third party prospectus;

(b) a financial promotion communicated by the firm that is not:

(i) an excluded communication;

(ii) a non-retail communication;

(iii) a third party prospectus; and

(c) a financial promotion approved by the firm.'

2.13 COBS 4.5.2 R provides:

'A firm must ensure that information:

(1) includes the name of the firm;

(2) is accurate and in particular does not emphasise any potential benefits of relevant business or a relevant investment without also giving a fair and prominent indication of any relevant risks;

(3) is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received; and

(4) does not disguise, diminish or obscure important items, statements or warnings.'

2.14 COBS 4.5.6 R provides:

'(1) If information compares relevant business, relevant investments, or persons who carry on relevant business, a firm must ensure that:

(a) the comparison is meaningful and presented in a fair and balanced way; and

(b) in relation to MiFID or equivalent third country business;

(i) the sources of the information used for the comparison are specified; and

(ii) the key facts and assumptions used to make the comparison are included.

(2) In this rule, in relation to MiFID or equivalent third country business, ancillary services are to be regarded as relevant business.'

Information about the firm, its services and remuneration

2.15 Chapter 6 of COBS sets out the Authority's rules governing disclosure of information to clients.

2.16 COBS 6.1.4 R provides:

'A firm must provide a retail client with the following general information, if relevant:

(1) the name and address of the firm, and the contact details necessary to enable a client to communicate effectively with the firm;

(2) in the case of MiFID or equivalent third country business, the languages in which the client may communicate with the firm, and receive documents and other information from the firm;

(3) the methods of communication to be used between the firm and the client including, where relevant, those for the sending and reception of orders;

(4) a statement of the fact that the firm is authorised and the name of the competent authority that has authorised it;

(5) in the case of MiFID or equivalent third country business, the contact address of the competent authority that has authorised the firm;

(6) if the firm is acting through an appointed representative or, where applicable, a tied agent, a statement of this fact specifying the EEA State in which that appointed representative or tied agent is registered;

(7) the nature, frequency and timing of the reports on the performance of the service to be provided by the firm to the client in accordance with the rules on reporting to clients on the provision of services (COBS 16);

(8)

(a) in the case of a common platform firm, a description, which may be provided in summary form, of the conflicts of interest policy;

(b) other than in the case of a common platform firm, when a material interest or conflict of interest may or does arise, the manner in which the firm will ensure fair treatment of the client;

(9) in the case of a common platform firm, at any time that the client requests it, further details of the conflicts of interest policy.

2.17 COBS 6.1.9 R provides:

'A firm must provide a retail client with information on costs and associated charges including, if applicable:

(1) the total price to be paid by the client in connection with the designated investment or the designated investment business or ancillary services, including all related fees, commissions, charges and expenses, and all taxes payable via the firm or, if an exact price cannot be indicated, the basis for the calculation of the total price so that the client can verify it. The commissions charged by the firm must be itemised separately in every case;

(2) if any part of the total price referred to (1) is to be paid in or represents an amount of foreign currency, an indication of the currency involved and the applicable currency conversion rates and costs;

(3) notice of the possibility that other costs, including taxes, related to transactions in connection with the designated investment or the designated investment business may arise for the client that are not paid via the firm or imposed by it; and

(4) the arrangements for payment or other performance.'

2.18 COBS 6.1.13 R provides:

'Except where expressly provided, a firm must provide the information required by this section in a durable medium or via a website (where it does not constitute a durable medium) where the website conditions are satisfied.'

2.19 COBS 6.1.16 R provides:

'(1) A firm carrying on MiFID business must make available to a client, who has used or intends to use those services, information necessary for the identification of the compensation scheme or any other investor-compensation scheme of which the firm is a member (including, if relevant, membership through a branch) or any alternative arrangement provided for in accordance with the Investor Compensation Directive.

(2) The information under (1) must include the amount and scope of the cover offered by the compensation scheme and any rules laid down by the EEA State pursuant to article 2 (3) of the Investor Compensation Directive.

(3) A firm must provide, on the client's request, information concerning the conditions governing compensation and the formalities which must be completed to obtain compensation.

(4) The information provided for in this rule must be made available in a durable medium or via a website if the website conditions are satisfied in the official language or languages of the EEA State.'

Suitability

2.20 Chapter 9 of COBS sets out the Authority's rules for governing suitability (including basic advice).

2.21 COBS 9.2.1 R provides:

'(1) A firm must take reasonable steps to ensure that a personal recommendation, or a decision to trade, is suitable for its client.

(2) When making the personal recommendation or managing his investments, the firm must obtain the necessary information regarding the client's:

(a) knowledge and experience in the investment field relevant to the specific type of designated investment or service;

(b) financial situation; and

(c) investment objectives;

so as to enable the firm to make the recommendation, or take the decision, which is suitable for him.'

2.22 COBS 9.2.2 R provides:

'(1) A firm must obtain from the client such information as is necessary for the firm to understand the essential facts about him and have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of managing:

(a) meets his investment objectives;

(b) is such that he is able financially to bear any related investment risks consistent with his investment objectives; and

(c) is such that he has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.

(2) The information regarding the investment objectives of a client must include, where relevant, information on the length of time for which he wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.

(3) The information regarding the financial situation of a client must include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments.'

2.23 COBS 9.2.3 R provides:

'The information regarding a client's knowledge and experience in the investment field includes, to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved, information on:

(1) the types of service, transaction and designated investment with which the client is familiar;

(2) the nature, volume, frequency of the client's transactions in designated investments and the period over which they have been carried out;

(3) the level of education, profession or relevant former profession of the client.'

2.24 COBS 9.2.5 R provides:

'A firm is entitled to rely on the information provided by its clients unless it is aware that the information is manifestly out of date, inaccurate or incomplete.'

2.25 COBS 9.2.6 R provides:

'If a firm does not obtain the necessary information to assess suitability, it must not make a personal recommendation to the client or take a decision to trade for him.'

2.26 COBS 9.4.7 R provides:

'The suitability report must, at least:

(1) specify the client's demands and needs;

(2) explain why the firm has concluded that the recommended transaction is suitable for the client having regard to the information provided by the client; and

(3) explain any possible disadvantages of the transaction to for the client.'

Decision Procedure and Penalties Manual ("DEPP")

2.27 Chapter 6 of DEPP, which forms part of the Authority's Handbook, sets out the Authority's statement of policy with respect to the imposition and amount of financial penalties under the Act. Changes to DEPP were introduced on 6 March 2010. Given that the misconduct occurred both before and after that date, the Authority has had regard to the provisions of DEPP in force before and after that date.

The Enforcement Manual

2.28 The Enforcement Manual, which was in force until 28 August 2007, set out the Authority's approach to exercising its enforcement powers prior to that date.

The Enforcement Guide

2.29 The Enforcement Guide sets out the Authority's approach to exercising its main enforcement powers under the Act.

2.30 Chapter 7 of the Enforcement Guide sets out the Authority's approach to exercising its power to impose a financial penalty.