THIS DECISION NOTICE WAS SUPERSEDED BY A FINAL NOTICE DATED 28 FEBRUARY 2013

DECISION NOTICE

To: **George Leavey**

Date of Birth: **19 October 1973**

Date: **23 September 2011**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") has decided to take the following action:

1. ACTION

1.1. For the reasons set out in this notice and pursuant to section 56 of the Financial Services and Markets Act 2000 ("the Act"), the FSA has decided to prohibit you, George Leavey, from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

2. REASONS FOR THE ACTION

2.1. The FSA has decided to take this action as a result of your conduct as the managing partner of First Colonial Investments LLP ("FCI"/"the Firm") between 7 September 2007 and 30 April 2009 ("the Relevant Period"). During this period, you demonstrated a serious lack of integrity in that you recklessly:

(1) directed FCI's business and carried out a significant influence function at FCI without any FSA approval to hold a controlled function;

(2) allowed FCI (an appointed representative) to place client money in its ordinary business bank accounts and in that of another company, thereby placing its principal, pursuant to section 39 of the Act, in breach of the FSA's rules relating to clients' assets;

(3) failed to segregate client money from FCI's own money, with the result that client money was used to pay FCI's ordinary business expenses;

(4) allowed FCI to sell shares to clients when you knew that there was a pattern of non-delivery of shares to FCI's clients;

(5) approved and signed letters inviting clients to invest in First Colonial Wealth Management plc ("FCWM plc") on the basis of unfair, unclear and misleading financial promotions issued by FCI regarding the flotation of FCWM plc and a buy-back or refund guarantee from FCI. Clients invested funds in reliance on those representations; and

(6) allowed FCI to continue to undertake regulated activities after FCI's status as an appointed representative had been terminated.

2.2. Further, you demonstrated a serious lack of competence and capability in that you failed to identify and remedy unsuitable sales practices by FCI's sales advisers. You were in charge of FCI's stockbroking business and responsible for managing FCI's sales advisers. In particular, you failed to take reasonable steps to ensure that FCI had in place adequate systems and controls to monitor sales and ensure the suitability of sales for FCI's clients.

2.3. As a result of the nature and seriousness of the breaches, the FSA has concluded that you fail to meet the minimum regulatory standards in terms of integrity, competence and capability and are not a fit and proper person to perform any functions in relation to regulated activities.

2.4. Accordingly, the FSA has decided to make an order pursuant to section 56 of the Act prohibiting you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person, or exempt professional firm ("the Prohibition Order").

3. RELEVANT STATUTORY PROVISIONS AND GUIDANCE

3.1. The FSA's statutory objectives, set out in section 2(2) of the Act, include the protection of consumers and the maintenance of market confidence.

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

Relevant Guidance

3.3. In deciding to take the action set out in this notice, the FSA has had regard to guidance published in the FSA Handbook and in the Enforcement Guide ("EG").

3.4. The FSA's policy for exercising its power to make a prohibition order and withdraw a person's approval is set out in Chapter 9 of EG. EG 9.1 states that the FSA may prohibit an individual where it considers this is appropriate to achieve one or more of its regulatory objectives.

3.5. EG 9.9 and 9.18 state that the FSA will take into account all the relevant considerations when deciding to make a prohibition order. These considerations include:

(1) whether the individual is fit and proper to perform functions in relation to regulated activities, assessed against the criteria in FIT;

(2) the relevance and materiality of any matters indicating unfitness; and

(3) the severity of the risk which the individual poses to consumers and to confidence in the financial system.

3.6. EG 9.12 provides examples of behaviour which have previously resulted in the FSA deciding to issue a prohibition order or withdraw an individual's approval. These examples include serious lack of competence and serious breaches of the Statements of Principle for approved persons, such as providing misleading information to clients and giving clients poor or inaccurate advice.

Fit and proper test for Approved Persons ("FIT")

3.7. The FSA Handbook sets out the fit and proper test for approved persons. The purpose of FIT is to set out the main criteria for assessing the fitness and propriety of a candidate for a controlled function, and to assess the continuing fitness and propriety of an approved person. As set out above it is also a relevant consideration when the FSA is considering whether to prohibit an individual.

3.8. FIT 1.3.1G provides that the FSA will have regard to certain factors when assessing fitness and propriety. Two of the most important factors will be the person's honesty and integrity, and their competence and capability.

3.9. In determining a person's honesty and integrity, FIT 2.1.3G provides that the FSA will have regard to all relevant matters including, but not limited to, whether the person has been a director, partner or concerned in the management of a business that has gone into insolvency, liquidation or administration while the person has been connected with that organisation, been dismissed from employment, and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system.

3.10. In determining a person's competence and capability, FIT 2.2.1G provides that the FSA will have regard to all relevant matters including, but not limited to, whether the person satisfies the relevant FSA training and competence requirements in relation to the controlled function the person performs or is intended to perform, and whether the person has demonstrated by experience and training that the person is suitable, or will be suitable if approved, to perform the controlled function.

4. FACTS AND MATTERS

4.1. FCI was a small stockbroking firm in central London. It was set up in 2006 to conduct stockbroking activities, specialising in offerings of a company's shares to raise capital privately prior to its initial public offering ("pre-IPO") and smaller companies listed on the AIM and PLUS markets. Shares from a pre-IPO are likely to be very difficult to sell until a public offering is completed. PLUS is a recognised investment exchange and AIM is the London Stock Exchange's Alternative Investment Market; both AIM and PLUS specialise in smaller growing companies.

4.2. FCI operated as an appointed representative of Direct Sharedeal Ltd ("DSL") from 7 September 2007 to 31 March 2009. FCI is now in liquidation. The Official Receiver was appointed as liquidator on 4 November 2009. The FSA published a Final Notice in respect of DSL on 18 February 2010.

4.3. FCI's sales advisers made telephone sales promoting high risk securities to retail clients.

4.4. You acted as the managing partner of FCI and were the primary figure involved in the supervision and management of the day-to-day running of FCI.

4.5. You were also in charge of the stockbroking business of the Firm. You were ultimately responsible for FCI's recommendations and sales of shares to clients, and were the signatory on the FCWM plc financial promotion letters sent to clients. Your responsibilities were to manage FCI and its staff, liaise with other senior management, assess operational risks and raise funds for FCI. You managed the relationship with DSL and were responsible for overseeing FCI's finances, including financial control and banking. You were also responsible for implementing a compliance monitoring system to ensure that FCI complied with the FSA's regulatory requirements.

Failure to register as an approved person

4.6. You were the managing partner at FCI and needed FSA approval to carry out that role. Your job description at FCI stated that your role constituted a significant influence controlled function requiring FSA approval. On 30 October 2007 DSL, on your

behalf, applied to the FSA for you to be approved to hold a significant influence function - controlled function CF 1 (Director) - with FCI.

4.7. Your application was incomplete and you never received approval from the FSA. On 14 April 2008 a Form B was signed by DSL to withdraw the application and on 9 May 2008 the FSA received your signed copy of that Form B. No further applications were made to the FSA by you or on your behalf to be an approved person at the Firm.

4.8. Although never approved, you had been carrying out a significant influence role at FCI since the Firm started up and continued to do so after your application was withdrawn. You headed up the reporting lines at FCI, signed off external correspondence, including financial promotions, as managing partner, appeared on internal organograms and the quarterly newsletter as managing partner and dealt with clients as managing partner.

4.9. You signed the Appointed Representative Agreement between DSL and FCI on behalf of FCI as director in September 2007, two account opening application forms as managing partner and were one of the designated members registered at Companies House as a partner of FCI since 23 November 2006. You also signed a job description containing a statement that your position involved carrying out a significant influence function, and accepted in interview with the FSA that you were the day to day "driving force" of FCI. Accordingly, you were performing a significant influence function at FCI, but had not been approved to do so.

4.10. You have stated that you believed that you did not need to be an approved person in relation to your role as managing partner of FCI as there were others at FCI who held a significant influence function at FCI during the Relevant Period and that you believed you were not involved in the regulated business of FCI. Both of these beliefs were incorrect. You were involved in the regulated activity at FCI and, even if for some of the Relevant Period there were others holding significant influence functions at FCI, you still should have been an approved person.

Sales practices and compliance

4.11. You were responsible for ensuring that all sales were conducted compliantly, and for making sure written sales procedures were in place and understood by employees who were appropriately trained, qualified and approved.

4.12. FCI had a compliance officer, but the main compliance oversight was outsourced to an external consultant. You relied on the compliance officer of FCI and the external compliance consultant to conduct compliance monitoring and the principal point of contact with the external consultant was the compliance officer.

4.13. The extent of your involvement in ensuring that sales were conducted compliantly was to receive reports from the external consultant and attend some compliance meetings. You accepted in interview that you did not take any action to monitor the level of compliance oversight to ensure that in practice FCI's sales practices were compliant and assumed that others were adequately discharging this responsibility.

4.14. You knew that there were periods when no compliance monitoring was carried out because of a dispute with the external consultant and that no alternative arrangements to cover the absence of the external consultant were made during this time.

4.15. In particular, you allowed FCI's business to go unmonitored for extended periods of time, failed to ensure that compliance oversight adequately covered the actual conduct of telephone sales calls and failed to implement and maintain effective client money controls. The result of this failure of control was serious shortcomings in how FCI dealt with its clients, including the suitability of its advice and its sales calls.

Suitability

4.16. Out of 20 calls sampled, one call did not contain any sales recommendation or result in a trade. Based on available client information, eight out of 19 clients whose transactions were reviewed by the FSA did not match FCI's own suitability criteria. Three clients were recommended PLUS and private equity shares, which are higher risk investments, despite their Client Information Forms indicating that they did not want to invest in higher risk investments.

4.17. In addition, recorded trading limits agreed with clients were exceeded, miscalculated or the limit used was not evidenced in 12 out of 19 cases.

4.18. Once a client had been accepted, there was little or no recorded information relating to their existing liabilities, and in none of the calls did the sales advisers make any enquiries as to the client's financial situation, changes in their financial circumstances or their investment objectives.

4.19. In the calls reviewed by the FSA, where clients did volunteer information about their financial circumstances or past investment experience, that information suggested that the shares recommended by FCI were either unaffordable for the client or unsuitable for that client's investment portfolio and objectives. However the sales adviser continued to recommend and sell the shares. In one call the adviser laughed off the client's poor financial position and told the client he was exaggerating.

Sales pitches

4.20. Sales advisers were given a research note to use in making their sales recommendations. Despite this, in 18 of the calls reviewed, the sales recommendation was unbalanced and incomplete, and was therefore potentially misleading.

4.21. You have acknowledged that although you knew there was a risk that sales pitches could be misleading, you did not take any steps to ensure they were balanced or contained risk warnings. You provided stock information to the brokers, but this did not cover risk warnings or the use of appropriate sales techniques. You have accepted that there may have been occasions when the sales advisers did not give the necessary risk warnings and may have made misleading statements, and that you did not take steps to satisfy yourself that FCI's sales practices were compliant.

4.22. In all the calls reviewed by the FSA, short term price projections were made but not supported by the stock information provided to sales advisers by FCI. For example, in 12 calls a 300% upside was suggested as "*very conservative*" and in one call that it was also "*very achievable*" according to FCI's analyst.

4.23. On seven occasions, the adviser suggested that they were expecting positive announcements, and clients were told that there were "*other things happening within the company which we were told yesterday but I cannot tell you about*". In five calls the client was either informed that "*the price will double on the back of those announcements*", that double digit figures were achievable or that the price would go up by 100% on the back of announcements. This risked misleading the clients as to the prospects of the securities.

Client money

4.24. As an exempt firm, in accordance with SUP 12.6.5R FCI was not authorised to hold client money. This was stated in FCI's own compliance manual and client application forms. Despite this, client money was received and held by FCI, and as managing partner, you did not ensure that adequate arrangements were made to safeguard client money and prevent use of the client money for the Firm's own account.

4.25. DSL was aware from April 2008 that FCI was holding client money prior to the monies being paid to DSL for transactions to be cleared through DSL. However, the client monies accepted by FCI were also accepted for non-DSL transactions. Furthermore, there was no safeguarding or segregation of client money, and there were no reasonable attempts to minimise the risk of the loss or diminution of client money.

4.26. At least £174,578 of client money was paid into an FCI bank account identified as a client account between 14 December 2007 and 15 August 2008 despite FCI not being authorised to hold client money. Monies were then transferred out of this account to FCI's main bank account.

4.27. After these accounts were closed, and new banking arrangements were made, between 21 August 2008 and 4 November 2008 at least another £271,825 was received from FCI's clients and paid into a general bank account which FCI used to pay its expenses.

4.28. At your direction, when FCI's banking arrangements changed again in November 2008, a bank account in the name of a sister company was set up with two employees of FCI as the signatories. The sister company was not an appointed representative of any FSA regulated firm, nor was it an authorised person. Despite this, you instructed

FCI sales advisers to instruct clients to pay money into the sister company's bank account which was then used to pay expenses At least a further £437,494 of client money was paid into that account.

4.29. The effect of these arrangements was that client money was put at risk twice. First, by initially holding client money in an FCI account when FCI was not authorised to hold this money, and secondly, by then placing client money into an account with another unauthorised entity. In total at least £883,897 of client money was not segregated from the Firm's monies and therefore may have been inappropriately used by the Firm for its own purposes. You admitted that you could not separately identify client monies as the records would simply show the cash balance held at the bank.

Non-delivery of shares

4.30. You have accepted that FCI displayed a pattern of conduct in repeatedly not delivering shares to clients. This occurred with at least six stocks. Clients would pay for these shares, but they were not always delivered to them or to a nominee account. You have stated that this was due to problems with FCI obtaining the shares because of a commercial disagreement with the company whose shares were being sold, or the counterparty who was providing the shares to FCI, or financial difficulties at the company whose shares were being sold. In the case of FCWM, there was no new issue of shares and the company did not float on PLUS.

4.31. As a result, a pattern arose whereby FCI sold shares to clients, banked client money in respect of those sales of shares (in a bank account which did not distinguish between client funds and FCI funds, as set out above) and failed to deliver shares to clients. You were fully aware of these problems and the subsequent complaints from clients regarding non-delivery of shares, yet you did not ensure FCI stopped selling these shares to clients whilst these problems persisted.

FCWM plc financial promotion letters

4.32. You misled FCI clients in communications dated between 8 December 2008 and 31 March 2009 containing an invitation to invest in First Colonial Wealth Management plc ("FCWM plc"). FCWM plc operated as the wealth management arm of FCI for

FCI's high net-worth clients. FCI planned to incorporate the wealth management side of the business as a separate company and to seek to raise £1 million of funding through flotation of the company and the issue of new shares.

4.33. The first version of the letter, signed by you, offered warrants in FCWM plc that would be converted to shares at a 50% discount on the flotation price.

4.34. The later versions offered shares in FCWM plc and were signed by you as managing partner and made the following representations:

(1) FCWM plc would be floating on PLUS on or about a particular date;

(2) the shares would be offered at 12p, which was a 50% discount of the flotation price of 25p per share;

(3) FCI guaranteed the client could sell the shares back to FCI at 18p one month after the float;

(4) the offer was on a first come first served basis; and

(5) if the float did not take place the amount originally invested by the client in FCWM plc would be repaid in full by FCI.

4.35. Each version of the letter stated a different date for flotation. The first version mentioned a flotation date of 12 January 2009; the second 9 March 2009, the third 30 March 2009; and the fourth "on approx 20 April 2009". You were unable to explain the basis of the forecast flotation dates.

4.36. A senior colleague closely involved in the proposal for flotation accepted that FCI was not ready to proceed with an application for flotation in February – March 2009 because of issues with the proposed vehicle for flotation, and was no nearer flotation when FCI ceased to be an appointed representative in April 2009. You therefore had no reasonable grounds for believing the dates for flotation set out in the letters were achievable.

4.37. You accepted that you signed and approved the contents of the letters. You also accepted that FCI was in financial difficulty and could not explain how FCI could

deliver on the promise to buy back the shares at 18p per share or refund the clients' investment if the proposed flotation did not take place. Over the period of financial promotion of FCWM plc, FCI had no cash, few realisable assets and a substantial number of creditors.

4.38. In total, FCI's clients paid at least £241,848 for shares in FCWM plc. However, they received contract notes describing the shares as ones purchased in F C Wealth Management. FCI's plan for flotation changed to incorporating a limited company that would reverse into an existing company listed on PLUS. A new company was incorporated on 2 February 2009 entitled "F C Wealth Management Ltd". Clients were not informed of the proposed change of vehicle, and there is no evidence that shares in either company were delivered to clients.

Trading after termination of appointed representative agreement

4.39. DSL acted as FCI's principal from 7 September 2007 to 31 March 2009. However, contract notes show shares bought for FCI, by an agent of FCI, with trade dates between 2 April 2009 and 21 April 2009. You have stated that some of these were transactions undertaken on behalf of FCI's clients. Furthermore, contract notes relating to FCWM continued to be issued in April 2009 with settlement dates for these trades also in April 2009. At that time, FCI was not authorised, or exempt from requiring authorisation, to conduct investment business and you were aware that FCI was not regulated at that time.

5. ANALYSIS OF FAILINGS AND SANCTION

Prohibition order

5.1. By reason of the facts and matters set out in this notice, you demonstrated a serious lack of integrity as a result of your reckless behaviour, as set out below.

5.2. You directed FCI's business and carried out a significant influence function at FCI without FSA approval to hold a controlled function. The FSA considers that your behaviour in this regard was reckless as:

(1) your job descriptions stated that your role was one which was a significant influence function requiring specific FSA approval, and FCI's compliance manuals described you as 'Managing Partner subject to FSA authorisation';

(2) you knew that an application was submitted to the FSA for approval for you to hold a significant influence controlled function at FCI. You also knew that you did not have approval as you signed the form withdrawing your application; and

(3) despite this, you took no steps either to get approval or to cease exercising significant influence over FCI, and acted throughout the Relevant Period as FCI's managing partner, exercising significant influence over its activities (including its regulated activities).

5.3. You allowed FCI to place client money in its ordinary business account and that of another company, placing its principal in breach of the FSA's client money rules. The FSA considers that your behaviour in this regard was reckless as:

(1) FCI's compliance manual and client application forms made it clear that FCI was not allowed to hold client money;

(2) you knew that FCI was holding its clients' money as you were in overall charge of FCI's finances;

(3) you knew that client money was held in an unregulated entity as you directed the setting up of a bank account in that company's name and directed that client money was paid into that account; and

(4) despite knowing that client money was not safeguarded in breach of FCI's own procedures, you failed to put any controls in place to safeguard client money.

5.4. You were aware of the risk to FCI's clients as their money was co-mingled with FCI's money. You failed to segregate client money from FCI's own money so that client money was used to pay FCI's ordinary business expenses. The FSA considers that your behaviour in this regard was reckless as:

(1) you knew that FCI was holding clients' money as you were in overall charge of FCI's finances;

(2) you knew that separate bank accounts were not set up during the Relevant Period and that the accounts used to pay FCI's own expenses were the same accounts which held FCI's own client monies; and

(3) you knew that you could not separately identify client monies held in these accounts.

5.5. You allowed FCI to sell shares when a pattern had developed of FCI failing to deliver shares sold by FCI to its clients. The FSA considers that your behaviour in this regard was reckless as:

(1) you knew that FCI had failed to obtain and then deliver shares to its clients on repeated occasions;

(2) you knew that FCI continued to sell shares to clients, despite previous failures to deliver shares; and

(3) you accepted that FCI did not have the proper procedures in place to obtain the shares and deliver them to clients.

5.6. You approved and signed the FCWM plc financial promotion letters issued by FCI that invited clients to invest in FCWM plc on the basis of unfair, unclear and misleading representations. The FSA considers that your behaviour in this regard was reckless as:

(1) you approved promotions setting out dates for the flotations of FCWM plc. However, you were unable to explain the basis of those dates and you were aware that the proposed flotation date had repeatedly been missed. A senior colleague who was closely involved in the proposed flotation stated that FCWM plc was not ready to be floated on the forecast dates. You therefore had no reasonable grounds for believing those dates were achievable; and

(2) you approved promotions setting out a buy-back guarantee to investors in FCWM plc. You knew that FCI was in financial difficulties and you were unable to explain adequately the basis of FCI's guarantee. You therefore had no reasonable grounds for believing that FCI was in a financial position to honour those guarantees.

5.7. You allowed FCI to continue to undertake regulated activities after FCI's status as an appointed representative had been terminated. The FSA considers that your behaviour in this regard was reckless as:

(1) you knew that FCI was neither authorised nor exempt from authorisation; and

(2) despite this, whilst you were still managing partner, FCI continued to undertake securities transactions and bank client money.

5.8. You have demonstrated a lack of competence and capability by failing to take reasonable steps to ensure sales were conducted in compliance with the FSA's regulatory regime.

5.9. You have stated that you acted as managing partner without approval in the belief that you did not need approval because you did not believe that you were involved with the regulated business of FCI and that there were others at FCI who held significant influence functions. However, you accepted that your role at FCI involved you carrying out a significant influence function.

5.10. Your failure to act appropriately in carrying out a significant influence function put client money at risk, caused clients to purchase shares which could not be delivered, and caused clients to invest on the basis of unclear, unfair and potentially misleading statements and financial promotions. There was a high risk of consumer detriment as a result of your actions.

5.11. You pose a risk to consumers by reason of each of the findings set out in 5.2 to 5.8 above.

5.12. In reaching this conclusion the FSA has had regard to the criteria for assessing fitness and propriety contained in FIT 2.1 and 2.2. In particular, your misconduct

demonstrates a lack of readiness and willingness to comply with the requirements and standards of the regulatory system within the meaning of FIT 2.1.3 G (13). The FSA considers that you are not a fit and proper person to perform any function in relation to any regulated activity carried out by any authorised person, exempt person or exempt professional firm.

6. REPRESENTATIONS AND FINDINGS

6.1. Below is a brief summary of the key written representations made by you in this matter and how they have been dealt with. In making the decision which gave rise to the obligation to give this notice, the FSA has taken into account all of your representations, whether or not explicitly set out below.

6.2. In addition to making written representations, you requested to make oral representations. The FSA therefore informed you on 5 May 2011 that it had arranged for a meeting to take place at the FSA's offices in London on 7 July 2011.

6.3. On 21 June 2011, the FSA was informed by your representative that you had lost your passport for the second time in recent months, and were encountering difficulty in obtaining a new passport. Since you live abroad you requested that the meeting be postponed by at least one month. Taking into account the relevant circumstances, including the points raised on your behalf by your representative, but also the need for the FSA to act promptly in carrying out its regulatory functions, the FSA determined that the meeting should go ahead as planned. The FSA offered to contact any relevant party (such as the Foreign and Commonwealth Office) to confirm the timing and purpose of the meeting if this would assist you. The FSA also offered to make arrangements for you to be involved in the meeting by telephone, with your UK-based legal representatives in attendance, should you be unable to attend in person.

6.4. On 5 July 2011 the FSA was informed that your legal representatives were no longer acting on your behalf. You subsequently said that you could not make representations to the FSA, as you were unrepresented, unprepared and busy with work commitments. Therefore, although the FSA again stated that you could be involved in the meeting by telephone, you chose not to be. Again, taking into account all of the relevant

circumstances, the FSA decided to proceed with the meeting, which took place on 7 July 2011 as planned. At the meeting the FSA considered the written representations that had been provided on your behalf.

6.5. Following the meeting, and taking into account your non-attendance, the FSA gave you the opportunity to make further written representations if you wished to do so. Following protracted email correspondence in which you requested a number of extensions and copies of documents, you provided further written representations on 8 August 2011, and they were also taken into account by the FSA in making the decision which gave rise to the obligation to give this notice.

Your position and responsibilities

6.6. You made representations that:

(1) the position which you held at FCI had been misstated and the degree of influence which you exercised over the running of the business had been exaggerated. Your principal and primary role within the business was to generate investment in the business. You were in effect 'the face' of FCI and it was for this reason that you were described as the managing partner. Investment in the business would be the cornerstone of its success and it was in this sense that you described yourself as the 'driving force' behind FCI; and

(2) you were not responsible for the day-to-day running of the business and were not the person responsible for the management of the activities in question; any failings in this regard were largely caused by the behaviour of DSL. Such activities complained of either occurred in circumstances beyond your control or, where they did not, you took all of the steps which you reasonably could to solve the problems as effectively as possible.

6.7. The FSA has found that:

(1) you were the managing partner of FCI, both in name and in substance. You held yourself out as managing partner in circumstances where there was no need for you to do so in order to be seen as 'the face' of FCI, such as in

internal organograms and job descriptions, as well as in circumstances where third parties relied upon your position as managing partner, such as when opening bank accounts and in FCI's appointed representative agreement with DSL. Further, the other partners of FCI all described you as the managing partner who ran FCI; and

(2) in your capacity as a partner of FCI, and as managing partner, you were responsible for the matters set out in this notice irrespective of whether others shared a degree of culpability. All of the relevant matters were matters within your control, with regard to which you could have, but failed to, take appropriate action.

Lack of FSA approval

6.8. You made representations that:

(1) you only applied for approval as it was anticipated that you would perform a sales role, however, the partners of the firm subsequently decided that you should concentrate on increasing investment in the business, and the application was therefore withdrawn. It was also withdrawn in accordance with DSL's wishes; and

(2) you never intended to apply for a significant influence function, as you had been led to believe that this was DSL's role. Throughout the period in which you were employed by FCI you were never advised, and never believed, that the functions which you discharged at FCI amounted to 'controlled (significant influence) functions' that required you to be an approved person. Further, since another partner of the firm was approved to perform a significant influence function, you believed that you did not need to be.

6.9. The FSA has found that:

(1) the form you signed withdrawing your application did not state that the reason for withdrawing was that you were to concentrate on increasing investment in the business. Further, you did not give this as the reason in interview with the

FSA. Emails after May 2008 do not demonstrate that you restricted your role to increasing investment into FCI, but show your involvement in finance matters, customer complaints, settlement of trades, and receiving compliance reports. The FSA is therefore not persuaded by your submissions on this point; and

(2) your job description made explicit reference to the role amounting to a significant influence function, and you should have understood that you required approval, even where there was another approved person at FCI.

Client money

6.10. You made representations that:

(1) DSL asked FCI to hold client funds and gave FCI specific permission to do so; and

(2) you were not responsible for overseeing and monitoring the progress of client funds through the business. It was decided by the partners of FCI that the financial management of client funds would be the responsibility of the compliance officer. Further, throughout the period in which FCI were holding client funds, FCI was attempting to appoint an appropriate individual to act as finance director.

6.11. The FSA has found that:

(1) DSL could not give any valid permission for FCI to hold client money, and you should have been aware of this; and

(2) FCI's compliance manual noted that your responsibilities included financial control and banking at FCI, and you accepted in interview that you were in charge of finance at FCI. The fact that FCI held client money, and without safeguards, was therefore your responsibility (as well as being the responsibility of DSL, against whom the FSA has already taken action in this regard).

Non-delivery of shares to clients

6.12. You made representations that:

(1) you did everything that you could in order to effect the delivery of shares to clients and, notwithstanding the non-delivery of shares to clients, FCI continued to trade in stock simply in order to keep the business running. If it had failed to do so, there would have been no prospect of those non-delivered shares being delivered to clients.

6.13. The FSA has found that:

(1) you should not have allowed the continued selling of shares by FCI when you were aware of various counterparties' refusal to deliver shares. As a result, subsequent customers simply funded the continued trading of FCI and were themselves at risk of non-delivery of shares.

Financial promotions regarding the flotation of FCWM plc

6.14. You made representations that:

(1) FCI were professionally advised by a business consultant regarding the flotation of FCWM. He was very bullish about the flotation and at all times you believed that the dates which you were providing to clients were achievable; and

(2) you had secured the substantial investment of a Swiss merchant bank into the business, and it was as a result of this investment that you thought that the flotation would go ahead and FCWM was able to offer to guarantee a buy-back of the shares at 18p per share - if FCWM did not float as planned the funds of the clients would be refunded.

6.15. The FSA has found that:

(1) the dates you provided to clients were clearly not realistic in the circumstances, and you were aware of this; and

(2) you made no mention of having secured substantial investment from a Swiss merchant bank when interviewed by the FSA, and the FSA has found, and you have provided, no compelling evidence to support this claim. The FSA therefore considers that no such investment had been secured, and the offer of a buy-back guarantee was not a realistic representation.

Failure to identify and remedy unsuitable sales practices

6.16. You made representations that:

(1) DSL appointed its own compliance manager who was responsible for reviewing the implementation of the compliance systems; he visited the offices every two weeks and only ever raised minor problems with FCI's compliance. Following a commercial dispute with the compliance manager he ceased in this role and you attempted to replace him. You are now aware that the compliance manager appointed by DSL is not, and never was, registered with the FSA;

(2) FCI also employed an internal compliance manager whose main responsibility was to listen to the recordings of each and every sales call made by FCI's sales people in order to ensure that they were compliant with FCI's procedures. He was expected to raise any issues at the weekly meetings, and they would be dealt with immediately, with subsequent monitoring to ensure the problem was resolved; he also gave FCI's sales people training in compliance. DSL instructed you that this individual was sufficient for FCI's compliance requirements;

(3) you did not retain overall responsibility for the compliance of FCI. Weekly management meetings were scheduled by the partners in order to monitor the running of the business and to make decisions. You now realise that problems were arising regarding compliance that were not being brought to the attention of the partners. You deny that fault in this respect can be attributed to you; and

(4) the FSA has only sampled 20 sales calls; this is not a representative number considering the overall number of calls FCI made each year.

6.17. The FSA has found that:

(1) DSL did not appoint a 'compliance manager' for FCI. The appointed representative agreement required FCI to appoint a regulatory consultant acceptable to DSL as FCI's external regulatory consultant, not as a compliance manager, which it did. As an external compliance consultant he was not required to be FSA-approved. Even if you had believed that he acted as FCI's compliance manager, following a dispute with him you were aware that no-one was performing his role for FCI from October 2008 to March 2009;

(2) the employee you referred to was not a compliance manager, but a 'compliance liaison officer' who was FCI's point of contact with its external compliance consultant. He was insufficiently qualified and experienced to have sole responsibility for compliance at FCI, as you should have been aware. The primary method of call monitoring was for FCI's external compliance consultant to review the compliance liaison officer's written reviews of sales calls. This was inadequate to detect and remedy compliance issues with suitability and the content of sales calls;

(3) you were the managing partner of FCI and had primary responsibility for FCI's adherence to the regulatory regime. You were aware of FCI's lack of adequate compliance oversight and were responsible for failing to resolve this; and

(4) there were compliance failings in relation to every call reviewed by the FSA. In relation to the widespread failings within the calls which were not picked up until March or April 2009, the FSA's view is that the sample size is sufficient to evidence such failings.

Prohibition

6.18. You made representations that:

(1) you have never shown any degree of dishonesty or a lack of integrity; and

(2) your sanction should be in line with those imposed by the FSA on others, including Gerald Classey, who was also a partner at FCI at the relevant time.

6.19. The FSA has found that:

(1) your actions, as set out in this notice, do not demonstrate dishonesty. However, they do demonstrate recklessness, and therefore a lack of integrity; and

(2) you were the managing partner of FCI, with primary responsibility for all of the matters set out in this notice. Your failings, in particular those demonstrating a lack of integrity, were more serious than those of Mr Classey and therefore, unlike in the case of Mr Classey, it is appropriate to prohibit you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

7. DECISION MAKER

7.1. The decision which gave rise to the obligation to give this notice was made by the Regulatory Decisions Committee.

8. IMPORTANT

8.1. This Decision Notice is given to you under section 57 and in accordance with section 388 of the Act. The following statutory rights are important.

The Tribunal

8.2. You have the right to refer the matter to which this Decision Notice relates to the Upper Tribunal (the "Tribunal"). Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, you have 28 days from the date on which this Decision Notice is given to you to refer the matter to the Tribunal. A reference to the Tribunal is made by way of a reference notice (Form FTC3) signed by you and filed with a copy of this Notice. The Tribunal's address is: The Upper Tribunal, Tax and Chancery Chamber, 45 Bedford Square, London WC1B 3DN (tel: 020 7612 9700; email financeandtaxappeals@tribunals.gsi.gov.uk). Further details are contained in "Making a Reference to the UPPER TRIBUNAL (Tax and Chancery Chamber)" which is available from the Upper Tribunal website:

http://www.tribunals.gov.uk/financeandtax/FormsGuidance.htm

8.3. You should note that a copy of the reference notice (Form FTC3) must also be sent to the FSA at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to Stephen Robinson at the FSA, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Access to evidence

8.4. Section 394 of the Act applies to this Decision Notice. In accordance with section 394, you are entitled to have access to:

(a) the material upon which the FSA has relied in deciding to give you this notice. A schedule of material upon which the FSA has relied in deciding to give you this Decision Notice was sent to you with the Warning Notice. The only additional material relied upon was that provided by you with your written representations; and

(b) any secondary material which, in the opinion of the FSA, might undermine that decision. There is no such secondary material to which you must be allowed access.

Third party rights

8.5. A copy of this notice is being given to FCI as a third party identified in the reasons above and to whom in the opinion of the FSA the matter is prejudicial. That party has similar rights of reference to the Tribunal and access to material in relation to the matter which identifies it.

Confidentiality and publicity

8.6. You should note that this Decision Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). The effect of section 391 of the Act is that you may not publish the notice or any details concerning it unless the FSA has published the notice or those details. The FSA may publish such information about the matter to which a decision

notice or final notice relates as it considers appropriate. You should be aware, therefore, that the facts and matters contained in this notice may be made public.

FSA contact

8.7. For more information concerning this matter generally, you should contact Stephen Robinson at the FSA (direct line: 020 7066 1338 /fax: 020 7066 1339).

Tim Herrington
Chairman, Regulatory Decisions Committee