



Financial Services Authority

FINAL NOTICE

To: **Mr Adrian Mark Mosley (trading as Mosley & Company)**

Individual ref: **AMM00003**

Date: **7 June 2012**

TAKE NOTICE: The FSA of 25 The North Colonnade, Canary Wharf, London E14 5HS has taken the following action:

1. ACTION

1.1. For the reasons listed below, the FSA hereby:

- (1) withdraws the approval given to Mr Mosley to perform the controlled function CF10 (Compliance Oversight) pursuant to section 63 of the Act;

- (2) cancels Mr Mosley's Part IV Permission pursuant to section 45 of the Act, because he has failed to satisfy Threshold Condition 4 (Adequate Resources) and Threshold Condition 5 (Suitability);
- (3) makes a Prohibition Order against Mr Mosley (pursuant to section 56 of the Act); and
- (4) imposes a financial penalty of £10,500 on Mr Mosley, pursuant to section 206 of the Act, for breaches of Principle 6 and Principle 9.

2. REASONS FOR THE ACTION

2.1. As set out in further detail below, in breach of Principle 6, the FSA has concluded that Mr Mosley failed to pay due regard to the interests of his customers and treat them fairly, in that Mr Mosley:

- (1) incorrectly categorised advised sales as 'execution-only', which led him to make potentially misleading statements to customers about their rights and the nature of his service;
- (2) sought to exclude or restrict his duties to his customers by encouraging them to sign declarations that they had not identified any poor advice at the point of sale;
- (3) failed to ensure that complaints that he received were recognised; and
- (4) failed to ensure that an adequate complaints handling process was in place.

2.2. Further, in breach of Principle 9, Mr Mosley failed to take reasonable care to ensure the suitability of the advice that he provided to customers, in that he:

- (1) failed to assess or record adequately his customers' personal and financial circumstances, objectives or attitudes to investment risk before giving advice to them;
- (2) failed to ensure that products were researched adequately or that the result of such research was communicated to customers;

- (3) failed to take adequate steps to record why his recommendations were suitable to customers' needs and circumstances and communicate those reasons to customers; and
- (4) recommended and arranged regulated mortgages for his customers when he was not qualified to do so; and
- (5) failed to take reasonable steps to maintain his professional development and attend appropriate training.

2.3. The FSA considers these breaches to be serious because Mr Mosley's actions have exposed his customers to the risk of unsuitable advice. He has also misled customers about the nature of the service that he offered to them and their right to receive redress should they be dissatisfied with that service, and therefore he has not treated customers fairly. The FSA therefore considers that it is appropriate and proportionate to impose a financial penalty on Mr Mosley of £10,500 in respect of his breaches of Principle 6 and Principle 9 and to cancel Mr Mosley's Part IV Permissions pursuant to section 45 of the Act.

2.4. Further, the FSA considers that Mr Mosley's conduct during the relevant period demonstrates that he lacks competence and capability to a serious degree and that he is therefore not a fit and proper person. In support of the FSA's consumer protection objective, it is therefore necessary and proportionate to withdraw his individual approval as a CF10 and impose the Prohibition Order upon Mr Mosley.

3. DEFINITIONS

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

- (1) The "Act" means the Financial Services and Markets Act 2000.
- (2) "COB" means the Conduct of Business in the FSA Handbook.
- (3) "COBS" means the Conduct of Business Rules Sourcebook in the FSA Handbook.
- (4) "DEPP" means the FSA's Decision Procedures and Penalties Manual in the

FSA Handbook.

- (5) “EG” means the Enforcement Guide in the FSA Handbook.
- (6) “FIT” means the Fit and Proper Test for approved persons.
- (7) The “FSA” means the Financial Services Authority.
- (8) “MCOB” means the Mortgages and Home Finance: Conduct of Business sourcebook in the FSA Handbook.
- (9) “MiFID” means the Markets in Financial Instruments Directive.
- (10) The “Principles” means the FSA’s Statements of Principle for Businesses.
- (11) “Principle 6” means Principle 6 of the FSA’s Principles for Businesses.
- (12) “Principle 9” means Principle 9 of the FSA’s Principles for Businesses.
- (13) The “Prohibition Order” means an order made pursuant to section 56 of the Act, prohibiting Mr Mosley from performing any significant influence functions, and performing as a sole trader, any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.
- (14) The “relevant period” means from 1 December 2001 and the date of this Notice.
- (15) “SFCD” means the FSA’s Small Firms and Contact Division.
- (16) “TC” means the FSA’s Training and Competence handbook in the FSA Handbook.
- (17) The “Threshold Conditions” means the threshold conditions set out in Part 1 of Schedule 6 of the Act.
- (18) The “Tribunal” means the Upper Tribunal (Tax and Chancery Chamber).

4. RELEVANT STATUTORY AND REGULATORY PROVISIONS

4.1. The relevant statutory provisions and regulatory requirements, to the extent not set out in the body of this Notice, are set out in the Annex to it.

5. FACTS AND MATTERS

Background

5.1. Mr Mosley was an independent financial adviser based in Keighley, trading as a sole trader under the name Mosley & Company. Mr Mosley had been authorised and regulated by the FSA since 1 December 2001.

5.2. Mr Mosley was authorised by the FSA to carry on the following regulated activities:

Activity	Authorised from
Advising (excluding Pension Transfers / Opt Outs)	1 December 2001
Agreeing to carry on a regulated activity	1 December 2001
Arranging deals in investments	1 December 2001
Arranging regulated mortgage contracts	31 October 2004
Making arrangements (designated investment business)	1 December 2001
Making arrangements (regulated home finance)	31 October 2004

5.3. Mr Mosley was approved to perform controlled functions CF10 (Compliance Oversight) and CF30 (Customer Function).

5.4. As part of a regional assessment of whether small regulated firms treat their customers fairly, SFCD carried out an initial assessment of Mr Mosley on 6 May 2010. This led to a follow-up assessment visit on 29 July 2010. As a result of these assessments,

SFCD identified a number of serious concerns.

- 5.5. Consequently, the FSA appointed investigators to investigate whether Mr Mosley was meeting the criteria for fitness and propriety as an approved person, set out in FIT, with particular regard to his competence, capability, honesty and integrity and whether he may have contravened the Principles. As part of its investigation, the FSA reviewed 20 customer files, interviewed Mr Mosley and a number of his customers.

Mr Mosley's failure to pay due regard to the interests of his customers and treat them fairly

Execution-only and non-advised sales

- 5.6. An execution-only transaction is defined in the FSA Handbook as one executed by a firm upon the specific instructions of the customer where the firm does not give advice on investments relating to the merits of the transaction and to which the appropriateness rules in COBS 10 in the FSA Handbook do not apply. In such instances, customers are responsible for their own decision about the product's suitability.
- 5.7. During interview, Mr Mosley demonstrated a lack of understanding of the definition of, and regulatory requirements associated with, execution-only transactions.
- 5.8. He wrongly believed that a general instruction from a customer to re-arrange their pensions or investments could be treated as an execution-only transaction. As a result, he drafted confirmation letters on behalf of customers which wrongly described advised sales as 'execution-only'. Consequently, it appears that Mr Mosley, contrary to what he thought, was providing advice to clients, without complying with the FSA's requirements in relation to advised transactions.
- 5.9. Further, Mr Mosley also treated the sale of a lifetime mortgage as an 'execution-only' transaction. This was incorrect, not only because this term only applies to investment sales, but also because he had in fact selected and recommended a specific mortgage to the customer, which would constitute 'advice'. As a result of this misunderstanding, he failed to comply with the FSA's requirements for advised sales

of mortgage products.

- 5.10. In addition, in relation to correctly categorised non-advised mortgage sales, Mr Mosley provided no evidence that he adhered to FSA's specific requirements for non-advised mortgage sales.

Advice disclaimers

- 5.11. Since 1 November 2007, COBS 2.1.2R has stated that a firm must not seek to exclude or restrict any duty or liability it may have to a client under the regulatory system in any communications relating to designated investment business.
- 5.12. In nine of the 20 customer files reviewed, the FSA saw examples of letters drafted by Mr Mosley and signed by customers that included a declaration that the customer 'could see no wrongful advice now or in the future'. He confirmed that he included this disclaimer in the letters so that he might use the disclaimer to justify his advice, should a customer complain at a later date, and thereby to protect himself from complaints or criticism from customers.

Complaints handling

- 5.13. Mr Mosley has demonstrated a lack of familiarity with, or understanding of, the FSA's complaints handling requirements. Until SFCD's intervention in 2010, he did not have a documented complaints handling procedure in place. In his regulatory returns and in his interview, he declared that he had never received a complaint; however, the FSA observed that in 2005 the Financial Ombudsman Service upheld a complaint against him by a customer in respect of poor advice, which he settled. Mr Mosley said that he did not consider this to be a complaint because he disagreed with the reasons for the complaint.

Mr Mosley's failure to take reasonable care to ensure the suitability of his advice

Customer information

- 5.14. There was no evidence on any of the customer files reviewed that Mr Mosley had collected and recorded sufficient information about customers' circumstances and

needs before giving them advice. On some customers' files he kept 'client information sheets', typically completed between 1996 and 2000, on which he recorded limited information about customers' circumstances. However, in instances where he had revisited a customer since 2000 there was no evidence that he had conducted an appropriate fact finding process. He said that a lot of the information was in his head rather than documented. Therefore, the FSA could not ascertain whether his recommendations were suitable with regard to customers' circumstances, needs or objectives at the time.

- 5.15. In one case that the FSA reviewed, Mr Mosley admitted in a letter to the customer that he had no knowledge of the customer's other investments. Despite this, he still proceeded to make investment recommendations to the customer.
- 5.16. Out of the 20 customer files reviewed, 16 contained no evidence of an assessment of customers' attitude to risk having been made. The four files that Enforcement did identify that contained an assessment of customers' attitude to risk pre-dated 2000. Mr Mosley's client information sheets' contained a simple 1 to 10 scale to record customers' risk appetite, but there was no record of any such assessments having been made during the relevant period. During his interview he demonstrated a limited understanding of the factors that he should consider when assessing a customer's attitude to risk. Therefore, the FSA could not ascertain whether his recommendations were suitable with regard to customers' risk appetites.
- 5.17. Further, there was no evidence in any of the files the FSA reviewed that Mr Mosley had a system in place to adequately assess or demonstrate whether customers could afford the products he recommended. Mr Mosley told the FSA that he typically relied on customers to confirm that they could afford the products he recommended. He said that he had never specifically calculated a customer's monthly expenditure before giving advice. He admitted that verification of customers' finances might be an area that was lacking in his records.

Product research

5.18. Mr Mosley's initial disclosure document states that he provides a 'whole of market' advice service to customers in relation to investment and mortgage products. However, Mr Mosley had no systems in place to ensure or demonstrate that he had sourced and compared products from the whole market before selecting the most suitable ones. Mr Mosley admitted during interview that he selected products for his customers based purely on his own knowledge of providers, rather than through the use of more comprehensive research tools, and he said that he tended to use providers who administered applications and paperwork to his satisfaction (rather than by reference to his customers' needs). He also admitted that he relied principally on the literature supplied by the product provider to inform customers as to why the product had been selected.

Records and disclosure of suitability

5.19. Out of the 20 customer files reviewed, 17 contained no record of the reasons for Mr Mosley's recommendations and no evidence that he had communicated the reasons (nor the associated risks or alternative options) to the customer. He said that he discussed the reasons verbally with customers but agreed that in the majority of cases he had not sent a suitability letter or report.

5.20. The FSA reviewed one suitability letter from Mr Mosley, which failed to specify the customer's demands and needs, failed to explain why Mr Mosley had concluded that the recommended transaction was suitable for the client, and failed to explain the disadvantages of each transaction to the customer.

5.21. Allied to the systematic absence of other key documentation, Mr Mosley was unable to provide documentary evidence to demonstrate that he had adequately assessed his customers' circumstances, sourced products from the whole market and presented them to the customers in such a way that they understood the risks and the reasons for his recommendations.

Providing mortgage advice without being qualified to do so and failing to take reasonable steps to maintain his competence

- 5.22. In accordance with TC 2.1.6 and Appendix 1 of TC, introduced on 1 November 2007, any person who gives advice on regulated mortgage contracts must pass the relevant regulatory module of a mortgage examination.
- 5.23. During SFCD's initial assessment Mr Mosley stated that he had not recommended regulated mortgage contracts to customers; however, product sales data indicated that he had arranged 21 regulated mortgages between April 2005 and September 2010, of which at least eight were advised sales.
- 5.24. Mr Mosley did not hold a relevant mortgage qualification and has failed the examinations in respect of the mortgage qualification on numerous occasions. Despite this, since November 2007 he arranged four regulated mortgage contracts for customers, including two lifetime mortgages.
- 5.25. In 2009, he stated erroneously that he had passed a relevant lifetime mortgages examination in relation to advised sales on a customer's application form. Also in 2009, he submitted a mortgage application for a customer declaring an advised sale when he had described it as an 'execution-only' transaction to the customer. He said that his rationale for both actions was to ensure that the application was successful and that the customer received what they wanted.
- 5.26. More generally, Mr Mosley could not demonstrate that he had maintained his competency in accordance with the FSA's requirements. In particular, the FSA found no evidence that Mr Mosley had undertaken any continuing professional development since 2000.

6. REPRESENTATIONS

- 6.1. Mr Mosley made representations on the matters which are the subject of this Notice in writing on 27 March 2012 and orally on 04 April 2012.
- 6.2. Below is a summary of the key representations made by Mr Mosley in this matter and how they have been dealt with. In making the decision which gave rise to the obligation to give this Final Notice, the FSA took into account of all of Mr Mosley's representations, whether or not explicitly set out below.

The breaches of Principle 6 and Principle 9

- 6.3. Mr Mosley did not seek to contest the alleged breaches of Principle 6 and Principle 9 and acknowledged that there are failings in his business.
- 6.4. Notwithstanding the above, Mr Mosley submitted that:
- (1) retaining information mentally is not unlawful. In particular, Mr Mosley stated that he had retained the information obtained through his ‘fact finds’ in his mind;
 - (2) his customers have not suffered any financial detriment;
 - (3) a complaint made by a customer in respect of poor advice (which was settled after it was upheld by the Financial Ombudsman Service), is still being held against him by the FSA; and
 - (4) several of his customers either refused to be interviewed and/or did not provide witness statements to the FSA.
- 6.5. Mr Mosley also maintained that his customers have always been satisfied with the service he provided. In particular, he contended that “[n]o one has ever complained justifiably in all the years that [he has] done life or pensions business”.
- 6.6. Mr Mosley also contended that:
- (1) “[n]o one has ever lost money through anything [he has] done, in business or out of business in [his] private life”; and
 - (2) “[he has] never cheated anyone out of money through investments made, by stealing, fraud or any other misdemeanour”.
- 6.7. Mr Mosley asserted that he had taken steps to remedy some of the failings in his business. Specifically, Mr Mosley claimed that he employed a new, more stringent ‘fact find’.

The Prohibition Order

6.8. Mr Mosley stated that his view of the Prohibition Order had changed when he realised that he was not facing a full prohibition. He asserted that he was happy to continue to work under supervision within the regulated financial services sector.

The financial penalty

6.9. Mr Mosley submitted that the financial penalty of £10,500 is disproportionate in all the circumstances (and especially if he is prohibited from working as a sole trader).

6.10. Mr Mosley stated that even if he is able to continue working as a sole trader, the financial penalty of £10,500 will be “unaffordable”. In support of this contention, Mr Mosley made submissions regarding the gross turnover and balance sheet of his business.

6.11. Mr Mosley stated that he was unwilling to complete the FSA’s detailed statement of means form because (amongst other things) his wife did not want to divulge her financial position to the FSA. Therefore, Mr Mosley accepted that he would be unable to demonstrate to the FSA that the imposition of the financial penalty of £10,500 would cause him serious financial hardship.

6.12. Finally, Mr Mosley asserted that the financial penalty of £10,500 is substantially more than that paid by other individuals in relation to similar conduct. In support of this submission, Mr Mosley cited an FSA decision from 2011.

7. FINDINGS & CONCLUSIONS

Findings

7.1. The FSA noted that Mr Mosley did not seek to contest the alleged breaches of Principle 6 and Principle 9 and acknowledged that there were failings in his business.

7.2. The FSA accepted Mr Mosley’s assertion that retaining information mentally is not unlawful.

7.3. However, the FSA found that a failure to keep certain written records, such as information about customers’ needs and circumstances, is a breach of certain regulations which Mr Mosley was subject to. In particular, the FSA found that Mr

Mosley failed to:

- (1) assess or record adequately his customers' personal and financial circumstances, objectives or attitudes to investment risk before giving advice to them. As a result of Mr Mosley's failure to obtain and record such information, the FSA does not consider that Mr Mosley has taken reasonable care to ensure that the advice that he provided was suitable for his customers.
- (2) ensure that products were researched adequately or that the result of such research was communicated to customers, despite offering a 'whole of the market' service in a number of cases. Mr Mosley's failure to conduct adequate research in relation to products means that there was a serious risk that customers were not receiving suitable advice.
- (3) take adequate steps to record why his recommendations were suitable to customers' needs and circumstances and communicate those reasons to customers.

7.4. The FSA also found that Mr Mosley:

- (1) recommended and arranged regulated mortgages for his customers when he was not qualified to do so; and
- (2) failed take reasonable steps to maintain his professional development and attend appropriate training.

7.5. Accordingly, the FSA found that Mr Mosley breached Principle 9 as he failed to take reasonable care to ensure the suitability of the advice that he provided to customers.

7.6. The FSA accepted Mr Mosley's assertion that there is no evidence of customer detriment at present. However, the FSA noted that Mr Mosley's failure to keep certain written records, such as information about customers' needs and circumstances, prevented a proper assessment being made as to whether any customers may have suffered loss.

7.7. The FSA also found that Mr Mosley breached Principle 6 by failing to pay due regard

to the interests of his customers and treat them fairly. Specifically, Mr Mosley:

- (1) sought to exclude or restrict his duties to his customers by encouraging them to sign declarations that they had not identified any poor advice at the point of sale, in order to protect his own interests. This meant that customers were being misled in relation to their right to complain and therefore that they were not being treated fairly.
- (2) incorrectly categorised advised sales as ‘execution-only’, which led him to make misleading statements to customers about their rights and the nature of his service. Further, as a result of his error, Mr Mosley was not complying with regulatory requirements in relation to advised sales and therefore there was a serious risk that customers were not being treated fairly.
- (3) failed to ensure that complaints that he received were recognised and that an adequate complaints handling process was in place. The FSA was therefore concerned about Mr Mosley’s ability to recognise, report and handle complaints from customers and pay due regard to their interests.

7.8. The FSA accepted that no allegations of dishonesty have been made against Mr Mosley.

7.9. Finally (and for completeness), the FSA:

- (1) rejected Mr Mosley’s assertion that the complaint made by a customer in respect of poor advice (which was settled after it was upheld by the Financial Ombudsman Service), was still being held against him. The FSA simply noted that although the Financial Ombudsman Services upheld the relevant customer’s complaint, Mr Mosley still regarded it as unjustified and had failed to recognise or acknowledge it; and
- (2) accepted that certain of Mr Mosley’s customers either refused to be interviewed and/or did not provide witness statements to the FSA for a number of different reasons. However, the FSA did not consider the mere fact that certain of Mr Mosley’s customers either refused to be interviewed and/or did

not provide witness statements to the FSA assisted Mr Mosley in all the circumstances.

Conclusions

- 7.10. The FSA has concluded (for the reasons set out above) that Mr Mosley has demonstrated a serious lack of competence and capability and the FSA considers that he does not meet the minimum standards of fitness and propriety required to remain an approved person under the Act.
- 7.11. In light of its findings, the FSA considers that the imposition of a financial penalty of £10,500 and the imposition of the Prohibition Order against Mr Mosley is both justified and proportionate in all the circumstances and supports the FSA's regulatory objectives of maintaining market confidence and the protection of consumers. In making this decision, the FSA has taken into account (in paragraphs 8.1 to 8.22 below) all of Mr Mosley's representations regarding the appropriateness of the sanction.

8. SANCTION

Imposition of a financial penalty

- 8.1. The FSA's policy on the imposition of financial penalties is set out in Chapter 6 of DEPP. Chapter 6 of DEPP changed on 6 March 2010. The conduct in question occurred between December 2001 and September 2010. Accordingly, the great majority of the conduct occurred prior to 6 March 2010, and the version of DEPP in force prior to 6 March 2010 has been applied for the purpose of this Final Notice. When determining the appropriate level of financial penalty the FSA has also had regard to Chapter 7 of EG.
- 8.2. The FSA's principal purpose, in imposing a financial penalty, is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour.
- 8.3. The FSA will consider the full circumstances of each case when determining whether

or not to take action for a financial penalty.

- 8.4. The guidance in DEPP sets out a non-exhaustive list of factors that may be of relevance in determining the level of financial penalty. The FSA considers that the following factors are particularly relevant in this case:

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

- 8.5. Mr Mosley's failings were serious and systemic. The evidence obtained by the FSA demonstrates that he failed to treat customers fairly and exposed them to the risk of unsuitable advice over a period of nine years. Particularly serious failings include Mr Mosley's requesting that clients sign agreements waiving their rights to complain, claiming that advice was not being provided to clients (when the evidence demonstrates that advice had been provided), and providing mortgage advice without the relevant qualification. Further, these issues were identified by the FSA, not by him.
- 8.6. However, in mitigation, the FSA notes that Mr Mosley did not typically expose his customers to higher risk products or seek to generate higher rates of commission and that no actual consumer detriment has been identified.

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

- 8.7. The FSA considers that the nature of Mr Mosley's actions in respect of execution-only investment sales, obtaining signed disclaimers in relation to future complaints, and providing mortgage advice without being qualified to do so, evidence a particularly serious and concerning failure to treat customers fairly.
- 8.8. Whilst this misconduct is very serious, the FSA has concluded, as a result of reviewing all of the evidence obtained, that Mr Mosley's contraventions were not deliberate but borne of a lack of understanding of regulatory requirements.
- 8.9. Due to his serious lack of competence and capability, the FSA does not regard Mr Mosley as being capable of performing significant influence functions or operating as a sole trader, as the evidence suggests that he would have difficulty ensuring that customers are treated fairly and that reasonable care is taken to ensure the suitability

of advice.

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

- 8.10. The FSA recognises that the financial penalty imposed on Mr Mosley is likely to have a significant impact on him as an individual and a sole trader.

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

- 8.11. The FSA considers that a financial penalty of the level proposed is appropriate, having taken account of all relevant factors.

- 8.12. The FSA rejects Mr Mosley's assertion that the financial penalty of £10,500 is substantially more than that paid by other individuals in relation to similar conduct. The FSA notes that the financial penalty in the case cited by Mr Mosley was reduced from £20,000 for early settlement and on the basis of serious financial hardship.

- 8.13. Mr Mosley stated that he was unwilling to complete the FSA's detailed statement of means form because (amongst other things) his wife did not want to divulge her financial position to the FSA. Therefore, Mr Mosley has failed to demonstrate to the FSA that the imposition of the financial penalty of £10,500 would cause him serious financial hardship.

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

- 8.14. Mr Mosley did not deliberately set out to accrue additional profits or avoid a loss through the way in which he gave advice to customers or ran his business generally.

- 8.15. The FSA accepts that there is no evidence of customer detriment at present.

Conduct following the breach (DEPP 6.5.2(8))

- 8.16. At the FSA's request Mr Mosley applied to vary his permissions under Part IV of the Act so that he was no longer permitted to advise on regulated mortgage contracts after the FSA established that he was not qualified to give mortgage advice and had no

staff.

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

- 8.17. The FSA has taken into account the fact that Mr Mosley has not been the subject of previous disciplinary action by the FSA.

Withdrawal of approval

- 8.18. The FSA has concluded that Mr Mosley has demonstrated a serious lack of competence and capability and the FSA has concluded that he does not meet the minimum standards of fitness and propriety required to remain an approved person under the Act.
- 8.19. In support of the FSA's consumer protection objective, it is therefore necessary and proportionate to withdraw the individual approval given to him to perform the significant influence function CF10 (Compliance Oversight).

Prohibition Order

- 8.20. The FSA regards Mr Mosley's conduct during the relevant period to constitute a serious failure to meet the minimum standards of fitness and propriety in terms of competence and capability. In coming to this conclusion, the FSA has considered the guidance in Chapter 9 of EG.
- 8.21. Mr Mosley's incompetence is serious, systemic and long-standing. He has fallen short of the FSA's expectations and is so seriously incompetent that he represents a current and ongoing risk to consumers. He is therefore not a fit and proper person, in terms of a serious lack of competence and capability, and the FSA therefore decided to prohibit Mr Mosley from performing any significant influence functions and from performing, as a sole trader, any function in relation to regulated activities carried on by authorised persons, exempt persons and exempt professional persons in support of its consumer protection objective.

Cancellation of Part IV Permissions of Mr Mosley

- 8.22. As the FSA has decided to remove Mr Mosley's controlled function of CF10 and

prohibit him from performing any function as a sole trader, Mr Mosley does not have adequate human resources to perform the specific regulated activities which he is currently permitted to perform. Mr Mosley was therefore failing and/or likely to continue to fail to satisfy the Threshold Conditions and his Part IV Permissions has been cancelled pursuant to section 45 of the Act.

9. PROCEDURAL MATTERS

Decision maker

9.1. The decision which gave rise to the obligation to give this Notice was made on behalf of the FSA by the Regulatory Decisions Committee.

9.2. This Final Notice is given to Mr Mosley in accordance with section 390 of the Act.

Manner of and time for Payment

9.3. The financial penalty must be paid in full by Mr Mosley to the FSA by no later than 21 June 2012, 14 days from the date of the Final Notice.

If the financial penalty is not paid

9.4. If all or any of the financial penalty is outstanding on 22 June 2012, the FSA may recover the outstanding amount as a debt owed by Mr Mosley and due to the FSA.

Publicity

9.5. 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 FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.

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

FSA contacts

- 9.7. For more information concerning this matter generally, contact Rebecca Irving at the FSA (direct line 020 7066 2334) of the Enforcement and Financial Crime Division of the FSA.

Tom Spender
Head of Department
FSA Enforcement and Financial Crime Division

ANNEX

1. RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE

Statutory provisions

- 1.1. The FSA's statutory objectives, set out in Section 2(2) of the Act, include the protection of consumers.
- 1.2. Pursuant to section 45 of the Act, the FSA may exercise its power to vary or cancel a firm's Part IV Permission if it appears to the FSA that a firm is failing, or is likely to fail, to satisfy the Threshold Conditions.
- 1.3. Pursuant to section 56 of the Act, if it appears to the FSA that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, the FSA may make a prohibition order prohibiting the individual from performing a specified function, any function falling within a specified description or any function.
- 1.4. Pursuant to section 63 of the Act, the FSA may withdraw an approval given under section 59 if it considers that the person in respect of whom it was given is not a fit and proper person to perform the function to which the approval relates.
- 1.5. The FSA has the power, pursuant to section 206 of the Act, to impose a financial penalty of such amount as it considers appropriate where the FSA considers that an authorised person has contravened a requirement imposed on him by or under the Act.

The Principles

- 1.6. Principle 6 (Customers' interests) states that a firm must pay due regard to the interests of its customers and treat them fairly.
- 1.7. Principle 9 (Customers: relationships of trust) states that a firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.

EG

- 1.8. The FSA's approach to taking disciplinary action is set out in Chapter 2 of EG. The FSA's approach to financial penalties and public censures is set out in Chapter 7 of EG. EG 7.1 states that the effective and proportionate use of the FSA's powers to enforce the requirements of the Act, the rules and the Statements of Principles for Approved Persons will play an important role in the FSA's pursuit of its regulatory objectives. Imposing financial penalties and public censures shows that the FSA is upholding regulatory standards and helps to maintain market confidence and deter financial crime. An increased public awareness of regulatory standards also contributes to the protection of consumers.
- 1.9. EG 9.1 states that the FSA's power to make prohibition orders under section 56 of the Act helps it work towards achieving its regulatory objectives. The FSA may exercise this power where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he may perform.
- 1.10. EG 9.2 states that the FSA's effective use of the power under section 63 of the Act to withdraw approval from an approved person will also help to ensure high standards of regulatory conduct by preventing an approved person from continuing to perform the controlled function to which the approval relates if he is not a fit and proper person to perform that function. Where it considers this is appropriate, the FSA may prohibit an approved person, in addition to withdrawing their approval.
- 1.11. EG 9.4 sets out the general scope of the FSA's powers in this respect, which include the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant. EG 9.5 provides that the scope of a prohibition order will vary according to the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk posed by him to consumers or the market generally.

- 1.12. In circumstances where the FSA has concerns about the fitness and propriety of an approved person, EG 9.8 to 9.14 provides guidance. In particular, EG 9.8 states that the FSA may consider whether it should prohibit that person from performing functions in relation to regulated activities, withdraw that person's approval or both. In deciding whether to withdraw approval and/or make a prohibition order, the FSA will consider whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions.
- 1.13. EG 9.9 states that the FSA will consider all the relevant circumstances when deciding whether to make a prohibition order against an approved person and/or to withdraw that person's approval. Such circumstances may include, but are not limited to, the following factors:
- (1) whether the individual is fit and proper to perform functions in relation to regulated activities, including in relation to the criteria for assessing the fitness and propriety of an approved person in terms of competence and capability as set out in FIT 2.2;
 - (2) the relevance and materiality of any matters indicating unfitness;
 - (3) the length of time since the occurrence of any matters indicating unfitness;
 - (4) the particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates;
 - (5) the severity of the risk which the individual poses to consumers and to confidence in the financial system; and
 - (6) the previous disciplinary record and general compliance history of the individual.
- 1.14. EG 9.12 provides a number of examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order or withdraw the approval of an approved person. The examples include serious lack of competence.

1.15. EG has been in force since 28 August 2007.

DEPP

1.16. Chapter 6 of DEPP sets out the FSA's approach to penalties.

COB

1.17. From 9 October 2004, COB 2.5.3R stated that a firm must not, in any written or oral communication in connection with designated investment business, seek to exclude or restrict, or to rely on any exclusion or restriction of, any duty or liability it may have to a customer (which for these purposes includes a retail customer) under the regulatory system.

1.18. Prior to 1 November 2007, the rules in relation to the suitability of a personal recommendation concerning a designated investment to a private customer were at COB 5.3.

1.19. From 6 April 2006, COB 5.3.5R stated that a firm must take reasonable steps to ensure that, if in the course of designated investment business, it makes any personal recommendation to a private customer, the advice on investments or transactions is suitable for the client.

1.20. COB 5.3.5(3)R further stated that in making the recommendation or effecting the transaction, the firm must have regard to the facts disclosed by the client and other relevant facts about the client of which the firm is, or reasonably should be, aware.

1.21. From 6 April 2007, COB 5.3 set out the circumstances in which a suitability letter should be provided to customers and the individual considerations that must be given to suitability in relation to specific products and schemes.

1.22. From 15 November 2001, COB 5.4.3R stated that a firm must not:

(1) make a personal recommendation of a transaction; or

(2) act as a discretionary investment manager; or

(3) arrange (bring about) or execute a deal in a warrant or derivative; or

(4) engage in stock lending activity;

with, to or for a private customer unless it has taken reasonable steps to ensure that the private customer understands the nature of the risks involved.

1.23. The last day that COB was in force was 31 October 2007.

COBS

1.24. Unless otherwise stated, the COBS provisions set out below have been in force since 1 November 2007.

1.25. COBS 2.1.2R states that a firm must not, in any communication relating to designated investment business seek to:

(1) exclude or restrict; or

(2) rely on any exclusion or restriction of;

any duty or liability it may have to a client under the regulatory system.

1.26. When considering the suitability of an investment for a specific client, an authorised firm is required to obtain and document the necessary information to understand the essential facts about the client pursuant to COBS 9, such as:

(1) the client's knowledge and experience in the investment field relevant to the investment being proposed;

(2) the client's financial situation and investment objectives;

(3) the client's investment horizon and the purposes of the investment;

(4) whether the client would be able, financially, to bear any related investment risks consistent with his investment objectives;

(5) the client's risk profile and preferences regarding risk taking; and

- (6) the client's ability to understand the risks involved in the transaction or in the management of their portfolio.
- 1.27. COBS 9.2.1R states that a firm must take reasonable steps to ensure that a personal recommendation is suitable for its client. When making the personal recommendation or managing his investments, the firm must obtain the necessary information regarding the client's:
 - (1) knowledge and experience in the investment field relevant to the specific type of designated investment or service;
 - (2) financial situation; and
 - (3) investment objectives.
- 1.28. COBS 9.2.2(1)R states that 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:
 - (1) meets his investment objectives;
 - (2) is such that he is able financially to bear any related investment risks consistent with his investment objectives; and
 - (3) 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.
- 1.29. COBS 9.22(2)R states that 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.

- 1.30. COBS 9.22(3)R states that 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.
- 1.31. COBS 9.2.3R clarifies that the information regarding a client's knowledge and experience in the investment field includes the nature and extent of the service to be provided and the type of product or transaction envisaged, including its complexity and the risks involved. In addition consideration needs to be given to:
- (1) the types of service, transaction and investments with which the client is familiar;
 - (2) the nature, volume and frequency of the client's transactions in investments and the period over which they have been carried out; and
 - (3) the level of education, profession or relevant former profession of the client.
- 1.32. COBS 9.2.6R states that if a firm does not obtain the necessary information to assess suitability, it must not make a personal recommendation to the client. That is, it must not make a recommendation consisting of advice on investments and presented as suitable for the client, or as being based on a consideration of the circumstances of that client.
- 1.33. COBS 9.3 sets out guidance on assessing suitability. It notes that a transaction may be unsuitable for a client because of the risks of the investments involved, the type of transaction, the characteristics of the order or the frequency of trading (COBS 9.3.1G).
- 1.34. Since 6 November 2008, COBS 9.4.1R has stated that a firm must provide a suitability report to a retail client if the firm makes a personal recommendation to the client and the client:
- (1) acquires a holding in, or sells all of part of a holding in:
 - (a) a regulated collective investment scheme;

- (b) an investment trust where the relevant shares have been or are to be acquired through an investment trust savings scheme;
 - (c) an investment trust where the relevant shares are to be held within an ISA which has been promoted as the means for investing in one or more specific investment trusts; or
- (2) buys, sells, surrenders, converts or cancels rights under, or suspends contributions to, a personal pension scheme or a stakeholder pension scheme; or
 - (3) elects to make income withdrawals or purchase a short-term annuity; or
 - (4) enters into a pension transfer or pension opt-out.
- 1.35. COBS 9.4.2R states that if a firm makes a personal recommendation in relation to a life policy, it must provide the client with a suitability report.
- 1.36. COBS 9.4.7R states that the suitability report must, at least:
- (1) Specify the client’s demands and needs;
 - (2) Explain why the firm has concluded 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 for the client.
- 1.37. COBS 9.5.2 states that a firm must retain its records relating to suitability for a minimum of five years regarding business conducted under the MiFID or equivalent third country business.

Execution-only transactions

- 1.38. An execution-only transaction is defined in the FSA Handbook glossary as:

“a transaction executed by a firm upon the specific instruction of a client where the firm does not give advice on investments relating to the merits of the transaction and in relation to which the rules on assessment of

appropriateness (COBS 10) do not apply”.

This definition has materially been in existence since 2001, although the statement of the inapplicability of COBS 10 has only been in existence since 2007.

MCOB

- 1.39. Except where stated, MCOB provisions have been in force since 31 October 2004.
- 1.40. MCOB 2.6.2R states that a firm must not, in any written or oral communication, seek to exclude or restrict, or to rely on any exclusion or restriction of, any duty or liability it may have to a customer under the regulatory system.
- 1.41. Further, MCOB 2.6.3R states that a firm must not, in any written or oral communication, seek to exclude or restrict, or to rely on any exclusion or restriction of, any duty or liability not referred to in MCOB 2.6.2 unless it is reasonable for it to do so.
- 1.42. Since 6 April 2007, pursuant to MCOB 4.3.1R(1), a firm must take reasonable steps to ensure that the scope of the service given to a customer, and the home finance transactions offered, is based on a selection from one of the following:
 - (1) the whole market; or
 - (2) a limited number of home finance providers; or
 - (3) a single home finance provider .
- 1.43. MCOB 4.3.2R states that a firm must take reasonable steps to ensure that the extent of the scope of the services which it holds itself out as offering to a customer reflects the extent of that scope in practice.
- 1.44. MCOB 4.3.4R states that a firm which holds itself out as giving information or advice to customers on regulated mortgage contracts from the whole market must not give any such information or advice unless:

- (1) it has considered a sufficiently large number of regulated mortgage contracts which are generally available from the market; and
 - (2) the consideration in (1) is based on criteria which reflect adequate knowledge of the regulated mortgage contracts generally available from the market as a whole.
- 1.45. MCOB 4.7 sets out the rules relating to advised mortgage sales.
- 1.46. MCOB 4.7.2R states that a firm must take reasonable steps to ensure that it does not make a personal recommendation to a customer to enter into a regulated mortgage contract, or to vary an existing regulated mortgage contract, unless the regulated mortgage contract is suitable for that customer.
- 1.47. MCOB 4.7.4R provides that a regulated mortgage contract will be suitable if, having regard to the facts disclosed by the customer and other relevant facts about the customer of which the firm is or should be aware, the firm has reasonable grounds to conclude that:
- (1) the customer can afford to enter into the regulated mortgage contract;
 - (2) the regulated mortgage contract is appropriate to the needs and circumstances of the customer; and
 - (3) the regulated mortgage contract is the most suitable of those that the firm has available to it within the scope of the service provided to the customer.
- 1.48. MCOB 4.7.7E(1) states that, in assessing whether a customer can afford to enter into a particular regulated mortgage contract, a firm should give due regard to the following:
- (1) information that the customer provides about his income and expenditure, and any other resources that he has available;
 - (2) any likely change to the customer's income, expenditure or resources; and
 - (3) the costs that the customer will be required to meet once any discount period

in relation to the regulated mortgage contract comes to an end (on the assumption that interest rates remain unchanged).

- 1.49. MCOB 4.7.17R states that a firm must make and retain a record:
- (1) of the customer information, including that relating to the customer's needs and circumstances, that it has obtained for the purposes of MCOB 4.7; and
 - (2) that explains why the firm has concluded that any personal recommendation given in accordance with MCOB 4.7.2R satisfies the suitability requirements in MCOB 4.7.4R(1).
- 1.50. MCOB 4.8 sets out the rules relating to non-advised mortgage sales.
- 1.51. MCOB 4.8.1R states that if a firm arranges a regulated mortgage contract or a variation to an existing regulated mortgage contract without giving a personal recommendation, it must ensure that all the questions it asks the customer about the customer's needs and circumstances are scripted in advance.
- 1.52. Since 1 October 2005, MCOB 4.8.2G(1) has stated that a firm that provides information on only a selection of regulated mortgage contracts will need to ensure that the selection is fair and unbiased.
- 1.53. Since 1 October 2005, MCOB 4.8.2G(2) has also stated that a firm selling what it considered to be an inappropriate product would be in breach if Principle for Businesses 6 as it would be conducting a regulated activity without regard to the customer's interests. In this event, the appropriate course would be for the firm to tell the customer to seek advice.
- 1.54. Since 6 April 2007, MCOB 8.6.1R has stated that the questions used to help a customer select an equity release transaction must cover the following:
- (1) the matters regarding eligibility criteria, customer's preferences for his estate, customer's health and life expectancy, customer's future plans and needs, customer's preference or need for stability in the amount of payments, and whether the customer has a preference or need for any other features, set out in

MCOB 8.5.8 R;

- (2) whether the customer has considered alternative methods of raising the required funds, and in particular:
 - (a) an equity release transaction from the other market sector; and
 - (b) where relevant, grant assistance from his local authority (or other provider); and
- (3) whether the customer has established whether either his entitlement to means-tested benefits or his tax position or both will be adversely affected.

1.55. Since 6 April 2007, MCOB 8.6.2G has stated that a firm should encourage a customer to seek advice on an equity release transaction if the customer is unsure about making their own choice.

TC

1.56. Since 1 November 2007, TC 2.1.6 has stated that a firm must ensure that an employee does not carry on an activity for which there is a qualification requirement without first attaining the relevant regulatory model of an appropriate qualification.

1.57. Appendix 1 of TC provides that advising on a regulated mortgage contract and an equity release transaction are activities for which there is a qualification requirement.

1.58. Since 1 December 2001, TC 2.6.1(R) has stated that a firm must have appropriate arrangements in place to ensure that an employee who has been assessed as competent to engage in or oversee an activity maintains competence.

1.59. Further, TC 2.6.2G states that a firm should ensure that maintaining competence for an employee takes into account:

- (1) technical knowledge and its application;

- (2) skills – their application and development; and
- (3) changes in the market and to products, legislation and regulation.