Financial Services Authority

# FINAL NOTICE

To: **Mr Andrew Paul Ruff**

Individual reference number: **APR00014**

Date **8 July 2011**

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives Mr Ruff final notice about the imposition of a prohibition order and a requirement to pay a financial penalty:**

## 1. ACTION

1.1. The FSA gave Mr Ruff a Decision Notice on 6 June 2011 which notified Mr Ruff that the FSA had decided to:

(1) make an order prohibiting Mr Ruff from performing any significant influence function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm ("the Prohibition Order") pursuant to section 56 of the Financial Services and Markets Act 2000 ("the Act"); and

(2) impose a financial penalty of £28,000 on Mr Ruff, pursuant to section 66 of the Act.

1.2. Mr Ruff confirmed on 25 May 2011 that he will not be referring the matter to the Upper Tribunal (Tax and Chancery Chamber) and agreed to settle at an early stage of the FSA's inquiries and therefore qualified for a 30% (Stage 1) reduction of the financial penalty under the FSA's executive settlement procedures. The FSA would otherwise have sought to impose a financial penalty of £40,000 on Mr Ruff.

1.3. Accordingly, for the reasons set out below, the FSA imposes a prohibition order and financial penalty on Mr Ruff in the amount of £28,000.

## 2. REASONS FOR THE ACTION

2.1. The FSA decided to take this action as a result of Mr Ruff's conduct as the director in charge of professional standards and compliance oversight at Alpha to Omega (UK) Ltd ("A2O" / "the Firm") between 29 March 2007 and 23 December 2009 ("the Relevant Period").

2.2. During the Relevant Period, Mr Ruff's conduct fell short of the FSA's regulatory standards required by the FSA's Statements of Principle for Approved Persons ("Statements of Principle") and he demonstrated a serious lack of competence and capability.

2.3. Mr Ruff was approved to hold the CF 1 (Director), CF 10 (Compliance Oversight) and CF 11 (Money Laundering Reporting) controlled functions at A2O from 26 March 2003 to 5 January 2010. These controlled functions are significant influence functions. As one of only two directors actively involved in running the day-to-day business of the Firm from January 2008, he exercised a significant influence on the conduct of the Firm's affairs.

2.4. As Professional Standards Director with oversight of compliance, he was principally responsible for ensuring that A2O met its regulatory responsibilities and that the compliance function was organised effectively. Mr Ruff failed to discharge that responsibility adequately.

2.5. Mr Ruff failed to take reasonable steps to ensure that A2O complied with the relevant requirements and standards of the regulatory system, in breach of Statement of Principle 7, by failing to:

(1) ensure that the Firm collected and analysed adequate management information to enable the Firm's senior management to properly identify and monitor the compliance risks that the business was exposed to; and

(2) ensure that A2O's compliance arrangements to identify and monitor the sales of products by A2O's appointed representatives ("ARs") were robust and effective, in particular the risks posed by higher risk products sold by A2O's ARs.

2.6. Further, Mr Ruff failed to exercise due skill, care and diligence in managing the business of A2O, in breach of Statement of Principle 6, in that he failed to:

(1) ensure that the recruitment, training and monitoring of advisers was sufficiently thorough to mitigate the risk of non-compliant sales; and

(2) take appropriate action where concerns about potentially unsuitable sales by ARs were apparent, and in particular where recommendations were made to invest in unregulated collective investment schemes ("UCIS") and other higher risk products in circumstances where recommendations to invest in such products may not have been appropriate.

2.7. From the Firm's "checked files" spreadsheet, 99% of the files reviewed by the Firm were passed as compliant. In contrast, 98% of the files reviewed by the skilled person

were failed. This lack of oversight was particularly serious given the significant amount of high risk business recommended to retail clients by certain advisers, particularly recommendations to invest in UCIS.

## 3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

3.1. Relevant statutory provisions, regulatory guidance and policy are set out at Annex A to this Notice.

## 4. FACTS AND MATTERS RELIED ON

### Background

4.1. A2O was an Independent Financial Adviser ("IFA") network authorised by the FSA on 26 March 2003. The head office and administrative centre of the Firm was located in Winchester. When A2O went into administration on 25 January 2010, the network had 47 ARs, employing approximately 101 advisers. A2O also had seven directly approved advisers holding the CF30 (Customer) controlled function.

4.2. From 26 March 2003 to 5 January 2010, Mr Ruff held the Controlled Functions 1 (Director), 10 (Compliance Oversight), and 11 (Money Laundering Reporting). In his role as Professional Standards Director, he had the primary responsibility at the Firm for the establishment and maintenance of its compliance systems and controls.

4.3. Mr Ruff was solely responsible for all the compliance monitoring at the Firm until January 2008; thereafter he led the Firm's compliance team and continued to undertake a significant proportion of file reviews and visits to AR firms himself.

4.4. From January 2008, the Firm had only two directors engaged in the day-to-day running of the Firm; Mr Ruff and the Managing Director of the Firm. While Mr Ruff and the Managing Director of the Firm were in charge of discrete areas of the business, both maintained a high level overview of the Firm and would seek to cover each other's role if necessary.

4.5. In April 2009, as a result of a review of client files of an AR of A2O, the FSA wrote to A2O setting out concerns about the suitability of recommendations provided by that AR, the effectiveness of A2O's controls over its ARs in general and the effectiveness of its compliance monitoring arrangements. As a result of these concerns, the Firm voluntarily varied its regulatory permissions to stop its ARs from recommending five high risk products, four of which were UCIS funds. A2O was also required to commission a skilled person's report to establish A2O's standards of compliance oversight and controls, sales monitoring processes and corporate governance and oversight.

4.6. The skilled person's report identified a number of concerns and issues in respect of the compliance systems and controls at A2O and the subsequent effect this had on the suitability of advice provided by some ARs of the Firm. The skilled person concluded that 98% of the sample of 41 files it reviewed were not compliant with FSA rules; A2O's compliance department had passed 99% of these files as compliant. The report also identified a lack of management information to provide effective Board oversight of the Firm's business.

4.7. A2O decided to focus the Firm's resources on rectifying the issues identified in the skilled person's report by undertaking a 'root and branch' review of the compliance systems in place at the Firm. The Firm implemented a number of changes to its compliance systems. These changes included recruiting additional members of staff to the compliance team; developing expanded checklists for use by the compliance team when carrying out file reviews; and the introduction of 100% file checks on all high risk cases. The FSA were not satisfied with the scope and extent of the remedial action proposed by the Firm. Specifically, the FSA was concerned that client detriment was not being properly investigated by the Firm and that clients had not received any redress due to them.

4.8. Mr Ruff offered his resignation as a director of A2O on 23 December 2009 and had no further involvement in the Firm after this date. His status as an approved person was withdrawn on 5 January 2010.

4.9. The Firm agreed to voluntarily vary its permissions with effect from 12 January 2010. Following a failure to comply with requirements of the variation and as a result of continuing concerns, the FSA used its own initiative powers to vary A2O's Part IV permission. Under the terms of the Supervisory Notice dated 18 January 2010, A2O were required to cease, with immediate effect, conducting all regulated activities for which it had permission.

4.10. A2O entered administration on 25 January 2010.

**A2O's business model**

4.11. A2O was established as an IFA network suitable for IFAs with a number of years experience in financial services. As a result, the culture and approach of A2O was to offer a personalised and 'bespoke' service which sought to offer experienced ARs flexibility and freedom to recommend higher risk products if they wished to do so. In addition, A2O's marketing proposition stated that all AR firms would be known personally to Mr Ruff and the Managing Director.

4.12. The Firm's marketing material emphasised that A2O's ARs were likely to be knowledgeable and innovative IFAs who wished to offer a wide range of products to their clients and would not want to be restricted to only recommending 'basic' investments.

4.13. Mr Ruff was aware, through the file reviews and visits he conducted, that a proportion of A2O's advisers recommended a large volume of high risk products, including UCIS funds. Mr Ruff was also aware that a number of A2O's AR firms were members of an informal marketing network. That network actively promoted a number of UCIS funds to A2O's ARs. Data obtained from one UCIS product provider shows that A2O sold the greatest volume of investments in UCIS funds for that provider, amounting to £6.9 million, compared to other firms.

4.14. Accordingly, A2O's network involved a business proposition that would be attractive to experienced IFAs with an interest in targeting increases in sales and new and innovative products. To mitigate this compliance risk required robust oversight and monitoring of advisers and any higher risk products sold to consumers.

**Failure to ensure compliance arrangements were robust and effective**

4.15. Mr Ruff failed to ensure that a sufficient compliance framework was implemented and failed to adequately mitigate the risks which arose as a result of A2O's business model because of the limited and flexible compliance monitoring in place at A2O.

4.16. Specifically, the Firm's compliance monitoring systems had the following weaknesses:

(1) initial competency assessments and ongoing competency assessments were poor and failed to demonstrate adequately that an adviser was fit and proper upon joining the network and thereafter;

(2) the ongoing compliance monitoring by way of file checks and compliance visits were not sufficient to identify and mitigate the risk of potential mis-selling; and

(3) Mr Ruff failed to challenge advisers who were a known compliance risk.

***Due diligence and competency assessments***

4.17. Mr Ruff was responsible for conducting and overseeing the due diligence and competency assessments of new advisers during the recruitment process, and for A2O's Training & Competence scheme ("the T&C scheme").

4.18. A2O's approach to assessing the competence of new recruits was to class a person as a competent adviser if that person had been classed as competent in a previous role. The T&C scheme was predicated on the assumption that "*most advisers are experienced and well qualified, and the nature of this scheme recognises this maturity.*" All A2O advisers were supposed to sit and pass a test to demonstrate their competency to advise on certain products, to attend an induction course and provide references.

4.19. The T&C scheme stated that as "*only experienced advisers will be recruited into advisory roles within member firms*," members were expected to have:

(1) at least two years' experience in an advisory role;

(2) the Financial Planning Certificate ("FPC"); and

(3) achieved competent status within two months of joining A2O, although this could be extended.

4.20. The T&C scheme allowed for the adoption of alternative approaches if approved by Mr Ruff:

*"Provided the suggested alternative is at least as effective as the basis described in the formal scheme, it is the policy of the network to agree such alternatives wherever possible. This will allow member firms as much flexibility as possible."*

4.21. The adviser files reviewed by the investigation team demonstrated that the formal T&C scheme requirements would often be waived but failed to demonstrate how A2O ensured that an equally rigorous alternative test of competence was imposed before an adviser was authorised.

4.22. The flexibility to waive the requirements of the formal scheme and the assumption that an adviser would be well qualified and have relevant experience meant that some advisers were authorised and assumed to be competent when the evidence on which to base that assessment was missing, incomplete or suggested that the advisers were not competent. These included:

(1) Mr Ruff failing to follow up poor test results for advisers who had failed tests in relation to certain products. One adviser failed the pensions test twice before finally passing. He only passed on his third attempt, when he sat a test paper which had the same examination reference number as the paper he had been given for the first attempt. This adviser was authorised to undertake investment business with A2O from 16 April 2007 despite not having been signed off as competent (which only eventually happened in April 2008), notwithstanding that the majority of his investment advice to his customers related to Self Invested Personal Pensions;

(2) one adviser was passed as competent as his results had been calculated incorrectly and he was given an overall score of 60%, when in fact he had failed;

(3) one adviser did not have the FPC on joining A2O in February 2008. Mr Ruff became aware of this on 4 April 2008, although the adviser was then put on 100% file checks, he did not pass the FPC until 26 November 2009;

(4) one adviser was assessed as competent despite having poor references showing significant compliance issues with the adviser. One reference covered the immediate period before recruitment (March 2006 - March 2007), during which period the adviser did not achieve competent adviser status because of the quality of files reviewed. He was still assessed as competent and there was no evidence on this adviser's file to show how these issues were addressed as part of the adviser's ongoing training needs;

(5) another adviser's reference identified four upheld complaints and poor fact-finding, but Mr Ruff approved the authorisation of this adviser. This adviser's file formed part of the sample reviewed by the skilled person where poor fact-finding was identified as being a continuing problem.

4.23. A2O's adviser files failed to record or demonstrate how ongoing compliance monitoring was used to identify training needs. There was no evidence of any issues identified from visits to firms and file checks feeding into competence tests and an ongoing training and competence programme.

***Ongoing compliance monitoring***

4.24. A2O monitored the ongoing competence of its advisers and the suitability of advice through file reviews and compliance visits. A2O aimed to review 10–15% of business written by its advisers and complete compliance visits every 8–10 months.

*File reviews*

4.25. Mr Ruff was responsible for failing to establish a robust file monitoring system, and for applying that system to a consistent and adequate standard through sufficiently experienced and qualified staff.

4.26. The file review process that Mr Ruff implemented was insufficient for A2O to assess properly whether a sale was suitable for a client. It was designed to provide a quick overview of the advice given to a customer to ascertain whether the advice provided was suitable. A2O would only request and review the fact find and suitability letter in the first instance, and a file review would be expected to take on average 10-15 minutes to complete. Furthermore, the results of these file reviews were not properly recorded until late 2009 when A2O introduced a file review checklist. The FSA has not found any evidence to suggest that these checklists were subsequently analysed to produce management information. While A2O could request further information from advisers, it does not appear that this was routinely done or that advisers were routinely challenged by Mr Ruff or the compliance team.

4.27. The Firm's record keeping of the results of compliance monitoring was poor and did not clearly demonstrate how many files were reviewed or the outcomes of these reviews. Mr Ruff told the FSA that he aimed to review 10-15% of cases written by A2O advisers and that this would include 100% of high risk business. However, a comparison of A2O's new business register with the Firm's compliance records suggests that only 41% of cases identified on the new business register as a UCIS sale were reviewed by the Firm between 2008 and 2009.

4.28. After a file review a grade should have been assigned to the file. An "A" grade indicated that there were no problems with the advice given and a "B" grade meant that there was not necessarily a problem, but there was an issue that needed further clarification from the adviser.

4.29. The Firm's records suggest that file reviews were either not being completed or given a grade during 2009. In 2008, of the 698 cases recorded as being requested for review, 2.7% were not given a grade on review. Of the 727 cases recorded as being requested for review in 2009, 49% do not appear to have been reviewed and given a compliance grading according to the Firm's records.

4.30. Notwithstanding the limited information available to the Firm, A2O's compliance function failed to identify clear breaches in the files they reviewed, despite there being sufficient information to do so. For example, the skilled person concluded that A2O had passed 99% of the files they reviewed as being compliant whereas the skilled person failed 98% of the files it reviewed.

4.31. In particular, the skilled person's review of client files found that in 17 out of 39 cases, the fact finds were poor. The lack of information obtained by A2O meant it

was not possible to identify the client's needs or assess the suitability of the product recommended. Similarly, suitability reports were not detailed enough to show the reasons why the advice was suitable and how it met the client's needs, both in terms of the investment in question and also in terms of the client's overall portfolio. As such, there was not enough evidence obtained by the Firm to demonstrate adequately that the advice provided was appropriate.

4.32. The skilled person also found clear evidence of churning and commission bias amongst certain advisers. In some cases, high levels of commission had been taken by the adviser without any challenge by A2O's compliance team. There is no evidence that the Firm had a system for monitoring commission and product bias that was used to detect trends or concerns with any particular adviser.

*UCIS*

4.33. The FSA has identified at least three occasions where Mr Ruff was aware of "know your customer" information on a file that should have led him to conclude that there had been a potentially unlawful promotion of a UCIS investment in breach of section 238 ("the section 238 restriction"). The section 238 restriction prohibits authorised persons from communicating an invitation or inducement to participate in a collective investment scheme. There are a number of exemptions to the section 238 restriction which an authorised firm can rely on to promote UCIS to its retail customers, which include where a firm is satisfied that the customer can be properly classified as a high net worth individual or a sophisticated retail customer.

4.34. In relation to each of the three recommendations to invest in UCIS, there was clear evidence on the face of the file indicating that the customers in question could not be properly classified as either high net worth or sophisticated investors. Mr Ruff failed to pick up on these issues in relation to these particular sales, and as a result failed to monitor later sales made by these advisers to ensure that inappropriate classification of customers did not continue to result in other customers being sold an investment product that should never have been promoted to them in the first place. The Firm's compliance records do not demonstrate that these advisers were subject to more effective compliance monitoring such as more rigorous file reviews or more challenging compliance visits.

4.35. Of the 14 files reviewed by the skilled person in which the client had been sold a UCIS, seven files suggested that the client had been incorrectly classified as a high net worth or sophisticated investor where this could not have been supported by facts on the file.

4.36. Mr Ruff delegated some of the file review function to members of the Firm's compliance department. The FSA has found that two of these team members did not understand the requirements relating to the restriction of the promotion of UCIS as a recommended investment product. As such, Mr Ruff could not have satisfied himself that he had delegated these matters to staff that had the necessary knowledge to review and assess the suitability of UCIS recommendations.

4.37. Mr Ruff accepted that UCIS investments were complex and higher risk products. However, he failed to properly understand the restrictions on the promotion of UCIS.

In particular, he misinterpreted the Promotion of Collective Investment Schemes Order and equated the ability to promote a UCIS to a consumer as a guarantee that it was a suitable recommendation. As such, he informed the Firm's compliance team that all that was necessary to establish client suitability to invest in UCIS was a self-certified client declaration.

4.38. The compliance staff at A2O did not assess whether a client had been correctly categorised by an adviser if there was a certificate on file to the effect that a customer was a high net worth or sophisticated investor. In addition, they automatically assumed that if an adviser was permitted to promote the UCIS to that customer the recommendation would automatically be suitable, even if this could not be evidenced by the information on file and by the client's stated attitude to risk.

*Compliance visits*

4.39. The second way in which A2O monitored the ongoing competency of advisers and the suitability of advice provided was via "professional standards visits" which should have taken place every 8–10 months. The scheduling of these visits was not risk-based; advisers who were known to A2O as being particularly active in the UCIS market would not receive a professional standards visit more frequently that advisers who were not generally promoting higher risk investments.

4.40. The FSA has found that these visits were sometimes postponed or cancelled and that the time between visits frequently exceeded 10 months. In 2009, A2O had 45 ARs who should have had a professional standards visit in that year. However, A2O's records show that only 21 visits took place that year. During the same year, the Firm's file review records suggest that fewer files were given a grade on review compared to the number of files given a graded review in 2008 as set out in paragraph 4.29.

***Failure to challenge advisers who were a known compliance risk***

4.41. A2O's assumption that its ARs would be highly experienced and capable had a significant impact on the compliance monitoring in place at A2O. In particular, this presumption of experience meant that Mr Ruff failed to provide appropriate sanction or challenge to advisers when he was notified of specific compliance concerns.

4.42. In one example, the FSA found evidence to suggest that Mr Ruff was notified of potential churning of business by an AR on three separate occasions over a period of two years. The information recorded on the Firm's commission processing system suggests that potential churning continued. There was no evidence on the adviser's compliance file that he addressed this issue by taking action to monitor this adviser and satisfy himself that there were valid reasons supporting the recommendation to invest, despite the fact that staff continued to notify him of their concerns.

4.43. Mr Ruff was aware that there was a group of advisers at A2O who recommended a significant amount of UCIS and other high risk products. A2O experienced significant compliance issues with these individuals. Some advisers were so notorious within A2O that they were given nicknames such as "the famous five" and the "the three amigos." These individuals, amongst others, were recognised by A2O employees as

posing an ongoing compliance concern as they routinely failed to disclose business written to A2O, failed to provide information to the compliance team in a timely manner and recommended a significant amount of high risk products.

4.44. Despite being aware that that these advisers posed a significant risk to A2O, Mr Ruff failed to take any effective action to sanction or control these advisers. The Firm's compliance records do not demonstrate that these advisers were subject to more rigorous file reviews or more challenging compliance visits. The Firm's compliance records show that none of the advisers nicknamed "the three amigos" received a compliance visit in 2009. One of these advisers refused to take a new compulsory test introduced by A2O to demonstrate that he was competent to advise on UCIS investments and this went unchallenged by the compliance team.

**Failure to implement and make proper use of management information to understand the risks associated with business written by advisers**

4.45. The FSA has found that Mr Ruff failed to ensure that the compliance function adequately recorded the outcomes of file reviews and compliance visits in such a way that would enable him to produce adequate management information on the trends arising from compliance monitoring. This had a clear impact on the availability of useful management information. Records made following compliance visits contained stock phrases which failed to adequately record potential compliance concerns with advisers. The FSA has not found any evidence to show that Mr Ruff regularly conducted a formal analysis of the trends in business written by advisers.

4.46. As a result of the weaknesses of A2O's management information, there was a lack of valuable management information available to the directors. The board reports contained insufficient information to enable the board of the Firm to properly understand the risks to which the business was exposed.

4.47. The key management information available at A2O was taken from the Firm's back office commission processing system, which was flawed largely because of the limited client and investment product information stored on it. The remaining management information available to A2O was the outcome of the file reviews and firm visits. The compliance team at A2O did not formally record the outcomes of file reviews in such a way that would enable Mr Ruff to create valuable management information.

4.48. As a result of the errors and deficiencies in the information contained on the Firm's commission processing system Mr Ruff was unable to capture and collate sufficient management information about higher risk products so as to inform himself adequately about the compliance risks such higher risk products posed to A2O.

4.49. From January 2007, A2O utilised a back office processing system to process commission due to ARs and advisers. The software system used by the Firm had a number of functions which could be used to automate and improve the Firm's compliance processing systems. Mr Ruff was aware of this functionality from March 2007 but failed to ensure that it was implemented in a timely manner. A2O began to implement these functions as part of its action plan following the skilled person's

report. They were never fully used by the Firm prior to it entering administration in January 2010.

4.50. The FSA has found that there were a number of risks posed by A2O's back office commission processing system, namely:

(1) The way in which advisers defined product types on their new business submission sheets was not always consistent. As a result, a UCIS could be categorised interchangeably as offshore bonds, investment bonds and UCIS. This meant that Mr Ruff did not know with any degree of accuracy what types of business were being written by advisers and relied entirely on the Firm's ARs to accurately inform A2O of the business they had written.

(2) The commissions system did not record, in relation to investments held within a wrapper product, what were the underlying investments. As a result, there may have been an unknown number of cases where a UCIS recommendation was made as part a wrapper product without A2O being able to identify that a UCIS product had been sold. It was not until late 2008 that the Firm appreciated this risk and began to contact platform providers in order to ascertain which funds were contained within the wrapper.

(3) Some advisers failed to report business written to A2O in a timely manner. Mr Ruff was aware who these advisers were, as they were routinely discussed at the management meetings which he attended, but he failed to take action to monitor advisers and remedy the issue. Given that A2O's compliance team relied on the accuracy of new business submissions to choose files for review, late reporting meant that there was a risk that files may not be reviewed in a timely fashion, to the potential detriment of the consumer.

(4) Some advisers failed to report business written to A2O at all, and liaised directly with product providers to obtain commission payments. This issue was a particular concern with advisers who recommended a significant amount of UCIS products. Again, Mr Ruff was aware who these advisers were, as they were regularly discussed at management meetings over the relevant period. As a result, there was an unquantifiable amount of business being written by ARs which the Firm were not aware of until it found out about such business on an ad hoc basis when issues with payment of commission arose.

4.51. Given that A2O's compliance team would only review business contained on the Firm's new business register, there was a clear risk that A2O was unable to effectively monitor higher risk business written by ARs. Mr Ruff's failure to ensure that advisers accurately reported all business meant there was a risk that unsuitable sales of higher risk products may have occurred which neither Mr Ruff, nor the senior management of the Firm, would have been able to monitor. Consequently, Mr Ruff would have been unable to identify if an AR of A2O had mis-sold a product to their client.

## 5. ANALYSIS OF BREACHES

5.1. As the Professional Standards Director, Mr Ruff was responsible for implementing the Firm's compliance processes, carrying out compliance monitoring and overseeing the Firm's compliance function.

5.2. Mr Ruff failed to take reasonable steps to ensure that A2O complied with the relevant requirements and standards of the regulatory system in breach of Statement of Principle 7, as he failed to ensure that:

(1) the Firm collected and analysed adequate management information to enable the Firm's senior management to properly identify and monitor the compliance risks which the business was exposed to, including the amount of high risk business written by A2O's advisers. Information obtained through file reviews and compliance visits to firms was not collated to produce accurate, timely and relevant management information that would identify the type and volume of business written. As a result, Mr Ruff did not have relevant management information to enable him to analyse trends, and detect and assess product or commission bias risks, or the risks and nature of products being sold by A2O's advisers. He did not have sufficient management information to enable him to satisfy himself that the risk appetite of customers matched the risks of products being recommended by the Firm's advisers. It was Mr Ruff's responsibility to ensure that he had this information; and

(2) A2O's compliance arrangements to identify and monitor the products sold by A2O's ARs were robust and effective. Mr Ruff failed to monitor adequately the types of business written by A2O's ARs and the risks associated with this business despite this being his sole responsibility at the Firm. File reviews did not adequately review suitability of advice, as they were limited in scope and in some cases, were carried out by staff with insufficient knowledge of the investment product sold. The file reviews were not backed up by effective compliance oversight visits.

5.3. Mr Ruff failed to exercise due skill care and diligence in managing the business of A2O in breach of Statement of Principle 6 as he failed to:

(1) ensure that the recruitment, training and monitoring of advisers was sufficiently thorough to mitigate the risk of non-compliant sales; and

(2) take appropriate action where concerns about unsuitable sales by ARs were apparent, and in particular where recommendations were made to invest in UCIS and other higher risk products in circumstances where recommendations to invest in such products may not have been appropriate.

5.4. This lack of oversight was particularly serious given the significant amount of high risk business recommended to retail clients by certain advisers, particularly recommendations to invest in UCIS. Consequently, the FSA has concluded that Mr Ruff's failures exposed customers to a serious risk of receiving unsuitable recommendations in relation to retail investment products.

5.5. In assessing Mr Ruff's competence and capability for the purpose of determining whether he is a fit and proper person, the FSA has had regard to the above breaches of Statements of Principle 6 and 7, and in particular regard to the following:

(1) Mr Ruff was aware, through the file reviews and visits he conducted, that certain A2O advisers specialised in higher risk UCIS products and that this formed a significant amount of the business that those advisers wrote; and

(2) during the relevant period, Mr Ruff was aware that potentially unsuitable advice was given by A2O's advisers who recommended high risk products.

5.6. The FSA has concluded that Mr Ruff's conduct fell short of the minimum regulatory standards in terms of his competence and capability, and that he is not a fit and proper person to carry out any controlled function involving the exercise of significant influence over any person in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

## 6. ANALYSIS OF SANCTIONS

6.1. In concluding that Mr Ruff failed to comply with Statements of Principle 6 and 7, the FSA considers that his conduct fell well below the standard expected of approved persons performing significant influence functions. For the reasons set out above, he failed to demonstrate the degree of competence expected under the regulatory system in carrying out his controlled functions. Such failings seriously undermine the protection and fair treatment of A2O's customers and confidence in the financial services industry. Accordingly the FSA considers it is necessary to impose a financial penalty on Mr Ruff and prohibit him from performing any significant influence function.

### Imposition of a financial penalty

6.2. The FSA's policy on the imposition of financial penalties relevant to the misconduct as detailed in this Notice is set out in Chapter 6 of the version of the Decision Procedure and Penalties Manual ("DEPP") in force prior to 6 March 2010, which formed part of the FSA Handbook. All references to DEPP in this section are references to that version of DEPP.

6.3. In determining whether a financial penalty is appropriate the FSA is required to consider all the relevant circumstances of a case.

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

***Deterrence (DEPP 6.5.2(1))***

6.5. In determining the level of the financial penalty, the FSA had regard to the need to ensure those who are approved persons exercising management functions act in accordance with regulatory requirements and standards. The principal purpose of the imposition of this 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.

***The nature, serious and impact of the breaches (DEPP 6.5.2(2))***

6.6. In determining the appropriate sanction, the FSA has had regard to the seriousness of the breaches. The issues referred to in this notice were identified by the FSA and not by Mr Ruff. The FSA has concluded from its analysis that Mr Ruff exercised inadequate management and control over the running of the business which resulted in him failing to comply with the regulatory requirements.

6.7. The FSA has also had regard to the seriousness of the conduct. In particular the FSA has had regard to the fact that Mr Ruff's failure to monitor effectively the ARs of A2O exposed consumers to the risk of receiving potentially unsuitable investment advice.

6.8. Of the 14 files reviewed by the skilled person in which the client had been sold a UCIS, seven files suggest that the client had been incorrectly classified as a high net worth or sophisticated investor where this conclusion could not have been supported by the facts on the file. In all these cases, the skilled person concluded that this could lead to consumer detriment. 30 out of 39 files reviewed by the skilled person in total were deemed to have caused consumer detriment.

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

6.9. The FSA has found no evidence that Mr Ruff acted deliberately or recklessly.

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

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

6.11. The FSA recognises that the financial penalty imposed on Mr Ruff is likely to have a significant impact on him as an individual but is considered to be proportionate given his position as an approved person performing a significant influence function at A2O.

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

6.12. The FSA considers that a financial penalty of the level proposed is appropriate, having taken account of all relevant factors, including Mr Ruff's income from A2O during the relevant period. Mr Ruff earned £65,000 per annum throughout the relevant period.

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

6.13. Mr Ruff has co-operated with the FSA's investigation.

***Previous action taken by the FSA (DEPP 6.5.2G (9))***

6.14. In determining the appropriate sanction, the FSA has taken into account sanctions imposed by the FSA on other approved persons for similar behaviour. This was considered alongside the deterrent purpose for which the FSA imposes sanctions.

6.15. The FSA, having regard to all the circumstances, consider the appropriate level of financial penalty to be £40,000 before any settlement discount.

**Prohibition**

6.16. The FSA has had regard to the guidance in Chapter 9 of the Enforcement Guide ("EG") in deciding that a Prohibition Order is appropriate in this case. The relevant provisions of EG are set out in Annex A of the notice.

6.17. The FSA has concluded that Mr Ruff's conduct demonstrated a serious lack of competence and capability. Mr Ruff was the Professional Standards Director but he failed to appreciate the inadequacies in A2O's compliance systems and controls even when alerted to problems by the FSA. He was responsible for developing and implementing a compliance system that did not have adequate controls to enable the Firm to identify potentially unsuitable advice. The failings were systemic and serious, and included basic failings to implement and carry out thorough files reviews and to ensure that customers had been classified correctly before being advised to invest in UCIS and other higher risk products.

6.18. Mr Ruff's failure to understand what systems and controls should have been in place to ensure compliance by the Firm's ARs in giving investment advice means that he would pose an ongoing risk to consumers if he was allowed to hold a significant influence function. As a result of the widespread failings identified by the investigation team, the investigation team considers that in order to fulfil our statutory objective of protecting consumers, it is also proportionate and necessary to prohibit Mr Ruff from carrying out any controlled function involving the exercise of significant influence over any person in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

## 7. DECISION MAKERS

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

## 8. IMPORTANT

8.1. This Final Notice is given to Mr Ruff under sections 57 and 67 of the Act in accordance with section 390 of the Act.

**Manner and time for payment**

8.2. The financial penalty must be paid in full by Mr Ruff to the FSA by no later than 14 days from the date of the Final Notice.

8.3. If all or any of the financial penalty is outstanding on 22 July 2011 the FSA may recover the outstanding amount as a debt owed by Mr Ruff to the FSA.

**Publicity**

8.4. 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 information would, in the opinion of the FSA, be unfair to Mr Ruff or prejudicial to the interests of consumers.

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

**FSA contacts**

8.6. For more information concerning this matter generally contact Stephen Robinson of the Enforcement and Financial Crime Division of the FSA (direct line: 020 7066 1338 / fax: 020 7066 1339).

**Georgina Philippou**
**FSA Enforcement and Financial Crime Division**

## Annex A

## STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY

### 1. Statutory Provisions

1.1. The FSA's statutory objectives are set out in section 2(2) of FSMA, maintaining confidence in the financial system, the protection of consumers and the reduction of financial crime.

1.2. Under 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 out by an authorised person, exempt person or exempt professional firm, the FSA may make a prohibition order.

1.3. The effect of making a prohibition order is to prohibit an individual from performing functions within authorised firms and to prohibit authorised firms from employing an individual to perform specific functions. Such an order may relate to:

(1) a specified function, any function falling within a specified description, or any function (section 56(2)); and

(2) a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities (section 56(3) (a)

1.4. Under section 66 of the Act, the FSA has the power to impose a financial penalty of such an amount as it considers appropriate where the FSA considers an approved person has failed to comply with a Statement of Principle issued under section 64 of the Act.

### 2. Relevant Guidance

2.1. The FSA will consider making a prohibition order where it appears that an individual is not fit and proper to carry out functions in relation to regulated activities carried on by firms. The FSA may exercise these powers where it considers that to achieve any of its statutory objectives it is necessary to prevent an individual from carrying out any function in relation to regulated activities carried on by firms. The FSA policy in relation to the decision to make a prohibition order is set out in Chapter 9 of the Enforcement Guide ("EG")

2.2. 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 which he poses to consumers or the market generally.

2.3. EG 9.9 provides that when deciding whether to make a prohibition order against an approved person, the FSA will consider the relevant circumstances if the case, which may include (but are not limited to):

(1) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of an individual are set out in FIT 2.1 (Honesty, integrity and reputation), FIT 2.2 (competence and capability) and FIT 2.3 (Financial soundness);

(2) Whether, and to what extent, the individual has failed to comply with the Statements of Principle issued by the FSA with respect to the conduct of approved persons;

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

(4) the length of time since the occurrence of any matters indicating unfitness; and

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

2.4. EG provides at paragraph 9.23 that the FSA may impose a financial penalty in addition to imposing a prohibition order where it is appropriate to do so.

## 3. Regulatory Requirements

### APER

3.1. APER is issued pursuant to section 64 of the Act. It sets out Statements of Principle with which approved persons are required to comply when performing a controlled function for which approval has been sought and granted. They are general statements of the fundamental obligations of approved persons under the regulatory system. APER also contains descriptions of conduct which, in the opinion of the FSA, constitutes a failure to comply with a particular Statement of Principle and describes factors which the FSA will take into account in determining whether an approved person's conduct complies with it.

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

3.3. APER 3.1.4G states that an approved person will only be in breach of a Statement of Principle if they are personally culpable, that is, where their conduct was deliberate or where their standard of conduct was below that which would be reasonable in all the circumstances.

3.4. In this case, the FSA considers that the most relevant Statements of Principle to Statement are:

(1) Principle 6 ("APER 6") under which an approved person performing a significant influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his controlled function; and

(2) Principle 7 ("APER 7") under which an approved person must take reasonable steps to ensure that the business of the firm for which he is responsible complies with the relevant requirements and standards of the regulatory system.

3.5. APER 4.6 gives examples of conduct which does not comply with Statement of Principle 6. This includes failing to take reasonable steps to adequately inform himself about the affairs of the business for which he is responsible (APER 4.5.3E)

3.6. APER 4.7 gives examples of conduct which does not comply with Statement of Principle 7. This includes but is not limited to:

(1) failing to take reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems of control (APER 4.7.3E);

(2) failing to take steps to monitor (either personally or through a compliance department) compliance with the relevant requirements and standards of the regulatory system (4.7.4E); and

(3) failing to take reasonable steps to adequately inform himself about the reason why significant breaches (whether suspected or actual) of the relevant requirements and standards of the regulatory system may have arisen.

**Fit and Proper test for Approved Persons**

3.7. The section of the FSA handbook entitled "FIT" sets out the Fit and Proper test for Approved Persons. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function and FIT is also relevant in assessing the continuing fitness and propriety of an approved person.

3.8. In this instance, the criteria set out in FIT are relevant in considering whether the FSA may exercise its powers to prohibit and/or withdraw approval of an individual in accordance with EG 9.8.

3.9. FIT 1.3 provides that the FSA will have regard to a number of factors when assessing a person's fitness and propriety. The most important considerations include the person's competence and capability.

3.10. In determining a person's competence and capability FIT 2.2 provides that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.2.1G. These include:

(1) 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

(2) whether the person has demonstrated by experience and training that the person is able to perform the controlled function.

## 4. FSA's policy on exercising its power to impose a financial penalty

4.1. The FSA's statement of policy with respect to the imposition and amount of penalties under the Act, as required by sections 69(1), 93(1), 124(1) and 210(1) of the Act, and guidance on those matters is provided in Chapter 6 of the FSA's Decision Procedure and Penalties Manual ("DEPP"), entitled "Penalties", which is part of the FSA's Handbook. In summary, chapter 6 of DEPP states that the FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty, and sets out a non-exhaustive list of factors that may be relevant for this purpose.

4.2. The principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour.

4.3. The FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty. DEPP6.2.1G sets out guidance on a non-exhaustive list of factors that may be of relevance in determining whether to take action for a financial penalty, which include the following.

(1) DEPP 6.2.1G (1): The nature, seriousness and impact of the suspected breach.

(2) DEPP 6.2.1G (2): The conduct of the person after the breach.

(3) DEPP 6.2.1G (3): The previous disciplinary record and compliance history of the person.

(4) DEPP 6.2.1G (4): FSA guidance and other published materials.

(5) DEPP 6.2.1G (5): Action taken by the FSA in previous similar cases.

4.4. The FSA will consider all the relevant circumstances of a case when it determines the level of financial penalty. DEPP 6.5.2G sets out guidance on a non exhaustive list of factors that may be of relevance when determining the amount of a financial penalty.

4.5. Factors that may be relevant to determining the appropriate level of financial penalty include:

(1) whether the breach revealed serious or systematic weaknesses in the person's procedures or of the management systems or internal controls relating to all or part of a person's business (DEPP 6.5.2G(2)(b)); and

(2) the general compliance history of the person, including whether the FSA has previously brought to the person's attention, issues similar or related to the conduct that constitutes the breach in respect of which the penalty is imposed (DEPP 6.5.2(9)(d)).

## 5. FSA's policy for exercising its power to make a prohibition order and withdraw a person's approval

5.1. The FSA's approach to exercising its powers to make prohibition orders and withdraw approvals is set out at Chapter 9 of the Enforcement Guide ("EG").

5.2. 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.

5.3. 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.

5.4. 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.

5.5. 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.

5.6. 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.