
FINAL NOTICE

To: **AXA Wealth Services Ltd ("AXA")**

Firm
Reference
Number: **465753**

Address: **Marlborough House
Marlborough Street
Bristol
BS1 3NX**

Date: **12 September 2013**

1. ACTION

1.1. For the reasons given in this Notice, the Authority hereby imposes on AXA a financial penalty of £1,802,200

1.2. AXA agreed to settle at an early stage of the Authority's investigation. AXA therefore qualified for a 30% (stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £2,574,595 on AXA.

2. SUMMARY OF REASONS

- 2.1. It is of fundamental importance that firms providing investment advice take reasonable care to ensure that they give suitable advice to customers. AXA failed to do so. This affected its sales of investment products through sales advisers based in the branches of Clydesdale Bank, Yorkshire Bank and West Bromwich Building Society in the period 15 September 2010 to 30 April 2012 (the "Relevant Period"). AXA breached Principle 9 of the Authority's Principles for Businesses and related Rules.
- 2.2. AXA is part of the wealth management arm in the UK of a major global financial services group and is prominent in the retail consumer market. During the Relevant Period, it sold 37,000 investment products through its Bancassurance business to approximately 26,000 retail bank and building society customers, with investments totalling £440 million in value. AXA's customers tended to have low levels of experience of investments. They were typically in or near retirement.
- 2.3. There were a number of serious deficiencies in AXA's processes for advising customers about investment products. In particular, AXA:
 - 1) until 31 October 2011 failed to have an adequate process in place for establishing the level of risk its customers were willing and able to take with their investments. In particular, AXA:
 - (a) asked customers to indicate their attitude to investment risk by selecting from a number of categories which described risk in unclear terms. AXA did not ensure that sales advisers checked customers' attitude to, and understanding of, the level of risk they would be taking with their investments; and
 - (b) failed to ensure that sales advisers adequately considered whether customers were able financially to bear the risks associated with the investment products recommended to them (capacity for loss);
 - 2) failed to have an adequate process in place to ensure its sales advisers gathered and took into account all of the information they were required to obtain from customers before making investment recommendations to them. Relevant information about customers, including their knowledge and experience of investments, was missing from many AXA sales files.

There was no evidence in the files that this missing information was gathered at all;

- 3) failed to have an adequate process to ensure sales advisers appropriately considered customers' investment objectives when assessing the suitability of investment products for them;
- 4) failed to have adequate guidance in place for advising customers on the impact of charges applicable to investments recommended to them;
- 5) failed to ensure that customers were provided with adequate explanations as to why investment recommendations were considered to be suitable for them in view of their circumstances. The Authority reviewed 24 suitability reports and in all cases the reports failed to contain sufficient information to justify the recommendations made to customers. The majority of sales advisers subject to mystery shopping conducted on behalf of AXA failed to provide sufficient explanations of their recommendations to customers during meetings with them;
- 6) failed to have effective controls in place over the incentives paid to sales advisers. In the absence of these controls, there was an unacceptable risk of sales advisers making inappropriate recommendations to customers in order to qualify for bonus payments; and
- 7) failed to put in place adequate procedures for monitoring sales of investment products. AXA's compliance monitoring staff failed to identify promptly and investigate effectively potentially unsuitable sales. In 2012, an external consultant appointed by AXA disagreed with the compliance staff's assessments of sales files in 79% of cases because they were not demonstrably suitable.

2.4. The Authority considers AXA's failings to be serious because:

- 1) customers were exposed to a significant risk of making investments which were unsuitable for them and of not being adequately informed about their features and risks. The failings were widespread across AXA's sales process for investment products and potentially affected a large number of customers, including investors who were inexperienced or may have been vulnerable (for example, due to their age, medical or other personal circumstances); and

- 2) the Authority has repeatedly stressed in its publications the importance of firms taking appropriate steps to ensure suitable investment advice is given to customers.
- 2.5. The Authority recognises that AXA proactively made a number of improvements to its sales process over the Relevant Period. This included AXA reviewing its processes in response to the Authority's Guidance Consultation of January 2011 (and Finalised Guidance of March 2011) titled '*Assessing Suitability: Establishing the risks that a customer is willing and able to take and making a suitable investment selection*', together with the Authority's letter dated 14 June 2011 to chief executive officers of wealth management firms. In July 2011 AXA also instructed third party consultants to review parts of its sales process and a sample of sales files. However, AXA failed overall to exercise reasonable care to ensure its recommendations to customers were suitable until 30 April 2012.
- 2.6. Customer complaints during the Relevant Period were low (82 complaints in total) and customer detriment may be low, as at the date of this Notice, due to increases in the value of the stock market since the start of the Relevant Period. However, there is the potential for customers to suffer losses on their investments in the future during downturns in the stock market. In view of this, the Authority has acted to ensure that AXA takes pre-emptive action to deal with future possible customer detriment as well as any detriment that has taken place to date.
- 2.7. Following discussions with the Authority, AXA has, therefore, agreed to contact all customers who made investments through sales advisers in the branches of Clydesdale and Yorkshire Banks and West Bromwich Building Society during the Relevant Period (15 September 2010 to 30 April 2012). AXA will carry out a review of any issues identified as a result of this contact exercise. AXA will compensate all customers who have suffered loss as a result of any failings on its part. It will also enable any customers who have been sold a product that is unsuitable for them to exit the product and avoid potential future losses. This review will be overseen by an independent third party.
- 2.8. Customers who made investments in the period 15 September 2010 to 30 April 2012 acting on the advice of sales advisers and have any questions relating to the advice they received should contact AXA on the following number or by visiting the following website:

AXA Customer Contact Number: 08448 800482

Website: www.axa.co.uk/fcafaqs

- 2.9. The Authority makes no criticism or finding of a regulatory failing against Yorkshire and Clydesdale Banks, West Bromwich Financial Planning Limited (WBFP) or West Bromwich Building Society in this Notice.

3. DEFINITIONS

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

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

"Appointed Representative" has the meaning given to that term in section 39(2) of the Act;

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

"AXA" means AXA Wealth Services Ltd;

"AXA Group" means the global financial services group of companies of which AXA is a member;

"Bancassurance" means the selling of insurance, banking and investment products through the same sales channel. This Notice relates to the sale of investment products to branch customers of Clydesdale and Yorkshire Banks and West Bromwich Building Society;

"Bank sales advisers" means sales advisers operating in the branches of Yorkshire and Clydesdale Banks;

"Building Society sales advisers" means sales advisers operating in the branches of West Bromwich Building Society;

"Clydesdale Bank", "Yorkshire Bank" and "Yorkshire and Clydesdale Banks" means Clydesdale Bank Plc;

"DEPP" means the Authority's Decision Procedure & Penalties Manual as set out in the Authority's Handbook;

“DISP” means the Dispute Resolution: Complaints Sourcebook which is part of the Authority’s Handbook;

“ISA” means Individual Savings Account, a financial product available to residents of the United Kingdom with a favourable tax treatment;

“OEIC” means open ended investment company;

“platform” means an internet-based service that offers information on and dealing in a range of authorised investment funds;

“the Principles for Businesses” means the Authority’s Principles for Businesses as set out in the Authority’s Handbook;

“the Relevant Period” means the period between 15 September 2010 and 30 April 2012;

“the Rules” means the rules set out in the Authority’s Handbook;

“sales advisers” means the advisers who recommended investment products to customers during the Relevant Period out of the branches of Yorkshire and Clydesdale Banks and West Bromwich Building Society. AXA employed the sales advisers in the branches of Yorkshire and Clydesdale Banks and WBFP employed the sales advisers in the branches of West Bromwich Building Society. However, AXA was responsible for the sales advisers employed by WBFP during the Relevant Period pursuant to sections 39(3) and 39(4) of the Act because WBFP was AXA’s Appointed Representative during that time. AXA established and maintained the sales process which all sales advisers were required to follow and had overall compliance responsibility for the investment advice they provided to customers;

“the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber); and

“WBFP” means West Bromwich Financial Planning Limited.

4. FACTS AND MATTERS

Background

- 4.1. AXA has been authorised by the Authority since 4 June 2007. However, prior to 15 September 2010, Bancassurance business was conducted by another entity in

the AXA Group. AXA commenced carrying on Bancassurance business on 15 September 2010 following the sale and restructure of parts of the AXA Group.

- 4.2. During the Relevant Period, AXA's Bancassurance business had agreements in place with bank and building society partners to provide investment advice to the branch customers of these partners. This Notice relates to investment products recommended by sales advisers in the branches of Yorkshire and Clydesdale Banks and West Bromwich Building Society. AXA employed the sales advisers in Yorkshire and Clydesdale Banks and WBF employed the sales advisers in the branches of West Bromwich Building Society. However, AXA established and maintained the sales process which all sales advisers were required to follow in these branches and had overall compliance responsibility for the investment advice they provided to customers (including because WBF was AXA's Appointed Representative during the Relevant Period). A total of approximately 201 sales advisers operated out of Yorkshire and Clydesdale Banks branches and 23 advisers operated out of the branches of West Bromwich Building Society.
- 4.3. Sales advisers made advised sales to customers on a face-to-face basis through a minimum of two appointments with customers. They recommended a number of investment products to customers, including stocks and shares ISAs, OEICs and onshore and offshore investment bonds. Stocks and shares ISAs were the most common form of investment, comprising 75% of investment product sales during the Relevant Period. The investment funds underlying the products recommended to customers were predominantly managed by members of the AXA Group.
- 4.4. AXA's customers tended to have low levels of experience of investment products. Approximately 57% were over 60 years of age and approximately 47% were retired. The average investment per customer was approximately £17,000.
- 4.5. AXA's sales process for retail investment products comprised, among other things, template documents, documented guidelines, sales bulletins and training for sales advisers. In 2011 AXA reviewed its sales process against the Authority's publications on assessing investment suitability (which confirmed pre-existing standards and did not create new obligations for firms) and engaged an external consultant to consider the changes it proposed to make. AXA implemented significant changes to its sales process and the range of funds it offered to customers on 31 October 2011. Further changes were made to AXA's training, guidance and compliance monitoring processes at different times between 31

October 2011 and 30 April 2012. During the Relevant Period, AXA's external consultant carried out a number of reviews of AXA's sales files. This included a review of 30 files of sales made between May to September 2011. The external consultant concluded that 24 (80%) of these sales files evidenced suitability of the recommended product. Of the 6 (20%) where suitability was not evidenced, AXA's compliance monitoring staff had failed to identify issues affecting 3 (50)% of these files.

- 4.6. In late 2011, in a separate exercise, the Authority reviewed 24 investment sales made by AXA in the period 1 June 2011 to 30 September 2011 and found that in 7 (29%) cases, the recommendations appeared to be unsuitable based on the information in the sales files. It appeared to the Authority that in the remaining 17 (71%) cases there was insufficient information in the files to enable the suitability of the sale to be assessed. These results were communicated to AXA in January 2012. AXA has since obtained additional information from customers and discussed with them the investment they made and, where appropriate, alternative suitable products which were not explained in the suitability reports sent to them at the time of the sale. Following these discussions no customers have decided to exit their investments and AXA, supported by the external consultant, therefore took the view that there were no unsuitable sales among those files. In all cases, the products customers invested in increased in value since the date of the advice they received. However, the Authority has since reviewed the files, together with the additional information AXA gathered from customers, and in a material number of cases, the additional information gathered either conflicts with the information recorded in AXA's sales files or casts doubt on the sufficiency of the information obtained from customers at the point of sale. The Authority remains concerned that these files evidence significant issues with the suitability of the advice being given at the point of sale. As set out above, AXA will contact customers who may have been adversely affected as a result of any failings on the part of sales advisers and will review any issues identified as a result of this contact exercise.
- 4.7. On 15 April 2013 AXA announced, for reasons unconnected to the contents of this Notice, that it was ceasing to provide investment advice in the branches of Clydesdale and Yorkshire Banks and would continue to support the appointed representative model with West Bromwich Building Society while the Building Society moved to a new model.

1) Deficiencies in relation to establishing the risk a customer is willing and able to take

Deficiencies in risk categories describing customers' attitude to risk

- 4.8. AXA required sales advisers to describe investment risk to customers using AXA's 'Investing Made Simple' brochure. They were then required to ask customers to select from a number of categories which category customers considered best described their attitude to risk. Between 15 September 2010 and 31 October 2011, there were five AXA risk categories called 'Very Cautious', 'Cautious Managed', 'Balanced Managed', 'Adventurous' and 'Very Adventurous'.
- 4.9. In view of the process followed it was particularly important that the descriptions in the risk categories were clear. However, until 31 October 2011, the categories were flawed because they contained unclear descriptions of investment risk. For example, the risk categories did not quantify the level of risk that customers would be taking with their investments. AXA's 'Cautious Managed' category referred to customers taking "some risk" in order to seek "some growth potential". The term "some" is vague and could be interpreted differently by customers and sales advisers.
- 4.10. In addition, it was insufficiently clear how AXA's "Cautious Managed" and "Balanced Managed" categories differed. They referred to investments in the same asset types, listed in a different order, without adequately explaining the difference between the categories.
- 4.11. The overall structure of AXA's risk categories was also defective. There was no category for those unwilling to take investment risk. The lowest category ('Very Cautious') referred to investments in money market assets (although there were no funds available for recommendation to customers in this category). There was also a large potential increase in risk from the "Very Cautious" to "Cautious Managed" categories.
- 4.12. The deficiencies in AXA's risk categories gave rise to an unacceptable risk of customers making investments that exposed them to a higher level of investment risk than they were prepared to take.

Inadequate training and guidance for sales advisers on assessing customers' attitude to investment risk

- 4.13. AXA's training and guidance for sales advisers failed to highlight sufficiently the need for sales advisers to confirm the risk category which had been selected by customers as best describing their attitude to investment risk and to check (and record how they had checked) that customers understood the level of risk they would be taking with their investments. This would be particularly important for customers who had a low level of experience of investments or were vulnerable. In addition, sales advisers were not trained on the need to resolve any conflicts in customers' answers to different questions about the level of risk they were prepared to accept. The training and guidance also did not caution sales advisers against influencing customers' answers to questions aimed at establishing their attitude to risk.
- 4.14. In any event, AXA's compliance audit function identified in June 2011 that it could not be established from AXA's records that all sales advisers had attended the training or that they had been appropriately overseen by AXA's sales managers.
- 4.15. In January 2011, AXA recognised that:
- 1) it should consider whether customers understood what they were told by sales advisers and consider testing whether customers and sales advisers had a consistent understanding of the risk categories. Whilst there was not a large volume of complaints, AXA's complaint history (82 complaints in total with 32 (39%) relating to investment risk) showed that although sales advisers talked to customers about volatility, customers did not always understand what it meant;
 - 2) sales advisers did not always gather information on customers' preferences for risk taking. Instead, they relied on the customers' risk profile; and
 - 3) sales advisers must have discussions with customers around their appetite for investment risk. This could be addressed through training and post-sale customer contact could be used to monitor how effective the process is.
- 4.16. There were also indications throughout the Relevant Period that a significant number of sales advisers were not assessing customers' attitude to risk adequately.

- 4.17. For example, in March 2011, AXA's compliance audit function expressed concern that a disproportionate number of customers were assessed as having a 'Balanced' attitude to investment risk. AXA's compliance audit function stated that it could be argued, in view of AXA's customer base, that a greater proportion of customers should be assessed as having a 'Cautious' attitude. In fact, a significant proportion (77%) of the funds in which customers invested between 15 September 2010 and 31 October 2011 (when AXA introduced new risk categories) were matched to AXA's 'Balanced Managed' or higher attitude to risk category. This cast doubt on the reliability of sales advisers' assessments of customers' attitude to risk.
- 4.18. In addition, a significant number of sales advisers who had been subjected to mystery shopping exercises conducted on behalf of AXA throughout the Relevant Period failed to follow an adequate process for establishing the individual's attitude to investment risk. Mystery shops were conducted on 38 Bank sales advisers who were considered by AXA to pose a higher risk due to their sales and compliance performance. Whilst AXA took action to address the failings of individual sales advisers, it did not consolidate the results of the mystery shopping or consider if these were indicative of issues affecting the broader population of sales advisers. If AXA had consolidated these results, it would have been alerted to the fact that 26 sales advisers (68% of the sample) were failing to undertake appropriate assessments of customers' risk appetites. The number of sales advisers who failed on this as part of the sample equated to around 13% of the total Bank sales adviser population. A number of material deficiencies were identified in relation to the sales practices of individual advisers. However, AXA failed to investigate whether, in view of this significant failure rate, the broader population of sales advisers were similarly not conducting appropriate attitude to risk assessments.
- 4.19. In December 2011 AXA's compliance audit function found that some sales advisers were making recommendations which could have exposed customers to an unacceptable level of risk. In particular, suitable lower risk products were not recommended in a number of cases. AXA's compliance audit function believed that this was because some sales advisers did not recommend more complex products as there was greater potential for AXA's compliance monitoring department to review and query those sales. That could result in sales advisers failing to meet quality standards which would reduce their bonuses. In addition, AXA's compliance audit function considered that some sales advisers lacked knowledge and understanding of certain products. It appears from this that sales

advisers had not received sufficient training and guidance to understand these products. AXA's compliance audit function also noted that, among other things, a poor attitude to risk assessment combined with an insufficient understanding of products by sales advisers could be leading to poor outcomes for some customers.

- 4.20. AXA made changes to its documented sales process on 31 October 2011 and this included amending its risk categories which resolved the issues noted in paragraphs 4.8 to 4.12 above. Training was rolled out to sales advisers shortly prior to these changes taking effect. However, there were weaknesses in the delivery of the training. AXA's external consultant observed that it would be a challenge to cover the training material in the time allocated. A staff survey revealed that some sales advisers considered that the training did not allow them sufficient time to understand fully the information they received or to ask questions in relation to it. There were also weaknesses in the post-training assessment of sales advisers as it could not be demonstrated that sales advisers had been adequately assessed as competent by sales managers through role plays. AXA's external consultant observed that there was no formal assessment of sales advisers following the training and the pass rate for the role plays was very high. It was not until early 2012 that more detailed guidance and training was delivered to sales advisers on how to assess customers' attitude to risk.

Inadequate process for assessing customers' capacity for loss

- 4.21. Until 31 October 2011, AXA failed to have an adequate process in place for determining whether customers were able financially to bear the risks associated with the investment products recommended to them. AXA's process failed to ensure sales advisers considered whether a customer was able to absorb a fall in the value of their investment without this having a materially detrimental effect on their standard of living.
- 4.22. AXA had an opportunity to make sales advisers aware of this issue when it circulated a sales bulletin to them in February 2011 as a result of the Authority's Guidance Consultation on Assessing Suitability. However, it did not do so despite the Guidance Consultation highlighting capacity for loss as an important issue and AXA having recognised that its sales process did not adequately address the issue. It was not until October 2011 that AXA introduced changes to its sales process and delivered training to its sales advisers on the need to establish customers' capacity for loss.

2) Deficiencies in relation to gathering, and taking into account, information from customers

- 4.23. AXA failed to have an adequate process in place to ensure sales advisers gathered and took into account all of the information they were required to obtain from customers prior to advising them about investment products.
- 4.24. AXA's documented guidance and training for sales advisers stated that the minimum information they should gather from customers and the benchmark requirement was completion of an AXA template fact find form. However, the template form did not prompt sales advisers to gather and document the following information which was necessary to establish the suitability of the advice given to customers:
- 1) the customer's knowledge and experience of investments, including the types of investments with which the customer was familiar, the nature, volume and frequency of previous investments made by the customer and the length of time previous investments had been held. The form only required sales advisers to establish what current investment products were held by the customer but did not require them to consider which funds the customer was currently invested in or previous investments. Information about customers' previous investments and their investment knowledge was relevant to whether they sufficiently understood the risks involved in the investments recommended to them;
 - 2) whether the customer was potentially vulnerable and therefore whether additional care should be exercised by the sales adviser to ensure they were provided with suitable advice; and
 - 3) the length of time for which the customer wished to hold the investment.
- 4.25. AXA's guidance and training for sales advisers did require them to gather and record sufficient information about customers to enable third parties to assess accurately the suitability of the recommendations made for them. However, this guidance and training was inadequate. It was not effective in ensuring that sales advisers gathered and took into account the necessary information.
- 4.26. The results of mystery shopping exercises conducted on behalf of AXA throughout the Relevant Period should have revealed to AXA that sales advisers were consistently failing to gather and record necessary information from customers.

If AXA had consolidated the results, it would have been alerted to the fact that 29 advisers (76% of the sample) had failed to gather relevant information from customers during mystery shops. The number of sales advisers who failed on this as part of the sample equated to around 14% of the total Bank sales adviser population. This significant failure rate across a large sample should have prompted AXA to investigate whether other sales advisers were similarly failing to gather relevant information from customers and, if so, why they were failing to do so.

- 4.27. In addition, AXA's external consultant reviewed 30 files of AXA sales made between May and September 2011. It considered that, whilst 24 of the files evidenced suitability, it was a consistent theme that insufficient information was recorded in these files, such as information about customers' investment objectives or potential changes in their future situation. Information was also not routinely recorded to identify whether customers may have been vulnerable.
- 4.28. In January 2011, AXA recognised that sales advisers needed explicitly to cover knowledge and experience when advising. In addition, AXA recognised that it may need to be more specific as to how long a customer wishes to hold an investment and that it needed to review the minimum amount of information required for assessing suitability. Whilst AXA's external consultant considered the fact finding template to be adequate for the target customer base, it also considered that by its very design, it would not always be sufficient for more complex financial affairs. It recommended that AXA consider the risks of this approach. AXA identified a need to review the design of the form. However, despite this and subsequent recommendations from AXA's compliance audit function to review the form, AXA did not address the gaps in the form. AXA did not take action until January 2012, a year later, when it issued additional guidance for sales advisers on the information they needed to gather.
- 4.29. In the month following the additional guidance, sales advisers continued to fail to capture sufficient information in sales files to justify their investment recommendations to customers. AXA's external consultant reviewed files of 110 sales made between 17 January 2012 and 9 March 2012 and concluded that in 70 (64%) cases, the suitability of the recommendations made to customers could not be demonstrated based on the information recorded in these files.
- 4.30. In view of the failure of sale advisers to maintain complete sales files in a significant number of cases, AXA compliance monitoring function could not check

whether necessary information had been gathered from customers and whether suitable recommendations had been made to them.

3) Deficiencies in relation to customers' investment objectives

- 4.31. AXA failed to provide sales advisers with a proper explanation as to how information about customers' investment objectives should be used to assess the suitability of particular investments for customers. For example, sales advisers were told to gather information about customers' "goals/dreams/aspirations" as these "give the customer a reason to buy, people buy on emotion". There was an unacceptable risk of sales advisers failing to gather sufficient information about customers' investment objectives because, in view of the training they received, they may not have fully appreciated its significance.
- 4.32. It was consistently identified in the sales files reviewed by AXA's external consultant and the Authority that insufficient information was captured about customers' investment objectives. It was unclear whether this information had been gathered at all. If it was not gathered, then it would not be possible to establish whether AXA's recommendations for customers were suitable or not.

4) Deficiencies in AXA's process for advising on charges

- 4.33. AXA's guidance document for sales advisers was deficient in that it failed to prompt sales advisers to consider sufficiently the charges applicable to the investment products and funds they were recommending. The guidance only prompted advisers to consider whether any charges would be incurred but not whether those charges were sufficiently large to affect the suitability of the advice. Sales advisers were also not prompted to consider the charges applicable to suitable alternative products and funds in AXA's range. Despite actively managed funds attracting higher charges, sales advisers were not provided with sufficient guidance requiring them to identify client-specific reasons for recommending such funds, especially for less experienced investors.

5) Inadequate explanations of investment recommendations in meetings with customers and suitability reports

- 4.34. The results of AXA's mystery shopping revealed that 22 out of the 38 sales advisers (58%) had failed to give customers adequate explanations as to why recommendations were considered to be suitable for them. The number of sales advisers who failed on this as part of the sample equated to around 11% of the total Bank sales adviser population. The inadequate explanations were given

during customers' second meetings with sales advisers. The main purpose of these second meetings was for sales advisers to present their recommendations to customers and to explain the products recommended to them. The meetings played an important role in customers' decisions to invest in recommended products.

- 4.35. Both AXA's external consultant (in 47% of the sales files it reviewed) and the Authority (in 100% of the 24 sales files it reviewed) also identified that there was insufficient information in suitability reports sent to customers. Both concluded that the suitability of AXA's recommendations could not be demonstrated based on the information contained in these suitability reports.
- 4.36. In particular, the risks of the investments recommended to customers were not sufficiently prominent. Standard wording included in suitability reports with regard to the benefits and risks of the recommended investments needed to be more balanced. In addition, suitability reports did not contain adequate justifications for recommendations to customers to invest in particular products. For example, there were insufficient explanations in relation to why investment bonds had been recommended to customers rather than OEICs. These recommendations should have been explained with reference to customers' particular circumstances, including their level of income and associated tax band, proposed investment amount and age.

Deficiencies in AXA's template suitability reports

- 4.37. AXA made a template suitability report available to sales advisers, who could adapt these for individual customers. However, until 31 October 2011, the template letter contained inadequate descriptions of the risks associated with recommended investment products. In addition, it contained potentially misleading statements in relation to those risks. The first section of the report titled 'Objectives' suggested that the risks were similar to deposit accounts because it described customers as wishing:

"...to have both the security of deposit type accounts and the potential for greater returns from collective investments."

- 4.38. The above statement featured in a prominent position at the top of AXA's template suitability report. It was inconsistent with the final paragraph of the template letter which stated that customers were not investing in a deposit account.

4.39. In addition, the description of customers' 'Objectives' in the suitability template was unclear. There was inadequate detail about customers' requirements, the term and purpose of the investment. In the absence of additional detail in suitability reports, it would not be clear what customers were seeking specifically to achieve in relation to their investments.

6) Ineffective controls over the incentives paid to sales advisers

4.40. AXA failed to implement effective controls over the incentives paid to sales advisers. As a result there was a risk of sales advisers making inappropriate recommendations to customers in order to receive bonuses.

4.41. There were different incentive schemes in place for Bank sales advisers and Building Society sales advisers. However, under both schemes sales advisers were entitled to earn fixed and variable bonuses based on their sales performance. Sales performance was measured against sales targets that were linked to the amount that customers had invested on the recommendation of the sales adviser.

4.42. Specifically, during the Relevant Period, Bank sales advisers received:

- 1) £2,000 per year if they achieved their sales target;
- 2) an additional amount of £3,000 if they achieved 125% of their sales target; and
- 3) a further amount of £7,000 if they achieved 150% of their sales target.

4.43. Building Society sales advisers received a flat payment of £3,000 to £3,250 each quarter if they had achieved their sales target.

4.44. In addition, sales advisers would earn uncapped variable bonuses calculated as a proportion of the amount customers had invested. Once sales advisers had reached their sales targets, the rate of bonus paid to them increased significantly. For Bank sales advisers it more than trebled from 3% to 10%. For Building Society sales advisers these bonus payments were between 5% and 7.5% of sales made above sales targets.

4.45. Sales advisers would earn a basic annual salary of between £23,000 and £30,000. However, with the addition of the bonuses described above, their total pay could reach as much as £75,000 for high performing sales advisers. For

example, in 2011 83% of sales advisers received an incentive related to sales performance and the average total incentive for sales performance was £8,980.

- 4.46. The bonuses referred to above would, without proper controls, give rise to an unacceptable risk that sales advisers (particularly those who were close to a bonus threshold) would make unsuitable investment recommendations to customers or seek to sell products to customers who did not want them in order to receive a bonus.
- 4.47. To receive their bonuses in full, sales advisers had to have low customer cancellation and upheld complaints rates and were required to meet minimum requirements in relation to the quality of their sales files. However, the file quality standards set by AXA were insufficient to ensure that advisers did not make unsuitable recommendations or seek to sell unwanted products. Until January 2011, in order to receive a full bonus, 60% of a sales adviser's files had to have been assessed as suitable on a first review of the file by AXA's compliance monitoring staff. If they were not assessed as suitable by compliance, further work would be required to ensure the customer had not been disadvantaged. This meant that advisers could still receive their full bonus even when a significant proportion (40%) of their reviewed files were considered to be unsuitable. The standard was only increased to 70% from January 2011 and 80% in January 2012. Even where a sales adviser had failed to reach the appropriate quality standard they would still receive a bonus but it would be reduced.
- 4.48. During the Relevant Period, improvements were made to the controls in place in respect of the incentive schemes for Bank sales advisers. This included strengthening the range of indicators of sales quality and withholding more of the bonus payment where the sales adviser failed to reach the appropriate standard.
- 4.49. However, these changes were not implemented in relation to Building Society sales advisers. In fact, additional bonus incentives were introduced to the scheme for those advisers. Most notably, retrospective bonus accelerator thresholds were added which, once reached, allowed sales advisers to earn an increased rate of bonus on all sales made above their sales target for that period. For example, sales advisers who reached 121% or more of their sales target earned the highest bonus rate on all their sales made over 100% of target. AXA failed to assess appropriately the risks resulting from these changes to the

scheme. Nor did AXA consider whether it should introduce additional controls in view of the increased risks arising from the changes.

- 4.50. Whilst 49% of sales files were reviewed by AXA's compliance monitoring staff and some advisers had a larger proportion of their files checked, this monitoring was ineffective for the reasons given below and failed to operate as an effective control over the incentives paid to sales advisers.

7) Inadequate compliance monitoring of sales

- 4.51. AXA's compliance monitoring staff reviewed a sample of completed sales each month for each sales adviser. In addition, they also reviewed all recommendations proposed to be made to customers that were considered a higher risk to customers; for example, those investing in higher risk investment products, typically offshore investment bonds.
- 4.52. AXA's compliance monitoring staff were required to review sales files against a guidance document given to sales advisers using a template check-list. However, the guidance document for sales advisers did not comprehensively cover all aspects of making suitable recommendations to customers. Specifically, it did not outline in sufficient detail the information that should be gathered from customers and captured in sales files and suitability reports. These issues were not remedied by AXA's training and guidance for compliance monitoring staff.
- 4.53. In March 2011, AXA's compliance audit function assessed whether compliance monitoring staff were reviewing sales files appropriately which would enable AXA to satisfy itself in relation to the suitability of the advice and adequacy of the information given to customers by sales advisers. Despite identifying issues in relation to a limited number of sales files and expressing a view that improvements were required, AXA's compliance audit function failed to identify that AXA's compliance monitoring staff were failing, in a significant proportion of cases, to carry out appropriate reviews of sales files.
- 4.54. It was not until reviews were conducted by AXA's external consultant after January 2012 that the extent of the deficiencies in AXA's compliance monitoring of sales files was first identified. AXA's external consultant reviewed investment sales made between 17 January 2012 and 9 March 2012 which had also been assessed as demonstrably suitable by AXA's compliance monitoring staff. In 79% of the cases reviewed, the external consultant disagreed with compliance

monitoring staff assessments that these files were demonstrably suitable on the basis that they had failed to identify:

- 1) instances of sales advisers failing to capture sufficient information in sales files (including suitability reports for customers) to justify their recommendations to customers (64% of such cases); and
- 2) recommendations which appeared to be unsuitable based on the information recorded in the sales files (15% of such cases).

4.55. As a result of the above findings, further training and guidance was delivered to AXA's compliance monitoring staff in early 2012. AXA's external consultant conducted another review of sales made on or after 26 March 2012. It concluded that whilst improvements had been made, it disagreed with 27% of assessments of sales files by AXA's compliance monitoring staff.

4.56. It was not until 1 May 2012 that AXA introduced a new compliance vetting template which facilitated holistic reviews of the suitability of the recommendations made to customers.

5. FAILINGS

5.1. The regulatory provisions relevant to this Final Notice are referred to in Annex A.

5.2. On the basis of the facts and matters set out in paragraphs 4.8 to 4.56 above AXA breached Principle 9 (Customers: relationships of trust) of the Authority's Principles for Businesses.

5.3. Principle 9 states:

"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 judgement."

5.4. AXA breached Principle 9 by failing to take reasonable care to ensure the suitability of its advice in its sales process for investment products. This included a failure to have effective controls in place over its incentives for sales advisers who sold such products and to undertake effective compliance monitoring of these sales.

5.5. In addition, AXA breached a number of the Authority's Handbook Rules as set out below.

- 5.6. In relation to the facts and matters set out in paragraphs 4.23 to 4.30 AXA breached COBS 9.2.1R(2), COBS 9.2.2R and COBS 9.2.3R by failing to ensure its sales advisers gathered all of the necessary information from customers. Specifically, AXA failed to ensure information was gathered in relation to customers' knowledge and experience of investments, whether they were potential vulnerable and the length of time for which they wished to hold their investment.
- 5.7. In relation to the facts and matters set out in paragraphs 4.8 to 4.33, AXA breached COBS 9.2.1R(1) and COBS 9.2.2R in that it failed to take reasonable steps to ensure its investment recommendations were suitable for customers. This included a failure to have an adequate process in place for identifying customers' attitude to investment risk and sufficiently taking into account the impact of customers' investment objectives and charges on the suitability of its recommendations for them.
- 5.8. AXA breached COBS 4.2.1R by failing to ensure that its communications with customers were clear and fair in that prior to October 2011, AXA used vague terms in its risk categories and did not sufficiently distinguish between those categories as outlined in paragraphs 4.8 to 4.12.
- 5.9. In relation to the facts and matters set out in paragraphs 4.34 to 4.39, AXA breached COBS 9.4.7R in that it failed to ensure it provided its customers with suitability reports which adequately specified their demands and needs, explained why AXA had concluded that its recommendations were suitable for them and sufficiently explained any possible disadvantages of the investments recommended for them.

6. SANCTION

- 6.1. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In respect of conduct occurring on or after 6 March 2010, the Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5A sets out the details of the five-step framework that applies in respect of financial penalties imposed on firms.

Step 1: disgorgement

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

- 6.3. It is not practicable for the Authority to quantify any financial benefit that AXA may have derived directly from the breaches.
- 6.4. Step 1 is therefore £0.

Step 2: the seriousness of the breach

- 6.5. Pursuant to DEPP 6.5A.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. Where the amount of revenue generated by a firm from a particular product line or business area is indicative of the harm or potential harm that its breach may cause, that figure will be based on a percentage of the firm's revenue from the relevant products or business area.
- 6.6. The Authority considers that the total revenue generated by AXA during the Relevant Period in respect of its sales of investment products is indicative of the harm or potential harm caused by its breach in this case. The Authority has therefore determined a figure based on a percentage of AXA's total revenue from sales of investment products during the Relevant Period. The period of AXA's breach was from 15 September 2010 to 30 April 2012. AXA's total relevant revenue for this period was £25,745,925.
- 6.7. In deciding on the percentage of the relevant revenue that forms the basis of the Step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 20%. The range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on firms there are the following five levels:
- Level 1 – 0%
 - Level 2 – 5%
 - Level 3 – 10%
 - Level 4 – 15%
 - Level 5 – 20%
- 6.8. In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly.
- 6.9. DEPP 6.5A.2G(11) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factor to be relevant: The breach

revealed systemic weaknesses in AXA's processes for assessing the suitability of its investment recommendations for retail customers across a large part of its business, and in its compliance monitoring procedures, which failed to identify and proactively address the deficiencies in the processes relevant to the assessment of suitability.

6.10. DEPP 6.5A.2(12) lists factors likely to be considered 'level 1, 2 or 3 factors'. Of these, the Authority considers the following factor to be relevant: The breach was committed negligently or inadvertently. There is no evidence that AXA's conduct was deliberate or reckless.

6.11. The Authority has also considered that AXA's breaches gave rise to a significant risk of customers making investments which were unsuitable for them and not being adequately informed about their features and risks. The failings potentially affected a large number of customers, including those who were inexperienced in investments or vulnerable.

6.12. Despite the significant risks, the precise impact of AXA's breaches is not known as at the date of this Notice. Customer complaints during the Relevant Period were low (82 complaints in total) and customer detriment may be low as at the date of this Notice due to movements in the stock market since the commencement of the Relevant Period. However, there is the potential for customers to suffer losses on their investments in the future during downturns in the stock market. Customers who have or may suffer loss as a result of AXA's failings will be identified in accordance with a past business review that will be carried out by AXA. AXA will compensate all customers who have suffered a loss as a result of any failings on its part.

6.13. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 3 and so the Step 2 figure is 10% of £25,745,925.

6.14. The figure at Step 2 is therefore £2,574,592.50.

Step 3: mitigating and aggravating factors

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

6.16. The Authority considers that the following factors aggravate the breach:

- 1) AXA's obligations in relation to processes relevant to gathering information from customers, assessing suitability and providing customers with appropriate suitability reports should have been clear from the publications issued by the Authority prior to the Relevant Period. During the course of the Relevant Period, there were further communications from the Authority heightening the level of awareness of the importance of ensuring suitable outcomes for customers; and
- 2) The previous disciplinary and compliance history of the AXA Group of which AXA is a wholly owned subsidiary. AXA Sun Life Plc was fined £500,000 in December 2004, when it was part of the AXA Group of companies, for breaches of Principles 3 and 7 relating to its financial promotions and associated systems and controls.

6.17. The Authority considers that the following factors mitigate the breach:

- 1) During and after the Relevant Period, AXA took a number of steps to identify the failings in its sales process and compliance monitoring of sales and to address those failings. It engaged an independent expert to review its sales process and carried out recommendations made by the expert. It has proactively made a significant number changes to its suitability processes.
- 2) AXA has also agreed to take remedial steps by carrying out a past business review.
- 3) AXA has co-operated with the Authority during the investigation.

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

6.19. Step 3 is therefore £2,574,592.50.

Step 4: adjustment and deterrence

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

6.21. The Authority considers that the Step 3 figure of £2,574,592.50 represents a sufficient deterrent to AXA and others, and so has not increased the penalty at Step 4.

6.22. The figure at Step 4 therefore remains £2,574,592.50.

Step 5: settlement discount

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

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

6.25. The figure at Step 5 is therefore £1,802,214.70 which has been rounded down to £1,802,200.

Penalty

6.26. The Authority therefore imposes a total financial penalty of £1,802,200 on AXA for breaching Principle 9 and related Rules.

7. PROCEDURAL MATTERS

Decision maker

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

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

Manner of and time for Payment

7.3. The financial penalty must be paid in full by AXA to the Authority by no later than 26 September 2013, 14 days from the date of the Final Notice.

If the financial penalty is not paid

- 7.4. If all or any of the financial penalty is outstanding on 27 September 2013, the Authority may recover the outstanding amount as a debt owed by AXA and due to the Authority.

Publicity

- 7.5. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Notice relates. Under those provisions, the Authority must publish such information about the matter to which this Notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
- 7.6. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contacts

- 7.7. For more information concerning this matter generally, contact Andrew Wigston (direct line: 020 7066 6286 /fax: 020 7066 6287) of the Enforcement and Financial Crime Division of the Authority.

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Tom Spender

Project Sponsor

Financial Conduct Authority, Enforcement and Financial Crime Division

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. STATUTORY PROVISIONS

1.1. The Authority's operational objectives, set out in sections 1B to 1E of the Act, are to secure an appropriate degree of consumer protection, to protect and enhance the integrity of the UK financial system and to promote effective competition in the interests of consumers.

1.2. Section 206 of the Act provides:

"If the appropriate regulator considers that an authorised person has contravened a relevant requirement imposed on the person ...it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate."

2. REGULATORY PROVISIONS

Principles for Businesses (PRIN)

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

2.2. Principle 9 states:

"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."

Handbook Rules

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

Communicating with clients

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

2.5. COBS 4.2.1R states:

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

(2) This rule applies in relation to:

- (a) *a communication by the firm to a client in relation to designated investment business other than a third party prospectus...*"

Suitability

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

2.7. COBS 9.2.1R provides:

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

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

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

(b) financial situation; and

(c) investment objectives;

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

2.8. COBS 9.2.2R provides:

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

(a) meets his investment objectives;

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

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

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

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

2.9. COBS 9.2.3R provides:

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

- (1) *the types of service, transaction and designated investment with which the client is familiar;*
- (2) *the nature, volume and frequency of the client's transactions in designated 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."*

2.10. COBS 9.4.7R provides:

"The suitability report must, at least:

- (1) *specify the client's demands and needs;*
- (2) *explain why the firm has concluded that the recommended transaction is suitable for the client having regard to the information provided by the client; and*
- (3) *explain any possible disadvantages of the transaction for the client."*