Financial Conduct Authority

FINAL NOTICE

To: **The Bank of New York Mellon London Branch ("BNYMLB")**
The Bank of New York Mellon International Limited ("BNYMIL")

Reference Numbers: **122467**
183100

Address: **1 Canada Square**
London E14 5AL
UNITED KINGDOM

Date: **14 April 2015**

1. ACTION

1.1. For the reasons given in this Notice, the Authority hereby imposes on BNYMLB and BNYMIL (together, "the Firms") a financial penalty of £126,000,000.

1.2. The Firms agreed to settle at an early stage of the Authority's investigation. The Firms 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 £180,000,000 on the Firms.

2. SUMMARY OF REASONS

2.1. In the period 1 November 2007 to 12 August 2013, the Firms breached Principle 10 in failing to arrange adequate protection for safe custody assets for which they

were responsible. The Firms also breached a number of rules in Chapter 6 of the Client Assets Sourcebook ("Custody Rules").

2.2. The Firms are the third largest and eighth largest custodian in the UK. They provide custody services jointly to 6,089 clients in the UK. The Firms undertake business in the UK under the Custody Rules. Under these rules, firms are required to maintain records and conduct reconciliations at regular intervals on a legal entity-specific basis. The Firms failed to do this.

2.3. The Firms:

(1) failed to implement adequate organisational arrangements for safeguarding client assets, as a result of the failings set out in this Notice;

(2) maintained records and accounts on a global, rather than entity-specific level and in that respect failed to meet the requirements of CASS 6.5.2R;

(3) failed to conduct external reconciliations between the Firms' records and accounts and those of affiliate group companies which the Firms appointed as sub-custodians. Where the Firms appointed non-affiliate third parties as sub-custodians, they also failed to conduct separate, entity-specific reconciliations with the accounts and records of the non-affiliate third party sub-custodians (instead performing external reconciliations on an enterprise-wide basis only);

(4) failed to have an entity-specific process in place prior to July 2012 to identify reconciliation discrepancies for which the Firms were responsible, as a result of which the Firms were unable to demonstrate compliance with the requirements of CASS 6.5.10R;

(5) failed to take the necessary steps to ensure that assets from 13 accounts, identified as proprietary assets on the Firms' own records and accounts, which were deposited into client omnibus accounts with certain third parties were identifiable separately to assets belonging to clients in those third party accounts. This resulted in the commingling of Firm and clients' custody assets;

(6) on occasions used clients' assets held in omnibus accounts, without the express prior consent of all clients whose assets were held in those accounts, to settle a transaction before corresponding assets had been received under a covering trade of the relevant client. This resulted in

some clients' assets being used without consent to settle other clients' trades. During most of the Relevant Period, the Firms did not have in place systems and controls that could identify the number of instances of this failure;

(7) failed to implement CASS-specific governance arrangements, such as committees that dealt specifically with CASS issues or accountability matrices for or job descriptions referring to CASS roles and responsibilities, until 2011. Although the Firms had some governance committees that included CASS in their Terms of Reference prior to this date, their consideration of CASS-specific issues was on an ad hoc basis only. This was insufficient given the nature of the Firms' business and the Firms' failure to identify and remedy the issues outlined in this Notice during the Relevant Period;

(8) failed to provide CASS-specific training to employees with operational or oversight responsibility for custody assets until March 2012; and

(9) as a result of failing to comply with the requirements of the Custody Rules the Firms' CASS resolution packs were inadequate (from 1 October 2012 when the requirement to maintain a CASS resolution pack came into force). CASS resolution packs are important as they can assist an insolvency practitioner in achieving a timely return of custody assets in the event of insolvency.

2.4. An insolvency process is often, by its nature, complex and fast-moving. Many unpredictable issues may unfold that need to be dealt with at short notice in order to ensure minimum impact on consumers. The custody asset regime seeks to ensure that the wind-down of a firm in the event of an insolvency is carried out in as orderly a manner as possible and in a way that reduces the risk of loss of consumers' custody assets. The custody asset regime is designed to ensure protection of custody assets and, to the extent possible, to speed up the return of those assets to clients in the event of firm failure, thereby reducing costs which would be met out of clients' assets. It is also designed to ensure that records in relation to custody assets are reconciled regularly to ensure their accuracy and enable them to be retrieved promptly while the firm is a going concern as well as when the firm has become a gone concern. For example, accurate, entity-specific records and accounts should be accessible to an Insolvency Practitioner in the event of a custodian's insolvency.

2.5. Compliance with the Custody Rules reduces the extent of the following kinds of loss or delay:

(1) diminution of assets due to costs of the insolvency: where a firm's accounts and records are not compliant with the Custody Rules, the Insolvency Practitioner may need to:

(a) seek directions from the Court in order to return assets to clients;

(b) resolve multiple claims for the same assets from different entities, including those subject to different insolvency regimes;

the costs of which would be borne by the custody asset pool and therefore ultimately by the clients to whom those assets belong;

(2) loss in opportunity to deal with assets: clients lose opportunities to complete pending transactions, to trade on or to realise the value of their assets while they wait for assets to be returned by an appointed Insolvency Practitioner. During the period when clients do not have access to their assets, the value of those assets may fluctuate and if the value decreases a client may therefore lose economic value; and

(3) delay in the return of assets: the Insolvency Practitioner has to identify and go through a process to independently verify for which clients the insolvent entity holds assets and to settle unresolved shortfalls, which process causes delay in the return of assets.

2.6. Compliance with the Custody Rules prior to insolvency can have a mitigating effect in an insolvency process for the reasons given above and is something over which firms have complete control. It is in this context that the Authority views breaches of the Custody Rules, and a firm's failure to comply with those rules, as a particularly serious matter.

2.7. The Firms' use of global custody platforms which, during the Relevant Period, did not record with which Bank of New York Mellon Group ("BNY Mellon Group") entity clients had contracted, caused several of the Firms' failings. Had the Firms complied with the Custody Rules, they would, in the event of the insolvency of BNYMLB and/or BNYMIL at any point during the Relevant Period, have been able to provide entity-specific accounts and records to the Insolvency Practitioner, which would have provided a record against which the Insolvency Practitioner could compare other information sources held by the Firms. This would have

reduced the risks identified in paragraph 2.5 and the complexity in returning assets to customers in an already complex insolvency situation.

2.8. The Firms' failure to maintain books and records on an entity-specific basis meant that the Firms were unable to fulfil their obligations to:

(1) maintain entity-specific records and accounts, which meant that the Firms' records and accounts failed to meet the requirements of CASS 6.5.2R;

(2) conduct entity-specific reconciliations between the Firms' records and accounts and those of affiliate group companies which the Firms appointed as sub-custodians or to conduct entity-specific external reconciliations with the accounts and records of non-affiliate third party sub-custodians by whom client assets were held (instead performing external reconciliations on an enterprise-wide basis only);

(3) maintain an adequate CASS resolution pack (from 1 October 2012 when the requirement to do so came into force) that would have assisted an insolvency practitioner in achieving a timely return of custody assets in the event of BNYMLB's and/or BNYMIL's insolvency; and

(4) submit accurate Client Money and Assets Returns ("CMAR") from October 2011 (when the requirement to do so came into force) until the end of the Relevant Period.

2.9. As a consequence, the Authority has concluded that the Firms failed to arrange adequate protection for the custody assets for which they were responsible as required by the Custody Rules.

2.10. The Authority considers the Firms' failings to be serious for the following reasons:

(1) The BNY Mellon Group, of which the Firms are part, is the world's largest global custody bank by custody assets. An insolvency of the size and complexity of BNYMLB's and/or BNYMIL's would have had a severe impact on the UK market. Had the Firms complied with the requirements of the Custody Rules, their wind-down would have been carried out in the most orderly manner possible and in a way that would have reduced the risks identified in paragraph 2.5. As a result of the Firms' misconduct, the total value of custody assets at risk of being impacted to some degree in the manner discussed above was significant. The custody asset balances held by BNYMLB and BNYMIL increased significantly over the course of the

Relevant Period and peaked at approximately £1.3 trillion and £236 billion respectively. Whilst the extent of any financial impact of the breaches on clients is uncertain, any breach that exposes clients to additional risk of being impacted is unacceptable;

(2) given the systemically important nature of the Firms and the fact that custody assets were central to the Firms' business, it was particularly important that they comply with the Custody Rules, a matter entirely within their control. It is particularly serious in this context that the Firms failed to comply with the fundamental requirement that their accounts and records be maintained on an entity-specific basis;

(3) a number of the Firms' failings were failings of the Firms as a whole (rather than incidences isolated by business line or account), indicating that the Firms' compliance with the Custody Rules was seriously inadequate;

(4) a number of the breaches of the Custody Rules took place, undetected, throughout the Relevant Period (a period of five years and nine months);

(5) the failings took place during a period when there was significant stress within the market, meaning that the Firms should have had heightened regard to the requirements of the Custody Rules;

(6) all of the Firms' failings, except for the one identified in April 2014, were drawn to the Firms' attention by the Authority, the Firm working with an external regulatory adviser (appointed by the Firms one year before the end of the Relevant Period and following the Authority's CASS visit of May 2012) and the Skilled Persons, rather than through their own compliance monitoring or internal audit function; and

(7) during the Relevant Period there was a high level of awareness in the financial services industry of the importance of adequately protecting client assets. In particular, the Authority published a report in January 2010 highlighting concerns about custody asset failings.

2.11. The Authority has taken into account that:

(1) the Firms have committed significant resources to reviewing its arrangements for compliance with the Custody Rules and to remediating the issues referred to in this Notice;

(2) the Firms have provided significant cooperation and assistance during the course of the Authority's investigation;

(3) the Authority has not found that the Firms acted deliberately or recklessly;

(4) although custody assets were at risk of some loss as described in paragraph 2.5 above, there was no actual loss of any custody assets in this instance; and

(5) ensuring the CASS Rules are adhered to supports the Authority's operational objectives of securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.

2.12. The Authority therefore imposes a financial penalty on the Firms in the amount of £126,000,000 pursuant to section 206 of the Act.

3. DEFINITIONS

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

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

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

"BNY Mellon" means The Bank of New York Mellon Corporation;

"BNYMIL" means the Bank of New York Mellon International Limited;

"BNYMLB" means the Bank of New York Mellon London branch;

"CASS Rules" means the Client Assets Sourcebook contained in the Authority's Handbook;

"Client Money Rules" means Chapter 7 of the CASS Rules (as defined above);

"CMAR" means Client Money and Assets Return;

"Custody Rules" means Chapter 6 of the CASS Rules (as defined above);

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

"EG" means the Enforcement Guide;

"Principles" means the Authority's Principles for Businesses;

"Relevant Period" means 1 November 2007 to 12 August 2013;

"Skilled Person" means the two firms appointed by the Firms in July 2013 under section 166 of the Act to make a report to the Authority on the Firms' compliance with the CASS Rules;

"the Wider CASS Review" means the review of the Firms' CASS compliance framework undertaken by an external regulatory adviser appointed by the Firms in October 2012.

4. FACTS AND MATTERS

Background

4.1. The BNY Mellon Group, of which the Firms are a part, is the world's largest global custody bank by custody assets. BNYMLB is the London branch of BNY Mellon, a custodian with its headquarters in the US and regulated primarily by the Federal Reserve Board. The custody asset balances held by BNYMLB and BNYMIL during the Relevant Period peaked at approximately £1.3 trillion and £236 billion respectively.

4.2. The Firms' primary business activities consist of the provision of custody services and related agency services to professional and retail clients, using global custody platforms and sub-custody networks and holding physical securities (for example bearer note certificates) in vaults in the US and UK. The Firms also act as custodians for other entities such as fund managers and pension funds. The Firms' clients are largely institutions, corporations, funds and high net worth individuals. BNY Mellon's regulatory filing in the third quarter of 2013 stated that the Firms' "trading activities are focused on acting as a market maker for our customers and facilitating customer trades. Positions managed for our own account are immaterial to our foreign exchange and other trading revenue and to our overall results of operations." The Firms do not carry out any material

business with clients as part of which client assets are rehypothecated or used for the Firms' own benefit or as collateral for the Firms' own exposures.

4.3. The Firms have been authorised and regulated by the Authority since 1 December 2001 to perform a number of activities, including the safeguarding and administration of assets and/or arranging the safeguarding and administration of assets.

4.4. BNYMLB holds custody assets under contractual agreements with clients to provide custodian services. BNYMLB used a sub-custody network to gain direct access (as a participant) or indirect access (via an external sub-custodian) to national and international central securities depositaries. During the Relevant Period:

(1) prior to the second quarter of 2009: BNYMLB used BNY Mellon's own network of contractually-appointed sub-custodians and direct securities depositaries to hold securities for its clients;

(2) from the second quarter of 2009: BNYMLB used a BNY Mellon Group entity as its global sub-custodian to hold securities for its clients. That entity then used its own network of contractually-appointed sub-custodians and direct securities depositaries to hold those securities for BNYMLB's clients. For certain national central securities depositaries, BNY Mellon was itself appointed as a sub-custodian of the BNY Mellon Group's sub-custodian.

4.5. BNYMIL also holds custody assets under contractual agreements with clients to provide custodian services. Similarly to BNYMLB, BNYMIL used a sub-custody network to gain direct and indirect access to national and international central securities depositaries. During the Relevant Period:

(1) prior to late 2009: BNYMIL used BNY Mellon as its global sub-custodian to hold securities for its clients. BNY Mellon then used its own network of contractually-appointed sub-custodians and direct securities depositaries to hold securities for BNYMIL's clients;

(2) from late 2009: BNYMIL used a BNY Mellon Group entity as its global sub-custodian to hold securities for its clients. That entity then used its own network of contractually-appointed sub-custodians and direct securities depositaries to hold those securities for BNYMIL's clients.

4.6. The Firms also hold physical securities (such as bearer note certificates) for clients and appoint a BNY Mellon Group entity to store those assets in vaults in the US and UK.

4.7. The assets received on behalf of the Firms' clients and held with third parties were safe custody assets and were subject to the relevant requirements and standards set out in the Authority's Principles and the Custody Rules.

Records and accounts failings

4.8. CASS 6.5.2R requires a firm to maintain its records and accounts in a way that ensures their accuracy, and in particular their correspondence to the safe custody assets held for clients.

4.9. The Firms used BNYM Group custody platforms that operated on a global, rather than entity-specific level to process securities transaction information. Although these platforms recorded the clients for whom custody assets were held, their securities entitlements and the securities depositary where the assets were held, they did not record the legal entity identified in the relevant client contracts, or indicate where the Firms had used another BNY Mellon entity as a global sub-custodian, which meant the Firms' records and accounts failed to meet the requirements in CASS 6.5.2R.

4.10. Had the Firms complied with the requirement to maintain their records and accounts so that they reflected accurately the basis upon which custody assets were held, in the event of their insolvency, they would have been able to provide a record against which the Insolvency Practitioner could compare other information sources held by the Firms. This would have reduced the risks identified in paragraph 2.5 above and the complexity in attempting to return assets to customers in an already complex insolvency situation.

Failure to conduct entity-specific external reconciliations

4.11. CASS 6.5.6R requires a firm to conduct "on a regular basis" reconciliations on a legal entity-specific basis between its internal accounts and records and those of any third parties by whom those custody assets are held ("external reconciliations").

4.12. During the Relevant Period, the Firms performed external reconciliations between what was held for clients by the BNY Mellon Group as a whole (as recorded on its global platform) and the records of non-affiliate third parties.

4.13. However, as a result of the Firms' failure to record on their custody platforms the legal entity with which clients contracted, the Firms were unable to conduct entity-specific external reconciliations. Where the Firms used a BNY Mellon Group entity as their global sub-custodian to hold securities, the Firms were required to conduct external reconciliations between their internal accounts and records and those of that BNY Mellon Group sub-custodian. However, the Firms' reconciliation systems did not recognise affiliate entities as third party sub-custodians, as a result of which the Firms were not able to carry out external reconciliations with affiliate sub-custodians. Where the Firms appointed non-affiliate third parties as sub-custodians, they also failed to conduct separate, entity-specific reconciliations with the accounts and records of the non-affiliate third party sub-custodians (instead performing external reconciliations on an enterprise-wide basis only).

4.14. Further, in the case of some physical assets held in a US vault for BNYMLB clients, BNYMLB carried out external reconciliations between the BNY Mellon Group's accounts and records and those of non-affiliate sub-custodians (rather than on an entity-specific level, as required by CASS 6.5.6R) every 18 to 24 months. External reconciliations should have been carried out 'on a regular basis', which in the context of BNYMLB's operations should have been at least every six months.

Funding external reconciliation discrepancies

4.15. CASS 6.5.10R requires a firm to correct promptly any discrepancies identified by external and/or internal reconciliations and make good, or provide the equivalent of, any unreconciled shortfall for which there are reasonable grounds for concluding that the firm is responsible.

4.16. Prior to July 2012, the Firms did not have an entity-specific process in place for identifying external reconciliation discrepancies for which the Firms were responsible. As a result, the Firms were unable to demonstrate compliance with the requirements of CASS 6.5.10R.

Use of clients' assets without consent

4.17. CASS 6.4.1(1)R prohibits a firm from using custody assets held on behalf of one client for the account of another client of the firm unless the client has given express prior consent to the use of the custody asset on specified terms and the use of those assets is restricted to those terms.

4.18. On occasions, the Firms used clients' custody assets held in omnibus accounts, without the express prior consent of all clients whose assets were held in those

accounts, to settle a transaction before corresponding assets had been received under a covering trade of the relevant client. This resulted in some clients' assets being used without consent to settle other clients' trades. During most of the Relevant Period, the Firms did not have in place systems and controls that could identify the number of instances of this failure.

Failure to segregate

4.19. CASS 6.3.1(2)R requires a firm to take the necessary steps to ensure that any client's custody assets that are deposited with a third party are identifiable separately to assets belonging to the firm and to the third party, by means of differently-titled accounts on the books of the third party or other equivalent measures that achieve the same level of protection.

4.20. Custody assets from 13 accounts, identified as proprietary assets on the Firms' own records and accounts, were deposited into omnibus client accounts with certain third parties, but were not identifiable separately to assets belonging to clients in those third party accounts. This resulted in the commingling of Firm and clients' custody assets.

Organisational requirement failings

4.21. CASS 6.2.2R requires a firm to have adequate organisational arrangements to minimise the risk of loss or diminution of clients' safe custody assets, or the rights in connection with those safe custody assets, as a result of the misuse of the safe custody assets, fraud, poor administration, inadequate record-keeping or negligence.

4.22. The Firms failed to implement CASS-specific governance arrangements until 2011. For example:

(1) there were no committees that dealt specifically with CASS issues until June 2011;

(2) there were no accountability matrices for CASS roles and responsibilities throughout the Relevant Period or job descriptions referring to CASS roles and responsibilities until 2011;

(3) Compliance did not perform a sufficiently proactive CASS role throughout the Relevant Period; and

(4) there was no CASS-specific remit for the Firms' internal audit function until 2013.

4.23. Although prior to 2011 the Firms had some governance committees that included CASS in their Terms of Reference, their consideration of CASS-specific issues was on an ad hoc basis only. This was insufficient given the nature of the Firms' business and the Firms' failure to identify and remedy the issues outlined in this Notice during the Relevant Period.

CASS resolution pack

4.24. Since 1 October 2012, CASS 10.1.3R requires a firm to maintain and be able to retrieve a CASS resolution pack, the purpose of which is to ensure that a firm maintains and is able to retrieve information that would, in the event of its insolvency, assist an insolvency practitioner to achieve a timely return of custody assets held by a firm to that firm's clients.

4.25. As a result of failing to comply with the requirements of the Custody Rules, for example by failing to maintain entity-specific records and accounts, the Firms' CASS resolution packs were inadequate for ten months of the Relevant Period (from 1 October 2012 when the requirement to maintain CASS resolution pack came into force). Had the Firms complied with the requirement to maintain and be able to retrieve an adequate CASS resolution pack, they would have been able to provide a more comprehensive record against which the Insolvency Practitioner could compare other information sources held by the Firms.

Client Money and Assets Return ("CMAR")

4.26. Since 1 October 2011, SUP 16.14.3R(1) requires a firm to submit a monthly CMAR within 15 business days of the end of each month, containing the information prescribed in the Authority's Handbook.

4.27. As the Firms' global custody platforms did not record the legal entity with which clients contracted or perform entity-specific reconciliations, the monthly CMARs submitted by the Firms to the Authority from October 2011 to August 2013 were incomplete and inaccurate in these respects.

Training

4.28. The Firms failed to ensure that those employees with operational or oversight responsibility for custody assets received CASS-specific training until March 2012, when the Firms provided CASS-specific training for the first time.

Identification of the issues

4.29. In January 2010, the Authority published on its website a Client Money & Asset report noting that the Authority considered compliance with the Custody Rules to be poor across the financial services industry. In particular, the key issues identified by the report included:

(1) the importance of implementing adequate arrangements to prevent the firm using a client's custody assets in the absence of express client consent to do so; and

(2) the importance of carrying out reconciliations to ensure that custody assets are appropriately segregated.

4.30. The Authority's Client Money & Asset report should have prompted the Firms to conduct a review of their custody asset compliance that identified the above issues, particularly because of the centrality of custody assets to their businesses and the substantial value of custody assets held for clients.

4.31. In the second quarter of 2012, the Authority visited the Firms to review the Firms' application of the banking exemption under the Client Money Rules. During the visit the Authority identified issues relating to the Firms' compliance with the Custody Rules. These issues were confirmed to the Firms in a letter of 2 July 2012, which included the following concerns:

(1) the use of one client's assets to settle the transaction of another client without the express consent of the client whose assets are being used, in relation to which the Firms confirmed that they did not know how many custody contracts provided the firm with express consent to use one client's assets in the settlement of another client's transaction; and

(2) the lack of reporting of stock reconciling items in Section 7 of the CMAR for both BNYMLB and BNYMIL. The reconciliation process adopted by the Firms did not appear to allow them to identify reconciling items by client, as a result of which the Authority was concerned that assets belonging to clients could be lost.

4.32. In August 2012, the Firms notified the Authority that they intended to appoint an external regulatory adviser to undertake a wider review of their CASS compliance framework ("the Wider CASS Review") to ensure that the framework was being applied appropriately. During August and September 2012, the Firms, in

conjunction with the external regulatory adviser, scoped the Wider CASS Review, which they shared with the Authority. The scope of that review included ensuring:

(1) completeness and accuracy of the books and records of BNYMLB and BNYMIL for the purposes of the CASS Framework;

(2) adequate legal entity record keeping and reconciliations controls are in place to correctly reflect client transactions in the relevant systems, books and records of the respective legal entities; and

(3) that reconciliation discrepancies are appropriately considered and treated for CASS purposes at the legal entity level.

4.33. In October 2012, as part of an on-site risk assessment (including an assessment of the Firms' compliance with CASS), the Authority identified further CASS failings. These failings were set out in a Risk Assessment letter and Risk Mitigation Programme sent to the Firms in February 2013. The review identified "significant failures" in the Firms' CASS regime, including examples which the Firms should have identified and mitigated without the need for the Authority's involvement. The review found that the underlying cause of these failings appeared to be insufficient consideration by the Firms of their UK-specific regulatory obligations in implementing a global, rather than entity-specific, approach to custody asset management.

4.34. In May 2013, the findings of the Firms' external regulatory adviser's Wider CASS Review were reported voluntarily to the Authority. These findings included:

(1) the BNY Mellon Group's global operating model "creates a level of complexity for the Firms in the execution of their respective CASS obligations";

(2) "the Firms' CASS Governance Framework was limited and requires significant considerable enhancement in order to provide comprehensive and effective governance and operational oversight over the Firms' CASS compliance"; and

(3) "Based on our assessment of the Firms' CASS related processes and controls that fall within the scope of this Report, we have identified a number of issues which we recommend that management should remediate in order to mitigate CASS related risks".

4.35. In June 2013, the Authority required the Firms to provide a Skilled Person's report under section 166 of the Act. The Firms appointed two Skilled Persons concurrently. On 12 August 2013, the Skilled Persons issued their report, which expanded on the issues identified previously by the Authority and the Firms' regulatory advisers in the Wider CASS Review. The findings included:

(1) failure to identify in records and accounts the legal entity with which clients contract (as required by the Custody Rules);

(2) external reconciliations were only being conducted between the global BNY Mellon Group records and accounts and those of non-affiliate sub-custodians, when they should have been conducted between BNY Mellon Group entities and between BNY Mellon Group entities and non-affiliate sub-custodians;

(3) in the case of some clients who had contracted with BNYMLB to hold physical custody assets, external reconciliations were only carried out between the BNY Mellon Group's records and accounts and those of non-affiliate sub-custodians and only every 18 to 24 months, rather than (1) on an entity-specific level and (2) every six months;

(4) as of 28 March 2013, the Firms had no formal procedure to consider funding external reconciliation discrepancies as per CASS 6.5.10R; and

(5) on occasions used clients' assets held in omnibus accounts, without the express prior consent of all clients whose assets were held in those accounts, to settle a transaction before corresponding assets had been received under a covering trade of the relevant client. This resulted in some clients' assets being used without consent to settle other clients' trades.

4.36. The issues identified by the Wider CASS Review and the Skilled Persons' report should have been identified by the Firms at an earlier stage through their own monitoring and review of their custody asset compliance regime, particularly because of the centrality of custody assets to their businesses and the substantial value of custody assets held for clients.

4.37. In April 2014, the Firms notified the Authority of an issue with the Firms' segregation of custody assets, which had not previously been identified.

5. FAILINGS

5.1. Based on the facts and matters described above, the Authority has concluded that the Firms have breached Principle 10 and associated Custody Rules. The regulatory provisions relevant to this Final Notice are referred to in Annex A.

5.2. Principle 10 requires a firm to arrange adequate protection for clients' assets for which it is responsible. The CASS Rules set out detailed requirements placed on firms to assist in ensuring that such adequate protection is in place for custody assets. The Authority has concluded that the Firms failed to arrange adequate protection for the custody assets for which they were responsible.

5.3. The Firms:

(1) failed to implement adequate organisational arrangements for safeguarding client assets, as a result of the failings set out in this Notice;

(2) maintained records and accounts on a global, rather than entity-specific level and in that respect failed to meet the requirements of CASS 6.5.2R;

(3) failed to conduct external reconciliations between the Firms' records and accounts and those of affiliate group companies which the Firms appointed as sub-custodians. Where the Firms appointed non-affiliate third parties as sub-custodians, they also failed to conduct separate, entity-specific reconciliations with the accounts and records of the non-affiliate third party sub-custodians (instead performing external reconciliations on an enterprise-wide basis only);

(4) failed to have an entity-specific process in place prior to July 2012 to identify reconciliation discrepancies for which the Firms were responsible, as a result of which the Firms were unable to demonstrate compliance with the requirements of CASS 6.5.10R;

(5) failed to take the necessary steps to ensure that assets from 13 accounts, identified as proprietary assets by the Firms' own records and accounts, which were deposited into client omnibus accounts with certain third parties were identifiable separately to assets belonging to clients in those third party accounts. This resulted in the commingling of Firm and clients' custody assets;

(6) on occasions used clients' assets held in omnibus accounts, without the express prior consent of all clients whose assets were held in those accounts, to settle a transaction before corresponding assets had been received under a covering trade of the relevant client. This resulted in some clients' assets being used without consent to settle other clients' trades. During most of the Relevant Period, the Firms did not have in place systems and controls that could identify the number of instances of this failure;

(7) failed to implement CASS-specific governance arrangements, such as committees that dealt specifically with CASS issues or accountability matrices for or job descriptions referring to CASS roles and responsibilities, until 2011. Although the Firms had some governance committees that included CASS in their Terms of Reference prior to this date, their consideration of CASS-specific issues was on an ad hoc basis only. This was insufficient given the nature of the Firms' business and the Firms' failure to identify and remedy the issues outlined in this Notice during the Relevant Period;

(8) failed to provide CASS-specific training to employees with operational or oversight responsibility for custody assets until March 2012; and

(9) as a result of failing to comply with the requirements of the Custody Rules, the Firms' CASS resolution packs were inadequate (from 1 October 2012 when the requirement to maintain a CASS resolution pack came into force). CASS resolution packs are important as they can assist an insolvency practitioner in achieving a timely return of custody assets in the event of insolvency.

5.4. The Firms' use of global custody platforms which, during the Relevant Period, did not record with which BNY Mellon Group entity clients had contracted, caused several of the Firms' failings. For example, the Firms' failure to maintain books and records on an entity-specific basis meant that the Firms were unable to fulfil their obligations to:

(1) maintain entity-specific records and accounts, which meant that the Firms' records and accounts failed to meet the requirements of CASS 6.5.2R;

(2) conduct entity-specific reconciliations between the Firms' records and accounts and those of affiliate group companies which the Firms appointed

as sub-custodians or to conduct entity-specific external reconciliations with the accounts and records of non-affiliate third party sub-custodians by whom client assets were held (instead performing external reconciliations on an enterprise-wide basis only);

(3) maintain an adequate CASS resolution pack (from 1 October 2012 when the requirement to do so came into force) that would have assisted an insolvency practitioner in achieving a timely return of custody assets in the event of BNYMLB's and/or BNYMIL's insolvency; and

(4) submit accurate Client Money and Assets Returns ("CMAR") from October 2011 (when the requirement to do so came into force) until the end of the Relevant Period.

5.5. As a consequence of these failures, the Authority has concluded that the Firms failed to arrange adequate protection for the custody assets for which they were responsible as required by the Custody Rules.

5.6. Having regard to the issues above, the Authority considers it is appropriate and proportionate in all the circumstances to take disciplinary action against the Firms for their breaches of Principle 10 and associated Custody Rules over the Relevant Period.

6. SANCTION

6.1. The Authority has considered the disciplinary and other options available to it and has concluded that a financial penalty is the appropriate sanction in the circumstances of this particular case.

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

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

6.4. For the reasons set out above, the Authority has concluded that the Firms failed to comply with Principle 10 and breached associated Custody Rules. In

determining that a financial penalty is appropriate and proportionate in this case, the Authority has considered all the relevant circumstances.

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

6.6. The Authority has therefore:

(1) calculated the financial penalty for the Firms' misconduct from 1 November 2007 to 5 March 2010 by applying the old penalty regime to that misconduct;

(2) calculated the financial penalty for the Firms' misconduct from 6 March 2010 to 12 August 2013 by applying the current penalty regime to that misconduct; and

(3) added the penalties calculated under (1) and (2) to produce the total penalty.

Financial penalty under the old penalty regime

Deterrence (DEPP 6.5.2G(1))

6.7. The Authority views compliance with the Custody Rules to be of significant importance. The Authority considers there to be a continuing need to send a strong message to the Firms and to the industry that firms must handle custody assets in a way that is consistent with the Principles and Custody Rules.

6.8. The principal objectives of the Custody Rules to which this Notice relates are to ensure that custody assets are clearly identified as such and are ring-fenced from the Firms' assets in the case of insolvency.

6.9. Failure to organise properly custody asset affairs and to ensure adequate protections are in place increases the risk that, in the event of insolvency, delivery up of custody assets will be delayed and that the assets properly owing to clients will be diminished.

6.10. The Authority considers that a significant financial penalty is an appropriate sanction given the serious nature of the breaches and the risk to the Firms' clients' assets, identified in paragraph 2.5 above.

Nature, seriousness and impact of the breach (DEPP 6.5.2(2))

6.11. The Authority considers the Firms' breach of Principle 10 and associated Custody Rules to be serious for the following reasons:

(1) the provision of custody services is the Firms' core business and the requirements of the Custody Rules should therefore have been central to their compliance regime throughout the Relevant Period;

(2) The BNY Mellon Group, of which the Firms are a part, is the world's largest global custody bank by custody assets. An insolvency of the size and complexity of BNYMLB and/or BNYMIL's would have had a severe impact on the UK market. Had the Firms complied with the requirements of the Custody Rules, their wind-down would have been carried out in the most orderly manner possible and in a way that would have reduced the risks identified in paragraph 2.5. As a result of the Firms' misconduct, the total value of custody assets at risk of being impacted to some degree in the manner discussed above was significant. The custody asset balances held by BNYMLB and BNYMIL increased significantly over the course of the Relevant Period and peaked at approximately £1.3 trillion and £236 billion respectively. Whilst the extent of any financial impact of the breaches on clients is uncertain, any breach that exposes clients to additional risk of being impacted is unacceptable;

(3) given the systemically important nature of the Firms and the fact that custody assets were central to the Firms' business, it was particularly important that they comply with the Custody Rules, a matter entirely within their control. It is particularly serious in this context that the Firms failed to comply with the fundamental requirement that their accounts and records be maintained on an entity-specific basis;

(4) a number of the Firms' failings were failings of the Firms as a whole (rather than incidences isolated by business line or account), indicating that the Firms' compliance with the Custody Rules was seriously inadequate;

(5) a number of the breaches of the Custody Rules took place, undetected, throughout the Relevant Period (a period of five years and nine months);

(6) the failings took place during a period when there was significant stress within the market, meaning that the Firms should have had heightened regard to the requirements of the Custody Rules;

(7) all of the Firms' failings, except for the one identified in April 2014, were drawn to the Firms' attention by the Authority, the Firms working with an external regulatory adviser (appointed by the Firms one year before the end of the Relevant Period and following the Authority's CASS visit of May 2012) and the Skilled Persons, rather than through their own compliance monitoring; and

(8) during the Relevant Period there was a high level of awareness in the financial services industry of the importance of adequately protecting custody assets. In particular, the Authority published a report in January 2010 highlighting concerns about custody asset failings.

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

6.12. The Authority does not consider that the Firms committed the breaches deliberately or recklessly.

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

6.13. In deciding on the level of penalty, the Authority has had regard to the size of the financial resources of the Firms.

6.14. The Authority has no evidence to suggest that the Firms are unable to pay the financial penalty.

The amount of profits accrued or the loss avoided (DEPP 6.5.2(6))

6.15. The Authority has not identified any financial benefit or avoidance of loss that the Firms may have derived directly or indirectly from its breaches.

Conduct following the breach (DEPP 6.5.2(8))

6.16. For most of the Relevant Period, the Firms failed to identify or act upon the failings set out in this Notice.

6.17. Following the Authority's CASS visit in May 2012, the Firms took steps to consider and resolve the issues identified. Since that time, the Firms have committed significant resources to reviewing their arrangements for compliance with the Custody Rules and to remediating the issues referred to in this Notice.

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

6.18. The Firms have not previously been the subject of an adverse finding by the Authority.

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

6.19. The Authority has had regard to the previous case that the Authority has brought under the old penalty regime for failure to protect adequately custody assets.

Conclusions in relation to the old penalty regime

6.20. The Authority considers that the seriousness of the Firms' failings merits a financial penalty. In determining the financial penalty, the Authority has considered the need to send a clear message to the Firms and the wider industry of the necessity of ensuring that custody assets are properly protected in accordance with the Custody Rules. Failure to ensure that appropriate measures are in place to protect custody assets will result in serious consequences.

6.21. The Authority therefore imposes a total financial penalty under the old penalty regime of £25,200,000 (£36,000,000 before application of a 30% settlement discount at Stage 1) on the Firms for their breach of Principle 10 and associated Custody Rules failings over the Relevant Period. To obtain this figure, the Authority has taken 0.2% of the average value of safe custody assets held by the Firms over the Relevant Period (as per previous cases brought by the Authority for breaches of the CASS Rules), made an adjustment to take into account that 28 out of 69 months of the Relevant Period were before 6 March 2010 and thus fell to be considered under the old penalty regime, and made a further adjustment to ensure that the level of financial penalty is in proportion to the breach concerned.

Financial penalty under the current penalty regime

6.22. All references to DEPP from this section are references to the version of DEPP implemented as of 6 March 2010 and currently in force. Under the current penalty regime, 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 to financial penalties imposed on firms.

Step 1: disgorgement

6.23. DEPP 6.5A.1G provides that at Step 1, the Authority will deprive a firm of the financial benefit derived directly from the breach.

6.24. The Authority has not identified any financial benefit that the Firms derived as a result of the breaches. The Step 1 figure is therefore £0.

Step 2: the seriousness of the breach

6.25. DEPP 6.5A.2G(1) provides that at Step 2 the Authority determines a figure that reflects the seriousness of the breach. Although DEPP 6.5A.2G(1) indicates that in many cases the amount of revenue generated by a firm from a particular business area is indicative of the harm that the breach may cause, it also recognises that revenue may not be an appropriate indicator of the harm the breach may cause. In those cases the Authority will use an appropriate alternative.

6.26. The Authority considers that the revenue generated by the Firms is not an appropriate indicator of the harm or potential harm caused by their breaches in this case. This is because their revenue is not related directly to the value of the custody assets they are holding (and therefore the associated risks) being directly affected.

6.27. The Authority usually considers that the appropriate indicator in a custody asset case is the average value of custody assets held over the Relevant Period. The Authority has therefore used the Firms' average custody asset balance over the Relevant Period to determine the figure at Step 2.

6.28. In deciding on the percentage of the custody asset value that forms the basis of the step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 0.8%. This range is divided into five fixed levels, which increase with the seriousness of the breach. The five levels are:

Level 1 – 0%;

Level 2 – 0.2%;

Level 3 – 0.4%;

Level 4 – 0.6%; and

Level 5 – 0.8%.

6.29. DEPP 6.5A.2G(11) lists factors likely to be considered 'level 4 factors' or 'level 5 factors'. The following factors are relevant to the Authority's assessment:

(1) risk of loss or delay in return of assets to clients: had the Firms complied with the Custody Rules, they would have, in the event of the insolvency of BNYMLB and/or BNYMIL at any point during the Relevant Period, been able to provide entity-specific accounts and records to the Insolvency Practitioner, which would have provided a record against which the Insolvency Practitioner could compare other information sources held by the Firms. This would have reduced complexity and the risks identified in paragraph 2.5 above in attempting to return assets to customers in an already complex insolvency situation;

(2) detrimental impact on CASS resolution pack (from 1 October 2012): had the Firms complied with the requirement to maintain and be able to retrieve an adequate CASS resolution pack, they would have been able to provide a more comprehensive record against which the Insolvency Practitioner could compare other information sources held by the Firms; and

(3) widespread weaknesses in systems and controls: a number of the Firms' failings were failings of the Firms as a whole (rather than incidences isolated by business line or accounts), indicating that the Firms' compliance with the Custody Rules was seriously inadequate.

6.30. The Authority also considers that the following factors are relevant:

(1) the failings took place during a period when there was significant stress within the market, meaning that the Firms should have had heightened regard to the requirements of the Custody Rules;

(2) most of the breaches continued for 41 months after the current penalty policy was introduced, having already been continuing for 28 months before this time; and

(3) the Firms failed to identify that they were not compliant with the Custody Rules until one year before the end of the Relevant Period (a period of five years and nine months), when they commenced working with an external regulatory adviser.

6.31. The Authority has taken these factors into account and considers the overall seriousness of the breach to be level 4. The relevant percentage of the relevant custody asset value is therefore 0.6%.

6.32. DEPP 6.5.3(3)G provides that the Authority may decrease the level of penalty arrived at after applying Step 2 of the framework if it considers that the penalty is disproportionately high for the breach concerned. Notwithstanding the serious and long-running nature of the breaches, the Authority considers that the level of penalty in respect of the current penalty regime would nonetheless be disproportionate if it were not reduced (because of the size of the relevant custody asset balance) and should be adjusted.

6.33. In order to achieve a penalty that (at Step 2) is proportionate to the breach, and having taken into account previous cases, the Step 2 figure is therefore reduced to £125,217,400.

Step 3: mitigating and aggravating factors

6.34. DEPP 6.5A.3G provides that at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2 to take into account factors which aggravate or mitigate the breach.

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

(1) the importance of arranging adequate protection for clients' custody assets was well publicised by the Authority during the Relevant Period, including through previous enforcement actions for breaches of the Custody Rules and related Client Money Rules, which have drawn firms' attention to the need for increased focus on this area (and specifically the importance of protecting client money and custody assets); and

(2) the Firms failed to identify that they were not compliant with the Custody Rules until one year prior to the end of the Relevant Period (a period of five years and nine months), when they commenced working with an external regulatory adviser. All of the Firms' failings, except for one identified in April 2014 (which date fell after the end of the Relevant

Period), were drawn to the Firms' attention by the Authority, the Firms working with the external regulatory adviser (appointed by the Firms one year before the end of the Relevant Period and following the Authority's CASS visit of May 2012) and the Skilled Persons, rather than through their own compliance monitoring.

6.36. The Authority considers that the following factor mitigates the breach:

(1) once the Firms had identified that they were not compliant with the Custody Rules, one year before the end of the Relevant Period (a period of five years and nine months), they committed significant resources to reviewing their arrangements for compliance with the Custody Rules and to addressing the issues referred to in this Notice.

6.37. The Authority has considered the various aggravating and mitigating factors and having done so has decided that the Step 2 figure should be subject to a 15% uplift at Step 3.

6.38. The Step 3 figure is therefore £144,000,010.

Step 4: adjustment for deterrence.

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

6.40. There are no relevant factors that justify a change to the Step 3 figure. The figure at Step 4 remains £144,000,010.

Step 5: settlement discount

6.41. 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.

6.42. The Firms have agreed to settle at Stage 1 and therefore qualify for a 30% discount to the current regime financial penalty. The Step 5 figure is therefore £100,800,000 (rounded down to the nearest £100).

Conclusion on financial penalty

6.43. The Authority therefore imposes on the Firms a total financial penalty of £126,000,000 (£180,000,000 before Stage 1 discount).

7. PROCEDURAL MATTERS

Decision maker

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

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

Manner of and time for Payment

7.3. The financial penalty must be paid in full by the Firms to the Authority by no later than 28 April 2015, 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 29 April 2015, the Authority may recover the outstanding amount as a debt owed by the Firms 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 Alexandra Stableforth or Matthew Finn of the Enforcement and Market Oversight Division of the Authority (direct lines: 020 7066 5866 / 020 7066 1276).

Anthony Monaghan
Project Sponsor
Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX A

1. RELEVANT STATUTORY PROVISIONS

1.1. Pursuant to sections 1B(1) and 1C(1) of the Act, one of the Authority's operational objectives is to secure an appropriate degree of protection for consumers.

1.2. The Authority is authorised, pursuant to section 206 of the Act, if it considers that an authorised person has contravened a requirement imposed on it by or under FSMA, to impose on such person a penalty in respect of the contravention of such amount as it considers appropriate in the circumstances.

2. RELEVANT REGULATORY PROVISIONS

Principles for Businesses ("Principles")

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 set out in the Act. The relevant Principle is as follows:

2.2. Principle 10 (clients' assets) states that:

"*A firm must arrange adequate protection for clients' assets when it is responsible for them*."

Client Assets sourcebook ("The CASS Rules")

2.3. The CASS Rules are the part of the Authority's Handbook that sets out the Authority's requirements in relation to holding client assets and client money.

2.4. CASS 6.5.10R, in force throughout the Relevant Period, stated that:

"*A firm must promptly correct any discrepancies which are revealed in the reconciliations envisaged by this section, and make good, or provide the equivalent of, any unreconciled shortfall for which there are reasonable grounds for concluding that the firm is responsible*."

2.5. In respect of all the rules and guidance within CASS 6 set out below:

(1) they were in force throughout the Relevant Period unless otherwise made clear; and

(2) where they now refer to "safe custody assets", before 1 January 2009 they referred to "financial instruments". Both terms are defined in the

Authority's Handbook, but the Authority does not consider the differences between the definitions to be material in the current case.

2.6. CASS 6.2.2R stated that:

"*A firm must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of clients' safe custody assets, or the rights in connection with those safe custody assets, as a result of the misuse of the safe custody assets, fraud, poor administration, inadequate record-keeping or negligence*."

2.7. CASS 6.3.1(2)R stated that:

"*A firm must take the necessary steps to ensure that any client's safe custody assets deposited with a third party, in accordance with this rule are identifiable separately from the applicable assets belonging to the firm and from the applicable assets belonging to that third party, by means of differently titled accounts on the books of the third party or other equivalent measures that achieve the same level of protection.*"

2.8. CASS 6.4.1(1)R stated that:

"*A firm must not enter into arrangements for securities financing transactions in respect of safe custody assets held by it on behalf of a client or otherwise use such safe custody assets for its own account or the account of another client of the firm, unless:*

(a) the client has given express prior consent to the use of the safe custody assets on specified terms; and

(b) the use of that client's safe custody assets is restricted to the specified terms to which the client consents."

2.9. CASS 6.5.2R stated that:

"*A firm must maintain its records and accounts in a way that ensures their accuracy, and in particular their correspondence to the safe custody assets held for clients*."

2.10. CASS 6.5.6R stated that:

"*A firm must conduct on a regular basis, reconciliations between its internal accounts and records and those of any third parties by whom those safe custody assets are held*."

2.11. Additionally, from 1 October 2012, CASS 10.1.3R stated that:

"*A firm falling within CASS 10.1.1R must maintain and be able to retrieve, in the manner described in this chapter, a CASS resolution pack*."

2.12. From 1 October 2012, CASS 10.3.1R stated that:

"*A firm must include, as applicable, within its CASS resolution pack the records required under:*

(1) CASS 6.3.1R (4) (safe custody assets: appropriateness of the firm's selection of a third party);

(2) CASS 6.4.3R (firm's use of safe custody assets);

(3) CASS 6.5.1R (safe custody assets held for each client), including internal reconciliations carried out pursuant to CASS 6.5.2R as explained in the guidance at CASS 6.5.4G;

(4) CASS 6.5.2AR (client agreements: firm's right to use);

(5) CASS 6.5.6 R (Reconciliations with external records);

(6) CASS 7.4.10R (client money: appropriateness of the firm's selection of a third party);

(7) CASS 7.6.1R (client money held for each client), including internal reconciliations carried out pursuant to CASS 7.6.2R as explained in the guidance at CASS 7.6.6G;

(8) CASS 7.6.7R and CASS 7.6.8R (method of internal reconciliation of client money balances);

(9) CASS 7.6.9R (Reconciliations with external records);

(10) COBS 3.8.2R(2)(a) and COBS 3.8.2R(2)(c) (client categorisation); and

(11) COBS 8.1.4R (retail and professional client agreements)."

Supervision Manual ("SUP")

2.13. SUP is the part of the Authority's Handbook that sets out the Authority's requirements for the relationship between the Authority and authorised firms and their supervision by the Authority.

2.14. From 1 October 2011 to 31 December 2012, SUP 16.14.3(R)(1) stated that:

"*A firm must submit a completed CMAR to the FSA within 15 business days of the end of each month.*"

2.15. From 1 January 2013 to 12 August 2013, SUP 16.14.3(R)(1) stated that:

"*Subject to (3), a firm must submit a completed CMAR to the FCA within 15 business days of the end of each month*."

Decision Procedure and Penalties Manual ("DEPP")

2.16. Chapter 6 of DEPP, which forms part of the Authority's Handbook, sets out the Authority's statement of policy with respect to the imposition and amount of financial penalties under the Act.

The Enforcement Guide

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

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