Financial Services Authority

FINAL NOTICE

To: **Barclays Bank Plc (Barclays or the firm)**

Of: **1 Churchill Place**
Canary Wharf
London E14 5HP

Date: **14 January 2011**

TAKE NOTICE: The Financial Services Authority, Enforcement and Financial Crime Division, of 25 The North Colonnade, Canary Wharf, London EI4 5HS (the FSA) gives Barclays final notice about a requirement to pay a financial penalty:

1. THE PENALTY

1.1 The FSA gave Barclays a Decision Notice on 14 January 2011 which notified the Firm that it had decided to impose a financial penalty of £7.7 million on Barclays pursuant to section 206 of the Financial Services and Markets Act 2000 (the Act).

1.2 This penalty relates to Barclays' sales of Aviva's Global Balanced Income Fund (the Balanced Fund) and Global Cautious Income Fund (the Cautious Fund) (together, the Funds) between July 2006 and November 2008 (the Relevant Period). The penalty is in respect of breaches of Principle 9 (Customers: relationships of trust) of the FSA's Principles for Businesses (the Principles) and associated rules.

1.3 Barclays has confirmed that it will not be referring the matter to the Upper Tribunal (Tax and Chancery Chamber).

1.4 Accordingly, for the reasons set out below and having agreed with Barclays the facts and matters relied on, the FSA imposes a financial penalty on Barclays in the amount of £7.7 million.

1.5 Barclays has agreed to settle this matter at an early stage of the proceedings. It therefore qualifies for a 30% (Stage 1) reduction in penalty pursuant to the FSA's executive settlement procedures. Were it not for this discount, the FSA would have imposed a financial penalty of £11 million on Barclays.

2. REASONS FOR THE ACTION

2.1 Barclays breached Principle 9 during the Relevant Period in that it failed to take reasonable care to ensure the suitability of its advice regarding the Funds for customers entitled to rely upon its judgement. The customers were typically in or near retirement and included inexperienced investors. The firm's failings include the following:

(1) The training material given to Barclays staff was inadequate. It did not identify the types of customers the Funds were suitable for. Nor did it explain clearly that, when markets go down, customers who drew income from the Funds were at risk of their capital being eroded and the amount of income they could draw declining over time. In relation to the Balanced Fund, it did not state that these were significant risks. The training material failed to make staff aware that the Funds were unlikely to be appropriate for customers who wanted capital growth as an investment objective.

(2) The sales briefs and product updates Barclays sent to its advisers increased the risk of the Funds being mis-sold because they referred only to the potential benefits of investing in the Funds. They did not refer to any of the risks nor the need for those risks to be clearly communicated to prospective customers.

(3) Product brochures and other documentation given to customers contained inadequate information and statements which could have misled customers about the nature and levels of risk involved. The documents did not clearly and prominently explain the extent to which an investment in the Funds was linked to fluctuations in the stock market. For those who drew income from the Funds, it did not explain the risk of capital loss and the negative impact this would have on the amount of income produced by the Funds.

(4) Barclays failed to put in place adequate procedures for monitoring of sales of the Funds and this resulted in a failure to promptly identify and investigate potentially unsuitable sales. Where compliance monitoring identified particular issues, Barclays failed to take appropriate and timely action, including by implementing a past business review.

2.2 Barclays also breached COB 5.3.5R and COBS 9.2.1R during the periods referred to in the Appendix in relation to the facts described in paragraph 2.1 above.

2.3 As a consequence of the above failings, Barclays customers were exposed to an unacceptable risk of unsuitable sales and a number of unsuitable sales were made. By 7 December 2010, 1676 customers had complained about their investment in the Funds and compensation of approximately £17 million had been paid. It is expected that further compensation of between £20 million and £42 million will be paid.

Seriousness of the breaches and mitigating factors

2.4 The breaches are viewed as particularly serious because Barclays identified, at an early stage, concerns with the Funds but did not take adequate steps to mitigate those concerns. In particular, Barclays identified:

(1) The Funds' enhanced income objective was likely to appeal to vulnerable customers, such as those inexperienced in stock market investments and the elderly looking to invest their retirement savings to generate additional income.

(2) Customers may not be able to understand the risks of the Funds because of their complex characteristics.

(3) In relation to the Balanced Fund, that its risk categorisation was at the upper end of 'balanced' and additional controls in its sales processes were therefore required to mitigate the risk of unsuitable sales.

2.5 The FSA has also taken the following into account when considering the seriousness of the breaches:

(1) A large number of investors were placed at risk and the potential impact was significant. During the Relevant Period, the total number of customers who invested in the Funds is 12,331 with investments totalling £692 million.

(2) The mis-conduct spanned more than 2 years.

2.6 Barclays is undertaking a comprehensive past business review to ensure that customers do not lose out as a result of the failings identified in this notice. In particular, Barclays has agreed in consultation with the FSA for a third party firm of accountants to review customer files for sales made during the Relevant Period to ascertain whether those sales were suitable. As part of this process, customers may be contacted if this is necessary to allow a decision on suitability to be made. For those sales which are found to be unsuitable, redress will be paid to the customer to ensure he or she has not lost out financially.

2.7 Barclays past business review described above has been taken into account when deciding upon the level of disciplinary sanction.

2.8 Barclays and its senior management worked in an open and co-operative way with the FSA from the outset of the investigation through to settlement of this matter. In particular, Barclays proactively carried out an internal investigation in consultation with the FSA. The results of the investigation were shared with the FSA and the FSA was able to place reliance on those results in dealing with this matter.

2.9 Barclays has made improvements in its end to end processes, including improvements in sales standards to protect vulnerable customers, product governance and monitoring.

2.10 It is difficult to predict at this stage, but the total amount Barclays will have to pay to customers could be as much as £60 million.

3. RELEVANT STATUTORY PROVISIONS AND REGULATORY REQUIREMENTS

3.1 Section 206 of the Act provides:

"*If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act ... it may impose on him a penalty, in respect of the contravention, of such an amount as it considers appropriate*."

3.2 Barclays is an authorised person for the purposes of section 206 of the Act. The procedures to be followed in relation to the imposition of a financial penalty are set out in sections 207 and 208 of the Act.

3.3 The Principles, as set out in the FSA Handbook, are a general statement of the fundamental obligations of firms under the regulatory system. They derive their authority from the FSA's rule making powers as set out in the Act and reflect the FSA's regulatory objectives.

3.4 Principle 9 of the FSA's Principles provides:

"*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*."

3.5 Specific rules in the FSA's Handbook also impose requirements on firms to ensure that they take reasonable steps to ensure that a personal recommendation is suitable for their clients. The rules which are relevant to this matter are set out in the Appendix to this Notice.

4. BACKGROUND

The firm

4.1 Barclays is a major global financial services provider with a prominent position in the retail consumer market. It was authorised by the FSA on 1 December 2001. The firm has permission from the FSA to carry on regulated activities in relation to, among other things, advising on investments and arranging deals in investments.

4.2 The Funds were recommended by the firm's advisers trading under the name "Barclays Financial Planning" (BFP). BFP staff operate out of Barclays retail bank branches. Their customers are typically Barclays retail customers who have been referred to BFP by other branch staff. Approximately one million of Barclays' 15 million bank customers are BFP customers.

4.3 BFP operates on a 'multi-tied' basis, selecting products from a number of product providers to include on a panel for possible recommendation to customers. In or around June 2004, Barclays approached Morley Fund Services Limited (Morley), a fund management company ultimately owned by Aviva plc, to build innovative income funds for sale to Barclays retail customers and to manage those funds.

The Funds

4.4 Sales of the Balanced Fund and the Cautious Fund started in August 2006. The Funds were jointly developed by Barclays and Morley. They were modelled on a previous product which had also been jointly developed by Barclays and Morley and sold by Barclays (“the previous product”).

4.5 The Funds were not subjected to Barclays' full development and approval process. They underwent an abbreviated approval process because of their similarities to the previous product. For the Cautious Fund, which had a different investment profile and risk classification to that of the previous product, this was inconsistent with Barclays' internal policies which mandated a new product sign-off process for all new or significantly modified products and services.

4.6 The Balanced Fund has a target income rate of 7% per annum (or 2.5% above UK Base rate, if higher). It is made up of approximately 60% equities and 40% bonds (almost entirely convertible bonds, up to half of which could be non-investment grade) and uses covered call options to convert some equity growth potential into income.

4.7 The Cautious Fund is structured similarly to the Balanced Fund. However, it has a lower target income of 5.5% per annum (or 1 % above the UK Base rate, if higher). The lower target income is a reflection of a different mix of investments in that the Cautious Fund is made up of approximately 40% equities and 60% investment grade bonds and again uses covered call options to convert some equity growth potential into income.

4.8 In July 2007, Barclays introduced a new method of risk rating investment funds and customers. The new method was applied to the Balanced Fund. However, due to the use of an incorrect benchmark, the Balanced Fund was risk-rated 'balanced', when under the new approach it should have been 'adventurous'. Barclays identified the error following an investigation into complaints which indicated that customers were unaware of the risks associated with the Fund. Concerns were also expressed internally within Barclays in late November 2007 regarding whether the risk categorisation of the Funds was correct, the volume of new business being invested in the Funds and that the customer literature for the product did not sufficiently reflect its risks.

4.9 In December 2007, Barclays corrected the risk rating of the Balanced Fund under the new method to 'adventurous'. Barclays also wrote to customers who had purchased the Balanced Fund since July 2007 to explain the error, offering to switch them out of the Balanced Fund without charge and make good any losses. Sales of the Funds reduced significantly following the re-rating. Barclays stopped selling the Balanced Fund in September 2008 and stopped selling the Cautious Fund in November 2008.

4.10 To clarify whether the Balanced Fund was correctly rated, the FSA asked Barclays to appoint an independent third party expert to give an opinion on whether its original rating was correct. The expert concluded that it was reasonable to describe the Fund as 'balanced' (although it was at the upper end of the description). The expert also concluded that despite the risk warnings provided, it was possible that customers who drew income from the Fund would not have appreciated the likelihood, when markets go down, that their capital might be depleted, which would in turn impact the sustainability of the income. Most customers who invested in the Balanced Fund drew the income from the Fund.

4.11 In view of these findings, the FSA has directed Barclays, and Barclays has agreed, to address the concerns raised by the expert as part of its past business review. Barclays has agreed to compensate customers who are affected by these issues and have lost out financially.

5. FACTS AND MATTERS RELIED ON

5.1 By reason of the facts and matters referred to below, Barclays breached Principle 9 by failing to take reasonable care to ensure the suitability of its advice for customers. It also breached COB 5.3.5R and COBS 9.2.1R during the periods referred to alongside those rules in the Appendix.

Due diligence

5.2 Barclays compliance function and product risk committee identified a number of risks during the approval process for the previous product which, if not mitigated in the firm's sales processes, were likely to lead to unsuitable sales of the product. These risks were relevant to the Funds because the Funds' key characteristics were substantially similar to those of the previous product. Although Barclays identified the risks, it did not adequately address them in its sales processes and a number of unsuitable sales of the Funds were made.

5.3 Barclays compliance function and product risk committee identified the following risks relevant to the Funds:

(1) The types of customers for whom the product would be suitable were not clear.

(2) The enhanced income objective of the product would make it attractive to a generally vulnerable customer type.

(3) The complexity of the product did not make it easily understood by mass market retail customers.

(4) In relation to the Balanced Fund, quantitative analysis had placed it at the upper end of the 'balanced' risk category.

(5) The factors mentioned above were likely to increase the risk of unsuitable sales.

5.4 The concerns raised internally within Barclays should have prompted the firm to take effective action to clearly identify the types of customers to whom it proposed to sell the Funds. This was particularly important because the firm correctly recognised the material risk that the enhanced income objective would attract vulnerable customers. Such customers included the elderly who were seeking to generate greater income than that available from deposits but who had limited or no experience of stock market investments and their inherent risks. Whilst Barclays placed restrictions on the investment manager in order to mitigate some of the risks of the Funds, the concerns identified should have prompted Barclays to put in place specific and robust controls in its sales processes for the Funds to further mitigate that risk.

5.5 The concerns raised around the complex characteristics of the Funds meant Barclays needed to ensure that the Funds' key features and risks were explained fully and effectively to its advisers and the customers who were recommended the Funds.

5.6 Barclays failed to adequately deal with these concerns and customers were exposed to a material risk of unsuitable sales. The firm's specific failings in the sales process are detailed below.

Training of advisers

5.7 Barclays failed to ensure that the training it gave to its advisers was sufficient to mitigate the risk of unsuitable sales of the Funds.

5.8 The training material for the Funds was deficient in material respects. In particular, it did not specify who, in view of their inherent risks, the Funds should be sold to. The training material did not explain clearly the extent to which the Funds exposed customers who drew income to a risk of capital loss and declining income over time. For the Balanced Fund, these were significant risks.

5.9 Nor did the training material make sufficiently clear to staff that the Funds were not appropriate for customers who wanted capital growth as an investment objective. References in the training to income as the primary objective of the Funds and to the fact that the potential for capital growth may be limited did not make this abundantly clear. The fact that the Funds were not appropriate for customers who wanted capital growth was an important factor which affected the suitability of the Funds.

5.10 Rather than highlight the risks, the training material gave advisers a misleading impression of the risks involved. For example, it referred to:

(1) the Funds' potential of achieving capital growth and stated that the value of a customer's investment '*should*' grow, as should the value of the income distributions. It also stated that the Funds deliver "*sustainable, high target income levels*". These references were misleading in the absence of any explanation that capital growth and sustainable income could only be achieved for income drawing customers if favourable investment conditions prevailed; and

(2) the fact that the Cautious Fund was developed as an "*innovative response*" to concerns regarding alternative investments which resulted in the erosion of capital for customers who are taking income. In fact, the Cautious Fund also exposed customers who drew income from the Fund to a risk, when markets go down, of capital depletion over time. In the case of the Balanced Fund, this risk was more significant.

5.11 Barclays considered the Balanced Fund to be a continuation of a previous product such that the training given to its advisers for the previous product remained applicable to the Funds.

5.12 However, it was inappropriate for Barclays to assume that advisers would apply the training for the previous product when selling the Funds because:

(1) The training materials for the Funds did not expressly cross-refer to the training for the previous product, although it did describe the Balanced Fund as a successor to it.

(2) The training for the previous product was rolled out at least 8 months earlier.

(3) Advisers who joined Barclays after the firm had stopped selling the previous product did not receive the training for that product.

(4) The Cautious Fund does not have the same characteristics as the previous product and therefore does not have the same target customers.

5.13 In any event, the training for the previous product was not appropriate for the Funds for the reasons referred to below.

Training for the previous product

5.14 The initial training for the previous product set out who it was suitable for, who it was not suitable for and some key risks associated with it. It included a reference to the risk of capital erosion and reduction in income if the stock market or fund performed poorly. Initial sales of the product were slower than expected and there was nervousness among advisers at the time around the risks associated with structured products. The sales team decided a re-launch was necessary to gain sales momentum. The re-launch involved some additional training. However, unlike the initial training, it did not include an explanation of who the product was and was not suitable for. It also did not include a clear enough warning about the risk of reduction in income due to capital erosion if the stock market or fund performed poorly. In the absence of a full and clear description of the product and its risk characteristics, the revised training was inadequate for the Funds.

5.15 The additional training included a case study purporting to be an example of '*excellent customer service*'. The case study involved the sale of the previous product as part of a mixed portfolio of investments and included the following:

(1) The customer was ‘inexperienced’ and so the adviser would usually recommend only products from the cautious range. However, given the customer’s income need could not be met by any product within the cautious range and income was his priority, the adviser recommended a 'balanced' income product (i.e. the previous product) as being "*more suitable*".

(2) The product should be recommended to a customer whose need for an additional income of £3,500 per annum "*was his priority*".

5.16 The example referred to in paragraph 5.15(1) above is inadequate because the advisor is shown recommending the customer take on a ‘balanced’ risk product, without being shown to have first established that the customer was prepared to accept, and was financially able to bear, the consequences of the potential losses associated with that product. The adviser should have considered the implications for the customer if he took a lower risk option. He should have drawn the customer's attention to potential mis-matches in his investment objectives, financial circumstances, experience and capacity for loss. The discussion should have included an explanation of the implications for the customer of making alternative trade-off decisions where mis-matches were present (for example, by highlighting that a lower risk option did not have a target income level sufficient to meet his income needs, or that he might not be able to afford to take a higher risk). The advisor should have assisted the customer to make trade-off decisions where necessary, but not to make those decisions for the customer.

5.17 The advice referred to in paragraph 5.15(2) is also deficient because the Funds provided a non-guaranteed variable income, whilst the customer referred to in the case study appears to need a fixed level of income. The advisor should have factored this into a discussion about the trade-offs required to achieve such income.

Other information for advisers

5.18 The limited sales and product information which Barclays sent to its advisers (in addition to the training material they received) exacerbated the risk of mis-selling because it focused only on the potential benefits of the Funds.

5.19 During the Relevant Period, Barclays provided its advisers with a series of 'Weekly Sales Briefs' and 'Weekly Product Office Updates'. Two of these publications dated 8 March 2007 and 19 July 2007 and an anniversary pack for the Funds dated 17 September 2007 promoted the sale of the Funds by listing "*ten reasons to invest in the Funds*".

5.20 These documents did not refer to any risk warnings or the need for these to be communicated to investors. Importantly, these communications did not specify the types of customers for whom the Funds were appropriate. On the contrary, two of the publications stated that the Funds were suitable for a broad range of cautious and balanced investors seeking to achieve strong income returns.

Customer literature

5.21 Product brochures and other documentation given to customers by Barclays contained inadequate information and statements which could have misled customers about the nature and levels of risk involved.

5.22 The product brochures did not fully and effectively explain to customers who intended to draw income from the Funds that during unfavourable market conditions, their capital investment could be eroded and, if so, the income from it would decline over time. Nor did they, in the case of the Balanced Fund, explain that these were significant risks. The limited risk warnings which were included in the documentation were not sufficiently prominent.

5.23 The customer literature for the Funds was issued and *approved* by Morley. However, Barclays reviewed and commented on draft versions of the documents to ensure they were balanced and expressed in plain language. Given that Barclays had very detailed knowledge about the Funds and the nature of its customers, Barclays should have done more to ensure that the documents fully and accurately described the Funds to its customers.

5.24 Advisers used a product brochure to explain the key features of the Funds to customers. The brochure contained inaccurate information. It included a statement that the Funds aim to give customers a "*more predictable income than [they] are likely to get from a deposit account*". Given that the income from the Funds was directly linked to the value of the Funds, which fluctuated over time, it was reasonably likely that income provided by the Funds would not be more predictable than a deposit account and customers could have been misled. Even though the product brochure referred to the fact that the income might vary, Barclays should have done more to make clear to customers seeking regular and predictable income payments that the Funds were not designed to do this.

5.25 The product brochure referred to above contained a graphic which showed the Cautious Fund and fixed income investments (such as an investment grade bonds) as belonging to the same category of 'cautious' investments. The graphic could have misled customers into thinking that the Cautious Fund was akin to a fixed income investment. This is inaccurate because the Cautious Fund comprised a significant investment in equities (up to 40%) which exposed customers to a much greater risk of capital loss due to stock market fluctuations than the bonds to which it was compared. The Cautious Fund was therefore a more risky form of investment than some forms of fixed income investment. Subsequent clarifications of the risks in the brochure were not given sufficient prominence and there remained a material risk that customers were misled.

5.26 During the sales process customers were shown descriptions of various attitudes to investment risk. These included descriptions for 'cautious' and 'balanced' attitudes and customers were asked to agree whether one of these accurately reflected their preference to investment risk-taking. The generic risk descriptions were not intended to describe the risk characteristics of products subsequently recommended. It was therefore essential that the features and risks of investments were fully explained to customers. This was particularly important with the Funds because the terms 'cautious' and 'balanced' were used in their names. Customers may therefore have been confused.

5.27 Although customers were given a pie chart showing the equity content of the Funds, this did not appear in the suitability letters. Furthermore, the wording used in a material number of suitability letters failed to make clear to customers the extent to which the performance of their investment was linked to fluctuations in the stock market and the risk of capital loss and declining income level to which they were exposed. The FSA has identified examples of customers being left with insufficient cash on deposit because the concentration of their investment in the products was too high. In other cases, customers were not adequately advised in relation to the diversification of their portfolio of investments.

Compliance and sales monitoring

5.28 Barclays procedures were inadequate because they failed to result in the effective identification and investigation of unsuitable sales of the Funds. Where compliance monitoring identified particular issues, Barclays failed to take appropriate action.

Analysis of sales following complaints

5.29 In June 2008, in response to a greater than expected level of upheld complaints relating to the Funds, Barclays' sales quality monitoring function reviewed 150 Balanced and Cautious Funds. The review concluded that in 35% of cases there was insufficient evidence on the file to establish suitability.

5.30 Based on this review, Barclays concluded that there was no clear evidence on any of the cases reviewed of inappropriate advice being given to customers. However, Barclays was concerned about the Funds being sold for growth or unspecified income needs. As a result of this concern, a firm of consultants was engaged to consider the validity of recommending the Funds for growth and the consultants concluded that while the Funds were not necessarily unsuitable, there were other products which were likely to be better for customers wanting growth.

5.31 Barclays had no way of knowing whether appropriate advice had been given to the customers referred to above. It made no attempt to contact customers to obtain additional information to establish suitability. It did not therefore know whether there were widespread problems with BFP's processes, beyond the failure of staff to keep accurate and complete records on files. Barclays failure to properly investigate the suitability of its past sales of the Funds in light of the outcome of Barclays review of the 150 sales in June 2008 exposed customers who subsequently purchased the Funds to an unacceptable risk of unsuitable sales. The firm also did not take any steps at that time to determine whether any customers who had previously invested had been mis-sold the Funds. It failed therefore to identify that a past business review was required.

5.32 From its review of 150 sales of the Funds, Barclays identified that:

(1) Barclays failed to complete target market testing for the Funds (which was a concern first raised by compliance staff in December 2004);

(2) Insufficient income producing products were included on Barclays' panel, resulting in a concentration of investments into the Funds;

(3) Barclays' training for advisers misleadingly stated that the Balanced Fund would out-perform in a falling market; and

(4) The Funds were incorrectly promoted in product literature as appropriate for customers wishing to invest for capital growth.

5.33 From June 2008 onwards Barclays changed the firm's governance around its product panel process and issued revised training for advisers. Shortly after these changes were implemented, Barclays stopped selling the Balanced Fund and the Cautious Fund (in September 2008 and November 2008 respectively).

Compliance monitoring of the BFP business

5.34 Barclays monitored compliance risk across the BFP business with a view to, among other things, identifying and remedying deficiencies in systems and controls. At the start of the Relevant Period (in mid 2006), the BFP business was graded as having a 'Medium High' residual compliance risk. Barclays considered the 'Medium High' grading to be indicative of "*a weakness in controls which is likely to or has already* *resulted in a breach of regulatory requirements and/or client disadvantage*". It was considered a 'significant' risk which was likely to crystallise in the absence of controls.

5.35 At the start of the Relevant Period, Compliance Monitoring had identified the following issues based on reviews of the BFP business in May 2006 and July 2006:

(1) Sales files failed to evidence the suitability of products recommended to customers, including because insufficient details of customers' circumstances were recorded on the files.

(2) Suitability letters provided to customers contained insufficient detail to support the recommendations made.

(3) BFP Area Managers failed, in relation to a number of files, to detect serious deficiencies.

5.36 Barclays took action to improve its sales processes and Barclays monitoring showed that improvements in the quality of sales was achieved. However, this monitoring failed to highlight the significant problems later identified through complaints about the Funds.

Training and competency management of advisers

5.37 Barclays operated a training and competency scheme for its advisers. As part of the scheme, staff competency levels were measured and staff were assessed against performance standards and key performance indicators. In order to allow staff to be judged on competence, Barclays collected data on the number of complaints, cancellations of sales, range of sales and quality of advice and documentation.

5.38 Barclays training and competency reports throughout 2007 and 2008 showed ongoing poor scores and breaches of Barclays' sales standards relating to the completion of sales documentation. Advisers who were performing particularly poorly were placed under increased supervision. This culminated in 20% of BFP advisers being subject to increased supervision in April 2008. However, Barclays continued to identify issues with documentation despite the high number of staff requiring increased supervision.

5.39 Barclays training and competency reports throughout the Relevant Period made plain that there were material concerns regarding the ability of its staff to properly document the sale of the Funds to customers. Despite this, Barclays failed to take prompt and effective remedial action.

Impact on customers

5.40 The Funds had lost about a third of their value at the height of the market turmoil in late 2008 / early 2009. This prompted some customers to encash their investment earlier than they had initially planned (the product documentation described the Funds as an investment for a minimum of 5 years). The Funds have subsequently recovered much of their value.

5.41 By 7 December 2010, Barclays had received complaints concerning sales of the Funds from:

(1) 1,023 customers (18 %) who had invested in the Balanced Fund; and

(2) 653 customers (10%) who had invested in the Cautious Fund.

5.42 Barclays has paid a total of approximately £17 million in compensation to customers who invested in the Funds and it is expected that a further amount of between £20 million and £42 million compensation will be paid.

6. ANALYSIS OF BREACHES

6.1 Principle 9 requires a firm to take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgement. Barclays did not take reasonable care to ensure the suitability of its advice to customers as required by Principle 9 because of its failings detailed in section 5 above.

6.2 In addition. Barclays also breached COB 5.3.5R and COBS 9.2.1R during the periods referred to in the Appendix because it failed to take reasonable steps to ensure that the advice it provided to its customers was suitable for them.

7. RELEVANT GUIDANCE ON PENALTY

Determining the level of the financial penalty

7.1 The FSA's policy in relation to the imposition of financial penalties is set out in Chapter 6 of the Decision Procedure and Penalties Manual (DEPP) which forms part of the FSA Handbook. It was previously set out in Chapter 13 of the Enforcement Manual (ENF). The Manuals set out the factors that may be of particular relevance in determining the appropriate level of financial penalty for a firm or approved person. The criteria are not exhaustive and all relevant circumstances of the case are taken into consideration.

Deterrence

7.2 The financial penalty is required to promote high standards of regulatory conduct by deterring firms who 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. It strengthens the message to the industry that it is vital to take proper steps to ensure in advised sales that the advice a firm gives customers is suitable.

Seriousness of the breaches

7.3 The FSA has had regard to the seriousness of the breaches, including the nature of the requirements breached, the number and duration of the breaches and the number of customers who were exposed to risk of loss. For the reasons set out at paragraphs 2.4 and 2.5 above, and because 80% of customers who invested in the Funds were between 60 and 90 years of age, the FSA considers that the breaches identified in this case are of a particularly serious nature.

The extent to which the breaches were deliberate or reckless

7.4 The FSA does not consider that Barclays deliberately or recklessly contravened regulatory requirements. However, it is particularly serious that issues identified by Barclays' compliance functions were not properly addressed, both when the Funds were first adopted onto their product panel (see paragraphs 5.1 to 5.6 above) and during subsequent compliance monitoring of sales of the Funds (see paragraphs 5.28 to 5.39 above).

7.5 **The size, financial resources and other circumstances of the firm**

7.6 Barclays has a prominent position in the retail consumer investment market. It has approximately 15 million retail customers of which approximately 1 million are BFP customers.

7.7 There is no evidence to suggest that Barclays is unable to pay the penalty.

Conduct following the breaches

7.8 In consultation with the FSA, Barclays is taking the following steps:

(1) The firm has appointed a third party firm of accountants to review point of sale documentation for sales of the Funds made during the Relevant Period. Based on this review, approximately 3,099 sales of the Cautious Fund (i.e. 51% of the population excluding complaints) and 3,378 sales of the Balanced Fund (i.e. 74% of the population excluding complaints) have been identified as requiring further consideration and, where necessary, customers will be contacted to obtain additional information.

(2) Where a sale is identified as unsuitable, the firm will pay redress to the customer to ensure he or she has not lost out financially.

7.9 Barclays and its senior management worked in an open and cooperative way with the FSA from the outset of the investigation through to settlement of the case. Barclays proactively carried out an internal investigation in consultation with the FSA. The results of the investigation were shared with the FSA and the FSA was able to place reliance on those results in dealing with this matter.

7.10 Barclays has made improvements in its end to end processes, including improvements in sales standards to protect vulnerable customers, product governance and monitoring.

7.11 Individuals who have invested in the Funds and have any questions relating to advice they received in connection with that investment should contact Barclays on the following number:

Customer Contact Number: **0800 587 7495**

Website: www.barclays.co.uk/investmentfundinfo

7.12 The FSA welcomes Barclays' agreement to undertake the remedial action described above. However, the FSA considers that the firm could have been more proactive by taking action sooner. Barclays could have, for example, carried out a past business review in June 2008 in response to a greater than expected level of upheld complaints concerning the Funds.

7.13 The firm has co-operated fully with the FSA in the course of its investigation.

Disciplinary record and compliance history

7.14 Barclays was fined in September 2009 for transaction reporting failings. Barclays has not previously been the subject of disciplinary action by the FSA for retail conduct of business issues.

Previous action taken by the FSA in relation to similar findings

7.15 In determining whether and what financial penalty to impose on Barclays the FSA has taken into account action taken by the FSA in relation to other authorised persons for comparable behaviour.

FSA guidance and other published material

7.16 The FSA has had regard to the fact that the FSA has published a series of high profile communications highlighting the requirement upon firms to treat customers fairly. The publications emphasise the need for firms to ensure the suitability of sales to customers, including by clearly identifying target customers for particular products and implementing appropriate controls during the sales process.

8. CONCLUSION

8.1 Having regard to the seriousness of the breaches and the risk they posed to the FSA's statutory objectives of maintaining confidence in the financial system and securing the appropriate degree of protection for consumers, the FSA has decided to impose a financial penalty of £7.7 million on Barclays.

9. DECISION MAKERS

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

10. IMPORTANT

10.1 This Final Notice is given to Barclays under section 207 and in accordance with section 390 of the Act.

Manner and time for payment

10.2 The financial penalty must be paid in full by Barclays to the FSA by no later than 28 January 2011, which is not less than 14 days from the date of the Final Notice.

If the financial penalty is not paid

10.3 If all or any of the financial penalty is outstanding on 1 February 2011, the FSA may recover the outstanding amount as a debt owed by Barclays and due to the FSA.

Publicity

10.4 Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to Barclays or prejudicial to the interests of consumers.

FSA contacts

10.5 For more information concerning this matter generally, you should contact Silvana Wood of the Enforcement and Financial Crime Division of the FSA (direct line: 020 7066 2088 / fax: 020 7066 2089).

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William Amos Head of Department
FSA Enforcement and Financial Crime Division,

APPENDIX

THE PRINCIPLES

Principle 9 - 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.

THE RULES

Suitability

For the period from I July 2006 to 31 October 2007 (inclusive):

COB 5.3.5 R

(1) A firm must take reasonable steps to ensure that, if in the course of designated investment business:
(a) it makes any personal recommendation to a private customer to:
(i) buy sell, subscribe for or underwrite a designated investment (or to exercise any right conferred by such an investment to do so); or
(ii) elect to make income withdrawals, or purchase a short-term annuity or not ; or
(iii) enter into a pension transfer or pension opt-out from an occupational pension scheme; or
(b) it effects a discretionary transaction for a private customer (except as in (5)); or
(c) it makes a personal recommendation to an intermediate customer or a market counterparty to take out a life policy;
the advice on investments or transaction is suitable for the client.

(2) If the recommendation or transaction in (I) relates to a packaged product:
(a) it must, subject to COB 5.3 .8 G - COB 5.3. 10 R, be the most suitable from the range of packaged products, on which advice on investments is given to the client as determined by COB 5.1.7 R; and
(b) if there is no packaged product in the firm's relevant range of packaged products which is suitable for the client, no recommendation must be made.

(3) In making the recommendation or effecting the transaction in (1), the firm must have regard to:
(a) the facts disclosed by the client; and
(b) other relevant facts about the client of which the firm is, or reasonably should be, aware.

For the period from I November 2007 to 30 November 2008 (inclusive):

COBS 9.2.1 R

(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.