FINAL NOTICE

To: Baronworth (Investment Services) Limited (in liquidation)

Of: 370 Cranbrook Road
Gants Hill
Ilford, Essex. IG2 6HY

FSA Reference Number: 115284

Date: 19 December 2012

ACTION

1. For the reasons given in this notice, and pursuant to section 206 of the Act, the FSA has decided to impose a financial penalty on Baronworth.

2. Baronworth entered into creditors' voluntary liquidation on 17 July 2012. Baronworth, and its liquidators, agreed to settle the investigation under the FSA's executive settlement procedures at stage 2. Were it not for the Firm's financial circumstances, the FSA would have sought to impose a financial penalty of £50,000 on Baronworth in respect of the breaches identified in this notice. This has been reduced to nil.

3. The FSA would prefer that any funds remaining within Baronworth be available to meet any claims by creditors, including any customer claims or from the Financial Services Compensation Scheme.

SUMMARY OF REASONS

4. Baronworth's business model mainly related to it, and its appointed representative, drafting, approving and sending by post financial promotions for a variety of high income products to its customers on a direct offer and non-advised basis. The FSA has found that during the relevant period Baronworth's financial promotions failed to comply with the applicable regulatory standards, in that they were not fair, clear and not misleading.

5. Baronworth also received complaints from customers arising from its financial promotions issued during the relevant period and particularly in relation to the ESB ISA, a financial promotion issued to its customers in 1999. In this regard, the FSA has further found that Baronworth failed to handle a significant proportion of these complaints appropriately and in compliance with the applicable regulatory standards.

Principle 7

6. Baronworth did not pay due regard to the information needs of its clients and communicate information to them in a way which was fair, clear and not misleading, in breach of Principle 7. Specifically, during the relevant period, Baronworth failed to ensure that the financial promotions, drafted, approved and sent by post by the Firm and its appointed representative, complied with Principle 7, by the following:

   i. the financial promotions frequently lacked appropriate balance as they emphasised the potential benefits of the proposed investment without giving equal prominence to the consequent risks;

   ii. the financial promotions included statements such as "100% capital protection at maturity" which were not supported by the literature from the product providers;

   iii. the financial promotions frequently failed to set out in clear terms charges that would be incurred by any customer in purchasing the investment;

iv. the financial promotions often contained inadequate information about the nature and the risk of the investment; and

v. a number of financial promotions did not contain accurate or sufficient information on the recourse available to customers under the Financial Services Compensation Scheme.

Principle 3

7. Baronworth did not take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems, in the way it handled complaints consistently and to ensure that the financial promotions were fair, clear and not misleading, in breach of Principle 3, by the following:

i. it had no controls in place to ensure that the financial promotions, drafted and approved by Mr Jackson, satisfied the relevant regulatory requirements;

ii. it had no formal complaints handling procedure in place;

iii. it had no procedures in place to manage conflicts of interest in that Mr Jackson handled complaints about financial promotions he had personally drafted and approved; and

iv. the lack of effective systems and controls contributed to Baronworth failing to address the substance of complaints.

DEFINITIONS

8. The definitions below are used in this Final Notice:

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

"Baronworth/the Firm" means Baronworth (Investment Services) Limited;

"Baronworth Investments" means the Firm's appointed representative Baronworth Investments Ltd;

"the Baronworth Group" means all companies associated with Mr Jackson (which may include firms before the relevant period);

"COB" means the FSA's Conduct of Business Rules, the requirements applying to firms with investment business customers, in force up to and including 31 October 2007;

"COBS" means the Conduct of Business Sourcebook, the conduct of business requirements applying to firms with effect from 1 November 2007;

"DEPP" means the FSA's Decision Procedures and Penalties manual;

"DISP" means the Dispute Resolution and Complaints part of the FSA Handbook. The relevant rule references under DISP in this notice refer to the rule(s) in force at the time of handling of the complaint and not the time of the purchase of the product;

"EG" means the Enforcement Guide, applying with effect from 28 August 2007;

"ENF" means the Enforcement Manual detailing the FSA's disciplinary and enforcement arrangements, in force up to and including 27 August 2007;

"ESB ISA" means The Eurolife Secured Bond ISA;

"the financial promotions" means the 74 financial promotions drafted, approved and sent out to customers by Baronworth and/or Baronworth Investments, all of which were non-real time financial promotions;

the "FOS" means the Financial Ombudsman Service;

the "FSA" means the Financial Services Authority;

the "FSCS" means the Financial Services Compensation Scheme;

the "Handbook" means the FSA's Handbook of Rules and Guidance;

"KFD" means the key features document relating to the product or investment;

"Mr Jackson" means Mr Colin Jackson;

the "Principles" mean the FSA's Principles for Businesses;

the "relevant period" means 1 December 2001 until 31 October 2010;

the "Tribunal" means the Upper Tribunal (Tax and Chancery Chamber).

FACTS AND MATTERS

Background to Baronworth

9. Baronworth was incorporated in September 1985. It was authorised by the FSA on 1 December 2001 to undertake regulated activities. Mr Jackson was Baronworth's 50% shareholder and controlling director and carried out the majority of the regulated activities within the Firm.

10. The Firm has had five appointed representatives since its incorporation and these were set up to carry out different types of businesses in the financial services Baronworth intended to operate in. However, a number of these appointed representatives have not traded since they were established. The majority of the regulated activity of the Firm relates to direct offer financial promotion business, with all transactions carried out on a non-advised basis. This business was conducted exclusively through the Firm's appointed representative, Baronworth Investments.

11. The Firm and Baronworth Investments both operated, in practice, as a one man band. Mr Jackson carried out research into investment products and decided upon the products Baronworth would promote by way of direct offer marketing to its retail customers. The investment products tended to be high income investment products. Mr Jackson also drafted and approved the financial promotions without any input from another approved person.

12. Mr Jackson also dealt with the complaints received by the Firm solely and regardless of whether they were about the financial promotions drafted and approved by him. The other approved persons at the Firm, Robert Jackson and

Michael Brill, were not involved in the complaint process and appear not to have taken active involvement in the running of the Firm.

Financial Promotions

13. During the relevant period Baronworth Investments issued 74 financial promotions to its customers. The Firm's procedure in relation to this business involved Baronworth Investments (i.e. Mr Jackson) drafting the financial promotions, Baronworth (i.e. Mr Jackson) approving the financial promotions and Baronworth Investments sending out the approved financial promotions, on a direct offer basis, to a core group of around 550 customers. These customers had purchased financial products through the Baronworth Group in the relatively recent past. When a customer bought a product as a result of this direct offer, Baronworth received commission from the relevant product provider, which it then shared with the relevant customer.

14. COB 3.8.4R(1) and COBS 4.2.1R require a firm to ensure that its financial promotions are fair, clear and not misleading. The FSA has found that a substantial number of the financial promotions drafted and approved by Baronworth and Baronworth Investments during the relevant period failed to comply with these requirements. These are discussed below.

(a) Lack of appropriate balance between risk and reward

15. The financial promotions frequently did not provide a fair and adequate description of the risks involved, in investing in the product. They lacked appropriate balance in that the financial promotions heavily promoted the potential benefits of the investment without giving equal prominence to the potential risks.

16. This breaches the FSA's fair, clear and not misleading rule in relation to financial promotions, which requires a financial promotion to include a fair and adequate description of the nature of the investment or service and the risks involved. In order to give an adequate explanation of the investment the promotion must avoid accentuating the potential benefits without also giving a fair indication of the risks.

17. For example, the financial promotion for the Pinnacle Insurance Guaranteed Annual Income Bond in October 2002 did not set out the risk of capital loss upon early encashment/cancellation although it strongly emphasised the 'guaranteed' nature of the investment.

18. A number of investment products promoted by Baronworth Investments involved the risk of loss of the customer's initial capital invested. The FSA has found that several of the promotional letters did not disclose this risk appropriately. For example, in the financial promotion for the Keydata Protected Portfolio Plan in August 2006, whilst the risk of capital loss was described within the KFD, it was not included as a main point within the financial promotion itself. On the contrary, the financial promotion heavily promoted the potential benefit of "100% Capital Protection at Maturity".

19. This is in breach of the FSA's fair, clear and not misleading rule which requires firms to identify where there is a possibility of loss of initial capital invested and to disclose this as one of the main points in the specific non-real time financial promotion.

(b) *Failure to provide adequate explanation of the nature of products*

20. During the relevant period Baronworth issued financial promotions for a number of complex structured products which failed to include an adequate explanation of the nature of those products. This was important given that the Firm's mailing distribution list mainly consisted of retail clients.

21. For example, the Structured Solutions Group Capital Protected Income Plan in January 2007 was a relatively complex structured investment product where income was based upon the performance of the underlying fund. The financial promotion did not provide an adequate explanation as to how the investment would work in practice. Instead of this, it quoted target income rates and made ambiguous statements, such as, "the potential of rising income" and "the possibility of a terminal bonus", without any qualification or explanation of the risks involved in attempting to achieve these aims.

22. This was in breach of the relevant regulatory standards which provide that it cannot be assumed that recipients necessarily have an understanding of the investment or service being promoted. The use of terms that are ambiguous, or the targeting of an audience which is unlikely to understand the financial promotion, are matters which are relevant to an assessment of whether the promotion is 'fair, clear and not misleading'. If a non-real time financial promotion is specially designed for a targeted collection of recipients who are reasonably believed to have particular knowledge of the investment or service being promoted, this fact should be made clear.

23. There was no such indication that this promotion had been targeted at a particular sector of the Firm's client base. Moreover Baronworth's mailing distribution list consisted mainly of retail clients and all resulting business was on a non-advised basis. Under these circumstances the FSA found that the financial promotion was in breach of the fair, clear and not misleading rule.

(c) *Lack of information on charges*

24. On a number of occasions Baronworth, in its financial promotions, did not set out adequate and clear information on the charges and expenses involved with the investment. In some instances the financial promotions did not contain any such information at all. This is a breach of the relevant regulatory requirement according to which a direct offer financial promotion must detail the basis or amount of any charges and expenses which the private customer may bear.

(d) *Lack of accurate or sufficient information on the recourse under FSCS*

25. A number of Baronworth's financial promotions did not contain accurate or sufficient information on the recourse available to the customers under the FSCS.

26. For example, the financial promotion for the Walker Crips FTSE Kick-Out Plan in May 2010 failed to include a risk warning that, in the event of the issuer's insolvency, the investor would not have any recourse to the FSCS. Although this information was included in the KFD this should have been set out clearly as a main point in the letter as it was a crucial risk warning.

Financial Promotions: Conclusion

27. Further to the matters discussed in paragraphs 13-26 above the Firm has failed to ensure that the financial promotions were fair, clear and not misleading. The Firm's lack of appropriate systems and controls during the majority of the relevant period contributed to these failures. This included the fact that Baronworth did not have any formal procedure for drafting and communicating financial promotions.

28. In addition, the majority of the Firm's financial promotions were carried out at a time when Baronworth did not have any formal compliance and monitoring procedures in place. As a result, the Firm had no means to ensure that Mr Jackson, who drafted and approved the financial promotions on his own, was complying with the regulatory requirements for financial promotions.

29. The Firm sought to obtain approval of its financial promotions from the relevant product providers. However, this was not by itself sufficient in order for Baronworth to comply with regulatory requirements given that the product providers could not have been responsible for ensuring that the Firm's financial promotions were compliant with the relevant regulatory standards.

Complaints Handling

30. During the relevant period Baronworth and Baronworth Investments received a total of 95 complaints. 39 of these complaints were referred to the FOS and 14 were upheld against Baronworth; all of these related to a financial promotion for the ESB ISA sent out to customers in 1999. The substance of the customers' cause for complaint in relation to this financial promotion was consistent (namely the wording of the financial promotion) and the main finding of the FOS relating to these complaints was that the Firm's financial promotions on the ESB ISA were not fair, clear and not misleading.

31. The ESB ISA financial promotions were drafted, approved and sent to customers prior to the relevant period. Accordingly, the wording of this financial promotion (a relevant extract is contained in paragraph 38) does not form part of the FSA's action against the Firm. However, the Firm's complaint

handling arising from the ESB ISA customers' complaints arose after FSA regulation and therefore is relevant in considering the Firm's conduct.

32. In relation to its handling of the ESB ISA complaints, Baronworth consistently failed to deal with the substance of the complaints and dismissed them solely on the basis that it had carried out the transactions on an 'execution only' (i.e. non-advised) basis. Many of these complaints did not relate to whether the customer received poor advice.

33. Baronworth handled a significant proportion of its complaints in breach of several DISP rules as follows:

    i. Mr Jackson handled complaints on his own, even though some of the complaints concerned financial promotions which he had drafted, approved and sent out himself. Mr Jackson therefore had an obvious conflict of interest in handling complaints about his own work (DISP 1.2.16R (in force from 2002-2007) and DISP 1.4.1R (in force from 2008 to the end of the relevant period)); and

    ii. during the majority of the relevant period Baronworth did not have a written internal complaints handling procedure (DISP 1.2.1R; 1.2.9R (in force from 2002-2007) and DISP 1.3.1R, 1.2.1R (in force from 2008 to the end of the relevant period)). This meant that there were no internal rules or guidance available for the Firm or Mr Jackson to follow when handling complaints. It also meant that Baronworth was unable to send the complaints handling procedure to customers who had complained, with the result that customers may not have been aware of the protection available to them.

34. Paragraphs 35-51 below set out the FSA's findings in relation to an example of four cases where Baronworth failed to handle the relevant customers' complaints adequately in compliance with the DISP rules applicable at the time of the complaints.

(a) *Customer A*

35. Anticipating a low level of capital return from his Eurolife Income or Growth Plans, Customer A wrote to Baronworth on 3 December 2003 to complain that the Firm's financial promotion overstated the security of his investments. Mr Jackson replied on 10 December 2003 stating that it was unclear to him if Customer A's letter constituted a complaint. The FSA has not found and the Firm did not produce any evidence of any further contact from Customer A to the Firm.

36. It was inappropriate for Baronworth not to regard Customer A's letter as a complaint. The customer was expressing dissatisfaction with the wording of the promotional literature for a product which was promoted through the Firm. For the purposes of DISP, the letter therefore qualified as a complaint.

37. This complaint was not handled properly and the Firm acted in breach of the DISP rules when dealing with it.

(b) *Customer B*

38. Customer B complained that he had not received the return which he expected from his investment in the ESB ISA. He complained that Baronworth's explanatory letter, on which he based his decision to invest in the ESB ISA, was misleading. It stated: *"Provided the investment is held for its full term your capital will be returned in full. This investment is not linked to any index".* This proved not to be the case and customers lost money. Also, the potential risks of investing in the ESB ISA were not set out in the Firm's promotional letter. Customer B considered that Baronworth had mis-sold him the product, and that it should pay him compensation.

39. Mr Jackson, on behalf of Baronworth, rejected his complaint on the basis that the transaction was carried out on an execution only basis. Customer B in turn rejected the Firm's reasoning stating that the fact remained that Baronworth in its promotional literature had misled him. In addition, Customer B asked for somebody other than Mr Jackson to consider his complaint.

40. In response Mr Jackson repeated that the transaction was carried out on an execution only basis, and that Baronworth did not give Customer B any advice. Mr Jackson did not accept that somebody else at the Firm should consider the complaint. Thereafter Customer B referred his complaint to the FOS.

41. The FOS upheld Customer B's complaint stating that although Baronworth had not given him any advice, nonetheless the Firm had misrepresented the ESB ISA in such a way as to encourage Customer B to invest when he may not otherwise have done so. It recommended that Baronworth pay Customer B the original capital invested plus interest.

42. In a similar way to other ESB ISA complaints, Baronworth and Mr Jackson failed to deal with Customer B's complaint fairly and adequately by failing to address the subject matter of the complaint.

43. In addition, DISP 1.2.16R provides that complaints should be investigated by an employee of sufficient competence who, where appropriate, was not directly involved in the subject matter of the complaint. Mr Jackson should therefore not have investigated Customer B's complaint as he had drafted the financial promotion about which the customer was complaining. Mr Jackson also failed to comply with Customer B's reasonable request that somebody else handle the complaint.

(c) *Customer C*

44. Customer C wrote to Baronworth stating that the endowment plan that he and his wife had bought following a promotion by Baronworth was facing a significant shortfall. Customer C complained that their investment was entered into in 1988 on the expectation that the payout on maturity would significantly exceed the mortgage amount and that this expectation was given by Baronworth and supported by the KFD. Customer C therefore claimed that they had been mis-sold the product by Baronworth and that the Firm should pay them compensation equal to the predicted shortfall figure, which was £28,500.

45. Baronworth acknowledged the complaint and sought to investigate it by requesting the client to send them their file and any relevant documentation. However the Firm ultimately rejected the complaint by stating that the policy was taken out through Baronworth Limited, a different company to Baronworth and one that was no longer trading.

46. The FSA considers that Baronworth failed to deal with this complaint fairly and adequately. Although Baronworth Limited had had a separate legal identity and was dissolved on 18 January 2000, it had been part of the Baronworth Group under the control of two of the same directors, i.e. Mr Jackson and Robert Jackson, and had operated from the same office premises as the other companies within the Baronworth Group. In all the circumstances it is neither fair nor reasonable for the complaint to have been dismissed on this narrow basis; Baronworth failed to address the substance of the complaint.

47. The FSA has found a number of similar cases where Baronworth had dismissed complaints on the basis that the promotion was carried out by Baronworth Limited and not the Firm. It therefore appears that Baronworth has used this as a defence to these complaints and as an excuse for not addressing the substance of the complaints.

(d) Customer D

48. Customer D wrote, on behalf of herself and her husband, to Baronworth in March 2006 complaining about their loss of returns from their investment in the ESB ISA. She criticised Baronworth for promoting a sub-standard product and requested the Firm to pay compensation. Customer D emphasised that she and her husband were in their late seventies and that they were gravely affected by this loss.

49. Baronworth replied to Customer D's letter stating that they were unable to respond to her letter until she specified the nature of her complaint. Further correspondence was exchanged during which time the Firm declined to deal with the complaint on the basis that the letters failed to set out the nature of the complaint in clear terms so as to enable Baronworth to respond as required by the regulations. Customer D then sent a final letter to Baronworth stating that

she was complaining against the Firm for mis-selling a product which was not suitable for her and her husband. Customer D stated that they became aware of the product and invested upon receiving the financial promotion from Baronworth which misled them regarding the security of the investment. The Firm sent a further response refusing to deal with the complaint claiming that the letter still failed to be clear on the nature of the complaint.

50. Baronworth failed to deal with this complaint fairly. It was inappropriate for the Firm to refuse to deal with the complaint on the basis that Customer D's letters failed to set out the reason for their complaint adequately, especially when the final letter set out clearly why the clients felt that they were mis-sold the product by Baronworth. Baronworth had sufficient information to deal with the complaint adequately and therefore should have responded in full to Customer D's final letter of complaint, but did not do so.

51. This complaint was not handled properly and constituted breaches of DISP rules. Baronworth's failure in this case is more serious as by March 2006 they were well aware of the Firm's failure in relation to the ESB ISA financial promotions from several FOS rulings made against the Firm on the same issue**.**

Complaints Handling: Conclusion

52. Further to the matters discussed in paragraphs 30-51 above, the Firm in handling complaints has therefore failed to comply with the regulatory requirements set out in DISP. In addition, the Firm frequently responded to complainants that they were rejecting the complaints on the basis that the transaction was carried out on an execution only basis. Regardless as to whether the substance of the complaint was considered, it was wrong to describe the Firm's service to customers in relation to their financial promotions as 'execution only'; it was in fact 'direct offer'.

53. As with the financial promotions drafting and approval process, the other approved persons at Baronworth did not take any active involvement in the Firm's business, including dealing with complaints. In this regard the Firm has

failed to ensure that its other directors were involved, as part of their CF1 (executive director) roles, in carrying out some of this scrutiny.

FAILINGS

54. The statutory and regulatory provisions and policy relevant to this Final Notice are referred to in the Annex.

Principle 7

55. By reason of the facts and matters referred to in paragraphs 13-29 above, Baronworth has failed to pay due regard to the information needs of its customers and to communicate information to them in a way which was fair, clear and not misleading, in breach of Principle 7.

56. This is due to the fact that the financial promotions issued and distributed by the Firm during the relevant period were not fair, clear and not misleading and constituted breaches of the relevant COB and COBS rules.

57. In particular, the financial promotions lacked the appropriate balance between highlighting the risks and rewards of the products and often contained inadequate or inaccurate information concerning the nature and the risks of the investment. In this regard, the most common and significant failure was whilst the risk of capital loss was described within the KFD (which in most cases were provided to the customers with the Firm's financial promotions), it was not included as a main point within the financial promotion itself. This failure appeared to be more serious given the fact that the financial promotions heavily promoted the potential benefit of "100% Capital Protection at Maturity", which was clearly misleading and contradictory to what the product provider literature had said.

58. In addition, a number of the promotional letters failed to set out in clear terms the charges involved and the extent of the commitments required from the investors with the particular investment. At times, the letters also held inadequate information on the nature of the products, especially when they were complex or were of too high risk for a retail investor.

59. One of the promotional letters contained misleading information on the recourse available to the customers under the FSCS, in that it stated that it was available to the customers whereas, according to the KFD, it was not.

Principle 3

60. By reason of the facts and matters referred to in paragraphs 28 and 30-53 above, Baronworth has failed to take care to organise and control its affairs responsibly and effectively, with adequate risk management systems, in breach of Principle 3.

61. Baronworth failed to put in place adequate systems and controls to ensure that its financial promotions were fair, clear and not misleading. The Firm had no controls in place to ensure that the financial promotions, which were drafted, approved and issued by Mr Jackson on his own, satisfied the regulatory requirements.

62. Further Baronworth failed to ensure that it had a formal complaints handling procedure in place. As a result, the Firm had no control over an obvious conflict of interest between Mr Jackson handling complaints appropriately and ensuring that no complaints relating to his drafting of financial promotions were upheld.

63. This also led to the Firm's failure to deal with a number of complaints fairly and adequately. This includes Baronworth's and Mr Jackson's failure on a number of occasions to deal with the substance of a complaint and thereby reject it and to fail to acknowledge a complaint as a 'Complaint' under DISP and to respond appropriately.

64. Further, by not having a written complaints handling procedure in place during the relevant period, Baronworth failed to ensure that its staff, as well as its customers, were aware of the Firm's process of handling complaints.

65. Baronworth also failed to ensure that its other approved persons were involved, as part of their CF1 (executive director) roles, in carrying out some of this scrutiny.

Other relevant factors

66. The Firm improved its systems and controls, procedures, and preparation of financial promotions during the relevant period.

SANCTION

67. The FSA's policy on whether to issue a financial penalty is set out in Chapter 6 of DEPP, which forms part of the FSA's Handbook. As the gravamen of Baronworth's misconduct occurred before the change in the regulatory provisions governing the determination of financial penalties on 6 March 2010, the FSA has applied the penalty regime as set out in DEPP that was in force up to 5 March 2010. All references to DEPP in this section are references to the version that was in force up to and including 5 March 2010 and are set out in detail in the Annex.

68. In determining the appropriate level of financial penalty the FSA has also had regard to Chapter 13 of ENF for part of the relevant period until August 2007 and Chapter 7 of EG thereafter.

69. The relevant sections of DEPP and EG are set out at Annex A.

70. In determining whether a financial penalty is appropriate, the FSA is required to consider all the relevant circumstances of the case. DEPP 6.5.2G sets out a non-exhaustive list of factors which may be relevant in this respect. The following factors are particularly relevant in this case.

Deterrence: DEPP 6.5.2G(1)

71. When determining the level of penalty, the FSA has regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business.

The nature, seriousness and impact of the breach in question: DEPP 6.5.2G(2)

72. The FSA has had regard to the seriousness of the breaches, the duration of the breaches and the risk of loss to consumers. The FSA considers Baronworth's breaches to be serious as it gave rise to the risk that customers could have suffered losses as a result of investing in the relevant products. Similarly, it is the FSA's view that the Firm's handling of complaints led to an increased risk of customers not being treated fairly.

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

73. The FSA has not determined that the Firm deliberately or recklessly contravened regulatory requirements.

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

74. The Firm has entered into creditors' voluntary liquidation. The Firm's Part IV permissions with the FSA to carry out regulated activities have been cancelled. Given Baronworth's current status and financial circumstances the FSA has decided to reduce the figure for the financial penalty to nil.

The loss or risk of loss caused to consumers: DEPP 6.5.2G(2)

75. The financial promotion of the ESB ISA by the Firm in 1999 led to a number of complaints being made by customers who then referred their cases to the FOS. The FOS upheld 14 of these cases ordering the Firm to pay compensation. The Firm has paid, to date, approximately £56,700 to these customers.

The Firm's conduct following the breach: DEPP: 6.5.2G(8)

76. Following its referral to Enforcement, the Firm has co-operated fully with the Enforcement investigation. The Firm agreed the facts quickly ensuring an efficient resolution of the matter.

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

77. The Firm has not been the subject of any previous disciplinary action.

Other action taken by the FSA: DEPP 6.5.2G(10)

78. In determining the level of financial penalty, the FSA has taken into account penalties imposed on other authorised firms for similar behaviour.

79. Having considered all the circumstances set out above, the FSA considers that £50,000 (before any discount for early settlement) is the appropriate financial penalty to impose on Baronworth. However, as stated above, given the Firm's current status, both regulatory and financial, the FSA has decided to reduce this figure to nil.

PROCEDURAL MATTERS

Decision maker

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

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

Publicity

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

FSA contacts

83. For more information concerning this matter generally, contact Paul Howick of the Enforcement and Financial Crime Division of the FSA (direct line: 020 7066 7954/email: paul.howick@fsa.gov.uk).

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Bill Sillett

Head of Department, Retail

FSA Enforcement and Financial Crime Division

Annex

Relevant regulatory provisions

1. The Act

1.1 The FSA's regulatory objectives are set out in section 2(2) of the Act and include the protection of consumers.

1.2 Section 138 of the Act provides that the FSA may make such rules applying to authorised persons as appear to it to be necessary or expedient for the purpose of protecting consumers.

1.3 The FSA has the power, pursuant to section 206 of the Act, to impose a financial penalty of such amount as it considers appropriate where the FSA considers an authorised person has contravened a requirement imposed on him by or under the Act.

2. The Principles

2.1 The FSA has published Principles which apply either in whole, or in part, to all authorised firms. The Principles are a general statement of the fundamental obligations of firms under the regulatory system and reflect the FSA's regulatory objectives. A firm may be liable to disciplinary sanction where it is in breach of the Principles.

2.2 The Principles relevant to this matter are:

i. Principle 3 – A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems; and

ii. Principle 7 - a firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is fair, clear and not misleading.

3. Relevant Handbook provisions

3.1 Guidance on the FSA's approach to penalties is set out in DEPP. DEPP came into effect on 28 August 2007.

3.2 The FSA's policy on the imposition and amount of penalties that applied for misconduct taking place before 6 March 2010 was set out in Chapter 6 of DEPP.

3.3 DEPP 6.1.2G provides that the principal purpose of imposing a financial penalty or public censure is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches, and demonstrating generally the benefits of compliant behaviour. Financial penalties are therefore tools that the FSA may employ to help it to achieve its regulatory objectives.

Financial Penalty

3.4 DEPP 6.5.1G(1) provides that the FSA will consider all the relevant circumstances of a case when it determines the level of financial penalty (if any) that is appropriate and in proportion to the breach concerned.

3.5 DEPP 6.5.2G sets out a non-exhaustive list of factors that may be relevant to determining the appropriate level of financial penalty to be imposed on a person under the Act. The following factors are relevant to this case:

Deterrence: DEPP 6.5.2G(1)

3.6 When determining the appropriate level of financial penalty, the FSA will have regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business.

The nature, seriousness and impact of the breach in question: DEPP 6.5.2G(2)

3.7 The FSA will consider the seriousness of the breach in relation to the nature of the rule, requirement or provision breached, which can include considerations such as the duration and frequency of the breach, whether the breach revealed serious or systemic weaknesses in the person's procedures or of the management systems or internal controls relating to all or part of a person's business and the loss or risk of loss caused to consumers, investors or other market users.

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

3.8 The FSA will regard as more serious a breach which is deliberately or recklessly committed, giving consideration to factors such as whether the person has given no apparent consideration to the consequences of the behaviour that constitutes the breach. If the FSA decides that the breach was deliberate or reckless, it is more likely to impose a higher penalty on a person than would otherwise be the case.

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

3.9 The degree of seriousness of a breach may be linked to the size of the firm. For example, a systemic failure in a large firm could damage or threaten to damage a much larger number of consumers or investors than would be the case with a small firm: breaches in firms with a high volume of business over a protracted period may be more serious than breaches over similar periods in firms with a smaller volume of business.

3.10 In addition, the size and resources of a person may be relevant in relation to mitigation, in particular what steps the person took after the breach had been identified; the FSA will take into account what it is reasonable to expect from a person in relation to its size and resources, and factors such as what proportion of a person's resources were used to resolve a problem.

Conduct following the breach: DEPP 6.5.2G(8)

3.11 The FSA may take into account the conduct of the person in bringing (or failing to bring) quickly, effectively and completely the breach to the FSA's attention, the degree of cooperation the person showed during the investigation and any remedial steps taken since the breach was identified.

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

3.12 The FSA may take account of the previous disciplinary record and general compliance history of the person. This will include:

i. whether the FSA has taken any previous disciplinary action against the person;

ii. whether the person has previously undertaken not to do a particular act or engage in particular behaviour;

iii. whether the FSA has previously taken protective action in respect of the firm, using its own initiative powers by means of a variation of the firm's Part IV permission, or has previously requested the firm to take remedial action and the extent to which that action has been taken; and

iv. the general compliance history of the firm.

Other action taken by the FSA (or a previous regulator): DEPP 6.5.2G(10)

3.13 The FSA seeks to apply a consistent approach to determining the appropriate level of penalty. The FSA may take into account previous decisions made in relation to similar misconduct.

Conduct of Business Rules

3.14 Guidance on the Conduct of Business Rules is set out in the Conduct of Business manuals of the FSA handbook.

3.15 COB was in force for part of the relevant period (until 31 October 2007), and thereafter COBS applied.

<u>COB</u>

3.16 COB 3.8.4R(1) states that a firm must be able to show that it has taken reasonable steps to ensure that a non-real time financial promotion is fair, clear and not misleading.

3.17 COB 3.8.5E(1) states that a firm should take reasonable steps to ensure that, for a non-real time financial promotion:

i. *[f]. the design, content or format does not disguise, obscure or diminish the significant of any statement, warning or other matter which the financial promotion is required by this chapter to contain;*

ii. *[h]. it does not omit any matters the omission of which causes the financial promotion not to be fair, clear and not misleading.*

3.18 COB 3.8.7G(1) states that it cannot be assumed that recipients necessarily have an understanding of the investment or service being promoted. The use of terms that are ambiguous, or the targeting of an audience which is unlikely to understand the promotion, are matters which are relevant to an assessment of whether the promotion is 'fair, clear and not misleading'. If a non-real time financial promotion is specially designed for a targeted collection of recipients who are reasonably believed to have particular knowledge of the investment or service being promoted, this fact should be made clear.

3.19 COB 3.8.8R(1) states that a specific non-real time financial promotion must include a fair and adequate description of: (a) the nature of the investment or service; (b) the commitment required; (c) the risks involved.

3.20 COB 3.8.9G states that:

i. *[1]. A specific non-real time financial promotion should give and fair and balanced indication of the requirements in COB 3.8.8R(1)(a) to (c), to meet COB 3.8.4R(1) (Fair, clear and not misleading rule);*

ii. *[2]. In giving a fair and adequate explanation of the investment or service being promoted firms should avoid:*

[a]. accentuating the potential benefits of an investment without also giving a fair indication of the risks;

[b]. drawing attention to a favourable tax treatment without stating that this might not continue in the future.

3.21 COB 3.8.9G(7)(b) states that in giving a fair and adequate explanation of the risk involved, firms should, where relevant identify where there is a possibility of loss of initial capital invested and disclose this as one of the main points in the specific non-real time financial promotion.

3.22 COB 3.9.6R states that:

i. *[1]. A direct offer financial promotion must be in a durable medium and contain sufficient information to enable a person to make an informed assessment of the investment or service to which it relates.*

ii. *[2]. In particular, a direct offer financial promotion must contain:*

[b]. where it is the case that no advice on investments has been given, a prominent statement that:

[i]. no advice on investments has been given; and

[ii]. if a person has any doubt about the suitability of the agreement which is the subject of the financial promotion he should contact the firm for advice on investments (or another appropriate firm if the firm does not offer advice on investments).

iii. details of the basis or amount of any commission or remuneration which might be payable by the person who is offering the investment or service to another person.

3.23 COB 3.9.7R(5) requires a direct offer financial promotion to detail the basis or amount of any charges and expenses which the private customer may bear.

<u>COBS</u>

3.24 COBS 4.2.1R(1) states that a firm must ensure that a communication or a financial promotion is fair, clear and not misleading.

3.25 COBS 4.2.4G states that:

A firm should ensure that a financial promotion:

i. for a product or service that places a client's capital at risk makes this clear;

ii. that quotes a yield figure gives a balanced impression of both the short and long term prospects for the investment;

iii. that promotes an investment or service whose charging structure is complex, or in relation to which the firm will receive more than one element of remuneration, includes the information necessary to ensure that it is fair, clear and not misleading and contains sufficient information taking into account the needs of the recipients;

iv. that names the FSA as its regulator and refers to matters not regulated by the FSA makes clear that those matters are not regulated by the FSA;

v. that offers packaged products or stakeholder products not produced by the firm, gives a fair, clear and not misleading impression of the producer of the product or the manager of the underlying investments.

3.26 COBS 4.5.2R states that:

A firm must ensure that information:

i. includes the name of the firm;

ii. is accurate and in particular does not emphasise any potential benefits of relevant business or a relevant investment without also giving a fair and prominent indication of any relevant risks;

iii. is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received; and

iv. does not disguise, diminish or obscure important items, statements or warnings.

3.27 COBS 4.5.5G states that when communicating information, a firm should consider whether omission of any relevant fact will result in information being insufficient, unclear, unfair or misleading.

Dispute Resolution: Complaints

3.28 DISP 1.2.1R (in force from 2002- 2007) states that a firm must have in place and operate appropriate and effective internal complaint handling procedures (which must be written down) for handling any expression of dissatisfaction, whether oral or written, and whether justified or not, from or on behalf of an eligible complainant about the firm's provision of, or failure to provide, a financial service.

3.29 DISP 1.3.1R (in force from 2008- to date) states that effective and transparent procedures for the reasonable and prompt handling of complaints must be established, implemented and maintained by a respondent.

3.30 DISP 1.2.9R (in force from 2002-2007) states that a firm must publish details of its internal complaint handling procedures, supply a copy on request to an eligible complainant, and supply a copy automatically to the complainant when it receives a complaint from an eligible complainant (unless the complaint is resolved by close of business on the next business day).

3.31 DISP 1.2.1R (in force from 2008-to date) states that to aid consumer awareness of the protections offered by the provisions in this chapter, respondents must:

i. publish appropriate summary details of their internal process for dealing with complaints promptly and fairly;

ii. refer eligible complainants in writing to the availability of these summary details, at, or immediately after, the point of sale; and

iii. provide such summary details in writing to eligible complainants:

(a) on request; and

(b) when acknowledging a complaint.

3.32 DISP 1.4.4R (in force from 2002-2007) states that:

A firm must, within four weeks of receiving a complaint, (unless DISP 1.4.3A R or DISP 1.4.9R applies) send the complainant either:

i. a final response; or

ii. a holding response, which explains why it is not yet in a position to resolve the complaint and indicates when the firm will make further contact (which must be within eight weeks of receipt of the complaint).

3.33 DISP 1.4.5R (in force from 2002-2007) states that:

A firm must, by the end of eight weeks after its receipt of a complaint, (unless DISP 1.4.3A R or DISP 1.4.9R applies) send the complainant either:

i. a final response; or

ii. a response which:

(b) explains that the firm is still not in a position to make a final response, gives reasons for the further delay and indicates when it expects to be able to provide a final response; and

(c) informs the complainant that he may refer the complaint to the Financial Ombudsman Service if he is dissatisfied with the delay and encloses a copy of the Financial Ombudsman Service's explanatory leaflet.

3.34 DISP 1.6.1R (in force from 2008-to date) provides that on receipt of a complaint, a respondent must:

i. send the complainant a prompt written acknowledgement providing early reassurance that it has received the complaint and is dealing with it; and

ii. ensure the complainant is kept informed thereafter of the progress of the measures being taken for the complaint's resolution.

3.35 DISP 1.6.2R (in force from 2008-to date) states that the respondent must, by the end of eight weeks after its receipt of the complaint, send the complainant:

i. a final response; or

ii. a written response which:

(b) explains why it is not in a position to make a final response and indicates when it expects to be able to provide one;

(c) informs the complainant that he may now refer the complaint to the Financial Ombudsman Service; and

(d) encloses a copy of the Financial Ombudsman Service standard explanatory leaflet.

3.36 DISP 1.2.16R (in force from 2002-2007) provides that complaints should be investigated by an employee of sufficient competence who, where appropriate, was not directly involved in the matter which is the subject of the complaint.

3.37 It further states that responses to complaints should address adequately the subject matter of the complaint and, where a complaint is upheld, to offer appropriate redress.

3.38 DISP 1.4.1R (in force from 2008-to date) provides that once a complaint has been received by a respondent, it must:

i. investigate the complaint competently, diligently and impartially;

ii. assess fairly, consistently and promptly:

(b) the subject matter of the complaint;

(c) whether the complaint should be upheld;

(d) what remedial action or redress (or both) may be appropriate;

(e) if appropriate, whether it has reasonable grounds to be satisfied that another respondent may be solely or jointly responsible for the matter alleged in the complaint;

taking into account all relevant factors;

iii. offer redress or remedial action when it decides this is appropriate;

iv. explain to the complainant promptly and, in a way that is fair, clear and not misleading, its assessment of the complaint, its decision on it, and any offer of remedial action or redress; and

v. comply promptly with any offer of remedial action or redress accepted by the complainant.

3.39 DISP 1.4.2G (in force from 2008-to date) states that factors that may be relevant in the assessment of a complaint under DISP 1.4.1 R (2) include the following:

i. all the evidence available and the particular circumstances of the complaint;

ii. similarities with other complaints received by the respondent;

iii. relevant guidance published by the FSA, other relevant regulators, the Financial Ombudsman Service or former schemes; and

iv. appropriate analysis of decisions by the Financial Ombudsman Service concerning similar complaints received by the respondent.