Financial Services Authority

FINAL NOTICE

To: **Belmont Regency Limited**

Address: Victoria House
24-28 St Peters Churchyard
Derby
DE1 1NN

FRN: 136822

Date: 21 June 2010

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives Belmont Regency Limited ("Belmont") final notice about a requirement to pay a financial penalty:

1. THE PENALTY

1.1. The FSA pursuant to section 206 of the Financial Services and Markets Act 2000 ("the Act"), had sought to impose a financial penalty on Belmont , in respect of its failure to comply with Principles 2 and 9 of the FSA's Principles for Businesses ("the Principles") between 1 April 2007 and 22 April 2008 ("the relevant period").

1.2. The Firm agreed to settle at an early stage of the FSA's investigation. However the Firm provided evidence which verifies the potential serious financial hardship that would arise if a penalty were imposed. Were it not for Belmont's current financial situation, the FSA would have sought to impose a financial penalty of £17,500. Consequently the FSA has decided not to impose a financial penalty.

1.3. The Firm confirmed by written agreement on 7 June 2010 that it will not be referring the matter to the Financial Services and Markets Tribunal.

2. REASONS FOR THE ACTION

2.1. The FSA had decided to impose a financial penalty on Belmont for breaches of the Principles within the relevant period. In summary, the FSA has made the following findings:

(a) Belmont failed to conduct its business with due skill, care and diligence in contravention of Principle 2 (Skill, care and diligence) by failing to follow its recruitment procedures and carry out reference checks which were appropriate prior to the recruitment of a new adviser; and

(b) Belmont failed to take reasonable care to demonstrate the suitability of its advice, in contravention of Principle 9 (Customers: relationships of trust), by failing to have appropriate systems and controls in place to ensure its advisers were trained and monitored appropriately and record-keeping on client files was adequate. This failing meant that Belmont was not able to demonstrate to the FSA the suitability of advice, (although the FSA is satisfied that no customers were provided with unsuitable advice).

2.2. Belmont's failings are viewed as being serious because the failure to follow its recruitment procedures resulted in Belmont employing an individual ("Adviser A"), who was subsequently charged on 10 November 2008 with 19 offences relating to financial crime allegedly committed by him during his time with his previous employer ("the previous employer"). Adviser A has pleaded guilty to 10 offences and has been found guilty of a further 5 offences to which he pleaded not guilty.

2.3. In the FSA's opinion, Belmont's misconduct merited the imposition of a financial penalty. In determining the level of penalty, the FSA has had regard to the following mitigating factors:

(a) Belmont accepted at an early stage that it had failed to implement an appropriate recruitment process in relation to Adviser A;

(b) Belmont reacted promptly when informed of the allegations against Adviser A on 28 January 2008. Belmont arranged a meeting with the investigating police

officers, spoke to the FSA and put Adviser A under enhanced supervision within five days, which included, but was not limited to, one of Belmont's directors observing all of Adviser A's meetings and discussions with customers; and

(c) Belmont has made changes to enhance its recruitment and compliance processes in light of the allegations against Adviser A and the FSA's concerns.

2.4. However, you provided verifiable evidence that imposing a penalty would cause serious financial hardship. Consequently the FSA has decided not to impose a financial penalty.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS AND FSA GUIDANCE

3.1. The relevant statutory provisions, regulatory requirements and FSA guidance are set out at Annex 1 to this Decision Notice.

4. FACTS AND MATTERS RELIED ON

Background

4.1. Belmont is a limited company conducting personal investment business, including pensions and mortgages, and general insurance in the Derby area. The FSA authorised Belmont to advise on pension transfers and arrange deals in investments on 1 December 2001. The FSA further authorised Belmont to advise on regulated mortgage contracts on 31 October 2004 and to assist in the administration of insurance on 14 January 2005.

4.2. Belmont has two directors, one responsible for investment advice and the other for general insurance. There are six other advisers at Belmont.

4.3. The FSA visited Belmont on 22 and 23 April 2008 to assess its systems and controls, in particular, those relating to Adviser A.

4.4. The FSA appointed investigators into Belmont on 25 June 2008.

Recruitment

4.5. During the relevant period, Belmont had a written recruitment procedure which set out its processes and provided for a system of three interviews and applicant references.

4.6. Adviser A approached Belmont in early 2007 regarding the possibility of employment as a mortgage/investment adviser. Adviser A had previously met with one of the directors of Belmont in 2005, following a recruitment campaign, at which time it is alleged that two of the three stages in Belmont's formal recruitment process were completed (although these were not documented).

4.7. During the recruitment in 2007, and in accordance with its written recruitment procedure, Belmont contacted Adviser A's previous employer requesting a reference. A reference was received from one of the partners of the previous employer and this reference identified areas of concern, which Belmont subsequently raised with Adviser A. Adviser A explained to Belmont that the reason he had received a less than satisfactory reference was down to the "political situation" at the previous employer. Adviser A requested that Belmont approach a different partner of the previous employer. Belmont did so without considering contacting the partner who provided the first reference to seek clarification of the poor reference. Belmont also did not conduct any formal interview process, at the time of Adviser A's recruitment, or competency testing for Adviser A as per its formal recruitment procedure. Instead it relied on the information obtained at the alleged earlier interview that had taken place two years previously. Belmont accepts that this was not in accordance with its written recruitment procedure.

4.8. Adviser A commenced employment with Belmont on 1 April 2007. Adviser A was later arrested on suspicion of fraud in January 2008, due to his activities whilst at the previous employer. Adviser A advised Belmont of his arrest and was made the subject of enhanced supervision which included, but was not limited to, one of Belmont's directors:

(a) observing all of Adviser A's meetings and discussions with customers;

(b) approving all of his correspondence; and

(c) approving all of his recommendations and advice.

4.9. Adviser A was charged on 10 November 2008 with 19 fraud related offences and pleaded guilty to ten of these on 24 March 2009. Adviser A has since been found guilty in relation to five of the counts to which he pleaded not guilty.

4.10. Whilst the FSA acknowledges that no financial crime was submitted by Adviser A through Belmont, the FSA were sufficiently concerned that Belmont failed to follow its own recruitment process and this led to Adviser A being employed despite there being a number of concerns raised about him. These concerns should, at the very least, have resulted in further enquiries being made by Belmont of the person providing the unsatisfactory reference before Adviser A was employed.

Reasonable care to ensure suitability of advice

Gathering customer information

4.11. Belmont completed 'fact find' documents during face to face meetings between sales advisers and customers. These fact finds contained personal and financial information, details of income, expenses, liabilities and current investments or pensions.

4.12. It was a company procedure that a Belmont fact find would be completed for each client. In four of the 12 files reviewed by the investigation team, Belmont failed to complete a Belmont fact find for the business. Belmont provided evidence however that recent and up to date fact finds had been completed by the client, albeit on the adviser's previous employer's fact find, in order to assess suitability of advice. There was however no evidence recording the fact that there had been no material change in the client's circumstances since the previous fact find. Belmont has admitted that such confirmation was sought from the client however a file note was not created.

Evidencing suitability of advice

4.13. Belmont used two different scales to assess each customer's attitude to risk ("ATR") and recorded this using one of the two scales on each customer's fact find document. One scale was used where a customer had opted to utilise active fund management for their investment and the other was used where a customer had not. Whilst Belmont have explained this process and the FSA are satisfied that customers would understand, agreed to and received a copy of their assessment of ATR, the FSA considers that Belmont should have recorded in every case that the active fund management ATR scale was used and that a copy of the ATR questionnaire should have been retained on the client file.

4.14. In a number of the files reviewed by the FSA a number of errors were discovered in the suitability letters. Whilst these were largely non-substantive and did not relate to the advice given, the FSA considers that procedures should have been in place to check the quality of suitability letters.

Training and competence of advisers

4.15. Belmont did not have an adequate procedure in place for recording the training and competence undertaken by their advisers. Although testing and role plays took place, there was no formal assessment and no documentation of the process. Belmont accepts that there were significant record-keeping failings in relation to the recording of role plays and knowledge tests that were designed to demonstrate the competence of advisers.

4.16. Belmont monitored its investment advisers by reviewing every file once the business had been written, and through informal one to one meetings between the adviser and the relevant director. Belmont admitted that these file reviews involved amounted to a pre-cursory quantitative scan of what documents appeared on each customer file and that the one to one meetings were not always documented.

4.17. One of Belmont's directors reviewed all the files described above and passed them as compliant, failing to identify any issues which the FSA observed on its review of the files.

5. ANALYSIS OF BREACHES

Breach of Principle 2 (Skill, care and diligence)

5.1. By reason of the facts and matters referred to in paragraphs 4.5 to 4.10 the FSA considers that Belmont failed to conduct its business with due skill, care and diligence and that Belmont has therefore breached Principle 2.

5.2. Belmont failed to follow its recruitment procedures in relation to the recruitment of Adviser A, resulting in an individual, who was charged and subsequently found guilty of 15 fraud related offences, being employed as an adviser at Belmont.

Breach of Principle 9 (Customers: relationships of trust)

5.3. By reason of the facts and matters referred to in paragraphs 4.11 to 4.17 the FSA considers that Belmont failed to take reasonable care to demonstrate the suitability of its advice, and that Belmont has therefore breached Principle 9.

5.4. In particular, Belmont has failed to:

(a) record customer information in accordance with its own written procedures;

(b) record on the client file how a customer's ATR was assessed appropriately; and

(c) demonstrate that training and competence monitoring took place appropriately.

Combined, these failings amounted to Belmont being unable to demonstrate that its advice was suitable when initially requested by the FSA.

6. ANALYSIS OF THE SANCTION

6.1. The FSA's policy on whether to issue a financial penalty is set out in Chapter 6 of the Decision Procedures and Penalties Manual ("DEPP"), which forms part of the FSA's Handbook. In determining the appropriate level of financial penalty the FSA has also had regard to Chapter 13 of the Enforcement Manual ("ENF"), the part of the FSA's Handbook setting out the FSA's policy on the imposition of financial penalties in force until 27 August 2007, and therefore part of the relevant period. The relevant sections of DEPP and ENF are set out in Annex 1.

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

6.3. The FSA will consider all the relevant circumstances of the case when deciding whether or not to impose a financial penalty. In light of the systemic weaknesses identified above, and the risk of loss to consumers caused by those breaches, the FSA considers it appropriate to impose a financial penalty on Belmont.

6.4. The FSA will also consider all the relevant circumstances of the case when deciding on the level of financial penalty.

6.5. The FSA considers the following factors to be particularly relevant in this case:

Deterrence

6.6. A financial penalty would deter Belmont from further breaches of regulatory rules and Principles. In addition, other firms will be deterred from allowing similar failings to occur and it will therefore promote the message to the industry that the FSA expects firms to maintain high standards of regulatory conduct.

The nature, seriousness and impact of the breach in question

6.7. In determining the appropriate sanction, the FSA has had regard to the seriousness of the breaches, including the nature of the requirements breached, the duration and frequency of the breaches, whether the breaches revealed serious failings in Belmont's

systems and controls and the number of customers who were affected and/or placed at risk of loss.

The nature and extent of any financial crime attributable to the breach

6.8. The FSA has had regard to the fact that although no financial crime was actually committed through Belmont, one potentially fraudulent application was submitted but was rejected by the lender. A financial penalty would deter Belmont and others from any further breaches of regulatory Principles which expose themselves to the risk of financial crime.

The size and financial resources of Belmont

6.9. Under normal circumstances, and considering the seriousness of Belmont's conduct in this case, the FSA would have sought to impose a financial penalty upon it. However, the FSA has taken into account the fact that Belmont is unable to pay a financial penalty (and having regard to the evidence that it has provided in relation to its current financial position) without suffering serious financial hardship. It is for this reason only that the FSA has decided not to impose any financial penalty upon Belmont in this case.

The loss or risk of loss caused to consumers

6.10. Despite the problems encountered, the FSA is not aware of any consumer that has actually suffered any loss as a result of the breaches of the Principles.

Belmont's conduct following the breach

6.11. The Firm has acknowledged some of its failings in relation to the recruitment of Adviser A and its record keeping in relation to its clients and its training and competency monitoring. Belmont has been proactive in taking prompt action to modify its systems and controls and recruitment procedure.

Disciplinary record and compliance history

6.12. Belmont has not been the subject of any previous disciplinary action.

The FSA's approach in similar previous cases

6.13. In determining that a financial penalty is appropriate, the FSA has taken account of sanctions against other authorised persons for similar conduct. In the circumstances, the FSA considers that a financial penalty is a proportionate and appropriate outcome to the case.

7. DECISION MAKERS

7.1. The decision which gave rise to the obligation to give this Final Notice was made on behalf of the FSA by members of the FSA Executive, being Settlement Decision Makers for the purposes of DEPP.

8. IMPORTANT

8.1. This Final Notice is given to the Firm in accordance with section 390 of the Act.

Publicity

8.2. 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 you or prejudicial to the interests of consumers.

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

FSA contacts

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

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Tom Spender

Head of Department

FSA Enforcement and Financial Crime Division

Annex 1

1. Statutory Provisions

1.1. The FSA's statutory objectives set out in section 2(2) of the Act are maintaining market confidence, ensuring/raising public awareness, the protection of consumers and the reduction of financial crime. In taking action against Belmont, the FSA is working towards its objectives of protecting consumers, maintaining market confidence and reducing financial crime.

1.2. The FSA is authorised by 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 upon it by or under the Act.

2. Relevant Handbook provisions

2.1. In exercising its power to impose a financial penalty, the FSA must have regard to relevant provisions in the FSA Handbook of rules and guidance ("the FSA Handbook"). The main provisions relevant to the action specified above are set out below.

Principles for Businesses

2.2. Under the FSA's rule-making powers as referred to above, the FSA has published in the Handbook the Principles for Business ("Principles") which apply either in whole, or in part, to all authorised persons.

2.3. 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.

2.4. The Principles relevant to this matter are set out below:

(a) Principle 3 (Management and Control): *A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.*

(b) Principle 9 (Customers: relationships of trust): *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.*

Conduct of Business Rules

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

2.6. The FSA's Conduct of Business Sourcebook ("COB") was in force for part of the relevant period (until 31 October 2007).

2.7. COB 5.2.5R requires that before a firm gives a personal recommendation concerning a designated investment to a private customer, it must take reasonable steps to ensure that it is in possession of sufficient personal and financial information about that customer relevant to the services that the firm has agreed to provide.

2.8. COB 5.2.9R requires that a firm must make and retain a record of a private customer's personal and financial circumstances that it has obtained in satisfying COB 5.2.5R.

2.9. COB 5.3.5R requires that firm must take reasonable steps to ensure that a personal recommendation concerning a designated investment to a private customer business is suitable for the client.

2.10. COB 5.3.14R provides that a firm that gives a personal recommendation, in relation to a life policy, to a person who is a policyholder or a prospective policyholder of a life policy, must provide the person with a suitability letter.

2.11. COB 5.3.16R requires that the suitability letter must: (1) explain why the firm has concluded that the transaction is suitable for the customer, having regard to his personal and financial circumstances; and (2) contain a summary of the main consequences and any possible disadvantages of the transaction.

2.12. COB 5.3.18R requires that a firm must provide a suitability letter when or as soon as possible after the transaction is effected.

2.13. COB 5.3.30G sets out guidance on the contents of suitability letters. COB 5.3.30G(2) provides that a suitability letter, to be successful, should explain simply and clearly

why the recommendation is viewed as suitable having regard to the customer's personal and financial circumstances, needs and priorities identified through the fact finding process, and attitude to risk in the area of need to which the recommendation relates. COB 5.3.30G(5) provides that any standard paragraphs are best limited to the description of the most common needs and the products which will satisfy those needs, and that the firm should clearly link the customer's own needs, priorities and attitude to risk to the product recommended rather than just setting out stock motives that may apply to all customers.

2.14. COB 5.4.3R provides that a firm must not, amongst other things, make a personal recommendation of a transaction to a private customer unless it has taken reasonable steps to ensure that the private customer understands the nature of the risks involved.

2.15. The FSA's Conduct of Business Sourcebook ("COBS") applied to firms for part of the relevant period (with effect from 1 November 2007).

2.16. COBS 9.2.1R(1) (assessing suitability) requires that a firm must take reasonable steps to ensure that a personal recommendation, or decision to trade, is suitable for its client.

2.17. COBS 9.2.2R requires that a firm must obtain from the client such information as is necessary for the firm to understand the essential facts about him.

2.18. COBS 9.4.2R requires that a firm making a personal recommendation in relation to a life policy, must provide the client with a suitability report.

2.19. COBS 9.4.7R provides that the suitability report must at least specify the client's demands and needs; explain why the firm has concluded that the recommended transaction is suitable for the client having regard to the information provided by the client; and explain any possible disadvantages of the transaction for the client.

ENF 13.3.3 G

The factors which may be relevant when the FSA determines the amount of a financial penalty for a firm or approved person include the following.

(1) The seriousness of the misconduct or contravention. In relation to the statutory requirement to have regard to the seriousness of the misconduct or contravention, the FSA recognises the need for a financial penalty to be proportionate to the nature and seriousness of the misconduct or contravention in question. The following may be relevant:

(a) in the case of an approved person, the FSA must have regard to the seriousness of the misconduct in relation to the nature of the Statement of Principle or requirement concerned. Similarly, in the case of a firm, the FSA must have regard to the seriousness of the contravention in relation to the nature of the requirement contravened;

(b) the duration and frequency of the misconduct or contravention (including, in relation to a firm, when the contravention was identified by persons exercising significant influence functions at the firm);

(c) whether the misconduct or contravention revealed serious or systemic weaknesses of the management systems or internal controls relating to all or part of a firm's business;

(d) the impact of the misconduct or contravention on the orderliness of financial markets, including whether public confidence in those markets has been damaged;

(e) the loss or risk of loss caused to consumers or other market users. If a contravention has caused loss to another firm, that firm may be able to take its own action against the firm which has committed the contravention; however, the FSA generally expects firms to comply with regulatory requirements, regardless of the nature of the counterparty; for example, persistent departures from MAR 3 (Inter-professional conduct) may have implications for the FSA's assessment of a firm's continued fitness and propriety.

(2) The extent to which the contravention or misconduct was deliberate or reckless. In determining whether a contravention or misconduct was deliberate, the FSA may have regard

to whether the firm's or approved person's behaviour was intentional, in that they intended or foresaw the consequences of their actions. The matters to which the FSA may have regard in determining whether a contravention was reckless include, but are not limited to, the following:

(a) whether the firm or approved person has failed to comply with the firm's procedures;

(b) whether the firm or approved person has taken decisions beyond its or his field of competence;

(c) whether the firm or approved person has given no apparent consideration to the consequences of the behaviour that constitutes the contravention.

If the FSA decides that behaviour was deliberate or reckless, it may be more likely to impose a higher penalty on a firm or approved person than would otherwise be the case.

(3) Whether the person on whom the penalty is to be imposed is an individual, and the size, financial resources and other circumstances of the firm or individual. This will include having regard to whether the person is an individual, and to the size, financial resources and other circumstances of the firm or approved person. The FSA may take into account whether there is verifiable evidence of serious financial hardship or financial difficulties if the firm or approved person were to pay the level of penalty associated with the particular contravention or misconduct. The FSA regards these factors as matters to be taken into account in determining the level of a penalty, but not to the extent that there is a direct correlation between those factors and the level of penalty. The size and financial resources of a firm or approved person may be a relevant consideration, because the purpose of a penalty is not to render a firm or approved person insolvent or to threaten its solvency. Where this would be a material consideration, the FSA will consider, having regard to all other factors, whether a lower penalty would be appropriate; this is most likely to be relevant to smaller firms or groups of firms or approved persons with lower financial resources; but if a firm or individual reduces its solvency with the purpose of reducing its ability to pay a financial penalty, for example by transferring assets to third parties, the FSA will take account of those assets when determining the amount of a penalty. The size of the firm may also be a relevant consideration for the following reasons:

(a) the degree of seriousness of a contravention 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 than would be the case with a small firm: contraventions in firms with a high volume of business over a protracted period may therefore be more serious than contraventions over similar periods in firms with a smaller volume of business; and

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

(4) The amount of profits accrued or loss avoided. The FSA may have regard to the amount of profits accrued or loss avoided as a result of the contravention or misconduct, for example:

(a) the FSA will propose a penalty which is consistent with the principle that a firm or approved person should not benefit from the contravention or misconduct; and

(b) the penalty should also act as an incentive to the firm or approved person (and others) to comply with regulatory standards.

(5) Conduct following the contravention. The FSA may take into account the conduct of the firm or approved person in bringing (or failing to bring) quickly, effectively and completely the contravention or misconduct to the FSA's attention and:

(a) the degree of cooperation the firm or approved person showed during the investigation of the contravention or misconduct (where a firm or approved person has fully cooperated with the FSA's investigation, this will be a factor tending to reduce the level of financial penalty);

(b) any remedial steps taken since the contravention or misconduct was identified, including identifying whether consumers suffered loss, compensating them, taking disciplinary action against staff involved (if appropriate), and taking steps to ensure that similar problems cannot arise in the future.

(6) Disciplinary record and compliance history. The previous disciplinary record and general compliance history of the firm or approved person may be taken into account. This will include whether the FSA (or any previous regulator) has taken any previous formal disciplinary action, resulting in adverse findings, against the firm or approved person, or whether the FSA has previously required the firm to take remedial action by means of a variation of Part IV permission (see ENF 3), or has previously requested the firm to take remedial action, and the extent to which that action has been taken. For example, the disciplinary record of a firm or approved person could lead to the FSA increasing the penalty, where the firm or approved person has committed similar contraventions or misconduct in the past. In assessing the relevance of a firm's or approved person's disciplinary record and compliance history, the age of a particular matter will be taken into account, although a long-standing matter may still be relevant. However, in undertaking this assessment, private warnings will not be taken into account.

(7) Previous action taken by the FSA. The action that the FSA has taken previously in relation to similar behaviour by other firms or approved persons may be taken into account. The FSA will seek to ensure consistency when it determines the appropriate level of penalty. If it has taken disciplinary action previously in relation to a similar contravention or misconduct, this will clearly be a relevant factor. However, as stated at ENF 13.3.1 G, with the exception of the specific circumstances described at ENF 13.5, the FSA does not intend to adopt a tariff system, and there may be other relevant factors which could increase or decrease the seriousness of the contravention or misconduct.

(8) Action taken by other regulatory authorities. This could include for example:

> (a) action taken or to be taken against a firm or approved person by other regulatory authorities which may be relevant where it relates to the contravention or misconduct in question;
>
> (b) action taken by any previous regulator regarding the general level of penalties.

(9) The timing of any agreement as to the amount of the disciplinary penalty. The FSA and the person subject to disciplinary action may seek to agree the amount of any financial penalty and other terms. In recognition of the benefits of such agreements, ENF 13.7 provides that the amount of the penalty which might otherwise have been payable will be reduced to reflect the stage at which the FSA and the person concerned reach an agreement.

DEPP 6.2.1 G

The FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty or public censure. Set out below is a list of factors that may be relevant for this purpose. The list is not exhaustive: not all of these factors may be applicable in a particular case, and there may be other factors, not listed, that are relevant.

(1) The nature, seriousness and impact of the suspected breach, including:

(a) whether the breach was deliberate or reckless;

(b) the duration and frequency of the breach;

(c) the amount of any benefit gained or loss avoided as a result of the breach;

(d) whether the breach reveals serious or systemic weaknesses of the management systems or internal controls relating to all or part of a person's business;

(e) the impact or potential impact of the breach on the orderliness of markets including whether confidence in those markets has been damaged or put at risk;

(f) the loss or risk of loss caused to consumers or other market users;

(g) the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the breach; and

(h) whether there are a number of smaller issues, which individually may not justify disciplinary action, but which do so when taken collectively.

(2) The conduct of the person after the breach, including the following:

(a) how quickly, effectively and completely the person brought the breach to the attention of the FSA or another relevant regulatory authority;

(b) the degree of co-operation the person showed during the investigation of the breach;

(c) any remedial steps the person has taken in respect of the breach;

(d) the likelihood that the same type of breach (whether on the part of the person under investigation or others) will recur if no action is taken;

(e) whether the person concerned has complied with any requirements or rulings of another regulatory authority relating to his behaviour (for example, where relevant, those of the Takeover Panel or an RIE); and

(f) the nature and extent of any false or inaccurate information given by the person and whether the information appears to have been given in an attempt to knowingly mislead the FSA.

(3) The previous disciplinary record and compliance history of the person including:

(a) whether the FSA (or any previous regulator) has taken any previous disciplinary action resulting in adverse findings against the person;

(b) whether the person has previously undertaken not to do a particular act or engage in particular behaviour;

(c) whether the FSA (or any previous regulator) has previously taken protective action in respect of a firm, using its own initiative powers, by means of a variation of a Part IV permission or otherwise, or has previously requested the firm to take remedial action, and the extent to which such action has been taken; and

(d) the general compliance history of the person, including whether the FSA (or any previous regulator) has previously issued the person with a private warning.

(4) FSA guidance and other published materials:

The FSA will not take action against a person for behaviour that it considers to be in line with guidance, other materials published by the FSA in support of the Handbook or FSA-confirmed Industry Guidance which were current at the time of the behaviour in question. (The manner in which guidance and other published materials may otherwise be relevant to an enforcement case is described in EG 2.)

(5) Action taken by the FSA in previous similar cases.

(6) Action taken by other domestic or international regulatory authorities:

Where other regulatory authorities propose to take action in respect of the breach which is under consideration by the FSA, or one similar to it, the FSA will consider whether the other authority's action would be adequate to address the FSA's concerns, or whether it would be appropriate for the FSA to take its own action.