Financial Services Authority

FINAL NOTICE

To: **CFS Independent Limited**

Of: **2 Fisher Street**
London
WC1R 4QA

Date: **7 September 2005**

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

1. THE PENALTY

1.1 The FSA gave CFS Independent Limited ("CFS"/"you") a Decision Notice on 2 August 2005 which notified you that, pursuant to section 206 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to impose a financial penalty on you in the amount of £25,000.

1.2 You have not referred the matter to the Financial Services and Markets Tribunal within 28 days of the date on which the Decision Notice was given to you. Accordingly, for the reasons set out below, and having taken account of your written representations dated 5 July 2005 and your oral representations made on 20 July 2005, the FSA has decided to impose a financial penalty on you in the amount of £25,000.

2. REASONS FOR THE PENALTY

2.1 The FSA imposed the financial penalty because it found that CFS had contravened the following FSA Rules and Principles:

(a) FSA Rules 3.1.1 and 3.2.6 of the FSA Handbook of rules and guidance ("the Handbook") entitled Senior Management Arrangements, Systems and Controls ("SYSC");

(b) Principle 2 (Skill, care and diligence), Principle 3 (Management and control), Principle 6 (Customers' interests) and Principle 8 (Conflicts of interest) of the FSA's Principles for Businesses; and

(c) the following rules in the part of the Handbook entitled Conduct of Business ("COB"): 7.7.3, 7.7.5, 7.13.4, 9.1.28, 9.1.43, 9.1.85, 9.3.47, 9.3.100, 9.3.123 and 9.3.126.

2.2 The specific failures are summarised below.

(a) CFS failed to take reasonable steps to ensure that senior management received prompt notification of employees' personal account transactions in designated investments, or that it maintained records by which its management could identify such transactions.

(b) CFS failed to ensure that it had in place a written policy for the allocation of investments when it aggregated a customer order with an own account order, and did not maintain appropriate records of its allocations of investments in relation to aggregated orders.

(c) CFS failed to ensure proper segregation of safe custody investments from its own designated investments.

(d) CFS appointed a firm to act as a custodian but it did not ensure that a custodian agreement was in place which met the requirements of Rule 9.1.69 in COB.

(e) CFS was not aware of the requirement to carry out a reconciliation of clients' unit trusts and OEICs, until the FSA drew the requirement to its attention and asked it to undertake such reconciliations.

(f) CFS failed to deal appropriately and promptly with a mixed remittance, in itself a significant sum, or recognise the importance of apportioning such proceeds between the firm and client accounts promptly and in accordance with regulatory requirements.

(g) CFS failed to perform a daily client money requirement calculation until the FSA asked it to do so.

(h) CFS failed to carry out a reconciliation of its client accounts every 25 business days or ensure it was completed within 10 business days until the FSA asked it to do so.

(i) CFS failed to perform a proper reconciliation of each bank account with its own ledger details. Instead, it obtained bank statements and simply entered details of account movements onto its own ledger.

2.3 These contraventions were significant in terms of impact on the effective conduct of CFS' business and the potential risk posed to clients.

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 amount as it considers appropriate.

Systems and Controls Rules

3.2 SYSC 3.1.1 R provides:

A firm must take reasonable care to establish and maintain such systems and controls as are appropriate to its business.

3.3 SYSC 3.2.6 R provides:

A firm must take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system.

FSA Principles for Businesses

3.4 Principle 2 states :

A firm must conduct its business with due skill, care and diligence.

3.5 Principle 3 states:

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

3.6 Principle 6 states:

A firm must pay due regard to the interests of its customers and treat them fairly.

3.7 Principle 8 states:

A firm must manage conflicts fairly, both between itself and its customers and between a customer and another client.

Conduct of Business

3.8 Rule 7.7.3 in COB states:

When a firm aggregates a customer order with an own account order, or with an order from a market counterparty, or with another customer order, and subsequently allocates the designated investments concerned, it must do so in accordance with a written policy on allocation that is consistently applied and that fulfils the requirements of this section.

3.9 Rule 7.7.5 in COB states:

When a firm has aggregated a customer order with an own account order, or with an order from a market counterparty, or with another customer order, and part or all of the aggregated order has been filled, it must promptly allocate the designated investments concerned.

3.10 Rule 7.13.4 in COB states:

A firm must take reasonable steps to ensure that:

(1) a personal account transaction in a designated investment undertaken by any of its employees does not conflict with the firm's duties to its customers under the regulatory system, unless COB 7.13.6 R applies; and

(2) when it permits an employee to undertake a personal account transaction in a designated investment in relation to which the firm conducts designated investment business, or in any related investment, it receives prompt notification of, or is otherwise able to identify, that transaction.

3.11 Rule 9.1.28 in COB[1] states:

A firm must segregate safe custody investments from its own designated investments except to the extent required by law or permitted by the custody rules.

[1] The rules in Chapter 9 of COB apply because the contraventions occurred before 1 January 2004 when the part of the Handbook entitled Client Assets, which now contains the relevant rules, took effect.

3.12 Rule 9.1.43 in COB states:

Before a firm holds a safe custody investment with a custodian or arranges registration of a safe custody investment through a custodian, it must undertake an appropriate risk assessment of that custodian.

3.13 Rule 9.1.69 in COB states:

Before a firm holds a safe custody investment for or on behalf of a client with a custodian, it must agree in writing appropriate terms and conditions with the custodian, including, where applicable:

(1) that the title of the account indicates that any safe custody investment credited to it does not belong to the firm or to an affiliated company that is not being treated as an arm's length client in accordance with COB 9.1.9(1)(b) (Application);

(2) that the custodian will hold or record a safe custody investment belonging to the firm's client (or where the firm is a trustee firm, the trustees), separately from any designated investment belonging to the firm or to the custodian;

(3) that the custodian will deliver to the firm a statement as at a date or dates specified by the firm which details the description and amounts of all the safe custody investments credited to the account;

(4) that the custodian will not claim any lien, right of retention or sale over any safe custody investment standing to the credit of any account set up in accordance with (1) except:

(a) where the firm has notified the custodian in writing that the client has provided written consent; or

(b) in respect of any charges relating to the administration or safekeeping of the safe custody investment;

(5) the arrangements for registration or recording of the safe custody investment if this will not be registered in the client's name;

(6) that the custodian is not to permit withdrawal of any safe custody investment from the account except for delivery to the firm or on the firm's instructions;

(7) the procedures and authorities for the passing of instructions to or by the firm;

(8) the claiming and receiving of dividends, interest payments and other entitlements accruing to the client; and

(9) the extent of the custodian's liability in the event of the loss of a safe custody investment caused by the fraud, wilful default or negligence of the custodian, or an agent appointed by him.

3.14 Rule 9.1.85 in COB states:

A firm must, as often as is necessary, but no less than every 6 months (or twice in a period of 12 months but at least 5 months apart), carry out:

(1) a count of all safe custody investments it physically holds on behalf of its clients and reconcile the result of that count with its record of safe custody investments that it physically holds on behalf of its clients; and

(2) a reconciliation between the firm's record of client holdings, and the firm's record of the location of safe custody investments.

3.15 The guidance at 9.1.90 in COB states:

That, whenever possible, a firm should ensure that reconciliations are carried out by a person (for example an employee of the firm) who is independent of the production or maintenance of the records to be reconciled.

3.16 Rule 9.3.47 in COB states:

If a firm receives a mixed remittance (that is part client money and part other money) it must:

(1) pay the full sum into a client bank account in accordance with COB 9.3.44(1)R; and

(2) pay the money that is not client money out of the client bank account within one business day of the day on which the firm would normally expect the remittance to be cleared.

3.17 Rule 9.3.100 in COB states:

Each business day, a firm that adopts the normal approach in accordance with COB 9.3.42R must:

(1) check whether its client money resource, being the aggregate balance on the firm's client bank accounts, as at the close of business on the previous business day, was at least equal to the client money requirement, as defined in COB 9.3.105R, as at the close of business on that day; and

(2) ensure that:

(a) any shortfall is paid into a client bank account by the close of business on the day the calculation is performed; or

(b) any excess is withdrawn within the same time period unless COB 9.3.39R or COB 9.3.40R applies.

3.18 Rule 9.3.123 in COB states:

A firm must perform a reconciliation of the client money balances which it holds, or for which it is responsible, as frequently as is necessary to ensure the accuracy of its records of money so held, and no less than once in every 25 business days.

3.19 Rule 9.3.126 in COB states:

A firm must compare:

(1) the balance on each client bank account as recorded by the firm with the balance on that account as set out on the statement or other form of confirmation issued by the bank with which those accounts are held; and

(2) the balance, currency by currency, on each client transaction account as recorded by the firm, with the balance on that account as set out in the statement or other form of confirmation issued by the person with whom the account is held;

and identify any discrepancies between them.

4. BACKGROUND

4.1 CFS is an independent financial adviser firm, offering advisory and discretionary investment management services to its clients.

4.2 CFS undertook discretionary investment management activity from November 2002, at which time it had 50 discretionary clients with an estimated £8 million under management. The FSA visited CFS in August and October 2003 and found evidence of material breaches of regulatory requirements.

4.3 The FSA provided CFS with details of the August 2003 visit findings on 18 September 2003 and invited it to submit proposals to address the FSA's serious concerns. CFS's initial response did not address all the FSA's concerns. The FSA therefore visited CFS again in October 2003. It provided CFS with details of its visit findings on 12 November 2003. The composite report of the two visits, CFS's response, and subsequent related communications between CFS and the FSA, provide the evidential basis for taking the action described in this Notice.

5. FACTS AND MATTERS RELIED ON

5.1 The FSA has imposed a financial penalty on CFS in respect of breaches of the FSA Rules and Principles identified in paragraphs 3.2 to 3.19 set out above, which occurred between November 2002 and November 2003.

5.2 From November 2002, CFS started to offer a discretionary investment management service to 50 private customers who had each been classified by CFS as "private customers" in accordance with Rule 4.1.4 in COB. When the FSA visited CFS in August and October 2003, it reviewed the discretionary investment management service and found serious shortcomings in CFS' systems and controls, management oversight and compliance function.

Systems and controls

5.3 The FSA identified inadequate systems and controls, management oversight and compliance arrangements in relation to administrative and back office functions. Specifically, the FSA identified:

(1) a failure to identify and manage potential risks associated with the administration of client assets; and

(2) a lack of awareness and understanding of regulatory requirements relating, in particular, to the custody and handling of client assets.

In its representations CFS described the steps taken by the firm before commencing the new discretionary management service. To a large degree CFS, and in particular its senior management, relied upon advice and recommendations of consultants and others because CFS' staff did not have sufficient experience of discretionary management issues. CFS accept that the preparations proved to be insufficient, but assert that this is largely because the professionals on which CFS relied did not provide the service it needed. CFS have subsequently increased the level of compliance resource – more than once – and state that CFS take compliance responsibilities seriously. CFS also argued that the impression given by the series of detailed rule breaches was not a fair reflection of the firm or its approach. While CFS accepted that it did not comply with the detail of rules, CFS argued that, in the context of a small firm with a small volume of business and a single person having full control of its activities, the underlying aims of regulation were met and there was no significant risk to customers.

5.4 In the opinion of the FSA, the steps taken by the firm were not adequate, and that these failures amounted to material breaches of regulatory requirements because of their impact on the effectiveness of the business and because they placed CFS' customers at risk of financial loss.

5.5 The failures to comply with the specific requirements identified below are, in the view of the FSA, indications of the inadequacy of the steps taken by the firm to implement suitable systems and controls. The degree of reliance placed by CFS and its senior management on others was extremely high. Indeed CFS' management had sought recommendations of appropriate procedures from external sources, and sought to

implement these, without gaining sufficient understanding of the underlying regulatory issues and obligations themselves. In particular, the degree of CFS' reliance on a custodian, to ensure that CFS' regulatory obligations were met, was unreasonable and inappropriate. The FSA accepts CFS' representations that its approach to reconciliations was not, on its face, contrary to the guidance in COB 9.1.90G. However, the FSA considers that CFS' approach is evidence of its lack of understanding, at the time, of the regulatory obligations designed to ensure client money and asset protection. The FSA specifically rejects the representation that detailed systems and records are not necessary for the protection of client funds and assets in a small firm like CFS.

5.6 By November 2004, however, CFS had satisfied the FSA that it was putting in place arrangements to help ensure ongoing compliance with regulatory requirements. The FSA notes also that CFS is currently subject to a requirement to provide compliance reports quarterly, which is expected to assist CFS' compliance with its regulatory obligations going forward.

5.7 Details of CFS's failure to comply with specific, detailed regulatory requirements are summarised below. An outline of the key representations made by CFS on these is included against each failure identified below. The FSA notes that CFS (with the one exception identified below) acknowledges its failures to comply with the relevant rules, and that the representations made relate to the systems and controls issues or to penalty. Accordingly the representations are not dealt with individually.

Conflict of interest and material interest

5.8 Under COB 7.13.4, a firm must take reasonable steps to ensure that when it gives permission to a member of staff to undertake personal account transactions, it receives prompt notification of, or is otherwise able to identify, the transaction. The FSA found no evidence that CFS's senior management had taken any steps to ensure that it received prompt, or any, notification of personal account dealing which had been undertaken by its staff, or that CFS maintained records for use by its senior management to identify such transactions. CFS therefore failed to comply with 7.13.4 and Principle 8 (Conflicts of interest).

In its representations CFS stated that it had an appropriate policy, that its staff signed appropriate personal account dealing notices, that there was little personal account dealing, and that the substance of its policy was followed. However, CFS accepted that there was no record of personal account transactions, as such, at the time, though the transactions were carried out as envisaged by CFS' written policy. CFS further stated that every personal account transaction now was recorded in a single book.

5.9 The FSA found that CFS did not have an adequate written policy for the allocation of investments when it aggregated a customer order with its own order. The FSA found no pattern of allocation and no clear written methodology with which to compare the allocations. CFS therefore failed to comply with the requirements of COB 7.7.3.

In its written representations CFS stated that it had a written policy and asserted that a more specific description of the usual approach to allocation was not appropriate to a small firm with few customers, but in the course of its oral representations accepted that its policy did not meet the requirements of the rule, while stating that, in practice, there was an appropriate policy actually followed.

5.10 CFS did not maintain appropriate records of its allocations of investments in relation to aggregated orders. The FSA was not therefore able to determine whether CFS was meeting the requirement under COB 7.7.5 to allocate investments promptly.

In its representations CFS did not dispute that it did not maintain records, but stated that it did allocate investments promptly and in accordance with its policy.

Custody of client assets

5.11 CFS did not segregate safe custody investments from its own designated investments in accordance with the requirements of COB 9.1.28. Consequently, client assets were held inappropriately by CFS for several weeks before being transferred to client accounts. CFS's failure put at risk the effectiveness of the segregation, the purpose of which is to protect client assets in the event of the failure of a firm. CFS therefore failed to comply with COB 9.1.28.

In its representations CFS pointed out that the assets concerned were all held in a client account, but accepted that there had not been adequate segregation. CFS stated that the holding of its assets with those of clients was a result of the custodian firm not being able to provide segregation as part of the service provided to CFS.

5.12 CFS appointed a firm to act as custodian, but it did not ensure that a custodian agreement was in place which met the requirements of COB 9.1.69. Consequently, CFS appointed a firm to act as custodian which did not provide CFS with a custodian agreement, and which could not provide separate nominee accounts for clients. All holdings, including those of CFS, were therefore pooled and held in the name of the custodian's nominee. In the event of a default by CFS, the custodian had a right to recover any debt by selling the assets it held, putting CFS's client assets at risk. CFS therefore failed to comply with COB 9.1.43 and Principle 2 (Skill, care and diligence) by failing to undertake an appropriate risk assessment

In its representations CFS made clear that it had relied upon its FSA authorised custodian to cover these obligations as having more expertise on the custody rules. However, CFS accepted that there had not been a custodian agreement as required by the rules.

5.13 CFS was not aware of the requirement under COB 9.1.85 to carry out a reconciliation of clients' unit trusts and OIECs (between the custodian's client holding list and the firm's own records). Consequently, CFS did not perform a reconciliation of these assets until August 2003, when asked to do so by the FSA. CFS therefore failed to comply with COB 9.1.85 and Principle 2 (Skill, care and diligence).

In its representations CFS stated that the relevant holdings identified the client in the registers of the unit trusts, and that checks were performed in the course of preparing portfolio valuations for clients (every six months). CFS accepted that it had not carried out reconciliations every 25 business days (the frequency required by the rule).

Client money

5.14 The FSA found one instance in which CFS aggregated the sale of its stock and that of its clients. The proceeds were received into CFS's bank account and not then apportioned appropriately between the firm and client accounts. CFS therefore failed to comply with COB 9.3.47, under which it should pay the full sum of a fixed remittance into a client bank account in accordance with COB 9.3.44 (1) and pay the money that is not client money out of the client bank account within one business day of the day on which the firm would normally expect the remittance to be cleared. CFS therefore failed to pay due regard to the interests of its customers in breach of Principle 6 (Customers' interests).

CFS accepted that a mixed remittance had not been dealt with in accordance with the rules and had not identified the issue for some time. But CFS stated that this had been an isolated instance in the early days of operating with its custodian, and had arisen because of the way in which the custodian operated. In addition it was a matter which the firm had picked up for itself, albeit after some time, and the relevant customers had been credited by CFS with sums compensating for lost interest.

5.15 As a result of account restructuring at CFS's bank, the trust status letter no longer covered the client accounts. Consequently, the client accounts no longer had trust status. CFS says it was not aware of the restructuring. CFS should have noted the changes to the account numbers and, from that, assessed the implications of the restructuring. It therefore failed to act with due skill, care and diligence in breach of Principle 2 (Skill, care and diligence) and to pay due regard to the interests of its customers in breach of Principle 6 (Customers' interests).

In its representations CFS emphasised that the account restructuring had been done unilaterally by the bank. CFS accepted that it only sought updated trust status letters after the FSA had pointed the issue out, but asserted that the willingness of its bank to provide confirmation of trust status showed that it had not actually been at risk.

5.16 In October 2003, the FSA found that from November 2002 until 2 September 2003 CFS had not performed a daily client money resource check, in breach of COB 9.3.100. When CFS subsequently performed the daily client money calculation, it did so incorrectly. For example:

(1) CFS based its calculation on a list of balances provided by its bank instead of a listing from CFS's own system; and

(2) CFS did not include all client accounts in the calculation, or take into account settlement, suspense or dividend accounts or unpresented cheques.

The FSA asserted that CFS therefore failed to comply with COB 9.3.100R and Principle 2 (Skill, care and diligence).

In its representations CFS accepted that it had not carried out the calculation daily or in accordance with the rule. It stated that CFS had carried out regular checks and that no adjustments were required so that the objectives of the rules were being fulfilled.

5.17 The FSA is not satisfied that, in the period from November 2002 to August 2003, CFS carried out a reconciliation of its client accounts every 25 business days, or ensured that it was completed within 10 business days, as required by COB 9.3.123. The client ledgers were not printed off, and the FSA saw no evidence of management review or sign off, or that discrepancies were identified, investigated and resolved in a timely manner. CFS therefore failed to act with due skill, care and diligence in breach of Principle 2 (Skill, care and diligence) and to exercise appropriate management control in breach of Principle 3 (Management and control).

In its written representations CFS argued that it had carried out reconciliations but had not documented them, and in its oral representations CFS acknowledged that it had not carried out the reconciliations on time.

5.18 When CFS did carry out a reconciliation for the purposes of COB 9.1.85, it allowed the reconciliation to be carried out by the person who was responsible for the production and maintenance of the accounts being reconciled, who was therefore not independent. CFS failed to recognise the inherent weakness of this approach and was unaware of the guidance at COB 9.1.90G that a firm should ensure that reconciliations are carried out whenever possible by a person who is independent of the production and the maintenance of the records to be reconciled. Furthermore, the FSA saw no evidence of management sign off or independent review of the reconciliation, in breach of Principle 3 (Management and control).

In its representations CFS acknowledged that the reconciliations were carried out by the same person as was responsible for the maintenance of the relevant accounts. CFS also argued that the relevant guidance, in the context of a small firm like CFS, should be read as accepting that this was appropriate.

5.19 CFS did not compare the balance on each bank account by comparing its system records with the balances on statements issued by its banker. The FSA found instead that it obtained bank statements and then simply entered details of account movements onto its own ledger. CFS therefore failed to perform a reconciliation of each bank account in accordance with COB 9.3.126. CFS failed to act with due skill, care and diligence in breach of Principle 2 (Skill, care and diligence) and to exercise appropriate management control in breach of Principle 3 (Management and control).

CFS did not specifically address this issue in its representations.

6. RELEVANT GUIDANCE

6.1 The FSA's policy on the imposition of financial penalties is set out in Chapter 13 of the Enforcement Manual ("ENF"), which is part of the Handbook. The principal purpose of a financial penalty is 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.

6.2 As stated at paragraph 13.3.4 of the FSA Enforcement Manual, the criteria listed in the Manual are not exhaustive and all relevant circumstances of the case will be taken into consideration.

6.3 In determining whether a financial penalty is appropriate, and its level, the FSA considers all the relevant circumstances of the case. The FSA considers the following factors to be particularly relevant in this case, and has considered the representations by CFS that no financial penalty should be imposed in the circumstances of this case, in particular on a small firm. In the light of the extent and nature of the breaches identified, the FSA does not accept CFS' representations that no financial penalty would be appropriate. The FSA does not consider that the fact that CFS is a small firm is reason not to impose a financial penalty given the failures to meet regulatory obligations in this case.

The extent to which the contraventions were deliberate or reckless

6.4 Although the FSA found no evidence that the contraventions were deliberate, CFS' failure to pay due regard to its duties towards its customers and the potential risk posed to the interests of customers demonstrated negligence on the part of CFS and a failure to exercise due skill care and diligence.

The representations made by CFS on the detailed rule breaches are relevant to this point – in particular the comments referred to in section 5 of this Notice. The representations confirmed that CFS had breached the rules concerned because it had not fully appreciated its regulatory obligations.

6.5 The FSA remains concerned that CFS does not accept that its failings posed any risk to client assets. That there was no identified loss ultimately suffered by customers does not mean that there was no risk to them.

The size, financial resources and circumstances of the firm

6.6 During the period in question, CFS had 50 discretionary clients with approximately £8 million under management. It employed five permanent staff.

In its representations CFS emphasised the sums which it had expended on improving its compliance, and stated that this seriously depleted its financial resources.

6.7 CFS' financial returns to the FSA show a surplus of funds against its regulatory capital obligations. While accepting that CFS has expended significant sums on compliance

consultants and skilled persons, the FSA is satisfied that CFS has the financial resources to pay the financial penalty which it has decided to impose.

Conduct following contravention

6.8 CFS co-operated with the FSA and started to take appropriate remedial action after the failures were identified.

6.9 In its initial response to the FSA's visit reports, CFS said it accepted the need for a complete overhaul of its systems and controls, and indicated that it would take steps to ensure that it fully complied with regulatory requirements on an ongoing basis. (CFS very recently withdrew its initial response to the visit report). It then appointed compliance consultants to conduct an internal review of its systems and controls and compliance procedures.

6.10 CFS agreed to appoint a skilled person to conduct a review of its senior management systems and controls and internal organisation, management information and reporting, and compliance with regulatory requirements.

6.11 CFS introduced additional resources to help ensure that it complies with regulatory requirements. It also appointed an independent compliance consultant to prepare quarterly compliance reports until further notice, and to send copies of the reports to the FSA as part of its ongoing monitoring of CFS. This last obligation is imposed by way of a requirement on CFS' permission.

In its representations, CFS emphasised the steps it had taken since these issues were raised with it. It has engaged additional compliance consultants to assist it in complying with the relevant regulatory provisions.

6.12 The FSA accepts that CFS has made considerable efforts to improve its compliance position since the failures were identified. However, the FSA notes that in making its representations, CFS reiterated that a number of the breaches derived from third parties engaged by it failing to provide the expertise on behalf of CFS which CFS needed.

The amount of profit accrued or loss avoided

6.13 The FSA has seen no evidence that CFS sought deliberately to increase its profits or avoid making losses.

Disciplinary record and compliance history

6.14 CFS has no previous disciplinary record.

Previous action taken by the FSA in relation to similar behaviour

6.15 The FSA has taken action against other firms for failures in systems and controls and management oversight of discrete new functions and specific aspects of businesses, and

these cases have been taken into consideration insofar as they present relevant similarities to this case. The closest precedent cases, albeit for larger firms with greater financial resources, suggest that a significant penalty would be appropriate in this case.

Conclusions

6.16 Notwithstanding CFS' likely ability to pay a financial penalty, taking into account all the circumstances, which include the size of CFS' operation, the fact that it has no disciplinary history, the small number of clients involved, that they appear not to have suffered financial loss as a result of the failures referred to in this Notice, the costly remedial action taken by CFS, and the existence of a requirement on CFS' permission for additional compliance reporting by compliance consultants engaged by it, the FSA considers that a financial penalty of £25,000 is a proportionate response to the contraventions summarised in this Notice. This sum is significantly lower than that specified in the warning notice, and takes account of the matters raised in the course of CFS' representations.

7. IMPORTANT

7.1 This Final Notice is given to CFS in accordance with section 390(1) of the Act.

Manner of and time for payment

7.2 The financial penalty must be paid in full by CFS to the FSA no later than 21 September 2005, being not less than 14 days beginning with the date on which this Notice is given to you.

If the financial penalty is not paid

7.3 If all or any of the financial penalty is outstanding on 21 September 2005, the FSA may recover the outstanding amount as a debt owed by you and due to the FSA.

Publicity

7.4 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 Final 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.

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

FSA contact

7.6 For more information concerning this matter generally, you should contact Chris Walmsley at the FSA (direct line: 020 7066 5894 /fax: 020 7066 5895).

John Kirby - Manager
Enforcement Division
The Financial Services Authority