
FINAL NOTICE

To: **Chase de Vere Financial Solutions plc**

Of: **Quay House
The Ambury
Bath
BA1 1UA**

Date: **17 December 2003**

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 you a decision notice on 5 December 2003 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 of £165,000 on Chase de Vere Financial Solutions plc. This financial penalty is in respect of breaches of the FSA's Conduct of Business ("COB") Rules 3.8.4 (1) and 3.8.4 (2) and associated COB Rules 3.8.8, 3.9.6(1) and 3.9.15 and of Principles 2 and 7 of the FSA's Principles for Businesses ("the FSA Principles").
- 1.2. Chase de Vere Financial Solutions plc has confirmed that it does not intend to refer the matter to the Financial Services and Markets Tribunal.

2. THE FIRM

- 2.1. On 1 June 2003 Chase de Vere Investments plc merged with MX Moneyextra Financial Solutions Limited. The entity created by this merger was named Chase de Vere Financial Solutions plc. References in this Notice to “Chase de Vere” are to the entity named Chase de Vere Investments plc prior to 1 June 2003 and to the merged entity named Chase de Vere Financial Solutions plc from 1 June 2003.

3. REASONS FOR THE PENALTY

- 3.1. The FSA has decided to impose a financial penalty on Chase de Vere in respect of breaches of the FSA's COB Rules and the FSA Principles in relation to Chase de Vere's approval and issue of a misleading direct offer promotion.
- 3.2. The promotion (“the Guide to Recovery brochure”) was entitled “Your Guide to Investment Recovery” and promoted four separate products. It was approved and issued in March 2003.
- 3.3. Chase de Vere's breaches are viewed by the FSA as serious and as demanding a significant financial penalty in view of the following particular factors:
 - taken as a whole, the Guide to Recovery brochure was not “clear, fair and not misleading” as significant risk factors were not given due prominence;
 - the products promoted were not capital guaranteed and included high income and precipice bonds. Two of the four products were complicated stockmarket linked investments that involved detailed formulas to determine investment returns and exposed investors to significant losses to capital in certain circumstances. These two products would have been unfamiliar to the ordinary unsophisticated investor at whom they were targeted. The FSA has repeatedly warned consumers to be careful when investing in high-income products and precipice bonds. In order to comply with its obligation to ensure that promotions were “clear, fair and not misleading”, therefore, Chase de Vere had a particular responsibility to ensure that the risks associated with this type of product were made explicit and that the promotion was likely to be understood by the persons at whom they were targeted. Chase de Vere failed to satisfy this requirement as the promotion did not include clear and balanced descriptions of the investments and fair disclosure of the risks involved.
 - the breaches resulted in the misleading promotion being distributed to a very large number of retail customers and that put a large number of consumers at risk. The Guide to Recovery brochure was circulated with over 2 million copies of national newspapers and was directly mailed to 236,000 prospective customers;
 - Chase de Vere failed to follow the advice and heed the warnings issued by the FSA in its publications regarding financial promotions. The FSA has made it clear that one of its key priorities is the enhancement of the minimum standards for information given by firms to customers. In April 2002, the FSA issued a publication titled “The FSA's regulatory approach to financial promotions”. While this publication does not constitute, and is not treated by the FSA as having

the effect of, formal guidance, it does contain detailed statements regarding the FSA's expectations. Chase de Vere was aware of this publication and provided training to its staff on the issues raised. Nevertheless, the Guide to Recovery brochure issued in March 2003 failed to satisfy the FSA's stated expectations, in particular with regard to promoting a balanced picture, ensuring that key information was not hidden in small print and avoiding playing down negative features and risk warnings. The FSA does not require that each page of a promotion include an express risk warning but it does require that promotions must give a balanced description of both positive and negative aspects of the product;

- the defects in the Guide to Recovery brochure were identified not by Chase de Vere but by the FSA's Financial Promotion Monitoring Team ("FPMT"); and
- the brochure contained defects that had previously been identified and criticised by FPMT in relation to earlier promotions. Chase de Vere's existing compliance systems were not put into practice properly so as to prevent this repetition. Even though it had disputed whether some of those criticisms were justified, Chase de Vere had agreed that it would take all of them into account in its future promotions.

3.4. While the seriousness of Chase de Vere's failings is demonstrated by the above factors, the FSA recognises that their impact, actual and potential, has been substantially mitigated by the remedial action taken by Chase de Vere, once it received notice of the FSA's concerns. In particular;

- Chase de Vere has taken action to advise customers who responded to the Guide to Recovery brochure of the defects, to clarify the misleading impressions given and to offer redress. Customers have been given the opportunity to cancel their investment without loss. Accordingly, consumers have received redress in a timely and effective fashion;
- Chase de Vere has arranged for the vetting and approval of financial promotions to be dealt with by its parent company's in-house compliance department, rather than by external consultants;
- Chase de Vere has been open and co-operative with the FSA during the investigation.

3.5. Were it not for the co-operation shown and the remedial action taken by Chase de Vere, the penalty imposed on Chase de Vere would have been significantly higher.

4. RELEVANT STATUTORY PROVISIONS AND REGULATORY REQUIREMENTS

4.1. 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."

Clear Fair and Not Misleading

- 4.2. COB Rule 3.8.4(1) requires that a firm must be able to show that it has taken reasonable steps to ensure that a non-real time financial promotion is clear, fair and not misleading.
- 4.3. Evidential provisions in COB 3.8.5 provide further detail as to how firms can comply with the “clear, fair and not misleading” Rule. Evidential provisions do not stand on their own, but relate to another binding rule and indicate in what circumstances that other rule will have been complied with or contravened. Compliance with or contravention of the evidential provisions creates a rebuttable presumption that the other rule has been complied with or contravened.
- 4.4. COB 3.8.5(1)(h) provides that a firm should take reasonable steps to ensure that a non-real time financial promotion does not omit any matters the omission of which causes the financial promotion not to be clear fair and not misleading.

Associated Financial Promotion Rules

- 4.5. COB Rule 3.8.8 requires that a specific non-real time financial promotion must include a fair and adequate description of the nature of the investment or service, the commitment required and the risks involved. Guidance on the operation of this Rule in COB 3.8.9(3)(a) makes it clear that, in giving a fair and adequate description of the investment or service being promoted, firms should avoid accentuating the potential benefits of the investment without also giving a fair indication of the risks.
- 4.6. COB Rule 3.9.6(1) requires that a direct offer financial promotion must contain sufficient information to enable a person to make an informed assessment of the investment or service to which it relates.
- 4.7. COB Rule 3.9.15 requires that a direct offer financial promotion relating to an investment which can fluctuate in value, or which offers income distributions which can fluctuate, must make this clear in terms which are likely to be understood by the kind of recipient to whom the financial promotion is communicated. This explanation must be set out with due prominence and in a print size no smaller than that used in the main text of the financial promotions.

Fair Comparison

- 4.8. COB Rule 3.8.4(2) requires that a non-real time financial promotion which includes a comparison or contrast must objectively compare one or more material, relevant, verifiable and representative features of those investments or services, which may include price.
- 4.9. COB Rule 3.8.5(1)(d) provides further clarification about comparisons. It states that comparisons should be presented in a fair and balanced way, which is not misleading, and which includes all factors relevant to the comparison.

FSA Principles

- 4.10. FSA Principle 2 states that a firm must conduct its business with due skill, care and diligence.
- 4.11. FSA Principle 7 states that a firm must communicate with its clients in a way that is clear, fair and not misleading.

5. BACKGROUND

Chase de Vere

- 5.1. Chase de Vere is an independent financial adviser (“IFA”) that became an authorised person on 1 December 2001 and is therefore subject to the requirements imposed on it by or under the Act and to the FSA’s Rules as set out in the Handbook. It was previously authorised by the Personal Investment Authority (“PIA”) from November 1994.
- 5.2. Chase de Vere is an autonomous wholly-owned subsidiary of Bristol and West plc. Its ultimate parent company is The Governor and Company of the Bank of Ireland (“the Bank of Ireland”).
- 5.3. At the time when the Guide to Recovery brochure was issued, Chase de Vere had permission under Part IV of the Act to undertake the following regulated activities:
 - advising on investments (excluding pension transfers/opt-outs);
 - advising on pension transfers/opt-outs;
 - agreeing to carry on a regulated activity;
 - arranging (bringing about) deals in investments;
 - dealing in investments as an agent; and
 - making arrangements with a view to transactions in investments.
- 5.4. Chase de Vere is a large, high-profile IFA. It is a frequent issuer of financial promotions.

The Promotion and the Products

- 5.5. The Guide to Recovery brochure was capable of being accepted by customers without them receiving any further advice.
- 5.6. The brochure promoted four products: a UK Growth Cocktail Fund, a Corporate Bond Cocktail Fund, an Enhanced Income Plan and an Enhanced Growth Plan.
- 5.7. The Cocktail Funds were combinations of different funds. The UK Growth Cocktail was a combination of three equity funds. The Corporate Bond Cocktail Fund was a combination of two bond funds that offered a “relatively high income” but this came at the cost of increased exposure to higher risk bond investments.
- 5.8. The Enhanced Income and Enhanced Growth Plans were complicated stockmarket linked investments that involved detailed formulas to determine investment returns.

- 5.9. The Enhanced Growth Plan was for a fixed term of five years. The investor was offered double the growth of the FTSE 100 index, up to a maximum of 100% growth. However, if the FTSE 100 index fell by more than 50% from its starting level and failed to recover to the starting level by the end date, the investor's capital would reduce at the rate of 1% for each 1% the index finished below its starting level: i.e. if the FTSE 100 index fell by 60%, investors would lose 60% of their initial investment.
- 5.10. The Enhanced Income Plan was also for a fixed term of five years. It offered no capital growth but an income of 7% per annum. In exchange for this high rate of income, investors had geared exposure to declines in the FTSE 100 Index. If the FTSE 100 index fell by more than 50% from its starting level and failed to recover to the starting level by the end date, the investor's capital would reduce at the rate of 2% for each 1% the index finished below its starting level. For example, if the FTSE index fell by more than 50% in the period and ended 20% below the starting level, investors would lose 40% of their initial investment and, if it ended below 50%, investors would lose all their money. This product was a "precipice bond" in that investors would receive a fixed income but might receive back less capital than they initially invested depending on movements in the FTSE 100 Index.
- 5.11. 2,200,500 copies of the Guide to Recovery Brochure were distributed in national newspapers. A further 236,000 copies were directly mailed to prospective customers. The promotion attracted a total of 259 investors.

High Income Products

- 5.12. High income products are products that offer a rate of return or interest that is considerably higher than that offered by banks or building societies for savings accounts. Investors in high income products are exposed to an additional level of risk in order to receive the higher returns. These products offer bonds that are linked to a particular stockmarket index such as the FTSE 100. Alternatively, they can be linked to investments in corporate bonds including high yield or "junk" bonds.
- 5.13. A particular type of high income product is a "precipice bond" where the level of income from the product is guaranteed but the return of capital initially invested depends on the performance of a particular index or collection of stocks.
- 5.14. Of the four products promoted in the Guide to Recovery brochure, two were high income products: the Corporate Bond Cocktail and the Enhanced Income Plan. Each of these products offered income in excess of that available from bank or building society accounts in return for higher risk exposure to stockmarket indices or high yield bonds. The Enhanced Income Plan was also a "precipice bond" as investors' capital was at risk.
- 5.15. The Enhanced Growth Plan also shared characteristics with these types of product. The return of capital invested was not guaranteed but was dependent on movements in the FTSE 100 Index.

Chase de Vere's approval procedures

- 5.16. Under a contract between Chase de Vere and external compliance consultants, the latter agreed to vet Chase de Vere's financial promotions, ensure that all financial promotions complied with regulatory requirements and sign them off as approved.
- 5.17. The procedures governing the preparation, approval and issue of financial promotions by Chase de Vere at the relevant times were set out in a document entitled "Marketing Procedures Manual, Direct Marketing Newsletters". This document specified the staff who were responsible for preparing the drafts, defined the role of the external compliance consultants, outlined the stages drafts had to go through and attached a series of checklists. At paragraph 9.3 of this manual it was stated:
- "It is Chase de Vere's responsibility if the mailing is uncompliant – even if the external agency has confirmed in writing that it is ok."*
- 5.18. Internally, it was the role of the Advertising Officer to ensure that the financial promotion was compliant. Chase de Vere had training procedures in place for staff involved in the preparation of financial promotions. Advertising Officers were trained by Chase de Vere's compliance department (known as the "Good Business Practice Team" or "the GBPT").
- 5.19. The procedure for issuing the Guide to Recovery brochure began in January 2003. During this procedure, the compliance team from the newspaper in which the brochure was to be distributed made a number of comments about the adequacy of the risk warnings and the lack of balance relating to the Enhanced Income and Enhanced Growth Plans. While Chase de Vere addressed some of these concerns, it did not incorporate all of the changes suggested.
- 5.20. On 28 January 2003, Chase de Vere faxed a form to its external compliance consultants requesting that they approve the Guide to Recovery brochure. The compliance consultants replied giving their approval shortly afterwards.

Discovery of current issues

- 5.21. On 20 March 2003 FPMT identified concerns with the Guide to Recovery brochure and wrote to Chase de Vere setting out its view that the promotion was not balanced and failed to give adequate prominence to the risks. On 4 April 2003, Chase de Vere responded to the FSA's concerns, accepting that the brochure was deficient in certain areas but maintaining that there had been no intention to mislead or misrepresent.

Remedial action

- 5.22. As soon as it received notice of the FSA's concerns about the Guide to Recovery brochure, Chase de Vere withdrew all remaining copies of the brochure and cancelled follow-up advertisements. In addition, Chase de Vere advised that it had taken immediate action to restructure its processes for preparing and approving financial promotions, including terminating its contract with its external compliance consultants and transferring responsibility for vetting financial promotions to the compliance department of its parent company, Bristol and West plc.

- 5.23. Having liaised with FPMT, Chase de Vere wrote to all customers who had invested in any of the products promoted in the Guide to Recovery brochure, clarifying the risks and offering them the opportunity to withdraw at no cost. Out of 259 customers who initially invested, 14 cancelled their investment on receipt of this letter of clarification.

6. REGULATORY HISTORY

FSA's general approach

- 6.1. The FSA made financial promotion a priority issue in both the 2002/3 and the 2003/4 FSA Plans and Budgets. In its 2002/3 Plan and Budget, one of the FSA's key priorities for the year was to be the pursuit "of fair treatment of consumers by enhancing the minimum standards for information given by firms to customers." In the 2003/4 Plan and Budget, the reduction of unclear and misleading financial promotions was identified as a major workstream.

FSA publications

- 6.2. In April 2002 the FSA published a 40-page brochure entitled "The FSA's regulatory approach to financial promotions". While this publication does not constitute and is not treated by the FSA as having the effect of formal guidance, it does contain detailed statements regarding the FSA's expectations. This publication stressed the importance of promoting a balanced picture and warned that marketing complex products to retail consumers posed particular risks.
- 6.3. The publication stated that vigorous enforcement action would be taken in relation to serious breaches and specifically warned against the following deficiencies:
- (a) a lack of balance, with headline benefits emphasised without clear and fair mention of material risks or drawbacks;
 - (b) misleading claims, and the creation of unrealistic expectations; and
 - (c) key information hidden in small print.
- 6.4. Chase de Vere was aware of this publication. A member of the GBPT gave an internal training seminar on the matters raised in it. Further, the FSA has repeatedly issued publications warning consumers to be careful when investing in high income and precipice bond products.

Previous interaction between Chase de Vere and its regulators

- 6.5. While Chase de Vere has not previously been subject to Enforcement action, PIA Supervision made adverse comments with respect to its financial promotions and procedures in the March 1999 report that detailed the PIA findings from its December 1998 visit.
- 6.6. In addition, since January 2002 four financial promotions issued by Chase de Vere were identified by FPMT through its monitoring activity as being non-compliant and Chase de Vere was requested to amend the promotion in question. Various criticisms

were raised by FPMT in this correspondence. Chase de Vere agreed with a number of the criticisms raised by FPMT but disputed whether some of the criticisms were justified. Chase de Vere stated that the issues concerned were subjective matters that were open to interpretation but agreed that it would take the FSA's views into account in its future promotions. Despite these exchanges, some specific deficiencies identified in these previous promotions were repeated in the Guide to Recovery brochure, as detailed in paragraphs 7.9 and 7.10.

7. CONTRAVENTION OF RELEVANT STATUTORY PROVISIONS AND REGULATORY REQUIREMENTS

7.1. The penalty is imposed pursuant to section 206 of the Act in respect of breaches of FSA Rules and the FSA Principles as detailed below:

(a) Failure to take reasonable steps to ensure that the financial promotion was clear, fair and not misleading.

7.2. By virtue of COB Rules 3.8.4(1), 3.8.8, 3.9.6(1) and 3.9.15, Chase de Vere was required to take reasonable steps to ensure that the Guide to Recovery Brochure was clear, fair and not misleading and included an adequate description of the nature of the investments and the risks involved. It failed to do so.

7.3. The brochure had a lack of balance, with headline benefits emphasised without clear and fair mention of material risks or drawbacks, and key information was hidden in small print. Deficiencies included:

- (1) the introduction to the four products promoted on page 2 did not provide a balanced view as the description of the products as “fantastic” and “excellent” investments was not accompanied by any explicit mention of the risks involved on that page; fuller warnings were only included later in the brochure;
- (2) the brochure's overview of market conditions and prospects was unbalanced and misleading as it emphasised the growth potential of new stockmarket investments without giving appropriate emphasis to the other possible adverse risks. The brochure seemed to imply that the “only way is up” for future stockmarket investments and the necessary risk warnings to balance these repeated positive statements were only included in the fine print;
- (3) the information about the two Cocktail Funds on page 6 did not include any specific risk warnings;
- (4) the brochure's description of the Corporate Bond Cocktail Fund on page 6 failed to include a standard warning about past performance;
- (5) the statement under the heading “Chase de Vere's view” on page 7 regarding the Enhanced Income and Enhanced Growth Plans was misleading and presented an unbalanced picture;
- (6) in the description of the Enhanced Income and Enhanced Growth Plans on page 7 there was a misleading and unbalanced statement which stated that

market commentators felt that the FTSE Index had reached the bottom of the market or was close to it;

- (7) also on page 7, Chase de Vere included statements that disguised or diminished the significance of the risk warning that investors' capital was at risk. In the section "Could I lose all my capital" Chase de Vere included the statement for the Enhanced Income Plan: "Again, given that the FTSE is already at a low level, this seems unlikely". In the same section for the Enhanced Growth Plan, Chase de Vere included the statement "yes, but the FTSE would have to fall by 100%. This is unlikely."

7.4. The combined effect of these deficiencies was that investors were not given an appropriately balanced summary of the risks involved in the products. This was especially important in relation to the Enhanced Income and Enhanced Growth Plans which were complicated stockmarket linked products and exposed investors to significant losses to capital in certain circumstances.

7.5. The description of charges involved in the products were also not "clear, fair and not misleading". In particular-

- (1) the brochure failed to include a full and clear description of all the charges for the two Cocktail Fund products on page 6;
- (2) the description of the charges for the Enhanced Income and Enhanced Growth Plans on page 7 was false and misleading. There was a bare statement that "there are no charges for you to pay". This was incorrect. Hidden in the key features on page 24 was a summary of how charges and expenses might effect the investment. The charges were implicitly rather than explicitly imposed. For example, if the investments were redeemed at the end of the first year (and assuming the FTSE 100 Index had grown by 5%), then the impact of charges was such that only £6,531 from an initial investment of £7,000 would be returned to investors under Option 1.

(b) Misleading and unfair comparisons

7.6. By virtue of COB Rule 3.8.4(2), taken with COB 3.8.5(1)(d), Chase de Vere was required, when making a comparison, to do so in a fair and balanced way that was not misleading and that included all matters relevant to the comparison. It failed to do so.

7.7. The Guide to Recovery brochure included on page 5 an unfair, biased and overly negative summary of tracker funds as opposed to the flattering description given to the type of funds promoted in the brochure. The impression given by Chase de Vere's comparison unfairly implied that tracker funds are riskier than the other type of funds (which are in fact equally exposed to the risk of equity price volatility) and did not allow a potential investor to make a fair and accurate comparison with the other funds.

7.8. Tracker funds, that typically have lower charges and commissions than the type of funds offered by Chase de Vere, were not offered.

(c) Repeated Mistakes

- 7.9. The deficiencies outlined above are made more serious by the fact that they involved repeated mistakes. Even though it disputed in some cases that the previous criticisms of FPMT were justified, Chase de Vere had undertaken that it would take all of them into account in future promotions.
- 7.10. FPMT had written on two occasions criticising the lack of balance and failure to give risk warnings due prominence in Chase de Vere's promotions, as follows:
- (1) on 20 December 2002, FPMT wrote to Chase de Vere in relation to the promotion of high income products similar to those in the subsequent Guide to Recovery Brochure. FPMT advised that it considered that the brochure should have contained an express warning about the risk that 100% of capital invested in the precipice bonds could be lost. In addition, FPMT stated that the reference to the small print elsewhere in the brochure was insufficient to convey the risks to investors clearly. This case was particularly serious as it resulted in investors being offered refunds. 200 investors were mailed and 30 cancelled;
 - (2) on 13 January 2003, FPMT wrote to Chase de Vere in relation to the promotion of a "Dynamic Growth Plan" from a different provider. FPMT raised concerns that risk warnings in the brochure were unsatisfactory because they were not sufficiently prominent, that the brochure did not contain a warning that 100% of capital could be lost and the cover of the brochure was unbalanced because it presented only positive information and contained no risk warnings. Chase de Vere agreed to change the location of risk warnings in future promotions.

(d) Breach of FSA Principles

- 7.11. By virtue of FSA Principles 2 and 7, Chase de Vere was required to conduct its business with due care, skill and diligence and to communicate with its clients in a way that was clear, fair and not misleading. It has failed to do so.

Particulars of breaches

- 7.12. As set out in paragraphs 7.2 to 7.10, Chase de Vere failed, in relation to its approval and issue of the Guide to Recovery brochure, to exercise due skill, care and diligence and to communicate with its clients in a way that was clear, fair and not misleading.
- 7.13. These failings were made more serious by the fact that the FSA had previously raised concerns with Chase de Vere regarding similar financial promotions that it had issued but Chase de Vere failed to ensure that the faults were not repeated. The existing compliance systems were not put into practice properly. The deficiencies in the brochure were in areas where the FSA had issued a significant amount of advice and recommendations to assist firms in ensuring that financial promotions were clear, fair and not misleading.

8. RELEVANT GUIDANCE ON SANCTION

- 8.1. The FSA's policy on the imposition of financial penalties is set out in Chapter 13 of the Enforcement Manual which forms part of the FSA Handbook ("ENF"). 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.
- 8.2. It is stated at ENF 13.3.4 that the criteria listed in the manual are not exhaustive and all relevant circumstances of the case will be taken into consideration.
- 8.3. 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.

The seriousness of the misconduct or contravention.

- 8.4. The level of financial penalty must be proportionate to the nature and seriousness of the contravention. The breaches identified in this case were potentially very serious. It was only due to the timely intervention of the FSA that the risks to consumers were minimised.
- 8.5. The Guide to Recovery brochure was seriously misleading and featured several material breaches of FSA Rules relating to financial promotions.
- 8.6. The brochure was widely circulated and thus had the potential to mislead a very large number of people. They could and did induce people to buy products (259 people invested in the Guide to Recovery brochure products) without appropriate disclosures and warnings. This gave rise to the risk of unsuitable transactions.
- 8.7. The Guide to Recovery brochure promoted complicated investment products, including high income and precipice bonds. Of the four products promoted in the brochure, two were high-income products. One of these high-income products was a "precipice bond". The stock market linked products in the Guide to Recovery brochure contained many unusual features that would be unfamiliar to the ordinary unsophisticated retail consumers at whom the promotion was targeted. Chase de Vere therefore had a particular responsibility to ensure that the brochure was presented in a way that was likely to be understood by those consumers.
- 8.8. In April 2002, the FSA issued a guide to the approach it would take to financial promotions. Although Chase de Vere was aware of this publication, the Guide to Recovery brochure issued in March 2003 failed to satisfy the FSA's approach.
- 8.9. On a number of occasions prior to the issue of the Guide to Recovery brochure, as a direct offer promotion in March 2003, FPMT had voiced its concerns about direct offer promotional material issued by Chase de Vere. The Guide to Recovery brochure contained defects that had previously been identified and criticised by FPMT in relation to financial promotions previously issued by Chase de Vere. The

existing compliance systems were not put into practice properly so as to prevent this repetition. While it is noted that Chase de Vere had disputed in some cases whether the previous criticisms of FPMT were justified, it had agreed to take all of them into account in future promotions.

- 8.10. It must be made clear to regulated firms that failure to issue financial promotions that are clear, fair and not misleading represents serious misconduct which will likely lead to disciplinary measures being taken. This should act as a deterrent to other firms and help to ensure that regulatory standards are upheld.

The extent to which the contravention is deliberate or misconduct was deliberate or reckless

- 8.11. There is no evidence that Chase de Vere deliberately contravened FSA Rules and the FSA Principles. However, the fact that Chase de Vere failed to give due attention to the FSA publications on financial promotions and failed to address concerns raised by FPMT in relation to earlier direct offer financial promotions is a serious aggravating factor, whether or not its misconduct is classified as reckless.

The size, financial resources and other circumstances of the firm

- 8.12. Chase de Vere is a large IFA employing over 400 staff and is a member of a large banking group. It is an autonomous wholly-owned subsidiary of Bristol and West plc and its ultimate parent company is the Bank of Ireland. There can be no doubt as to its ability to pay a financial penalty.

The amount of profit accrued or loss avoided

- 8.13. There is no evidence that Chase de Vere deliberately set out to accrue additional profits as a result of its failings.

Conduct following the contravention

- 8.14. Chase de Vere did not itself identify the breaches. However, once the breaches were brought to its attention, it actively sought to improve its procedures to ensure future compliance. It has written to the customers involved, pointing out the failings and agreeing to refund investments at no cost where requested.

Disciplinary record and compliance history

- 8.15. Chase de Vere has not been subject to any previous enforcement action.

Previous action by the FSA in relation to similar failings. Action taken by other regulatory authorities in relation to similar findings

- 8.16. Both the FSA and the Personal Investment Authority (Chase de Vere's previous regulator) have, in the past, taken action against firms for advertising failings. This

action has included the imposition of financial penalties. The FSA has taken these penalties into account.

9. IMPORTANT NOTICES

9.1. The Final Notice is given to you in accordance with section 390 of the Act.

Manner of payment

9.2. The Penalty must be to the FSA in full.

Time for payment

9.3. The Penalty must be paid to the FSA within 14 days beginning with the date on which the notice is given to you.

If the penalty is not paid

9.4. If all or any of the Penalty is outstanding after 14 days, the FSA may recover the outstanding amounts as a debt owed by you due to the FSA.

Publicity

9.5. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the 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.

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

FSA contacts

9.7. For more information concerning this matter generally, you should contact Tom Spender at the FSA (direct line: 020 7066 1858/fax: 020 7066 1859).

Julia MR Dunn
Head of Retail Selling
FSA Enforcement Division