Financial Services Authority

FINAL NOTICE

To:	**Sudipto Chattopadhyay**
Of:	**Alpari (UK) Limited** **201 Bishopsgate** **London** **EC2M 3AB**
Individual Reference Number:	**SXC01518**
Date:	**5 May 2010**

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

1. THE PENALTY

1.1 The FSA gave you a Decision Notice on 5 May 2010 which notified you that pursuant to section 66 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to impose a financial penalty of £14,000 on you for failing to comply with Statement of Principle 7 of the FSA's Statements of Principle and Code of Practice for Approved Persons ("the Statements of Principle"). The penalty relates to failures by you in overseeing the anti-money laundering systems and controls at Alpari (UK) Limited ("Alpari") during the period 8 September 2006 and 11 November 2008 (the "relevant period").

1.2 You agreed to settle at an early stage of the FSA's investigation. You therefore qualified for a 30% (stage 1) discount under the FSA's executive settlement procedures. Were it not for this discount, the FSA would have imposed a financial penalty of £20,000 on you.

1.3 You have agreed to provide an undertaking that you will not make an application to the FSA to be approved for controlled functions CF10 (Compliance Oversight) and CF11 (Money Laundering Reporting) as defined in the FSA Handbook, at any authorised person, exempt person, or exempt professional firm for a period of three years.

1.4 You confirmed on 22 April 2010 that you would not be referring the matter to the Upper Tribunal (Tax and Chancery Chamber).

1.5 Accordingly, for the reasons set out below, the FSA imposes a financial penalty on you in the amount of £14,000.

2. REASONS FOR THE ACTION

2.1 On the basis of the facts and matters described below, the FSA has taken action against you as a result of your conduct as an approved person at Alpari, during the relevant period, undertaking the controlled functions ("CF") of compliance oversight (CF10) and money laundering reporting (CF11). You ceased to hold these functions on 11 November 2008.

2.2 In performing these functions, you had responsibility for and oversight of Alpari's compliance with the FSA's rules relating to systems and controls for countering the risk that it might be used to further financial crime and for money laundering.

2.3 During the relevant period, you breached Statement of Principle 7 as you failed, as an approved person performing a significant influence function, to take reasonable steps to ensure that the business of Alpari, for which you were responsible, complied with the relevant requirements and standards of the regulatory system. In particular, as Money Laundering Reporting Officer ("MLRO") you failed to take reasonable steps to ensure that Alpari had adequate processes and procedures in place for:

(1) assessing the money laundering and financial crime risks that it was exposed to;

(2) overseeing and monitoring the role of the compliance and anti-money laundering function and ensuring that it was adequately resourced in line with the growth of the business;

(3) carrying out checks to screen customers against U.K. and global sanctions lists and to determine whether a customer is a politically exposed person (PEP);

(4) adequately carrying out customer due diligence procedures, in relation to customers from higher risk jurisdictions, at the account opening stage;

(5) adequately carrying out on-going monitoring of the business relationship with its customers; and

(6) adequately training yourself and other employees, on an on-going basis, in relation to financial crime and money laundering.

2.4 These failings were particularly serious because of the following factors:

(1) Alpari's customer base included customers from higher risk jurisdictions, such as Nigeria;

(2) Alpari's relationship with its customers was not face to face making it more important that adequate due diligence on those from higher risk jurisdictions was carried out; and

(3) the FSA has repeatedly stressed the importance of effective anti-money laundering controls and has on previous occasions taken disciplinary action against regulated firms for failing to meet the FSA's anti-money laundering requirements.

2.5 The FSA has also taken into account the following steps taken by you which have served to mitigate your failings:

(1) you had identified and begun to rectify the weaknesses in Alpari's compliance and anti money laundering functions before the identification of these failings by the FSA;

(2) you had increased the number of employees in the compliance department and handed over the CF10 and CF11 functions to a designated successor;

(3) you had taken appropriate steps to delegate part of your role, although you failed to ensure that this was carried out adequately;

(4) Alpari has admitted to placing too much responsibility on you and failing to provide you with adequate support in your role;

(5) you have agreed to provide an undertaking that you will not make an application to the FSA to be approved for controlled functions CF10 (Compliance Oversight) and CF11 (Money Laundering Reporting) for a period of three years; and

(6) you have co-operated fully with the FSA's investigation.

2.6 The FSA has concluded that the nature and seriousness of the breaches outlined above warrant the imposition of a financial penalty. The FSA therefore has imposed a financial penalty of £14,000 on you.

2.7 This action supports the FSA's statutory objectives of maintaining market confidence and reducing financial crime.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS AND GUIDANCE

3.1 The relevant statutory provisions and regulatory requirements and Joint Money Laundering Steering Group ("the JMLSG") guidance sections are set out at Annex A to this Final Notice.

3.2 The FSA has had regard to the guidance issued by the JMLSG. The JMLSG is a body made up of the leading U.K. trade associations in the financial services industry, whose aim is to promulgate good practice in countering money laundering and to give practical assistance in interpreting the U.K. money laundering regulations. Since 1990 it has provided advice on anti-money laundering controls by issuing guidance for the financial sector ("JMLSG Guidance"). Subsequent editions of the JMLSG Guidance have taken into account relevant legal changes and evolving practice within the financial services industry.

4. FACTS AND MATTERS RELIED ON

Background

4.1 You were a director at Alpari, holding the CF1 (director) function during the relevant period as well as CF10 (compliance oversight) and CF11 (money laundering reporting). As such, you were responsible for compliance and were the MLRO at Alpari. Alpari appointed a successor to take over the CF10 and CF11 functions from you on 25 November 2008.

4.2 Alpari provides, on an execution only basis, rolling spot foreign exchange contracts for speculative investment purposes. It became authorised on 8 September 2006 and serves retail and institutional customers through an internet based platform.

4.3 The FSA conducted a visit to Alpari in March 2009 and identified weaknesses in its financial crime and anti money laundering systems and controls. The FSA has since conducted an investigation into Alpari to review its compliance with the relevant regulatory requirements and standards in connection with its business during the relevant period and into your conduct in performing the CF10 and CF11 roles.

4.4 As a result of this investigation, the FSA has given a Final Notice to Alpari for failing to demonstrate that it took reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. In particular, Alpari did not take reasonable care to establish and maintain effective systems and controls for countering the risk that it might be used to further financial crime.

4.5 In addition and as a result of the same investigation, the FSA considers that your conduct as MLRO and a significant influence function holder fell short of the FSA's prescribed regulatory standards for approved persons and that you have breached Statement of Principle 7. The FSA has had regard to the particular facts and circumstances of this case and to the descriptions of non-compliant conduct in APER 4.7, the relevant sections of which are listed in Annex A.

Breach of Statement of Principle 7

4.6 In your MLRO function, you had responsibility for and oversight of Alpari's compliance with the FSA's rules relating to systems and controls for countering the risk that it might be used to further financial crime and for money laundering. The documents and information provided throughout the investigation demonstrated that, as an approved person performing a significant influence function, you had not taken reasonable steps to ensure that the business of Alpari, complied with the relevant requirements and standards of the regulatory system. Specifically, you failed to ensure that, during the relevant period, Alpari had adequate processes and procedures in place for the six areas listed above at paragraph 2.3. More details of these failings are set out below at paragraphs 4.8 to 4.22.

4.7 The FSA acknowledge that you delegated a substantial part of your CF10 and CF11 role to another individual during the relevant period. That individual had previous compliance and anti-money laundering experience, and you reasonably relied upon him being competent and experienced to assist you. Furthermore, Alpari has admitted

that it failed to provide you with adequate support in your role. However, you were ultimately responsible for the oversight of Alpari's compliance with the FSA's rules relating to systems and controls for countering the risk that it might be used to further financial crime and for money laundering. In performing that role you failed to focus sufficiently on this responsibility or adequately allocate resources to these functions at a time then Alpari was expanding rapidly.

Failure to carry out adequate risk assessments of the money laundering and financial crime risks that the Alpari was exposed to

4.8 Although you organised for Alpari to set out its anti money laundering policy in its compliance manual, you did not ensure that Alpari carried out formal risk assessments or performed a gap analysis of its position in relation to the Money Laundering Regulations 2007, Proceeds of Crime Act 2002, Terrorism Act 2000 or the Joint Money Laundering Steering Group Guidance to establish the way it might be used to facilitate financial crime and how it could mitigate these risks.

4.9 This meant that it was exposed to the risk that it might not maintain anti money laundering systems which were appropriate to its business as it grew.

Inadequate compliance anti money laundering resource

4.10 Despite the significant growth in business between mid 2007 and mid 2008 and your awareness towards the end of 2007 of the potential problems with Alpari's approach to anti money laundering processes and specifically the need to be more focused on the risks to its actual business, you only recruited an additional junior member of staff in July 2008. Moreover, it was not until November 2008 that Alpari appointed an additional person to take over your CF10 and CF11 functions and to run a larger department with more members of staff.

4.11 During the relevant period, as one of the two directors of Alpari, you were heavily involved in expanding the business, which impacted on your ability properly to undertake your compliance and anti money laundering functions. Although Alpari produced a yearly MLRO report, which was signed off by you, you confirmed that you had no significant involvement or oversight in producing the report. The FSA found that inappropriate levels of responsibility were placed on you and that you were not provided with adequate resources. As a result you were unable to commit sufficient time and attention to your MLRO responsibilities.

Inadequate system for screening of customers against U.K. and global sanctions lists and for determining whether a customer is a politically exposed person ("PEP")

4.12 Alpari mistakenly believed that its electronic system checked against sanctions lists and checked for PEPs when it did not. This meant that no checks against the sanctions lists or for PEPs were carried out during the relevant period and Alpari was exposed to the risk that it might accept customers in these categories without being aware of this fact.

4.13 You therefore did not ensure that Alpari had an adequate system in place for screening against UK and global sanctions lists or for checking whether customers were PEPs either at the account opening stage or periodically after that.

4.14 Additionally, in interview, it was clear that you were also confused as to the difference between sanctions and PEP checks.

Inadequate procedures for customer due diligence at the account opening stage

4.15 You established a policy at Alpari in relation to customer identity verification, which classified its customers into two categories: medium and high risk. Alpari operated an enhanced due diligence process in relation to customers from higher risk jurisdictions.

4.16 The FSA reviewed twelve customer files and found that the identity verification for the six customers with a medium risk categorisation was completed in accordance with Alpari's policy. However, of the six files relating to customers from higher risk jurisdictions only two were completed in accordance with Alpari's policy.

4.17 Therefore you did not ensure that Alpari's staff followed its own policy in relation to verifying the identity of its customers from higher risk jurisdictions.

Inadequate on-going monitoring of the business relationship with the customer

4.18 You did not ensure that Alpari had adequate systems in place to undertake ongoing monitoring to assess whether customers transactions were consistent with Alpari's knowledge of the customer and his/her financial circumstances.

4.19 Alpari gathered only high level information at the account opening stage. Gathering more detailed information about customers, such as source of funds, would have been particularly relevant as although the compliance department at Alpari carried out spot checks on customer files as part of the compliance monitoring plan, it was the responsibility of customer facing staff to alert the compliance department of any suspicious activities.

Inadequate staff training

4.20 You delegated responsibility for staff anti-money laundering training to another individual whom you reasonably believed to be experienced and competent to carry out the task. Although you took steps for provision of training, you did not adequately ensure that appropriate training was in fact delivered, in accordance with your instructions. You therefore failed to ensure that Alpari's staff received adequate training in relation to its anti money laundering controls. Alpari gave informal one off one to one training when employees joined and updated staff on an ad-hoc basis. This was inadequate as demonstrated by the failings identified in the files reviewed by the FSA. Alpari placed reliance on employees noticing and notifying the compliance department of any suspicious payments from customers, particularly customers from higher risk jurisdictions. Given the growth of its business, including the increase in customers from higher risk jurisdictions. You should have given more consideration to the importance of anti money laundering checks and provided refresher training to staff accordingly.

4.21 In relation to your role as MLRO, you failed to demonstrate that you undertook sufficient training during the relevant period to ensure that you remained competent and up-to-date.

4.22 By failing to take reasonable steps to ensure that Alpari's business complied with the relevant requirements and standards of the regulatory system, for which you were responsible in your role as MLRO, you breached Statement of Principle 7.

5. ANALYSIS OF BREACHES

5.1 By reason of the facts and matters referred to in paragraphs 4.8 to 4.22 above, the FSA considers that you failed, as an approved person performing a significant influence function, to take reasonable steps to ensure that the business of Alpari, for which you were responsible in your controlled functions, complied with the relevant requirements and standards of the regulatory system, in breach of Statement of Principle 7. Specifically, you failed to take reasonable steps to ensure that Alpari had adequate processes and procedures in place for:

(1) assessing the money laundering and financial crime risks that it was exposed to;

(2) overseeing and monitoring the role of the compliance and anti-money laundering function and ensuring that it was adequately resourced in line with the growth of the Alpari;

(3) carrying out checks to screen customers against U.K. and global sanctions lists and to determine whether a customer is a politically exposed person (PEP);

(4) adequately carrying out customer due diligence of customers from higher risk jurisdictions, at the account opening stage;

(5) adequately carrying out on-going monitoring of the business relationship with its customers; and

(6) adequately training employees, on an on-going basis, in relation to financial crime and money laundering.

5.2 Having regard to the facts and matters set out in this notice, the FSA considers it proportionate and appropriate in all the circumstances to take disciplinary action against you.

6. ANALYSIS OF SANCTION

Imposition of a financial penalty

6.1 The FSA's policy on the imposition of financial penalties as at the date of this notice is set out in Chapter 6 of the Decision Procedures and Penalties Manual ("DEPP"), which forms part of the FSA Handbook. In addition, the FSA has had regard to the corresponding provisions of Chapter 13 of the Enforcement Manual ("ENF") in force during the relevant period until 27 August 2007 and Chapter 7 of the Enforcement Guide ("EG"), in force thereafter.

6.2 The principal purpose of 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 In determining whether a financial penalty is appropriate the FSA is required to consider all the relevant circumstances of a case. Applying the criteria set out in the DEPP 6.2.1 (regarding whether or not to take action for a financial penalty or public censure) and 6.4.2 (regarding whether to impose a financial penalty or a public censure), the FSA considers that a financial penalty is an appropriate sanction, given the serious nature of the breaches and the risks that your failure to take reasonable care to establish and maintain effective systems and controls for countering the risk that Alpari might be used to further financial crime.

6.4 DEPP 6.5.2G sets out a non-exhaustive list of factors that may be of relevance in determining the level of a financial penalty. The FSA considers that the following factors are particularly relevant in this case.

Deterrence (DEPP 6.5.2(1))

6.5 A financial penalty will deter other individuals from operating businesses that fail to establish and maintain effective systems and controls for countering the risk that Alpari might be used to further financial crime.

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

6.6 In determining the appropriate sanction, the FSA has had regard to the seriousness of the breaches, including the nature of the requirements breached and the duration of the breach.

6.7 Your failings took place between 8 September 2006 and 11 November 2008 and are viewed as being particularly serious because you failed to ensure that Alpari had adequate processes and procedures in place for:

(1) assessing and adequately carrying out on-going monitoring of the money laundering and financial crime risks that it was exposed to;

(2) carrying out checks to screen customers against U.K. and global sanctions lists and to determine whether a customer is a politically exposed person (PEP); and

(3) adequately training employees, on an on-going basis, in relation to financial crime and money laundering.

6.8 You delegated a substantial part of your CF10 and CF11 role to another individual during the relevant period. That individual had previous compliance and anti-money laundering experience, and you reasonably relied upon him being competent and experienced to assist you. However, you were ultimately responsible for Alpari's compliance with the FSA's rules relating to systems and controls for countering the risk that Alpari might be used to further financial crime and for money laundering. In performing that role, you failed to focus sufficiently on this responsibility or

adequately allocate resources to these functions at a time when the business was expanding rapidly.

6.9 The FSA has also taken into account the following steps taken by you which have served to mitigate your failings:

(1) you had identified and begun to rectify the weaknesses in Alpari's compliance and anti money laundering functions before the identification of these failings by the FSA;

(2) you had increased the number of employees in the compliance department and handed over the CF10 and CF11 functions to a successor: and

(3) you have co-operated fully with the FSA's investigation.

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

6.10 The FSA has found no evidence to show that you acted in a deliberate or reckless manner.

Conduct following the breach (DEPP 6.5.2(8))

6.11 You have been proactive in taking steps to rectify your shortcomings and have co-operated with the FSA during the investigation. By doing so, you have allayed the FSA's immediate concern that Alpari might be used to further financial crime.

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

6.12 You have not been the subject of previous disciplinary action.

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

6.13 In determining the level of financial penalty, the FSA has taken into account penalties imposed by the FSA on other approved persons for similar behaviour.

FSA Guidance (DEPP 6.5.2 (12)):

6.14 Your conduct is serious given that the FSA has repeatedly stressed the importance of effective anti-money laundering controls and has on previous occasions taken disciplinary action against regulated firms for failing to meet the FSA's anti-money laundering requirements.

7. CONCLUSION

7.1 Having regard to the seriousness of the breaches and the risk posed to the customers the FSA considers a financial penalty of £20,000 (before discount for early settlement) to be appropriate.

8. DECISION MAKERS

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

9. IMPORTANT

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

Manner of and time for Payment

9.2 The financial penalty must be paid in full by you to the FSA by no later than 19 May 2010, 14 days from the date of the Final Notice.

If the financial penalty is not paid

9.3 If all or any of the financial penalty is outstanding on 20 May 2010, the FSA may recover the outstanding amount as a debt owed by you and due to the FSA.

Publicity

9.4 Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. 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.

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

FSA contacts

9.6 For more information concerning this matter generally, you should contact Anna Hynes at the FSA (direct line: 0207 066 9464) 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 A

RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE

1. Statutory provisions

1.1 The FSA's regulatory objectives are set out in section 2(2) of the Act and include market confidence, public awareness, the protection of consumers and the reduction of financial crime. In relation to this case, the most relevant statutory objectives are market confidence and the reduction of financial crime.

1.2 Section 66 of the Act provides that the FSA may take action against a person if it appears to the FSA that he is guilty of misconduct and the FSA is satisfied that it is appropriate in all the circumstances to take action against him. Misconduct includes failure, while an approved person, to comply with a statement of principle issued under 64 of the Act. The action that may be taken by the FSA includes the imposition of a penalty on the approved person of such amount as it considers appropriate.

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.

Statements of Principle and the Code of Practice for Approved Persons ("APER")

2.2 APER sets out the Statements of Principle as they relate to approved persons and descriptions of conduct which, in the opinion of the FSA, do not comply with a Statement of Principle. It further describes factors which, in the opinion of the FSA, are to be taken into account in determining whether or not an approved person's conduct complies with a Statement of Principle.

2.3 APER 3.1.3G states that when establishing compliance with or a breach of a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, including the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour to be expected in that function.

2.4 APER 3.1.4G provides that an approved person will only be in breach of a Statement of Principle where he is personally culpable, that is in a situation where his conduct was deliberate or where his standard of conduct was below that which would be reasonable in all the circumstances.

2.5 APER 3.1.6G provides that APER (and in particular the specific examples of behaviour which may be in breach of a generic description of conduct in the code) is not exhaustive of the kind of conduct that may contravene the Statements of Principle.

2.6 The Statements of Principle relevant to this matter is:

(1) Statement of Principle 7 which provides that an approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system.

2.7 APER 3.3.1E states that in determining whether or not the conduct of an approved person performing a significant influence complies with Statements of Principle 5 to 7, the following are factors which, in the opinion of the FSA, are to be taken into account:

(1) whether he exercised reasonable care when considering the information available to him;

(2) whether he reached a reasonable conclusion which he acted on;

(3) the nature, scale and complexity of the firm's business;

(4) his role and responsibility as an approved person performing a significant influence function; and

(5) the knowledge he had, or should have had, of regulatory concerns, if any, arising in the business under his control.

2.8 APER 4.7 lists types of conduct which, in the opinion of the FSA, do not comply with Statement of Principle 7.

2.9 APER 4.7.3E states that failing to take reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems of control to comply with the relevant requirements and standards of the regulatory system in respect of its regulated activities is conduct that does not comply with Statement of Principle 7.

2.10 APER 4.7.4E states that failing to take reasonable steps to monitor (either personally or through a compliance department or other departments) compliance with the relevant requirements and standards of the regulated system in respect of its regulated activities is conduct that does not comply with Statement of Principle 7.

Decision Procedure and Penalties Manual ("DEPP")

2.11 Guidance on the imposition and amount of penalties is set out in Chapter 6 of DEPP.

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

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

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

Deterrence: DEPP 6.5.2G (1)

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

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

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

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

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

Whether the person on whom the penalty is to be imposed is an individual: DEPP 6.5.2G (4)

2.18 When determining the amount of penalty to be imposed on an individual, the FSA will take into account that individuals will not always have the resources of a body corporate, that enforcement action may have a greater impact on an individual, and further, that it may be possible to achieve effective deterrence by imposing a smaller penalty on an individual than on a body corporate. The FSA will also consider whether the status, position and/or responsibilities of the individual are such as to make a breach committed by the individual more serious and whether the penalty should therefore be set at a higher level.

Conduct following the breach: DEPP 6.5.2G (8)

2.19 The FSA may take into account the degree of co-operation the person showed during the investigation of the breach by the FSA.

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

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

FSA guidance and other published materials: DEPP 6.5.2G (12)

2.21 The FSA will consider the nature and accessibility of the guidance or other published materials when deciding whether they are relevant to the level of penalty and, if they are, what weight to give them in relation to other relevant factors.

3. Relevant extracts from Part I and Part II of the Joint Money Laundering Steering Group Guidance

Chapter 5 – Customer due diligence

5.1 Meaning of customer due diligence measures and ongoing monitoring

3.1 Paragraph 5.1.4 - Firms must determine the extent of their CDD measures and ongoing monitoring on a risk-sensitive basis, depending on the type of customer, business relationship, product or transaction. They must be able to demonstrate to their supervisory authority that the extent of their CDD measures and monitoring is appropriate in view of the risks of money laundering and terrorist financing.

5.3 Application of CDD measures

3.2 Paragraph 5.3.1 - Applying CDD measures involves several steps. The firm is required to identify customers and, where applicable, beneficial owners. It must then verify these identities. Information on the purpose and intended nature of the business relationship must also be obtained.

3.3 Paragraph 5.3.41 - The United Nations, European Union, and United Kingdom are each able to designate persons and entities as being subject to financial sanctions, in accordance with legislation explained below. Such sanctions normally include a comprehensive freeze of funds and economic resources, together with a prohibition on making funds or economic resources available to the designated target. A Consolidated List of all targets to whom financial sanctions apply is maintained by HM Treasury, and includes all individuals and entities that are subject to financial sanctions in the UK. This list is at: www.hm-treasury.gov.uk/financialsanctions.

3.4 Paragraph 5.3.42 - The obligations under the UK financial sanctions regime apply to all firms, and not just to banks. The Consolidated List includes all the names of designated persons under UN and EC sanctions regimes which have effect in the UK. Firms will not normally have any obligation under UK law to have regard to lists issued by other organisations or authorities in other countries, although a firm doing business in other countries will need to be aware of the scope and focus of relevant financial sanctions regimes in those countries. The other websites referred to below may contain useful background information, but the purpose of the HM Treasury list is to draw together in one place all the names of designated persons for the various sanctions regimes effective in the UK. All firms to whom this guidance applies,

therefore, whether or not they are FSA-regulated or subject to the ML Regulations, will need either:

- for manual checking: to register with the HM Treasury update service (directly or via a third party, such as a trade association); or
- if checking is automated: to ensure that relevant software includes checks against the relevant list and that this list is up to date.

Mitigation of impersonation

3.5 Paragraph 5.3.82 - Were identity is verified electronically, or copy documents are used, a firm should apply an additional verification check to manage the risk of impersonation fraud. The additional check may consist of robust anti-fraud checks that the firm routinely undertakes as part of its existing procedures, or may include:

- requiring the first payment to be carried out through an account in the customer's name with a UK or EU regulated credit institution or one from an equivalent jurisdiction;
- verifying additional aspects of the customer's identity, or of his electronic 'footprint' (see paragraph 5.3.25);
- telephone contact with the customer prior to opening the account on a home or business number which has been verified (electronically or otherwise), or a "welcome call" to the customer before transactions are permitted, using it to verify additional aspects of personal identity information that have been previously provided during the setting up of the account;
- communicating with the customer at an address that has been verified (such communication may take the form of a direct mailing of account opening documentation to him, which, in full or in part, might be required to be returned completed or acknowledged without alteration);
- internet sign-on following verification procedures where the customer uses security codes, tokens, and/or other passwords which have been set up during account opening and provided by mail (or secure delivery) to the named individual at an independently verified address;
- other card or account activation procedures;
- requiring copy documents to be certified by an appropriate person.

5.5 Enhanced due diligence

3.6 Paragraph 5.5.1 - A firm must apply EDD measures on a risk-sensitive basis in any situation which by its nature can present a higher risk of money laundering or terrorist financing. As part of this, a firm may conclude, under its risk-based approach, that the standard evidence of identity (see section 5.3) is insufficient in relation to the money laundering or terrorist financing risk, and that it must obtain additional information about a particular customer.

3.7 Paragraph 5.5.2 - As a part of a risk-based approach, therefore, firms may need to hold sufficient information about the circumstances and business of their customers for two principal reasons:

- to inform its risk assessment process and therefore manage its money laundering/terrorist finance risk effectively; and
- to provide a basis for monitoring customer activity and transactions, thus increasing the likelihood that they will detect the use of their products and services for money laundering or terrorist financing.

3.8 Paragraph 5.5.4 - In practice, under a risk-based approach, it will not be appropriate for every product or service provider to know their customers equally well, regardless of the purpose, use, value, etc., of the product or service provided. Firms' information demands need to be proportionate, appropriate and discriminating, and to be able to be justified to customers.

3.9 Paragraph 5.5.9 - The ML Regulations prescribe three specific types of relationship in respect of which EDD measures must be applied. These are:

- where the customer has not been physically present for identification purposes (see paragraphs 5.5.10ff);
- in respect of a correspondent banking relationship (see Part II, sector 16: Correspondent banking);
- in respect of a business relationship or occasional transaction with a PEP (see paragraphs 5.5.18ff).

3.10 Paragraph 5.5.17 - Non face-to-face identification and verification carries an inherent risk of impersonation fraud, and firms should follow the guidance in paragraph 5.3.82 to mitigate this risk.

Politically exposed persons (PEPs)

3.11 Paragraph 5.5.18 - Individuals who have, or have had, a high political profile, or hold, or have held, public office, can pose a higher money laundering risk to firms as their position may make them vulnerable to corruption. This risk also extends to members of their immediate families and to known close associates. PEP status itself does not, of course, incriminate individuals or entities. It does, however, put the customer, or the beneficial owner, into a higher risk category.

3.12 Paragraph 5.5.19 - A PEP is defined as "an individual who is or has, at any time in the preceding year, been entrusted with prominent public functions and an immediate family member, or a known close associate, of such a person". This definition only applies to those holding such a position in a state outside the UK, or in a Community institution or an international body.

3.13 Paragraph 5.5.20 - Although under the definition of a PEP an individual ceases to be so regarded after he has left office for one year, firms are encouraged to apply a risk-based approach in determining whether they should cease carrying out appropriately enhanced monitoring of his transactions or activity at the end of this period. In many cases, a longer period might be appropriate, in order to ensure that the higher risks associated with the individual's previous position have adequately abated.

3.14 Paragraph 5.5.25 - Firms are required, on a risk-sensitive basis, to:

- have appropriate risk-based procedures to determine whether a customer is a PEP;
- obtain appropriate senior management approval for establishing a business relationship with such a customer;
- take adequate measures to establish the source of wealth and source of funds which are involved in the business relationship or occasional transaction; and
- conduct enhanced ongoing monitoring of the business relationship.

Risk-based procedures

3.15 Paragraph 5.5.26 - The nature and scope of a particular firm's business will generally determine whether the existence of PEPs in their customer base is an issue for the firm, and whether or not the firm needs to screen all customers for this purpose. In the context of this risk analysis, it would be appropriate if the firm's resources were focused in particular on products and transactions that are characterised by a high risk of money laundering.

On-going monitoring

3.16 Paragraph 5.5.30 - Guidance on the on-going monitoring of the business relationship is given in section 5.7. Firms should remember that new and existing customers may not initially meet the definition of a PEP, but may subsequently become one during the course of a business relationship. The firm should, as far as practicable, be alert to public information relating to possible changes in the status of its customers with regard to political exposure. When an existing customer is identified as a PEP, EDD must be applied to that customer.

5.7 Monitoring customer activity

3.17 Paragraph 5.7.1 - Firms must conduct ongoing monitoring of the business relationship with their customers. Ongoing monitoring of a business relationship includes:

- Scrutiny of transactions undertaken throughout the course of the relationship including, where necessary, the source of funds) to ensure that the transactions are consistent with the firm's knowledge of the customer, his business and risk profile;

- Ensuring that the documents, data or information held by the firm are kept up to date.

3.18 Paragraph 5.7.2 - Monitoring customer activity helps identify unusual activity. If unusual activities cannot be rationally explained, they may involve money laundering or terrorist financing. Monitoring customer activity and transactions that take place throughout a relationship helps firms know their customers, assist them to assess risk and provides greater assurance that the firm is not being used for the purposes of financial crime.

Chapter 7 – Staff awareness, training and alertness

3.19 Paragraph 7.1 - One of the most important controls over the prevention and detection of money laundering is to have staff who are alert to the risks of money laundering/terrorist financing and well trained in the identification of unusual activities or transactions which may prove to be suspicious.

3.20 Paragraph 7.2 - The effective application of even the best designed control systems can be quickly compromised if the staff applying the systems are not adequately trained. The effectiveness of the training will therefore be important to the success of the firm's AML/CTF strategy.

3.21 Paragraph 7.3 - It is essential that firms implement a clear and well articulated policy for ensuring that relevant employees are aware of their obligations in respect of the prevention of money laundering and terrorist financing and for training them in the identification and reporting of anything that gives grounds for suspicion. This is especially important for staff who handle customer transactions or instructions. Temporary and contract staff carrying out such functions should also be covered by these training programmes.

Part II

Chapter 10 –Execution only stockbrokers

Verification of identity

3.22 Paragraph 10.8 - The risk level of execution only broking, however, depends on whether the services are offered and operated on a face-to-face basis. The ML Regulations identify non-face-to-face business as higher risk for money laundering that face-to-face business. In view of this, firms need to have in place additional measures to neutralise the higher risk when opening and operating accounts for non face-to-face business. This can take the form of additional due diligence at the point of account opening, appropriate monitoring of customer activity or both.

Additional customer information

3.23 Paragraph 10.10 - ExO business is driven by the customer and, as mentioned earlier, customer behaviour may vary widely, from the occasional transaction in a FTSE 100 share to day trading in a variety of instruments. As there are no suitability obligations for ExO stockbrokers, firms will have little or no information about the customer. Given the reasonably narrow range of services provided by ExO stockbrokers, no

additional information is likely to be required to establish the purpose and intended nature of the business relationship.