
FINAL NOTICE

To: City Gate Money Managers Limited
Of : 1 Park Circus, Glasgow, G3 6AX

Dated: 20 July 2009

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you final notice of its decision to impose a financial penalty:

1. ACTION

- 1.1. The FSA gave City Gate Money Managers Limited (“City Gate”) a Decision Notice on 14 July 2009 which notified the firm that pursuant to section 205 of the Financial Services and Markets Act 2000 (“the Act”), the FSA had decided to impose a financial penalty of £42,000 with regard to City Gate for breaches of Principles 3 (management and control), 2 (skill, care and diligence) and 7 (Communications with clients) of the FSA’s Principles for Businesses (“the Principles”) and certain Conduct of Business Rules (“COB Rules”) set out in the FSA’s Handbook between January 2006 and August 2008 (“the Relevant Period”).
- 1.2. City Gate agreed to settle at an early stage of the FSA’s investigation and 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 £60,000.

2. REASONS FOR THE ACTION

- 2.1. City Gate failed to have adequate systems and controls in place to ensure that financial promotions issued by its appointed representatives were clear, fair and not misleading. This failing created an unacceptably high risk that unclear, unfair and misleading financial promotions would be issued to customers. This risk crystallised between January and March 2006 when City Gate approved two financial promotions (“the Scheme Financial Promotions”) in relation to the Optimum Returns (BFIG) Trust (“the Scheme”). In approving these financial promotions, City Gate failed to comply with FSA Principles and rules, details of which are set out below. In particular, City Gate failed to take reasonable steps to ensure that financial promotions approved by it and issued by its appointed representatives set out clearly the key features of the Scheme, including the risks of investing in the Scheme, and were clear, fair and not misleading.
- 2.2. City Gate approved the Scheme Financial Promotions without taking any steps to satisfy itself as to the accuracy of the information they contained. Subsequent to their approval by City Gate, the Scheme Financial Promotions were used by Independent Financial Advisers (“IFAs”), including City Gate’s appointed representatives (“ARs”), to promote the Scheme to their customers.
- 2.3. The FSA has concluded that, during the Relevant Period, City Gate breached Principle 3 in that it failed to take reasonable care to organise and control its affairs with adequate risk management systems, in particular failing to ensure that its systems and controls for reviewing financial promotions were adequate.
- 2.4. The FSA has also concluded that in relation to the approval of the Scheme Financial Promotions, City Gate failed to conduct its business with due skill, care and diligence (in breach of Principle 2), in that it approved the Scheme Financial Promotions without ensuring that it understood:
 - (a) the details of how the Scheme would operate in practice, including the feasibility of the Scheme generating the guaranteed returns that it promised customers;
 - (b) the risks to customers of investing in the Scheme; or

- (c) whether the promotion was clear, fair and not misleading.
- 2.5. City Gate used the Scheme Financial Promotions to promote the Scheme to its ARs and its customers. The Scheme Financial Promotions did not adequately disclose the risks of the Scheme. As a result, City Gate failed to pay due regard to the information needs of its clients, and communicate information to them in a way that was clear, fair and not misleading in breach of Principle 7.
- 2.6. In addition to the breaches set out above, City Gate also breached the following COB Rules as a consequence of its approval of the Scheme Financial Promotions:
- (1) COB 3.7.1R (failing to keep adequate records of each financial promotion);
 - (2) COB 3.8.4R (failing to take reasonable steps to ensure that a financial promotion is clear, fair and not misleading);
 - (3) COB 3.8.8(1)(c)R (failing to ensure financial promotions included a fair and adequate description of the risks involved);
 - (4) COB 3.6.1R (failing to confirm financial promotions are compliant before approval); and
 - (5) COB 2.1.3R (failing to ensure information communicated to customers are communicated in a clear, fair and not misleading manner).
- 2.7. As a consequence of these breaches the FSA imposes a financial penalty of £42,000 on City Gate.
- 2.8. The FSA considers City Gate's failings to be serious. City Gate held itself out as, and generated revenues on the basis of providing compliance services, including reviewing financial promotions, to IFAs who were ARs of City Gate. Those ARs were entitled to rely and relied on City Gate to have proper systems and controls in place to ensure that any financial promotions approved by City Gate were clear, fair and not misleading.
- 2.9. City Gate's failings in relation to the Scheme Financial Promotions meant that customers and IFAs who received the Scheme Financial Promotions could not properly assess the risks of making an investment in the Scheme. 53 customers

(including one of City Gate's customers) invested £9,452,000 into the Scheme which was put at a serious risk of loss.

2.10. Separately, the FSA have recently identified serious concerns that City Gate's systems and controls are not adequate to ensure that the business of its appointed representatives, for which it is responsible, is compliant with the relevant requirements and standards of the regulatory system and specifically in relation to the investment advice given by its appointed representatives to customers. As a consequence, City Gate has voluntarily varied their permissions to the effect that:

- (1) City Gate will not take on as principal any new appointed representatives;
- (2) City Gate will not carry out any new business advising on or arranging a pension transfer, a new income drawdown contract, or switching from an existing pension contract into a new contract; and
- (3) City Gate's appointed representatives will not carry out any pension transfer or income drawdown business, or switching from an existing pension contract into a new contract.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

3.1. The FSA's regulatory objectives, set out in section 2(2) of the Financial Services and Markets Act 2000 ("the Act") includes the protection of consumers.

3.2. 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 an amount as it considers appropriate."

3.3. The FSA therefore has the power, pursuant to section 206 of the Act, to impose a financial penalty of such amount as it considers appropriate where the FSA considers that an authorised person has contravened a requirement imposed upon it by or under the Act. The procedures to be followed in relation to the imposition of a financial penalty are set out in sections 207 and 208 of the Act.

3.4. City Gate is an authorised person for the purposes of section 206 of the Act. The requirements imposed on authorised persons include those set out in the FSA's Principles and Rules made under section 138 of the Act.

3.5. Section 21 of the Act provides:

(1) *“A person (“A”) must not, in the course of business, communicate an invitation or inducement to engage in investment activity.*

(2) *But subsection (1) does not apply if –*

(a) *A is an authorised person; or*

(b) *The content of the communication is approved for the purposes of this section by an authorised person”*

3.6. The FSA's Principles are a general statement of the fundamental obligations of firms under the regulatory system and reflect the FSA's regulatory objectives. The FSA's Principles and Rules constitute requirements imposed on authorised persons under the Act; breaching a Principle and/or a Rule can make a firm liable to disciplinary sanctions.

3.7. Principle 3 states:

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

3.8. Principle 2 states:

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

3.9. Principle 7 states:

“A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.”

3.10. For the purpose of this Notice, Financial Promotions are defined as:

“an invitation or inducement to engage in investment activity that is communicated in the course of business.”

in accordance with the glossary definition in the FSA Handbook.

- 3.11. Up to and including 31 October 2007, the COB Rules applied to City Gate during the period in which the Scheme Financial Promotions were approved. The relevant COB Rules and other FSA rules are set out in the Annex of this Notice.

Relevant guidance

- 3.12. In deciding to take the action above, the FSA has had regard to the guidance published in the Decision Procedure and Penalties Manual (“DEPP”), which forms part of the FSA’s Handbook and, together with the Enforcement Guide (“EG”), came into effect on 28 August 2007. In particular, the FSA has taken into account the general criteria for determining whether to take disciplinary action and the factors relevant to determining the appropriate level of financial penalty set out in DEPP 6.2 and 6.5 respectively.
- 3.13. The FSA has also had regard to the guidance published in the Enforcement Manual (“ENF”), and in particular Chapters 11 and 13 which set out the relevant guidance in force when the breaches set out in paragraphs 2.3 to 2.5 above were committed. ENF was replaced by DEPP and EG on 28 August 2007. In this case, there are no material differences between the guidance and factors to be taken into account when determining whether to take disciplinary action and the factors relevant to determining the appropriate level of financial penalty that were in force during the Relevant Period and those presently in force.

4. FACTS AND MATTERS RELIED ON

Background

City Gate

- 4.1. City Gate is an IFA based in Glasgow. City Gate has been authorised by the FSA since 1 December 2002.
- 4.2. During the Relevant Period, City Gate held a permission under Part IV of the Act to carry on the following regulated activities:
- (1) with respect to designated investment business: advising (including on pension transfers and opt-outs); agreeing to carry on a regulated activity; arranging deals in investments; and making arrangements; and

- (2) with respect to regulated home finance: advising on regulated mortgage contracts; arranging regulated mortgage contracts; and making arrangements.
- 4.3. Since 2003 City Gate has undertaken regulated activities on behalf of other IFAs. IFAs who were ARs of City Gate paid a monthly fee of £500 to City Gate. In return, City Gate provided services to the ARs, including reviews of proposed financial promotions to ensure that they complied with regulatory requirements and were clear, fair and not misleading. City Gate had four ARs in January 2003. This number had grown to eleven by March 2006.

The Bridford Group

- 4.4. On 21 January 2005 City Gate appointed Bridford Optimum Returns Limited (formerly Bridford Life Settlements Ltd) (“BORL”) and Bridford Money Management Limited (“BMML”) as ARs. BORL and BMML were part of the Bridford Group, a group of family-owned businesses based in Skipton, North Yorkshire.
- 4.5. During the Relevant Period, the main activity of BMML was providing advice to high net worth clients on investments, pensions, life assurance and inheritance tax. The main activity of BORL was the marketing, sale, and administration of life assurance policies.

Financial promotions

- 4.6. City Gate’s ARs had to submit all proposed financial promotions to City Gate for review and approval before issuing the financial promotion to customers or other IFAs.
- 4.7. Pursuant to section 21 of the Act, acting as Principal and in providing compliance services to its ARs, City Gate was obliged to review all financial promotions submitted to it by its ARs. City Gate had no control over the volume and type of financial promotions submitted to it by its ARs. City Gate was therefore required to have robust systems and controls in place to ensure that it could review financial promotions appropriately and only approve them if it was satisfied that the financial promotion was clear, fair and not misleading.

City Gate's systems and controls for reviewing financial promotions

- 4.8. City Gate's systems and controls required it to review and approve all proposed financial promotions by its ARs. If City Gate identified a concern with the financial promotion, it would highlight the concern and send it back to the relevant AR with a request to amend it.
- 4.9. In practice, City Gate's systems and controls for reviewing financial promotions were simplistic, informal and applied inconsistently.
- 4.10. City Gate's systems and controls for reviewing and approving financial promotions were inadequate in that:
- (1) City Gate did not require the AR to submit an explanation of the purpose of the financial promotion, including the audience it was intended to reach or the product it was promoting.
 - (2) City Gate did not require the AR to provide any evidence of any factual statements made in the financial promotion.
 - (3) City Gate did not provide any adequate guidance to its compliance staff to enable them to determine whether or not a financial promotion was clear, fair and not misleading.
 - (4) City Gate did not have a process which enabled it to distinguish between financial promotions for complex, higher risk products and financial promotions for simple, low risk financial products. As a result a financial promotion for a complex product, such as the Scheme, would be reviewed in the same way as a simpler product such as an ISA.
 - (5) City Gate had no formal procedures that required its compliance staff to record its reasons for rejecting or approving a financial promotion.

City Gate's record keeping

- 4.11. City Gate was obliged to maintain a register of those financial promotions that it approved. City Gate did have a financial promotions register in place ("The Financial Promotions Register") during the Relevant Period, but failed to keep it up to date.

Five of the financial promotions approved by City Gate during the Relevant Period were not recorded on the Financial Promotions Register.

- 4.12. City Gate also failed to ensure that the Financial Promotions Register only contained approved financial promotions. Three of the documents on the Financial Promotions Register were not financial promotions, but stationery in the form of letterheads, compliment slips and business cards. As a result, the Financial Promotions Register was not a complete or accurate record of all of the financial promotions City Gate approved.

The promotion of the Scheme

- 4.13. Between January and March 2006, BORL sent a number of documents to City Gate, including the two Scheme Financial Promotions: a Key Characteristics document (“the Key Characteristics Document”), which was approved on 19 January 2006, and two versions of a Key Features document (“the Key Features Document”) approved on 19 January 2006 and 9 March 2006. Both documents were intended to be given to customers to explain the nature of the Scheme and how it would work.
- 4.14. BORL also submitted supporting documents. The supporting documents consisted of a document purporting to set out the terms and conditions of the Scheme (“the Terms and Conditions Document”), two template letters to be sent to IFAs in the expectation that those IFAs would use them to promote the Scheme to their customers (“Letters to IFAs”), and an application form.
- 4.15. The Scheme offered customers a guaranteed return of at least 6% over a fixed one year period, significantly higher than the return offered by other guaranteed low risk investments at the time. BORL claimed that both the customers’ capital and the 6% return would be guaranteed by a bank (“the Bank Guarantee”).
- 4.16. City Gate knew, or should have known, at the time that it received the Scheme Financial Promotions and the supporting documents, that:
- (1) the Scheme Financial Promotions were the first substantive financial promotions that it had been asked to review by an AR.

- (2) the Scheme was unique in that no other bank product was offering a guaranteed 6% return over one year.
 - (3) comparable products at the time only offered returns of between 3 and 4%; and
 - (4) despite the assurance given by the Scheme Financial Promotions, no Bank Guarantee had been obtained.
- 4.17. City Gate had not been provided with and nor had it sought any evidence to suggest that such a bank guarantee would be obtained in good time or that there was a reasonable prospect of it being obtained. The factors set out above should have led City Gate to seek further information about the Scheme or to take other steps to determine the viability of the Scheme prior to approving it. In fact, City Gate approved each of the Scheme Financial Promotions without taking any such steps.
- 4.18. City Gate has explained to the FSA that, in essence, it considered that it could rely upon the statement of Neil Marlow (Director of BORL, BMML and Bridford Financial Solutions Limited who were the administrators of the scheme) that a Bank Guarantee could and would be obtained.
- 4.19. The Scheme Financial Promotions were subsequently used by BORL to market the Scheme to IFAs and by BMML in recommending the Scheme to their customers. 53 customers (including one of City Gate's customers) responded to the Scheme Financial Promotions and invested a total of £9,452,000 in the Scheme.

Terms and Conditions Document

- 4.20. On 19 January 2006 and 9 March 2006, City Gate approved the Terms and Conditions Document.
- 4.21. The Terms and Conditions Document outlined the operation of the Scheme, but failed to highlight the following risks to customers of investing in the Scheme, in that:
- (1) funds held in this Scheme may be used as leverage with other collateral to achieve the guaranteed returns;
 - (2) the obligation of sourcing the Bank Guarantee was in the hands of a party who was not under the control of BORL or City Gate; and

(3) customers' initial capital investment could be lost.

Key Characteristics Document

- 4.22. On 19 January 2006, City Gate approved a Scheme Financial Promotion submitted by BORL entitled “*Key Characteristics of Bank Secured Product*” (the Key Characteristics Document).
- 4.23. The Key Characteristics Document included the following claims:
- “*Guaranteed return of 6% paid by a bank rated at least P1/A [Moody’s ratings]*”
 - *Full capital guarantee by a bank rated at least P1/A**”
- 4.24. Readers of the financial promotion were directed to the definitions of “P1” and “A” by the inclusion of an asterix (*) after the assertion that capital would be guaranteed by a bank. “P1” was defined in the Key Characteristics Document as “*Issuers rated Prime-1 have a superior ability to repay short term debt obligations. This is the highest quality short term grade*”. “A” was defined in the Key Characteristics Document as “*Considered Upper Medium Grade and are subject to Low Risk.*”
- 4.25. By directing the reader to the definitions of “P1” and “A” immediately after considering the reference to the return of 6% being “*guaranteed*”, the Key Characteristics Document gave the impression that investors’ capital was guaranteed by an institution with a high credit-rating when, in fact, it was not.
- 4.26. The Key Characteristics Document therefore stated unequivocally that potential investors would enjoy a guaranteed return of 6% paid by a low-risk bank with a high credit rating by a reputable ratings agency and a full capital guarantee by such a bank. In fact, no such guarantees had been obtained at the time the Scheme Financial Promotions were approved and issued to customers, or existed any time thereafter. In addition, the Key Characteristics Document did not set out or otherwise alert potential investors to any of the risks associated with the Scheme, including those set out in paragraph 4.21.
- 4.27. City Gate approved the Key Characteristics Document without taking any steps to determine:

- (1) whether there was any reasonable prospect of a bank with a P1 or A credit rating guaranteeing the purported 6% return; and/or
 - (2) whether the “*full capital guarantee*” had been arranged or whether such a guarantee would be available.
- 4.28. By directing the reader to the definition of grade “A”, the Key Characteristics Document further gave the impression that the Scheme itself was low risk. City Gate approved the Key Characteristics Document despite these potentially misleading statements.

Key Features Document

- 4.29. On 9 March 2006, City Gate approved a Key Features Document submitted by BORL.
- 4.30. The Key Features Document stated that the Scheme had been established with “*a view to minimise risk.*” However, the Key Features Document did not set out what risk had been minimised and how that risk had been minimised. Neither was this explained in any of the other Scheme Financial Promotions or supporting documents.
- 4.31. The Key Features Document also stated that “*if, prior to the relevant payment date, such financial institution goes into liquidation, or becomes insolvent, or fails to comply with the terms of its obligations then you may lose part or all of your money and therefore get back less than you invested.*” The financial institution was a reference to the bank that would give the guarantee. The document failed to make reference to the other risks associated with the Scheme, including those set out in paragraph 4.21 above. These risks were not reflected in the other Scheme Financial Promotions or the supporting documents.
- 4.32. The Key Features Document stated that “*the guaranteed return of not less than 6% is dependent on the financial institution offering the guarantee.*” This was not reflected in the other Scheme Financial Promotion approved by City Gate, or any other documentation relating to the Scheme.

Letters to IFAs

- 4.33. BORL promoted the Scheme by sending letters highlighting the Scheme to other IFAs. BORL submitted two letters intended for other IFAs for approval to City Gate. The letters were approved by City Gate on 20 March 2006 and 11 April 2006.
- 4.34. The letters were misleading in that they gave the impression that a Bank Guarantee had been obtained, when in fact it had not. This posed a risk that IFAs would communicate to customers that a guarantee had already been sourced and that therefore the Scheme was a low risk investment.

City Gate's approval of the Scheme Financial Promotions

- 4.35. The Scheme Financial Promotions should also have been recorded in the Financial Promotions Register but were not. The only documents that related to the Scheme recorded on the Promotions Register were the letters to IFAs. These letters, along with other supporting documents, were the only documents relating to the Scheme Financial Promotions that City Gate retained.
- 4.36. City Gate did not take any steps to obtain information on how the Scheme would operate in practice. There was no evidence of steps taken by City Gate to establish the status of the Scheme, to assess the risks of the product or to ensure that the promotions were clear, fair and not misleading. City Gate stated that the only actions taken in reviewing the documents was to check that all the information was "*there and covered.*"
- 4.37. In relation to the assessment of the risk profile of the product, City Gate relied on the information provided by a director of BORL. City Gate did not make any assessment nor did it make enquiries as to the assessment carried out by BORL. There is no evidence that City Gate took any steps to understand what made a compliant financial promotion, or the steps to be taken in order to ensure a financial promotion is clear, fair and not misleading. In fact, City Gate has subsequently accepted that it did not understand or consider that it had to understand the details of the Scheme in order to approve the Scheme Financial Promotions.

Operation of the Scheme

- 4.38. From 1 September 2006, BORL and BMML ceased to be appointed representatives of City Gate. No guarantee was obtained in relation to the monies that customers invested in the Scheme. Ultimately, the monies were transmitted to the United States and used as collateral by a third party trader in an attempt to obtain the return that had been promised to customers. That transfer took place on 29 August 2007. The monies were due to be returned to customers, with the 6% return, on 5 September 2007. The trading was unsuccessful and the monies were frozen and held as collateral. Customers would have lost the whole of their investment but for the fact that the trustees' professional indemnity insurance paid out to customers their original investment and their promised 6% return.
- 4.39. Whilst City Gate had no involvement or knowledge of the transfer, the key risk that was not highlighted in the Scheme Financial Promotions, namely the risk of customers' monies being used as collateral, was in fact the risk that crystallised and put at risk the loss of customer's investments.

5. ANALYSIS OF BREACHES

Breach of Principle 3

- 5.1. By reason of the facts and matters set out in paragraphs 4.8 to 4.39 above, the FSA considers that City Gate failed to take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems. City Gate failed to establish systems and controls sufficient to ensure that it only approved financial promotions that were clear, fair and not misleading. City Gate's systems were simplistic, informal and applied inconsistently. City Gate did not take any adequate steps to ensure that, when presented with a financial promotion relating to a complex or unusual financial product such as the Scheme, it had adequate systems in place that could identify it as such and ensure that the firm took steps to gather and assess appropriate and sufficient information to be able to properly determine whether the financial promotion complied with regulatory requirements. In particular, that it was clear, fair and not misleading and included a fair and adequate description of the risks involved.

Breach of Principle 2

- 5.2. By reason of the facts and matters set out in paragraphs 4.13 to 4.39 above, the FSA considers that in reviewing and approving the Scheme Financial Promotions considering the supporting documents, City Gate failed to conduct its business with due skill, care and diligence in breach of Principle 2. In particular, City Gate failed to take any steps to determine how the Scheme would work in practice, whether the guarantees at the heart of it were available or to identify the risks to customers posed by the Scheme.

Breach of Principle 7

- 5.3. In using the Scheme Financial Promotions to communicate the details of the Scheme to its ARs and its customers, City Gate failed to communicate with its clients in a way that was clear, fair and not misleading in breach of Principle 7. As the Scheme Financial Promotions did not set out a key risk of the Scheme, namely that the customers' funds would be used as collateral, an AR recommending the Scheme to its customers could not assess whether the risk exposure of the Scheme matched the customer's appetite for risk and accordingly, whether the Scheme was suitable for the customer. Without this information about the risks of the Scheme, customers were unable to make an informed decision as to whether to invest in the Scheme or not.

Breach of COB Rules

- 5.4. In failing to take reasonable steps to ensure that the Scheme Financial Promotions:
- (1) were clear fair and not misleading;
 - (2) included a fair and adequate description of the risks involved; and
 - (3) were communicated to customers in a clear, fair and not misleading manner
- for the reasons set out in paragraphs 4.8 – 4.39 above, City Gate was in breach of COB 3.8.4R, COB 3.8.8(1)(c)R and COB 2.1.3R.
- 5.5. In failing to keep adequate records of each financial promotion and in failing to confirm that financial promotions are compliant before approval for the reasons set

out in paragraphs 4.1 – 4.39 above, City Gate was in breach of COB 3.7.1R and COB 3.6.1R.

6. ANALYSIS OF SANCTION

6.1. The FSA regards the decision to impose a financial penalty as a serious one. In determining whether a financial penalty is appropriate and, if so, its level, the FSA is required to consider all the relevant circumstances of the case. The FSA considers that the following factors set out in the DEPP are particularly relevant in this case.

Deterrence

6.2. 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.

The nature, seriousness and impact of the breach in question

6.3. In determining the appropriate sanction, the FSA has had regard to the seriousness of the contraventions, including the nature of the requirements breached, the number and duration of the breaches, and to the number of customers who were exposed to risk of loss. The FSA considers that the breaches identified in this case are of a serious nature.

6.4. The FSA considers City Gate's failings to be serious because:

- (1) City Gate's failure to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems in place in relation to the review and approval of financial promotions meant that there was a risk that the financial promotions it approved did not set out the relevant material risks and may have misled customers; and
- (2) the risk presented by City Gate's inadequate systems and controls crystallised when one of the key risks that should have been set out in the Scheme Financial Promotions, namely the use of the funds as collateral, led to the loss of the customers' investments in the Scheme.

The extent to which the breach was deliberate or reckless

- 6.5. The FSA has not determined that City Gate deliberately contravened regulatory requirements or was reckless.

The amount of benefit gained or loss avoided

- 6.6. City Gate received a total of £5,000 in respect of commission from the Scheme.

The size, financial resources and other circumstances of the firm

- 6.7. In determining the level of penalty, the FSA has been mindful of the size and financial situation, including the regulatory capital position, of the firm. There is no evidence to suggest that City Gate cannot pay the financial penalty.

Conduct following the breach

- 6.8. After City Gate was informed by the FSA of its concerns it co-operated fully with the FSA.
- 6.9. During the FSA's investigation, and in the course of its ordinary supervisory oversight of City Gate, the FSA identified serious concerns with the firm's systems and controls to mitigate the risk of unsuitable advice. City Gate has agreed to conduct a review of past business transactions conducted by the firm and its appointed representatives and has voluntarily varied its permissions as set out in paragraph 2.10 above.

Disciplinary record and compliance history

- 6.10. City Gate has not been the subject of previous disciplinary action.

Other action taken by the FSA

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

7. DECISION MAKERS

- 7.1. 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.

8. IMPORTANT

8.1. This Final Notice is given to City Gate under section 390 of the Act.

Manner of and time of payment

8.2. City Gate must pay to the FSA £10,500 within three months of the date of the Final Notice. The remaining balance of the financial penalty must be paid in three equal instalments of £10,500 quarterly thereafter.

If the financial penalty is not paid

8.3. If all or any part of the financial penalty is outstanding after the agreed date of payment, the FSA may recover the outstanding amount as a debt owed by City Gate and due to the FSA.

Publicity

8.4. 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. This 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 City Gate or prejudicial to the interests of consumers.

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

FSA contacts

8.6. For more information concerning this matter generally, you should contact Suzanne Burt at the FSA (direct line: 020 7066 1062).

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Georgina Philippou

FSA Enforcement Division

