Financial Services Authority

FINAL NOTICE

To: Close Investments Limited

Of: 10 Crown Place
London
EC2A 4FT

Date: 4 June 2010

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 Close Investments Limited ("CIL"/ "the Firm") a Decision Notice on 3 June 2010 which notified the Firm that for the reasons listed below, the FSA had decided to impose a financial penalty of £98,000 on the Firm pursuant to section 206 of the Financial Services and Markets Atc (2000) ("the Act"). This penalty is for breaches of Principle 10 (Clients' Assets) and Principle 3 (Management and control) of the FSA's Principles for Businesses, and Rules 7.3.2R (Organisational requirements: client money) and 7.8.1R (Notification and acknowledgement of trust), in the Client Assets Handbook ("CASS") between January 2008 and January 2010 ("the Relevant Period").

1.2. CIL 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 £140,000.

1.3. The Firm confirmed on 2 June 2010 that it will not be referring the matter to the Upper Tribunal (Tax and Chancery Chamber).

1.4. Accordingly, for the reasons set out below, the FSA imposes a financial penalty on CIL in the amount of £98,000.

2. REASONS FOR THE ACTION

2.1. The breaches of the Principles and CASS Rules, which are described in more detail in section 4 below, relate to a number of failings by CIL in relation to the segregation and protection of client money held by the Firm during the Relevant Period.

2.2. Throughout the Relevant Period CIL:

(1) breached Principle 10 in that it failed to place client money in segregated client money accounts with trust status and thereby failed adequately to protect client money; and

(2) breached Principle 3 in that it failed to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. In particular, CIL failed to implement and maintain adequate controls over client money in that it did not verify that 21 distribution accounts that should have been set up as client money accounts with trust status had been set up as such. Further, compliance monitoring conducted during the Relevant Period did not involve independent confirmation that all client money had been correctly placed in client money accounts with trust status and so its failure to set up the 21 distribution accounts as client money accounts with trust status was not identified for two years.

2.3. CIL also breached CASS Rules 7.3.2R and 7.8.1R in relation to the facts described at paragraph 2.2. above.

2.4. The FSA views these failings as particularly serious because:

(1) the failure to segregate and therefore adequately protect client money persisted over a two year period and put a significant number of investors at risk of financial loss; and

(2) during the Relevant Period:

(a) the aggregated amount of client money held in the 21 distribution accounts and at risk was £8.2 million; and

(b) the highest amount held in the accounts and at risk at any one time was £2.2 million.

2.5. The main objective of Principle 10 and the CASS Rules is to ensure that client money is adequately protected. A fundamental requirement is that firms keep client money segregated from firm money in separate accounts with trust status. This ensures client money is ring fenced for the benefit of consumers, so far as possible, in the event of the insolvency of the firm. If client money is not adequately segregated and a firm becomes insolvent then clients will stand to be treated as any other unsecured creditor.

2.6. As a result of the breaches set out above, CIL put clients at risk of financial loss by failing to afford them the protections offered by segregation of client money and trust

status. In the event of CIL's insolvency, the Firm's clients would have been classed as general unsecured creditors in the insolvency process rather than them having the right to reclaim their money from a pool of protected money. The likelihood of clients recovering their money in the event of insolvency would have been significantly reduced.

3. RELEVANT STATUTORY PROVISIONS

3.1. The FSA's regulatory objectives set out in section 2(2) of the Act include 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. CIL 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 Principles and Rules made under section 138 of the Act.

3.4. 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.

3.5. 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.

3.6. Principle 3 states:

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

3.7. Principle 10 states:

"A firm must arrange adequate protection for client's assets when it is responsible for them."

3.8. CASS 7.3.2R states:

"*A firm must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of client money, or of rights in connection with client money, as a result of misuse of client money, fraud, poor administration, inadequate record keeping or negligence.*"

3.9. CASS 7.8.1R states:

(1) "When a firm opens a client bank account, the firm must give or have given written notice to the bank requesting the bank to acknowledge to it in writing that:

(a) all money standing to the credit of the account is held by the firm as trustee (or if relevant, as agent) and that the bank is not entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against money in that account in respect of any sum owed to it on any other account of the firm; and

(b) the title of the account sufficiently distinguishes that account from any account containing money that belongs to the firm, and is in the form requested by the firm.

(2) In the case of a client bank account in the United Kingdom, if the bank does not provide the required acknowledgement within 20 business days after the firm dispatched the notice, the firm must withdraw all money standing to the credit of the account and deposit it in a client bank account with another bank as soon as possible."

4. FACTS AND MATTERS RELIED ON

Background

4.1. CIL is a subsidiary of Close Asset Management Holdings Limited which is the unregulated holding company for the Asset Management Division of Close Brothers Group. CIL is regulated and authorised by the FSA to hold client money. As a regulated firm CIL must comply with the rules set out in the FSA's Handbook, including the rules governing the protection of client money. In particular, CIL is required to hold client money in client money accounts with trust status.

4.2. CIL manages a number of unregulated collective investment schemes ("the Funds") which are generally open ended investment companies ("OEICs"). Before January 2008, CIL was appointed by the administrator of the Funds to arrange for the payment of all periodic distributions directly to the relevant investors. CIL made distribution payments directly to the investors from an account in the name of each of the Funds and therefore the accounts were not required to be client money accounts.

4.3. In January 2008 the distributions ceased to be paid by CIL. The administrator of the Funds contracted out this function to an external provider and appointed an asset servicing firm (the "External Provider") to arrange for the payment of the periodic distributions, amongst other things.

4.4. From January 2008, a new process was put in place for the payment of the periodic distributions. As distribution payments were no longer to be paid directly to investors, CIL arranged for distribution accounts to be opened in relation to each Fund ("Distribution Accounts") in order to pay distributions to investors. Although 21 of the Distribution Accounts should have been set up as client money accounts with trust status, none of them were.

4.5. CIL failed to verify that the 21 Distribution Accounts had been set up as client money accounts with trust status or that acknowledgement of trust status letters had been received in relation to them. During the Relevant Period:

(1) the Firm did not maintain a list of all bank accounts which identified those accounts that should have client money status; and

(2) compliance reviews did not involve independent confirmation that all client money accounts had been correctly designated as such and afforded trust status, but instead used lists that only included those accounts actually designated as client money accounts.

4.6. During the course of a compliance monitoring review in January 2010, CIL's compliance function noted that that one of the Distribution Accounts was overdrawn and queried whether, as it contained client money, the FSA had been duly notified. CIL then identified the failure to segregate the client money in 21 of the Distribution Accounts. CIL subsequently took remedial action to ensure that it held all client money appropriately, in client money accounts with trust status.

4.7. The balance held in the Distribution Accounts fluctuated considerably during the Relevant Period due to regular distribution payments being made to shareholders. The aggregated amount of client money held in the 21 Distribution Accounts and at risk during the Relevant Period was £8.2 million and the highest amount held in the accounts and at risk at any one time was £2.2 million.

4.8. The client money failings at CIL resulted in 2,384 investors in the Funds being put at risk of financial loss over a prolonged period of time.

5. ANALYSIS OF BREACHES AND SANCTION

5.1. Principle 10 and the CASS Rules require that a firm arranges adequate protection for clients' assets when it is responsible for them and holds client money separate from the firm's money. In failing, throughout the Relevant Period, to segregate any of the client money in the 21 Distribution Accounts, CIL failed to arrange adequate protection for clients' assets. Accordingly the Firm breached Principle 10 and the CASS Rules.

5.2. Principle 3 requires that a firm takes reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. CIL failed to establish adequate risk management systems relating to client money, as a result of which it failed to identify and remedy the client money failings in relation to the 21 Distribution Accounts for a period of two years, and accordingly the Firm was in breach of Principle 3.

5.3. As a result of the above failings, CIL put its clients at risk of financial loss over a prolonged period of time.

5.4. In deciding to take the action above, the FSA has had regard to the guidance published in the FSA handbook, in particular as set out in Chapter 12 of the Enforcement Guide ("EG") and Chapter 6 of the Decision Procedure and Penalties

Manual ("DEPP"), which forms part of the FSA Handbook of Rules and Guidance. 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.

Deterrence

5.5. The principal purpose of imposing 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.

5.6. The FSA considers compliance with client money requirements to be of significant importance and considers there to be a need to send a strong message to other firms that they must handle client money in compliance with the CASS Rules and the Principles. In particular, firms must ensure that client money is segregated in client money accounts with trust status, thereby affording protection to clients in the event of the firm's insolvency.

The nature, seriousness and impact of the breach

5.7. In determining the appropriate sanction, the FSA had regard to the seriousness of the contraventions, including the nature of the requirements breached, the number and duration of the breaches, and the number of investors who were at risk of financial loss.

5.8. The FSA considers CIL's failings to be serious because:

(1) Client money was not segregated and was therefore at risk for a prolonged period of time and a large number of investors were exposed to risk of financial loss (albeit no investors did suffer any financial loss); and

(2) CIL should have been fully aware of the obligations placed on it by Principle 10 and the CASS Rules and of the importance of complying with these rules.

Extent to which the breach was deliberate or reckless

5.9. The FSA has not determined that CIL deliberately or recklessly contravened regulatory requirements.

Size, financial resources and other circumstances of the firm

5.10. There is no evidence to suggest that CIL is unable to pay the financial penalty.

Amount of profits accrued or loss avoided

5.11. There is no evidence to suggest that CIL deliberately set out to accrue profits or avoid a loss from the breaches.

Conduct following the breach

5.12. In deciding on the appropriate disciplinary sanction, the FSA recognises the following factors which mitigate the seriousness of the failings identified in this case:

(1) CIL identified and self-reported the breaches to the FSA and put in place measures to rectify the breach.

(2) CIL has reviewed and revised its client money processes and procedures.

(3) CIL is engaging external accountants to conduct an audit of its client assets procedures.

(4) CIL has been cooperative throughout the Enforcement proceedings and worked constructively to facilitate an early settlement.

Disciplinary record and compliance history of the Firm

5.13. CIL has not been the subject of previous disciplinary action.

6. CONCLUSIONS

6.1. In light of the matters above, the FSA has decided to impose a financial penalty of £98,000 on CIL for the breaches of Principle 3 and Principle 10 of the FSA's Principles for Businesses, and Rules 7.3.2R and 7.8.1R of the Client Assets Handbook.

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 the Firm in accordance with section 390 of the Act.

Manner of and time for Payment

8.2. The financial penalty must be paid in full by the Firm to the FSA by no later than 18 June 2010, 14 days from the date of the Final Notice.

If the financial penalty is not paid

8.3. If all or any of the financial penalty is outstanding on 19 June 2010, the FSA may recover the outstanding amount as a debt owed by the Firm 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. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such

publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.

8.5. 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 Jason Burt of the Enforcement and Financial Crime Division of the FSA on direct line 020 7066 9326.

Georgina Philippou
Head of Department
FSA Enforcement and Financial Crime Division