Financial Services Authority

FINAL NOTICE

To:	**Coutts & Company**
FSA Reference Number:	122287
Address:	440 Strand, London WC2R 0QS
Date:	7 November 2011

1. ACTION

1.1 For the reasons given in this Notice, the FSA hereby imposes on Coutts a financial penalty of £6.3 million.

1.2 Coutts agreed to settle at an early stage of the FSA's investigation. It 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 £9 million on Coutts.

2. SUMMARY OF REASONS

2.1. The penalty is in respect of Coutts' failure to comply with Principle 9 in connection with its sale of the AIG Life Premier Access Bond and Premier Bond, Enhanced Variable Rate Fund (the Fund) between 3 December 2003 and 15 September 2008 and its compliance review of those sales between October 2008 and July 2009.

2.2. Coutts failed to take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who was entitled to rely upon its judgement.

2.3. In particular, Coutts:

(1) failed to have an adequate sales process in place for the Fund. Coutts' advisers were not provided with adequate training on the Fund and its features and risks were not sufficiently explained to them. Nor did Coutts' sales documentation accurately or adequately describe the Fund and its risks. As a result, customers were exposed to an unacceptable risk of an unsuitable sale of the Fund;

(2) recommended the Fund to some customers even though it may not have provided them with the level of capital security they appear to have required. In other cases, it should have advised customers in relation to their competing investment objectives and made them sufficiently aware of the trade-off between the Fund's risks and returns. Many customers were advised to invest a large proportion of their overall assets in the Fund and there is a risk that their investments were not appropriately diversified;

(3) generally informed customers that the Fund was a cash fund which invested in money market instruments and could be seen as an alternative to a bank or building society account. However, a significant proportion of the Fund was invested in assets which did not meet this description and customers may have misunderstood the true position about the risks they were assuming;

(4) failed to respond appropriately to the changing market conditions in late 2007 and during 2008 when there was a greater risk of the Fund suspending redemptions and of customers suffering a loss. Despite having been aware of these issues affecting the Fund, Coutts failed to make the necessary changes to the way in which it sold the Fund, and did not ensure that advisers who sought to reassure existing customers inquiring about their investment in the Fund provided a fair explanation of the risks. Nor did Coutts properly deal with questions raised from December 2007 around its past sales of the Fund, including about whether it had explained the Fund's risks to customers adequately and whether their investments were appropriately diversified; and

(5) failed to undertake an effective compliance review of its sales of the Fund after the Fund was suspended and customers complained. The review failed to adequately address suitability and disclosure issues and was not completed in a timely manner.

2.4. As a consequence of the above failings, Coutts' customers were exposed to an unacceptable risk of an unsuitable sale of the Fund over the Sales Period. At the time of the Fund's suspension on 15 September 2008, 247 Coutts customers had £748 million invested in the Fund. Of these, 93 customers have complained.

2.5. Following discussions with the FSA, Coutts has agreed to implement a comprehensive past business review of its sales of the Fund. This will, where necessary, include contact with customers who may have been adversely affected by Coutts' failings.

The review will be overseen by an independent third party. Coutts will compensate all customers who have suffered loss as a result of any failings on its part.

3. DEFINITIONS

3.1. The following definitions are used in this Final Notice:

"Act" means the Financial Services and Markets Act 2000;

"adviser" means Coutts Financial Planners authorised to sell the Fund;

"AIG" means AIG Inc;

"ALICO" means American Life Insurance Company;

"Coutts" means Coutts & Company;

"DEPP" means the FSA's Decisions Procedure and Penalties manual;

"ENF" means the FSA's Enforcement manual;

"FSA" means the Financial Services Authority;

"Fund" means the AIG Life Premier Access Bond and Premier Bond, Enhanced Variable Rate Fund;

"Principles" means the FSA's Principles for Businesses;

"Relevant Period" means 3 December 2003 to July 2009;

"Sales Period" means 3 December 2003 to 15 September 2008; and

"Tribunal" means the Upper Tribunal (Tax and Chancery Chamber).

4. FACTS AND MATTERS

Background

4.1. Coutts offers a range of private banking services, including investment and wealth management and advisory services, to high net worth individuals and businesses. It is wholly owned by the Royal Bank of Scotland Group, through its National Westminster Bank subsidiary. It was authorised by the FSA on 1 December 2001. Coutts has permission from the FSA to carry on regulated activities in relation to, among other things, advising on investments and arranging deals in investments.

4.2. The Fund was recommended to Coutts' customers in an advised sales process by Coutts' advisers. They operated out of Coutts' various UK offices. Coutts' sales force also comprised private bankers who were responsible for the day to day relationship with customers, but private bankers were not permitted to sell the Fund from 1 June 2005.

4.3. Coutts commenced sale of the Fund on 3 December 2003. The Fund was provided by ALICO, a UK branch of a wholly owned subsidiary of AIG. AIG was, and remains, one of the world's largest international insurance and financial services organisations and was AA rated from 2005 until its downgrade on 15 September 2008. ALICO's UK insurance business was ringfenced from AIG's and its own assets and liabilities through a separate account. As the Fund was held within an insurance bond, a customer's investment was also subject to the Financial Services Compensation Scheme, which covered 100% of the first £2,000, plus 90% of the balance (with no upper limit) in the event ALICO defaulted.

4.4. The Fund was invested in financial and money market instruments, including certificates of deposit, bank deposits and commercial paper. However, unlike a standard money market fund, it was seeking to deliver an enhanced return by investing a material proportion of the Fund's assets in:

(1) asset backed securities. These comprised on average 27% of the Fund's assets between 6 July 2005 and 28 December 2007 and reduced to between 23% and 15% in the period 1 February 2008 to 8 August 2008, varying over the Sales Period between approximately 31% and 14%. They were primarily backed by UK residential and commercial mortgages;

(2) floating rate notes. These comprised on average 38% of the Fund's assets between 6 July 2005 and 28 December 2007 and reduced to between 30% and 27% in the period 1 February 2008 to 8 August 2008, varying over the Sales Period between approximately 51% and 27%; and

(3) assets which had terms to maturity of between 3 and 5 years. Again, these comprised on average 54% of the Fund's assets between 6 July 2005 and 28 December 2007 and reduced to between 41% and 15% in the period 1 February 2008 to 8 August 2008, varying between approximately 65% and 15% of the Fund's assets.

4.5. The Fund's investment strategy was to smooth out fluctuations in the market value of its assets so that it achieved steady, increasing returns for customers which were better than the returns available on a typical bank deposit account. Customers purchased units in the Fund which had a value assigned to them by ALICO. ALICO determined the value of the units by reference to the book value of the Fund's underlying assets, rather than their market value. This was because it was intended that the underlying assets would be held by the Fund to their maturity periods of between one day and five years. However, if necessary, the longer dated assets could also be sold on the secondary market prior to maturity for a price which depended upon market conditions. To meet ordinary levels of withdrawal requests, the Fund held a proportion of its assets in cash or near cash products (overnight cash or on very short term deposit). ALICO quoted variable annual rates of return for the Fund on approximately a monthly basis.

4.6. The Fund was designed to be tax efficient; there was no personal liability to lower or basic rate income tax or capital gains tax because ALICO accounted for tax liabilities on the underlying funds. Higher rate tax payers were only liable to pay additional tax on any gains over the amounts invested when they withdrew more than 5% in any policy year.

4.7. During the financial crisis of 2007 and 2008, the market values of some of the assets in the Fund fell below their book values. There was also adverse press about the financial stability of ALICO's parent company, AIG. This, together with volatile market conditions, prompted concerns on the part of Coutts and some of its customers about the Fund. From mid to late 2007, in view of the then market conditions, ALICO began to increase the liquidity of the Fund, including by decreasing the proportion of asset backed securities in the Fund and increasing the proportion of overnight cash.

4.8. On 15 September 2008, the day of Lehman Brothers' application for Chapter 11 bankruptcy protection in the US and a sudden drop in AIG's share price, a large number of investors sought to withdraw their investments and there was a run on the Fund. ALICO was unable to meet all withdrawal requests immediately. It established that it could not meet the requests without having to sell some of its longer dated assets for materially less than their book value, which would have given rise to a significant drop in the accrued value of customers' investments. ALICO suspended withdrawals and ultimately closed the Fund to new customers.

4.9. Existing customers were subsequently permitted to withdraw 50% of their investment (comprising capital plus accrued interest), realising its full accrued value. However, since 14 December 2008, they have been able to withdraw the remaining 50% but not for its full value (as at 14 December 2008, this represented a 13.5% reduction in the accrued value of their entire investment). ALICO offered a guarantee that customers would get back this proportion of their investment in full, based on its value as at 14 December 2008, if they kept their money in a Protected Recovery Fund (which ALICO established) until 1 July 2012. Eight customers did not enter the Protected Recovery Fund and suffered a loss on their accrued investment (of these, 5 suffered a capital loss). As at 17 October 2011, customers who transferred 50% of their investment into the Protected Recovery Fund have, taking into account distributions made from that fund, recovered approximately 99% of the value of their entire investment as at 14 December 2008. However, these customers have lost the opportunity to earn an investment return on 50% of these monies since 14 December 2008. These customers have also suffered a loss of liquidity. Coutts attempted to address this by offering a loan to these customers up to the amount they have been unable to access in the Protected Recovery Fund. This loan attracts an interest rate of one per cent over the Bank of England Base Rate.

Failure to have an adequate sales process in place for the Fund

4.10. Coutts failed to establish an adequate sales process for the Fund. Coutts relied on another member of its group to carry out the due diligence on the Fund with a view to determining whether the Fund should be sold by Coutts. This was an appropriate procedure to follow. However, Coutts did not take the additional and necessary steps to understand all of the Fund's features and risks in order to consider sufficiently how they should be taken into account in the sale of the Fund. This was a key contributor to the specific failings detailed below.

Inadequate training and guidance for advisers

4.11. Coutts failed to provide adequate training and guidance on the Fund to its advisers.

4.12. Coutts made some written guidance available to advisers in relation to the Fund, in addition to the general training it provided to advisers about financial products. It otherwise relied upon its advisers actively seeking out information for themselves about the further details of its features and risks. Coutts should have provided additional, product-specific training and guidance to minimise the risk of its advisers failing to:

(1) properly understand the more detailed but potentially important characteristics of the Fund;

(2) explain adequately to customers the risks associated with the Fund; and

(3) appreciate when Coutts' other products should be recommended to customers instead of the Fund.

4.13. The FSA's review of documentation held on a number of sales files indicates that many advisers may have underestimated the Fund's risks and failed to describe them appropriately to customers. The lack of adequate product-specific training is likely to have contributed to the apparent failure of some advisers to fully understand the Fund.

Sales documentation

4.14. Coutts' suitability letters, which recorded its recommendation of the Fund to customers, contained descriptions about the Fund which, in the absence of an appropriate explanation to the customer during the sale, were inaccurate and were in any event potentially unclear and potentially misleading.

4.15. Template suitability letters were produced by Coutts' Training and Competency team and were used by Coutts' advisers until the Fund's suspension in September 2008. The letters were personalised having regard to the particular circumstances of the customer. The standard paragraphs in the letters which described the Fund were not usually amended.

4.16. The template suitability letters informed customers that their investment was in a single premium, unit linked whole of life assurance policy and as the Fund was unit linked, the value of their investment could go down as well as up. They also informed customers that ALICO reserved the right to introduce a 90 day notice period which would only be applied in very exceptional circumstances. However, the following standard phrases which appeared in Coutts' template suitability letters (based on similar language in ALICO's literature but adapted and used by Coutts in a different context) could have given an unclear, unfair or misleading explanation of the Fund:

(1) That the Fund invested in "*money market instruments*" and in "*a wide range of assets within the money markets*". The letters should not have referred to the assets in the Fund as money market instruments without also explaining that a material proportion of the Fund was invested in assets which were more complex and had longer maturity dates than assets in a standard money market

fund in order to generate enhanced rates of return. They should also have explained that because of this, the Fund exposed customers to greater levels of capital and liquidity risk than a standard money market fund;

(2) That the Fund was a "*cash*" product. This was an inaccurate description of the Fund because it contained a significant proportion of non-cash assets, including the asset backed securities (which were backed by UK residential and commercial mortgages and generally had terms to their maturity of three to five years) and floating rate notes (which generally had terms to their maturity of one to three years); and

(3) The Fund could "*be seen as an alternative to traditional bank and building society deposits*". It may not have been clear to customers from these words and the context in which they were used that, in fact, in order to generate an enhanced return, the Fund exposed customers to greater levels of capital and liquidity risk than that typically associated with a traditional bank or building society deposit account.

4.17. A document summarising the characteristics of a "*cash bond*" was also enclosed with suitability letters sent to customers from April 2007. The title of this document was potentially misleading and it may not have been clear to customers that the Fund was also comprised of non-cash assets.

4.18. Coutts' suitability letters should have highlighted and explained the risks, as well as the benefits of the Fund, in a balanced way. As a result of the issues identified above the template suitability letters did not adequately explain the risks and there was therefore a risk that customers were unable to make an informed decision about whether to invest in the Fund.

4.19. In particular, there was a risk that some customers may have compared the returns on other financial products with the returns on the Fund without appreciating that they were not comparing like for like in terms of the risks they were assuming.

Failure to monitor the Fund effectively

4.20. Coutts relied on another member of its group to undertake an annual review of the Fund with a view to determining whether the Fund should continue to be sold by Coutts. However, Coutts did not adequately consider how the Fund was changing over time and how it had been described to customers: for example, how changes in the Fund's asset composition and market developments could impact on the Fund over time. This information affected the level of risk associated with the Fund and therefore whether any changes should be made over time as to how the Fund was sold.

Risk of unsuitable sales

4.21. The FSA considers, based on its review of sales files, that there was a significant risk that a material number of unsuitable sales have been made. The FSA's review did not include customer contact and, as such, was not able to determine if actual unsuitable sales were made.

Failings in relation to risk to capital

4.22. Many Coutts customers had stated that they were looking for a short term cash position or a cash type alternative with a higher rate of return than a bank or building society account. Others described themselves as risk averse and wanted to avoid the risk of a bank or building society default associated with a typical deposit account. Some Coutts customers wanted to invest in a product with capital protection.

4.23. Coutts recommended the Fund to customers which included the types of customer referred to above. However, the Fund was potentially unsuitable for such types of customer because a significant proportion of its assets were not cash or cash alternatives (which is what those customers appear to have requested) and because the Fund exposed them to a level of capital risk which was greater than they appeared willing to accept.

4.24. Coutts' customers who invested in the Fund generally indicated that they had a limited appetite for investment risk. However, they were chasing returns which were better than those offered on a typical bank deposit account. By recommending the Fund to these customers, Coutts aimed to meet their objectives of achieving a high level of return. However, Coutts' advisers should have drawn to their attention the fact that there were mis-matches in their investment objectives in that they could not achieve the level of return they were seeking without also being exposed to an increased level of capital risk. They should have advised customers in relation to their competing investment objectives and assisted them to make trade-offs between them. However, the FSA has found little or no evidence in the sales files it has reviewed of Coutts' advisers having had appropriate discussions with customers about this trade-off in risks and rewards when recommending the Fund.

Failings in relation to diversification

4.25. In the files it has reviewed as part of its investigation, the FSA has identified customers who have been advised to invest what Coutts understood to be up to 100% of their total investment assets, comprising millions of pounds, in the Fund. Approximately 26% of customers who remained in the Fund at the time of its suspension had been advised to invest more than half of their investment assets in the Fund.

4.26. Coutts sales files for these customers do not evidence a sufficiently robust rationale for this level of investment in the Fund for many of these customers. These customers were exposed to an unacceptable risk of their investment assets not being appropriately diversified.

4.27. Although the Fund's underlying assets were diverse, by investing so high a proportion of their overall wealth into one product, customers were overexposed to risks associated with a single fund provider and to the risk of the Fund failing to be able to meet withdrawal requests in the ordinary course because of the long dated nature of some of its assets (a risk which in fact crystallised).

4.28. Although Coutts had a general policy on diversification of investment products, that policy did not apply to the Fund. Coutts failed to give any specific guidance to its advisers on how diversified customers' investments in the Fund should be.

Failure to respond appropriately to the changing market conditions in late 2007 and during 2008

4.29. In late 2007 and during 2008 there was increased uncertainty with regard to the market value and liquidity of some of the underlying assets of the Fund. These issues particularly affected the asset backed securities (which were primarily backed by UK residential and commercial mortgages) and floating rate notes in the Fund. As a result, during this period, there was an increased risk of the Fund suspending redemptions and of customers suffering a loss because:

(1) the market value of a material proportion of the Fund's assets dropped to below their book value. This gave rise to an increased likelihood of ALICO changing the valuation approach for the Fund's units so that they reflected the market value of those assets rather than their book value. This would have resulted in a decrease in the value of the Fund's units and consequently a drop in the value of customers' investments in the Fund; and

(2) there was speculation in the press about the financial stability of ALICO's parent company, AIG. Together with the volatile market conditions, this increased the risk of a run on the Fund. In this event, ALICO was unlikely to be able to meet all withdrawal requests without having to sell quickly some of the longer dated and less liquid assets in the Fund at below book value. A significant increase in withdrawals could have forced ALICO to suspend withdrawals from the Fund to allow it to sell assets and fairly value customers' units in the Fund (a risk which in fact crystallised in September 2008).

4.30. In response to the changing market conditions, Coutts initiated discussions with ALICO to obtain additional information about the Fund. Coutts took comfort from ALICO's decision in late 2007 to begin to increase the overall cash composition of the Fund in view of market conditions by decreasing the proportion of asset backed securities in the Fund and increasing the proportion of overnight cash. It met ALICO on two occasions, obtained further information on the assets held within the Enhanced Fund (in particular confirming that there was no exposure to US subprime mortgages), and monitored outflows as well as the increasing cash composition of the Fund.

4.31. In response to speculation in the press about the financial stability of AIG, ALICO's parent company, Coutts investigated and reconfirmed the ringfencing in place to protect customer investments in the Fund from the financial position of AIG, drew comfort from this protection, and updated sales advisers about this ringfencing. Coutts also continued to monitor press commentary on the position of AIG through the middle of 2008, when there continued to be differing opinions in the market about the extent of AIG's exposure to US subprime mortgages.

4.32. Whilst Coutts' above actions were in themselves appropriate, overall they amounted to an insufficient response to the increased risks to the Fund which Coutts had identified. In particular, these actions did not adequately mitigate the risk of a suspension of the Fund or of customers suffering a drop in the value of their investment. The failure to react properly meant that Coutts did not take adequate steps to address the interests of customers. In particular, Coutts:

(1) did not properly explain these risks or their impact to its advisers, although it did make available to its advisers some information received from the product provider about the assets underlying the Fund. Coutts did not therefore ensure that its advisers were in a position to take the above risks into account when assessing whether the Fund was suitable for new customers. Advisers were inappropriately reassured about the Fund because they were given incomplete information;

(2) failed adequately to disclose the issues affecting the Fund to new customers, or alternatively stop selling the Fund; and

(3) did not take appropriate action to ensure that advisers who sought to reassure existing customers inquiring about their investment in the Fund provided a fair explanation of the risks.

Failure to adequately investigate and address questions raised about past sales

4.33. In addition, from December 2007, Coutts became aware of, and was considering, the questions detailed below about how it had previously sold the Fund. In particular, a sales adviser flagged the need for advisers to understand that enhanced funds are not like funds that invest in short term, highly rated government debt. Coutts became aware through discussions with four of its advisers in January 2008 that some of them did not know all of the types of assets in which the Fund was invested.

4.34. Between December 2007 and February 2008, questions were raised by a senior member of staff as to whether customers who remained invested in the Fund may have been exposed to material liquidity risk for some time without their knowledge and whether advisers were aware of, and communicating to customers, the higher risk profile of the Fund compared to other products. It was also suggested by that staff member that Coutts investigate whether the assets of customers of the Fund were adequately diversified.

4.35. Despite these issues having been highlighted, Coutts failed to take prompt and effective action to address them. For example, it did not carry out a review of past sales of the Fund to determine whether its risks had been adequately highlighted to customers and whether they received a suitable recommendation to invest in the Fund, until after the suspension of the Fund (see paragraphs 4.37 to 4.40 below). Nor did Coutts ensure its advisers were adequately informed about the Fund to be able to determine whether it was suitable for prospective customers or be in a position to respond appropriately to queries from existing customers.

4.36. In respect of the diversification issue, Coutts did conduct an investigation into its top 13 customers by value of their investment in the Fund which revealed that some customers, who had millions of pounds invested in the Fund, had between 50% and 90% of their overall investment assets in it. Whilst there might have been a rationale for such levels of investment, further consideration should have been given to this and its impact, if any, on the position of other customers.

Inadequate compliance sales review

4.37. Between October 2008 and July 2009 Coutts carried out a compliance review of its sales of the Fund to customers who remained invested in the Fund as at 15 September 2008. However, the review was inadequate in that it failed to adequately address suitability and disclosure failures by Coutts' advisers. Nor was the review completed in a timely manner.

4.38. Coutts carried out the review in response to a significant number of complaints it received following the Fund's suspension on 15 September 2008 from customers who it had advised to invest in the Fund. Most of these complaints were in relation to allegations of unsuitable advice and misleading information.

4.39. The quality of the checklist used by Coutts' compliance personnel for carrying out the review was poor. In particular:

(1) there was nothing in the questionnaire which prompted those conducting the review to consider whether the right product was recommended to the customer in view of their financial circumstances and objectives; and

(2) the questionnaire was process driven and not customer outcome focussed.

4.40. As a result of its review, Coutts identified 10 clients which it considered were entitled to redress and offered them redress in the form of either a settlement sum or a limited recourse loan pending maturity of the Protected Recovery Fund.

Impact on customers

4.41. A total of 247 Coutts customers with investments totalling £748 million were invested in the Fund on the date of its suspension on 15 September 2008.

4.42. 239 customers (97%) opted to withdraw 50% of their investment (realising its full value) and opted to transfer some or all of the remaining 50% to ALICO's Protected Recovery Fund. As at 17 October 2011, customers who transferred 50% of their investment into the Protected Recovery Fund have, taking into account distributions made from that Fund, recovered approximately 99% of the accrued value of their entire investment as at 14 December 2008. If these customers keep their investment in the Protected Recovery Fund until 1 July 2012, ALICO has guaranteed to customers that they will get back 100% of this proportion of their investment based on its value on 14 December 2008. However, these customers have lost the opportunity to earn an investment return on this proportion of their investment since that date. Coutts has offered them loans at one percent over the Bank of England Base Rate up to the value of their investment in the Protected Recovery Fund. 46 customers have opted to utilise this loan.

4.43. Eight customers withdrew the entirety of their investment before 14 December 2008 and suffered a loss of approximately 13.5% of its accrued value. Of these, 5 suffered a capital loss.

4.44. Coutts has received complaints concerning the Fund from 93 (38%) customers who were invested in the Fund at the time of its suspension in September 2008.

4.45. In addition, four sets of legal proceedings have been commenced against Coutts by Coutts' customers in relation to the recommendations they received to invest in the Fund. These proceedings have not yet concluded.

4.46. Coutts will compensate all customers who have suffered loss as a result of any failings on its part.

5. FAILINGS

5.1. On the basis of the facts and matters set out above, Coutts has breached Principle 9 (Customers: relationships of trust).

5.2. Principle 9 states:

"*A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgement.*"

5.3. By reason of the matters set out in paragraphs 4.10 to 4.3640 above, Coutts has breached Principle 9 by failing to establish and maintain an adequate sales process for the Fund and thereby failing to take reasonable care during the Sales Period to ensure the suitability of its advice in relation to the Fund for its customers. In addition, Coutts failed to respond appropriately to issues affecting the Fund in the period December 2007 to 15 September 2008, investigate and address questions about its past sales of the Fund identified during that period and carry out an adequate compliance review of its sales of the Fund between October 2008 and July 2009.

6. SANCTION

Relevant guidance on sanction

6.1. The FSA has considered the disciplinary and other options available to it and has concluded that a financial penalty is the appropriate sanction in the circumstances of this particular case.

6.2. In determining the financial penalty, the FSA has had regard to guidance contained in DEPP and ENF, which formed part of the Handbook during the Relevant Period. During that period, both DEPP 6.5 and Chapter 13 of ENF contained some of the factors that may be of particular relevance in determining the appropriate level of a financial penalty. However, DEPP 6.5.1 G and ENF 13.3.4 G both stated that the criteria listed in DEPP 6.5 and ENF 13.3 respectively were not exhaustive and that all relevant circumstances of the case should be taken into consideration. In determining whether a financial penalty is appropriate and the amount, the FSA is therefore required to consider all the relevant circumstances of the case.

Deterrence

6.3. The FSA considers that in this case, the financial penalty imposed will 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 benefit of compliant behaviour. It will strengthen the message to the industry that it is vital for firms to take reasonable care to ensure the suitability of their advice to customers.

The nature, seriousness and impact of the breach in question

6.4. The FSA has had regard to the seriousness of the breaches, including the nature of the requirements breached, the number and duration of the breaches, the number of customers who were exposed to risk of loss and whether the breaches revealed serious weakness of the management systems or internal controls. In view of these, the FSA considers that Coutts' breaches are of a serious nature. The failings identified within Coutts existed for more than four and half years.

The extent to which the breach was deliberate or reckless

6.5. The FSA does not consider that the misconduct on the part of Coutts was deliberate or reckless. However, the FSA considers it particularly serious that Coutts failed to take reasonable care to establish and maintain an adequate sales process for the Fund and ensure the suitability of its advice throughout the Relevant Period. The FSA also considers it particularly serious that Coutts failed to take prompt and appropriate action to address questions raised by a senior member of staff in relation to the Fund and its sales of it.

The size, financial resources and other circumstances of the person on whom the penalty is imposed

6.6. The FSA has taken into account Coutts' size and financial resources. Coutts is a major private bank in the UK. As such, it has a leading competitive position in the market and its practices set an example for others in the financial services industry. During the Relevant Period, Coutts' gross income from sales of the AIG Life Premier Access Bond and Premier Bond Standard Rate Variable Fund and Enhanced Rate Variable Fund was approximately £10.5 million. During the Relevant Period, Coutts advised on investments in the Fund to approximately 427 customers. The total value of investments in the Fund by Coutts' customers during this period was £1.45 billion.

Conduct following the breach

6.7. In consultation with the FSA, Coutts has agreed to undertake a review, overseen by an independent third party, in relation to all of its sales of the Fund to customers who remained invested at the time of the Fund's suspension on 15 September 2008 to ensure that customers do not lose out as a result of the failings identified in this Notice. For any sales which are found to be unsuitable, redress will be paid to the customers to ensure that they have not suffered financially.

6.8. Since the commencement of the FSA's investigation, Coutts and its senior management have worked in an open and cooperative manner with the FSA.

7. PROCEDURAL MATTERS

Decision maker

7.1. The decision which gave rise to the obligation to give this Final Notice was made by the Settlement Decision Makers.

7.2. This Final Notice is given to Coutts under and in accordance with section 390 of the Act.

Manner of and time for payment

7.3. The financial penalty must be paid in full by Coutts to the FSA by no later than 21 November 2011, 14 days from the date of the Final Notice.

If the financial penalty is not paid

7.4. If all or any of the financial penalty is outstanding on 22 November 2011, the FSA may recover the outstanding amount as a debt owed by Coutts and due to the FSA.

Publicity

7.5. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to Coutts or prejudicial to the interests of consumers.

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

FSA contacts

7.7. For more information concerning this matter generally, contact Lance Ellison (direct line: 020 7066 2422 / fax: 020 7066 2423) of the Enforcement and Financial Crime Division of the FSA.

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William Amos
FSA Enforcement and Financial Crime Division