
FINAL NOTICE

To: Cricket Hill Financial Planning Limited

Address: Unit 8a, Maple Estate, Stocks Lane, Barnsley, South Yorkshire S75 2BL

Date: 16 February 2011

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. PENALTY

- 1.1. The FSA gave Cricket Hill Financial Planning Limited (“Cricket Hill”) a Decision Notice on 3 February 2011 which notified it that pursuant to section 206 of the Financial Services and Markets Act 2000 (the “Act”), the FSA had decided to impose a financial penalty of £70,000 on Cricket Hill in respect of breaches of Principles 3, 8 and 9 of the FSA’s Principles for Businesses (the “Principles”) between 6 April 2006 and 7 August 2009 (the “relevant period”).
- 1.2. Cricket Hill agreed to settle at an early stage of the FSA’s investigation and therefore qualified for a 30% (stage 1) discount under the FSA’s executive settlement procedures. The FSA would have otherwise imposed a financial penalty of £100,000 on Cricket Hill.
- 1.3. As part of the settlement, Cricket Hill will write to its pension switching customers explaining that they may have been given unsuitable advice and informing them that their pensions will be reviewed in priority order and, where appropriate, redress paid.
- 1.4. Cricket Hill agreed on 1 February 2011 that it will not be referring this 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 Cricket Hill in the amount of £70,000.

2. REASONS FOR ACTION

2.1. On the basis of the facts and matters described below, the FSA has decided to impose a financial penalty on Cricket Hill for breaches of the Principles within the relevant period. In summary, the FSA has concluded that:

(1) Cricket Hill failed to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems, in breach of Principle 3 (Management and control). In particular, Cricket Hill failed to take reasonable steps to:

(a) ensure that both it and its appointed representative, Firm A, had adequate systems and controls in place to comply with the relevant requirements and standards of the regulatory system in relation to their pension switching business. Specifically, its pension switching sales process was tailored towards recommending a specific risk management service (“the RMS”);

(b) identify that its initial verbal communications with its pension switching customers constituted financial promotions and ensure that these were compliant with the financial promotions rules. Specifically, it did not identify that this communication breached rules.

(2) Cricket Hill failed to take reasonable steps to identify and manage potential conflicts of interest, in breach of Principle 8 (Conflicts of interest).

(3) Cricket Hill failed to take reasonable steps to demonstrate the suitability of advice given to customers in relation to pension switches, in breach of Principle 9 (Customers: relationships of trust). In particular, Cricket Hill failed to:

(a) obtain and record adequate information about customers’ circumstances in order to assess the suitability of its advice and support the recommendations to switch;

(b) demonstrate that it had undertaken adequate and independent product research to support the recommendations; and

(c) ensure that its advice to customers, particularly in suitability reports, was clear, fair and not misleading and explained why recommendations were suitable. Specifically, it failed to demonstrate that it gave balanced and impartial advice and clearly explained the main consequences, including the costs and charges, of its recommendations.

2.2. The FSA regards these failings as particularly serious because Cricket Hill’s principal customers were unsophisticated investors, many of whom had small pension pots.

2.3. The FSA has taken into account the following points, which are regarded as mitigating factors:

- (1) Cricket Hill appointed an external compliance consultant to review and update its pension switching business processes when it became aware of the FSA's concerns;
- (2) Cricket Hill co-operated fully with the FSA's investigation and past business review; and
- (3) Cricket Hill has agreed that an external compliance consultant will review a sample of its regulated pension business for a period of six months to demonstrate to the FSA that the quality of its advice meets regulatory standards.

2.4. During the relevant period, the RMS average performance appears to be higher than its selected benchmarks. In practice, this means that although the FSA has found significant levels of potentially unsuitable advice, the RMS has performed well and many of the affected customers may not have suffered financial detriment. In the small number of pension switches that had been reviewed at the time of this Final Notice, no customers had suffered financial detriment as a result of their pension switch.

3. RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND FSA GUIDANCE

3.1. The relevant statutory provisions, regulatory requirements, and FSA Guidance are set out at Annex A to this notice.

4. FACTS AND MATTERS RELIED ON

Background

4.1. On 6 April 2006 ("A-Day"), the government introduced changes to simplify the tax rules for personal and occupational pensions in the UK. In particular, limits to the amount that could be paid into a personal pension were removed, although restrictions on the amount of tax-free cash that could be taken from personal pensions remained. Additionally, from A-Day alternatives to drawing a pension as an annuity became available. Following these changes many advisers reviewed their customers' existing pension arrangements. These reviews lead to a significant increase in advice given to customers to transfer their existing pension arrangements into Personal Pension Plans ("PPPs") or Self Invested Personal Pensions ("SIPPs").

4.2. In light of the significant increase in pension switches, the FSA became concerned that consumers may have been switched into pension products which carried high charges and had features or additional flexibility that they did not need. The FSA was also concerned about whether firms' controls, management oversight and compliance monitoring of this type of advice were robust enough to detect and prevent unsuitable advice and ensure fair outcomes for customers.

- 4.3. In the summer of 2008, the FSA commenced phase 1 of a thematic review of pension switching advice, looking at pension switches made since A-Day. For the purposes of the FSA thematic review a pension switch was defined as advice to switch from any occupational or individual pension scheme to an individual PPP or SIPP.
- 4.4. In December 2008, the FSA published a report on the findings of phase 1 of the thematic review. The report noted that the FSA had visited 30 firms and assessed 500 customer files. A quarter of the firms visited were assessed as providing unsuitable advice in a third or more of the cases sampled. Overall, unsuitable advice was found in 16% of cases reviewed.
- 4.5. In January 2009, Cricket Hill was referred to the Enforcement and Financial Crime Division of the FSA for investigation as a result of concerns that Cricket Hill appeared to be advising a significant proportion of its customers to switch their pensions to one provider, which used a particular RMS. The referral took place at around the same time as other referrals resulting from the FSA's thematic review of pension switching.
- 4.6. In February 2009, the FSA published guidance on assessing the suitability of pension switches, setting out the standards expected in relation to pension switches and the action firms should take to ensure that customers receive suitable advice.
- 4.7. The FSA wrote to over 4,500 firms to summarise its findings, to ask those firms to consider past and future sales in light of the findings and to take remedial action where necessary. The FSA then undertook a further programme of firm assessments in the latter half of 2009 in phase 2 of the thematic review.

Cricket Hill

- 4.8. Cricket Hill is a small IFA which is based in Barnsley, Yorkshire. The majority of its business comprises the provision of pension switching advice. Cricket Hill became authorised and regulated by the FSA on 2 November 2004 and, during the relevant period, was authorised to carry on the following regulated activities:
 - (1) advising on investments (except on pension transfers and pension opt outs);
 - (2) agreeing to carry on a regulated activity;
 - (3) arranging (bringing about) deals in investments; and
 - (4) making arrangements with a view to transactions in investments.
- 4.9. During the relevant period, Cricket Hill's personnel included a controlling director, one non-executive director and up to nine customer advisers at any one time.
- 4.10. Cricket Hill has two appointed representatives of which only one, Firm A, is active. It has been an appointed representative of Cricket Hill since 27 March 2007.
- 4.11. Cricket Hill and Firm A used the same sales advisers. Cricket Hill transacted all the pension switching business until July 2007; Firm A transacted the majority of the business thereafter.

- 4.12. During the relevant period, Cricket Hill and Firm A conducted 1,864 pension switches. Cricket Hill and Firm A actively promoted a type of discretionary management service (the RMS), which was managed and administered by a third party (the “RMS Operator”). The RMS provides investment management for customers’ pension funds, which includes regular monitoring of the funds and asset reallocation where appropriate. There is a 1% annual charge for this service, which is paid by the product provider from the customer’s pension fund and is divided between either Cricket Hill or Firm A (depending on which entity advised on the switch) and the RMS Operator.
- 4.13. Of the 1,864 pension switches completed by Cricket Hill and Firm A during the relevant period, 1,858 customers opted to use the RMS.

Cricket Hill’s previous regulatory conduct

- 4.14. Prior to this investigation, the FSA had conducted a review of Cricket Hill’s pension income drawdown business and had produced a report, dated 6 June 2006, detailing significant failings in Cricket Hill’s sales processes and systems and controls. Many of the FSA’s findings in relation to Cricket Hill’s pension switching business are similar to the FSA’s findings in relation to Cricket Hill’s business in 2006.

The FSA’s investigation

- 4.15. The FSA reviewed a total of 46 customer files from the relevant period, in which Cricket Hill or Firm A recommended to customers that they switch their pensions. The FSA found deficiencies in Cricket Hill’s pension switching sales including the fact that its fact finding, product research and recommendation processes were tailored towards recommending the RMS, its communications with customers were not clear, fair and not misleading and it failed to identify, manage and disclose appropriately conflicts of interest.
- 4.16. The FSA required Cricket Hill to instruct a skilled person to produce a report in relation to Cricket Hill’s pension switching business during the relevant period. The skilled person produced an interim report of its findings following a review of four customer files in September 2010 and these findings supported the FSA’s wider findings set out below.

Systems and controls

- 4.17. Cricket Hill did not have adequate and appropriate systems and controls, compliance arrangements and risk management systems. Specifically, Cricket Hill:
- (1) had significant failings in its advice and sales processes. Cricket Hill and Firm A had a standardised approach to fact finding, product research and recommendation processes, which led to insufficient tailoring of pension switching advice to customers’ needs. As part of its investigation, the FSA reviewed 46 pension switching customer sales. In all sales reviewed, the standardised sales process was followed and in 44 of the 46 sales the RMS was recommended;

- (2) suggested the RMS as being potentially suitable for a customer before having researched alternative products. In all sales reviewed, Cricket Hill's notes from its initial meeting with the customer explain that the RMS was potentially suitable for the customer, despite Cricket Hill not having undertaken any product research before making this assertion. In 34 of 46 files reviewed, the product provider eventually selected was recommended in the initial fact find meeting;
 - (3) inappropriately used standard phrases for customers' objectives, which were not specific to the individual customer. In 44 of 46 files reviewed, the initial meeting note recorded that the customer wanted "*to consider an alternative plan with an alternative...provider who would have the potential to improve on fund growth/benefits*";
 - (4) could not demonstrate that it had adequately checked the accuracy of the information gathered. An example of this is that, of the files 46 reviewed by the FSA, two had basic and fundamental errors in the fact find process in relation to the age of retirement, which meant the basis on which the advice was given was incorrect; and
 - (5) failed to recognise that initial verbal communications with customers about switching pensions constituted financial promotions and were therefore subject to regulatory requirements. In breach of these requirements, the scripts on which these communications were based failed to provide a fair and prominent indication of the relevant risks and disadvantages of the proposed pension switch and omitted key facts on the payment of fees.
- 4.18. Cricket Hill's failure to control its business with adequate and appropriate compliance arrangements and risk management systems exposed customers to the risk of receiving unsuitable advice, in breach of Principle 3.

Conflicts of interest

- 4.19. Cricket Hill did not adequately identify, manage and, where necessary, disclose potential conflicts of interest between the firm, including its managers, employees and appointed representatives, and customers of the firm. Specifically, it failed to identify, manage and, where appropriate, disclose to customers the following potential conflicts:
- (1) that Cricket Hill's controlling director held shares (up until July 2007) in the RMS Operator. In the same period, this director and other Cricket Hill advisers advised customers to invest in the RMS Operator's RMS; and
 - (2) that during the relevant period, Firm A was ultimately controlled by individuals who also controlled the RMS Operator.
- 4.20. The FSA has found no evidence that payments, such as salaries, fees, commission, or dividends to shareholders, were made by the RMS Operator to Cricket Hill or Firm A's directors and employees.

- 4.21. However, Cricket Hill failed to identify, manage and, where appropriate, disclose this potential conflict of interest. Cricket Hill failed to take reasonable steps to manage this conflict of interest between itself and its customers, in breach of Principle 8.

Suitability of advice

- 4.22. Cricket Hill was unable to demonstrate that it had taken reasonable care to ensure the suitability of its advice. Specifically, it failed to:
- (1) demonstrate that it had obtained and retained sufficient personal and financial information about its customers to assess the suitability of its recommendations. In 38 of 46 files reviewed, there was insufficient evidence that it had assessed the customer's knowledge and experience to support the recommendations made. In 45 out of 46 sales, the customer's pension needs in retirement were not identified;
 - (2) demonstrate that it had adequately assessed and described each customer's attitude to risk ("ATR"). In all sales reviewed, Cricket Hill assessed customers' future ATR at the fact finding stage using only the RMS profiler tool. This indicated Cricket Hill was already disposed towards recommending the RMS even though it had not yet considered whether other products could be more suitable for the customer;
 - (3) demonstrate that it had undertaken and/or retained adequate product or provider research to support its recommendations. Cricket Hill's product provider analysis involved using an external personal pension projection system to select the best funds for the customers. It input customers' data into the system and the results were subsequently listed in projected maturity value order. In 34 out of 46 sales, Cricket Hill limited its research to only those product providers who could accommodate an annual management charge to cover the cost of the RMS, and did not research any other providers. It therefore excluded stakeholder pensions, which could have been a suitable option for a number of its customers. In 44 of the 46 sales, the recommended RMS fund was not the best fund in terms of projected maturity values, there was no evidence on the files of research into the other relevant alternative products providers;
 - (4) obtain sufficient information from the customer's ceding scheme. In all sales there was insufficient information, particularly in relation to costs, to enable a meaningful comparison between the ceding system and the recommended product. This meant that it was difficult for the customer to make an objective and balanced decision as to whether to accept Cricket Hill's recommendation to switch to a new pension arrangement and use the RMS;
 - (5) ensure that suitability reports were clear, fair and not misleading and explained sufficiently why recommendations were suitable. In all files reviewed, the suitability reports were unclear, did not contain sufficient information in relation to costs. Cost illustrations (which purported to show when the recommended product would outperform the ceding scheme) were included in appendices at the back of the report. This meant that customers' attention was not sufficiently drawn to the illustrations, even though they provided

fundamental information as to whether or not the customers would benefit from the proposed switch;

- (6) demonstrate that it had explained the main consequences, including costs, charges and risks, associated with its recommendations. In 42 out of 46 sales, the projected value of the receiving scheme at retirement on a cost basis was lower than the projected value of the ceding scheme. The suitability reports did not explain the total cost of the recommended scheme or compare the total cost in a clear way with the total cost of the ceding scheme. Although the suitability reports indicated that the recommended scheme would cost more, they did not clearly set out by how much, taking into account the RMS charge, the provider's charges, Cricket Hill's commission, any penalty charge imposed by the ceding scheme provider and any loss of guaranteed benefits under the ceding scheme. These failings made it difficult for customers to make an objective and balanced decision as to whether to accept Cricket Hill's recommendation to switch to a new pension arrangement and use the RMS;
- (7) issue suitability reports which accurately compared the customer's ceding scheme with the recommended scheme. In 36 out of 46 sales reviewed, customers were wrongly informed that on a costs basis, they would be better off if they switched their pension into the recommended pension plan utilising the RMS. However, in each of these cases Cricket Hill had compared the customer's ceding scheme with a balanced managed fund, which was not recommended and did not include the costs of the RMS, and therefore wrongly concluded that the customer would be better off on a cost basis by switching their pension;
- (8) ensure that suitability reports were tailored sufficiently to the circumstances of each customer. The suitability reports used standard paragraphs, for example in all the files reviewed the following standard customer objective was stated: *"To maximise your income in retirement by a combination of contributions, charges and investment performance"*. Also, in relation to different customers, standard wording was used to recommend three different RMS pension providers, on the basis of *"...financial strength, product features, value for money and fund performance..."*.
- (9) ensure that suitability reports were balanced as all were heavily weighted towards the use of the RMS, and did not contain sufficient information on other products to enable customers to make an informed and balanced decision.

5. ANALYSIS OF BREACHES

- 5.1. As a result of the facts and matters referred to in paragraphs 4.17 to 4.18 above, the FSA has determined that Cricket Hill failed to take reasonable care to organise and

control its affairs responsibly and effectively, with adequate risk management systems in breach of Principle 3 and the associated Conduct of Business Sourcebook¹ (“COBS”) rules and Senior Management Arrangements, Systems and Controls (“SYSC”) rules listed in Annex A.

- 5.2. As a result of the facts and matters referred to in paragraphs 4.19 and 4.21 above, the FSA has determined that Cricket Hill failed to take reasonable care to ensure that it identified and managed conflicts of interest between Cricket Hill and its customers, in breach of Principle 8 and the associated COBS and SYSC rules listed in Annex A.
- 5.3. As a result of the facts and matters referred to in paragraph 4.22 above, the FSA has determined that Cricket Hill failed to take reasonable care to ensure the suitability of its advice to its customers in breach of Principle 9 and the associated COBS rules listed in Annex A. Specifically, Cricket Hill failed to provide balanced pension advice to customers (as its sales process was tailored to sell the RMS), obtain and retain sufficient personal and financial information about its customers, undertake adequate or independent product research, ensure that suitability reports were clear, fair and not misleading and explain the suitability, as well as the main consequences and risks, of its recommendations.

6. ANALYSIS OF PROPOSED SANCTION

- 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 imposing a financial penalty is to promote high standards of regulatory conduct by deterring firms who have committed regulatory breaches from committing further breaches, and helping to deter other firms from committing similar breaches, as well as demonstrating generally the benefits of compliant behaviour.

Financial penalty

- 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 DEPP 6.2.1 and 6.4.2, the FSA has determined that a financial penalty is an appropriate sanction, given the serious nature of the breaches, the risks created for customers of Cricket Hill and the need to send out a strong message of deterrence to other firms.

¹ Applicable from 1 November 2007 and substituting the Conduct of Business (“COB”).

- 6.4. DEPP 6.5.2G sets out a non-exhaustive list of factors which may be relevant to determining the appropriate level of a financial penalty. The FSA considered that the following factors were particularly relevant in this case.

Deterrence (DEPP 6.5.2(1))

- 6.5. A financial penalty will deter Cricket Hill from committing further breaches and deter other firms from committing similar breaches, as well as demonstrating generally the benefits of compliant behaviour. The fine will reinforce the message that the FSA expects firms to give impartial pension switching advice and be able to evidence the suitability of their advice to customers.

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, the duration and frequency of the breaches, and whether the breaches revealed serious failings in Cricket Hill's systems and controls and the number of customers who were affected and or placed at risk of loss.
- 6.7. Cricket Hill's failings in the relevant period are viewed as being particularly serious because Cricket Hill's principal customers were unsophisticated investors, many of whom had small pension pots. The failure to gather sufficient information at the fact finding stage, undertake adequate product research and ensure that its communications were clear, fair and not misleading therefore exposed unsophisticated customers to the risk of receiving unsuitable advice.

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

- 6.8. The FSA has found no evidence to show that Cricket Hill acted in a deliberate or reckless manner.

The size, financial resources and other circumstances of Cricket Hill (DEPP 6.5.2(5))

- 6.9. In determining the level of penalty, the FSA has considered the following issues:
- (1) Cricket Hill's latest financial statements;
 - (2) the cost of the past business review to be conducted; and
 - (3) the potential need for Cricket Hill to be able to afford the cost of paying financial redress to any customers identified during the past business review as having suffered financial detriment as a result of Cricket Hill's pension switching advice.
- 6.10. Having considered these issues, the FSA has determined that the level of financial penalty is appropriate and proportionate.

Conduct following the breach (DEPP 6.5.2(8))

6.11. The FSA has also taken into account the following steps taken by Cricket Hill which have served to mitigate its failings:

- (1) Cricket Hill was proactive in appointing an external compliance consultant to review and update its pension switching business processes when it became aware of the FSA's concerns;
- (2) Cricket Hill has co-operated fully with the FSA's investigation and the FSA's past business review; and
- (3) Cricket Hill has agreed that an external compliance consultant will review a sample of regulated pension business for a period of six months to demonstrate to the FSA that the quality of its advice meets the required regulatory standards.

6.12. During the relevant period, the RMS average performance appears to be higher than its selected benchmarks. In practice, this means that although the FSA has found significant levels of potentially unsuitable advice, many of the affected customers may not have suffered financial detriment. The FSA has required Cricket Hill to test this through the past business review and to pay redress where appropriate.

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

6.13. Cricket Hill has not been the subject of previous disciplinary action, but similar systems failings were identified by the FSA during a visit in 2006 in relation to its sale of pension income drawdown products.

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

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

7. DECISION MAKERS

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

8. IMPORTANT

8.1. This Final Notice is given to Cricket Hill 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 Cricket Hill to the FSA in accordance with the terms of the settlement agreement dated 1 February 2011.

8.3. If all or any of the financial penalty is outstanding on the day after the due date for payment as expressed in the settlement agreement dated 1 February 2011, the FSA may recover the outstanding amount as a debt owed by Cricket Hill 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 Cricket Hill or prejudicial to the interests of consumers.

FSA contacts

- 8.5. For more information concerning this matter generally, you should contact Anna Hynes of the Enforcement and Financial Crime Division of the FSA (direct line: 0207 066 9464; fax: 0207 066 9465).

Tom Spender

FSA Enforcement and Financial Crime Division

ANNEX A

RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE

1. Statutory provisions

- 1.1. The FSA's statutory objectives are set out in section 2(2) of the Act. In relation to this case, the most relevant statutory objective is the protection of consumers.
- 1.2. Section 138 of the Act provides that the FSA may make such rules applying to authorised persons as appear to it to be necessary or expedient for the purpose of protecting consumers.
- 1.3. The FSA 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 an authorised person has contravened a requirement imposed on him by or under the Act.

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.

Principles for Businesses

- 2.2. Under the FSA's rule-making powers as referred to above, the FSA has published in the FSA Handbook the Principles for Business ("Principles") which apply either in whole, or in part, to all authorised persons.
- 2.3. The Principles are a general statement of the fundamental obligations of firms under the regulatory system and reflect the FSA's regulatory objectives. A firm may be liable to a disciplinary sanction where it is in breach of the Principles.
- 2.4. The Principles relevant to this matter are:
 - (1) Principle 3 (management and control) which states that "a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems."
 - (2) Principle 8 (conflicts of interest) which states that "A firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client."
 - (3) Principle 9 (customers: relationships of trust) which states that "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 judgment."

Conduct of Business Rules

- 2.5. Guidance on the Conduct of Business Rules is set out in the Conduct of Business manuals of the FSA handbook.

Conduct of Business

- 2.6. Conduct of Business Rules (“COB”) applied to firms until 31 October 2007.
- 2.7. COB 2.1.3R requires a firm to take reasonable steps to communicate with its customers in a way which is clear, fair and not misleading.
- 2.8. COB 3.2.4R extends the scope of COB 3.8.4 to certain unsolicited real time financial promotions approved by a firm.
- 2.9. COB 3.8.4R requires that a firm must be able show that it has taken reasonable steps to ensure that a financial promotion is clear, fair and not misleading.
- 2.10. COB 3.10.3R requires that a firm must not make an unsolicited financial promotion unless:
- (1) the recipient has an established existing customer relationship with the firm; or;
 - (2) the financial promotion relates to a generally marketable packaged product; or
 - (3) the financial promotion:
 - (a) relates to a controlled activity to be carried out by the firm; and
 - (b) the only investments involved are or which reasonably could be involved are:
 - (i) readily realisable securities; and
 - (ii) generally marketable non-g geared packaged products.
- 2.11. COB 5.2.5R requires that before a firm gives a personal recommendation concerning a designated investment to a private customer, it must take reasonable steps to ensure that it is in possession of sufficient personal and financial information about that customer relevant to the services that the firm has agreed to provide.
- 2.12. COB 5.2.9R requires that a firm must make and retain a record of a private customer’s personal and financial circumstances that it has obtained in satisfying COB 5.2.5R.
- 2.13. COB 5.3.5R requires that a firm must take reasonable steps to ensure that a personal recommendation concerning a designated investment to a private customer business is suitable for the customer.
- 2.14. COB 5.3.16R requires that the suitability letter must: (1) explain why the firm has concluded that the transaction is suitable for the customer, having regard to his

personal and financial circumstances, (2) contain a summary of the main consequences and any possible disadvantages of the transaction, and (3) in the case of a personal pension scheme which is not a stakeholder pension scheme, explain the reasons why the firm considers the personal pension scheme to be at least as suitable as a stakeholder pension scheme.

- 2.15. COB 5.3.18R requires that in the case of a pension contract or stakeholder scheme, where the cancellation rules require notification of the right to cancel, a firm must provide a suitability letter no later than the fourteenth day after the contract is concluded, and in any other case, when, or as soon as possible after, the transaction is effected.
- 2.16. COB 5.4.3R requires that a firm must not, amongst other things, make a personal recommendation of a transaction to a private customer unless it has taken reasonable steps to ensure that the private customer understands the nature of the risks involved.
- 2.17. COB 5.7.3R requires that before a firm conducts investment business with a private customer it must disclose in writing the basis or amount of its charges for conducting that business and the nature or amount of any other income receivable by it.
- 2.18. COB 5.7.5R requires that when a firm recommends or arranges the sale of a packaged product the firm must disclose to the customer in cash terms any commission receivable by it in connection with the transaction.
- 2.19. COB 7.1.3R (2) requires that when a firm has or may have a relationship that gives or may give rise to a conflict of interest in relation to a transaction to be entered into with or for a customer, the firm must not knowingly advise in relation to that transaction unless it takes reasonable steps to ensure fair treatment for the customer.

Conduct of Business Sourcebook

- 2.20. Conduct of Business Sourcebook (“COBS”) applied to firms, with effect from 1 November 2007.
- 2.21. COBS 4.2.1R requires a firm to ensure that a communication is fair, clear and not misleading.
- 2.22. COBS 4.5.2R requires that information is accurate and, in particular, does not emphasise any potential benefits of an investment without also giving a fair and prominent indication of any relevant risks.
- 2.23. COBS 4.5.6R requires that if information compares investments a firm must ensure that the comparison is meaningful and presented in a fair and balanced way.
- 2.24. COBS 9.2.1R requires that a firm must take reasonable steps to ensure that a personal recommendation or decision to trade, is suitable for its customer.
- 2.25. COBS 9.2.2R requires that a firm must obtain from the customer such information as is necessary for the firm to understand the essential facts about him.

- 2.26. COBS 9.2.6R requires that if a firm does not obtain the necessary information to assess suitability it must not make a personal recommendation to the customer.
- 2.27. COBS 9.4.1R requires that a firm must provide a suitability report to a retail customer if the firm makes a personal recommendation to the client and the client buys, sells, surrenders, converts or cancels rights under, or suspends contributions to, a personal pension scheme or a stakeholder pension scheme or elects to make income withdrawals or enters into a pension transfer or pension opt-out.
- 2.28. COBS 9.4.7R requires that the suitability report must at least (i) specify the client's demands and needs; (ii) explain why the firm has concluded that the recommended transaction is suitable for the client having regard to the information provided by the client; and (iii) explain any possible disadvantages of the transaction for the client.

Senior Management Arrangements, Systems and Controls

- 2.29. SYSC 3.1.1R provides that a firm must take reasonable care to establish and maintain such systems and controls as are appropriate to its business.
- 2.30. SYSC 3.2.6R provides that a firm must take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system.
- 2.31. SYSC 10.1.3R, provides that a firm to which SYSC 10 applies must take all reasonable steps to identify any conflict of interest between the firm, including its managers, employees and appointed representatives, or any person directly or indirectly linked to them by control, and a client of the firm that arise or may arise in the course of providing a relevant service.
- 2.32. SYSC 10.1.4R provides that a firm should consider, as a minimum, whether the firm or a relevant person, or a person directly or indirectly linked by control to the firm:
 - (1) is likely to make a financial gain, or avoid a financial loss, at the expense of the client;
 - (2) has an interest in the outcome of a service provided to the client or of a transaction carried out on behalf of the client, which is distinct from the client's interest in that outcome;
 - (3) has a financial or other incentive to favour the interest of another client or group of clients over the interests of the client;
 - (4) carries on the same business as the client; or
 - (5) receives or will receive from a person other than the client an inducement in relation to a service provided to the client, in the form of monies, goods or services, other than the standard commission or fee for that service.