Financial Services Authority

FINAL NOTICE

To:	**Mr David Grant Sinclair ("Mr Sinclair")**
Of:	**Roman House, 296 Golders Green Road, London NW11 9PT.**
Individual Reference:	**DGS01082**
Date:	**20 December 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 and an order prohibiting you from performing any significant influence function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. This Partial Prohibition Order does not prohibit you from performing functions falling within the definition in the FSA's handbook of customer functions.

1. ACTION

1.1. The FSA gave you a Decision Notice on 20 December 2010 which notified you that the FSA has decided to take the following action against you, David Grant Sinclair:

(1) pursuant to section 66 of the Financial Services and Markets Act 2000 ("the Act"), to impose a financial penalty of £68,000 on you in respect of a breach of Principle 6 of the FSA's Statements of Principle and Code of Practice for Approved Persons ("APER"); and

(2) pursuant to section 56 of the Act, to make an order prohibiting you from performing any functions within the definition of the FSA's Handbook of significant influence functions in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm ("the Partial Prohibition Order") but so as to not prohibit you from performing functions falling within the definition in the FSA's handbook of customer functions.

1.2. You confirmed on 20 December 2010 that you will not be referring the matter to the Financial Services and Markets Tribunal.

1.3. Accordingly for the reasons set out below, and having agreed with you the facts and matters relied on, the FSA has imposed the Partial Prohibition Order and imposes a financial penalty on you in the amount of £68,000.

1.4. The prohibition order takes effect from 23 December 2010. The Partial Prohibition Order does not prohibit you from performing functions falling within the definition in the FSA's Handbook of customer functions.

1.5. The financial penalty imposed is discounted by 20% pursuant to the stage 2 early settlement discount scheme. Were it not for this discount, the FSA would have imposed on you a financial penalty of £85,000.

2. REASONS FOR THE ACTION

2.1. On the basis of the facts and matters described below, the FSA considers that your conduct, while a director and controlled function holder at Axiom Capital Limited ("Axiom"), fell short of the standards required by APER Principle 6.

2.2. Specifically, when holding controlled functions in connection with Axiom's regulated business in the period from 1 October 2008 to 5 November 2009 ("the relevant period"), you breached Principle 6 of APER as you failed as an approved person performing a significant influence function to exercise due skill, care and diligence in managing the business of the firm for which you were responsible in your controlled functions for the following reasons:

(a) you failed to carry out adequate due diligence, failed to heed warnings from investors and a colleague about the legitimacy of Eduvest Plc's ("Eduvest") activities and failed to notify the FSA of your concerns;

(b) you failed to take reasonable action to prevent activities carried on by Eduvest in breach of the general prohibition; and

(c) you failed to adequately respond to consumer complaints and recognise the warning signs that unauthorised overseas entities were involved in the sale of Eduvest shares.

2.3. The FSA has concluded that the nature and seriousness of the failures listed above warrants the imposition of a financial penalty. Accordingly, the FSA has imposed a financial penalty on you of £68,000.

2.4. The FSA has also concluded that you are not fit and proper to carry out any significant influence functions in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. Accordingly, the FSA makes the Partial Prohibition Order against you, in respect of any significant influence functions, because of the nature of your failings and the potential impact on consumers.

2.5. This action supports the FSA's regulatory objectives of maintaining confidence in the financial system, the protection of consumers and the reduction of financial crime.

3. STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY

3.1. Relevant statutory provisions, regulatory guidance and policy are set out in Annex "A" to this Notice.

4. FACTS AND MATTERS RELIED ON

Background

4.1. You were approved by the FSA to hold the following controlled functions:

(1) CF1 (Director), CF3 (Chief Executive) and CF11 (Money Laundering Reporting) from 1 December 2001 to 24 December 2009;

(2) CF23 (Corporate Finance Adviser) from 1 December 2001 to 31 October 2007;

(3) CF8 (Apportionment and Oversight) from 1 December 2001 to 31 March 2009;

(4) CF10 (Compliance Oversight) from 8 May 2006 to 24 December 2009; and

(5) CF30 (Customer) from 1 November 2007 to present date.

4.2. Axiom is a corporate advisory business, which operates from offices in London. With effect from 1 December 2001, Axiom became authorised by the FSA to carry on the following regulated activities in relation to Designated Investment Business:

(1) Advising (ex Pension Transfers / Opt outs);

(2) Agreeing to carry on a regulated activity;

(3) Arranging deals in investments;

(4) Arranging safeguarding and administration of assets;

(5) Causing dematerialised instructions to be sent;

(6) Dealing in investments as agent;

(7) Dealing in investments as principal;

(8) Establishing/operating/winding up an un-regulated Collective Investment Scheme;

(9) Making arrangements;

(10) Managing Investments;

(11) Safeguarding and administration of assets; and

(12) Sending dematerialised instructions.

4.3. In addition to your role at Axiom you are a director of an accountancy firm, SA, and prior to setting up that company, you were a partner in an accountancy firm called SS. SS held its client bank account with private bank "C" and during the relevant period maintained a client account used for its clients and those of SA.

4.4. In November 2008, you were approached in your capacity as director of Axiom by an individual, David Mason, about buying a shell company listed on the PLUS market which he intended to utilise as an investment vehicle. Axiom specialised in advising companies that wished to list on PLUS and was paid £17,500 (plus VAT) by David Mason for Axiom's services.

4.5. You advised David Mason that it would be simpler to set up a new company rather than buy a shell company and you therefore assisted David Mason in incorporating for him a new company called Eduvest PLC, using an incorporation agent, which was jointly owned by you and another individual.

4.6. Immediately on incorporation David Mason became a director of Eduvest although the company secretary appointed by him failed to file the appointment at Companies House. David Mason asked you to open a bank account for Eduvest as he was

expecting payments from investors and needed an account opened immediately. You therefore opened a sub-account for Eduvest under the main SS client account with private bank C. You were aware that Axiom was not authorised to hold client money and would not be able to carry out the activities that you carried out in relation to Eduvest through the sub-account to the SS account. You therefore gave instructions for the sub-account of your SS account to hold monies for Eduvest from Eduvest investors. You communicated to David Mason that this was to be on a temporary basis.

4.7. Contrary to the representations made by David Mason, the FSA investigation has established that shares in Eduvest were sold to at least 32 consumers in the United Kingdom and Republic of Ireland, by salesmen making unsolicited, high pressure telephone calls to these individuals. The salesmen were employed by entities including Rothman Capital, Investor Relations Corp, Bernam and Shore and Bishop Capital, colloquially known as "boiler rooms."

4.8. Payment for the shares was made by the investors into the Eduvest bank account held with private bank C, and controlled by you. Money was then distributed out of the Eduvest account into other accounts including to bank accounts in the name of, or controlled by, David Mason; to the Axiom Capital bank account in respect of the aforementioned fee and to an account in Switzerland in the name of a third party whose identity was not verified. On the specific instructions of David Mason, you in turn gave instructions that the money transfers from the Eduvest sub-account be made to these other accounts.

4.9. Investors have not received any return on their investment, no share certificates have been issued and no refund of sums invested has been made by Eduvest. Axiom has however fully compensated such investors. Eduvest was never listed on PLUS because David Mason failed to honour his stated business plan and instead

misappropriated the monies. The main beneficiary of the funds paid by investors was Company T, an entity owned and controlled by David Mason.

4.10. David Mason's / Eduvest's activities in selling these shares amounted to breaches of the general prohibition, because they carried out regulated activities in the UK without being authorised or exempt (in breach of Section 19 of the Act) and communicated an invitation or inducement to engage in investment activity without being an authorised person or without having the content of the communication approved by an authorised person (in breach of Section 21 of the Act).

Breach of Statement of Principle 6 of APER/ Conduct as Director of Axiom

4.11. David Mason approached Axiom to obtain advice from you on a PLUS listing. Such work should have been preceded by adequate due diligence checks by you into David Mason and Eduvest. The importance of such checks was highlighted to you in a letter from PLUS on 21 October 2008 following a visit to your offices. Despite this, you did not undertake satisfactory due diligence checks into David Mason which ultimately allowed David Mason to mislead investors.

4.12. During the relevant period, investors contacted you in your capacity as a director of Axiom, and corporate advisor to Eduvest, to raise concerns about the sale of Eduvest shares and yet you took inadequate action to question or halt David Mason's activities. For example, you were put on actual notice of the legitimacy of Eduvest's "introducers" when you received a call from an investor, Mr "B", who advised that he had been cold-called by a firm called Hunter Rowe (a boiler room entity) attempting to sell him shares in Eduvest. Despite this warning sign you did not adequately pursue the matter or take adequate steps to consider whether Axiom should discontinue advising / acting on the instructions of David Mason.

4.13. Other investors contacted Axiom, as the FSA authorised entity involved in the scheme, to make enquiries about their investment. For example, Mr "O" (who purchased £2,000 worth of Eduvest shares) made several unsuccessful attempts to contact Eduvest using the contact details on their website. He then wrote to you at Axiom by e-mail on 29 April 2009 asking when he might receive his share certificate or, failing this, a refund for his investment. He also asked when Eduvest would be listed. You responded to this e-mail informing Mr O that Axiom had instructions to list the company on the PLUS market and that you anticipated that this would be done by the end of June 2009. You also informed Mr O that, on that basis, share certificates for the Eduvest shares would be made available in June 2009 or earlier. Although you continued to press David Mason for more information so that the listing could progress, you did not update Mr O of the further delays.

4.14. In another instance you received an e-mail from Ms "S" on 29 July 2009 stating: "*I contacted you last week regarding shares which I have purchased in Eduvest Plc and you had kindly agreed to find out more information on these shares for me. Have you been able to establish the current situation with them? I still cannot get in contact with David Mason from Eduvest and I have been trying to contact him on a daily basis for 2 weeks.*" You responded the same day from your Axiom email address saying "*I have heard no more and will chase up*". Ms S recognised your efforts in her email of 30 July 2009 to you: "*Thank you again for helping me with this – you are the only person who seems interested in doing this!*" However, you did not update her following this email, although, having emailed David Mason on 23 July 2009, you emailed him again on 4 August, when you were on holiday. You did not hear back. Even though you were still away, you emailed David Mason a month later, on 24 August 2009, to express your ongoing concerns about the Eduvest situation. David Mason did not respond. Whilst the FSA acknowledges that you were on holiday during this time, you did not pass the matter to any other employee of Axiom who could have helped Ms S in your absence. You failed to deal with the situation

effectively either by delegating the matter to a colleague or by taking sufficient follow up action yourself.

4.15. A colleague at Axiom, Mr "H", also alerted you (in your capacity as director of Axiom) to calls that had been received from investors.

4.16. In October 2009, Mr H sent an e-mail to you, forwarding information supplied by a consumer who had purchased shares in Eduvest, and queried whether this matter should be raised with the FSA. You simply replied "*Let's discuss*". Again, you did not contact the FSA, despite the prompt from your colleague although you agreed that you would contact the FSA after your return from your business trip abroad. Given your roles as holder of several key controlled functions (including compliance oversight) and your approved person status at Axiom, the FSA is of the view that your conduct fell substantially below the standards expected of someone in such a position.

4.17. All of these incidents show a lack of due skill, care and diligence in managing the business of Axiom for which you were responsible in performing the significant influence functions for which you were approved.

4.18. In return for a fee you were responsible for advising David Mason on the proposed PLUS listing for Eduvest. You were aware that the purported forthcoming PLUS listing was the basis on which most investors had invested in Eduvest and yet, although you chased David Mason for information to enable you to proceed with the listing, you did not pursue this information sufficiently vigorously despite the warning signs described above.

Lack of Fitness and Propriety / Conduct Outside Role as Director of Axiom

4.19. You controlled the Eduvest sub-account with private bank C and were responsible for carrying out money laundering and other compliance checks. The FSA considers that your use of the SS client account and the Eduvest sub-account was in a personal capacity rather than as an officer of Axiom and it is this conduct that also causes the FSA to have concerns about your fitness and propriety, as explained further below.

4.20. Prior to opening the Eduvest sub-account you did not carry out sufficient checks on David Mason's identity in accordance with anti-money laundering procedures. You confirmed in your interview with the FSA on 17 November 2009 that you opened the account for David Mason without seeing documentation or confirming his identity, although you did request such identity information and expected to receive this. However, you had not confirmed his identity even after the account received its first funds on 3 December 2008.

4.21. You continued to facilitate payments into, and the transfer of monies out of, the sub-account even after David Mason had opened an account in the name of Company T in January 2009. You should have insisted on David Mason opening a separate bank account for Eduvest.

4.22. On 16 December 2008 you received a letter from private bank C requesting the return of £20,000 to a consumer, Ms B, for allegedly mis-sold shares. David Mason emailed your secretary on 18 December 2008 to say that Ms B "*has been spokened to and is apparently reversing the instruction today*" (sic). A handwritten note was made on a copy of that email by either you or your secretary indicating that the money would remain in the account. There is no evidence that you took sufficient action to verify whether the shares had in fact been mis-sold, although when Ms B telephoned you on 8 January 2009 for a progress update she expressed no further concern about mis-selling.

4.23. You continued to operate the Eduvest sub-account and your secretary actively pursued banks, on the instructions of David Mason, to ensure that payments had been received into this account. You did not question the purpose of the payments that, on behalf of David Mason, you instructed to be made out of this account and you signed them off. For example, payments were paid out of the Eduvest sub-account to account R. Even though you believed the payments to be proper business expenditure for Eduvest, you did not have documentation, other than instructions from David Mason, to know the reason for, or purpose of these transactions. Neither did you know in whose name the recipient account was held, the beneficial owner of the recipient account, nor the person authorised to give instructions regarding funds held in the recipient account. A total of £75,000 was paid to R.

5. ANALYSIS OF THE MISCONDUCT AND PROPOSED SANCTIONS

5.1. The FSA has also considered whether you are a fit and proper person to perform any significant influence functions in relation to regulated activities. In doing so, the FSA has considered its regulatory objectives, the regulatory guidance and policy referred to in the Annex. The FSA considers that your misconduct demonstrates that you acted without sufficient due skill, care and diligence in breach of Principle 6 of APER.

5.2. In assessing your fitness and propriety for the purpose of determining whether you are a fit and proper person, the FSA has had regard to the following:

(1) By failing to act, in your capacity as a significant influence function holder at Axiom, on information from investors and a colleague that raised concerns about the conduct of David Mason and others regarding the sale of Eduvest shares, and in failing to carry out adequate due diligence checks on David

Mason / Eduvest, your conduct demonstrates that you acted without due skill, care and diligence in breach of Principle 6 of APER; and

(2) Your actions in setting up a sub-account to your SS account, failing to undertake appropriate money laundering checks, transferring monies from this account on the instructions of David Mason, and the fact that you continued to carry out these actions indicate that you failed to take reasonable steps to prevent these activities which were in breach of the general prohibition. This raises additional concerns about your fitness and propriety in terms of your competence and capability to perform significant influence functions.

5.3. The FSA has concluded that your conduct fell short of the minimum regulatory standards in respect of the skill, care and diligence to be exercised by someone in your position, and that you are not a fit and proper person to carry out any significant influence functions in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. This is due to the lack of skill, care and diligence you displayed whilst performing significant influence functions at Axiom during the relevant period.

6. ANALYSIS OF THE SANCTIONS

Imposition of a financial penalty

6.1. The FSA's policy in relation to the imposition of financial penalties is set out in Chapter 6 of the Decision Procedure and Penalties Manual (DEPP) which forms part of the FSA Handbook. The relevant provisions of EG and DEPP are set out in Annex A of this notice.

DEPP sets out the factors that may be of particular relevance in determining the appropriate level of financial penalty for a firm or approved person. The criteria are not exhaustive and all relevant circumstances of the case will be taken into consideration.

Deterrence

6.2. The principal purpose of the imposition of a financial penalty is to promote high standards of regulatory conduct by deterring approved persons who have committed breaches from committing further breaches, helping to deter other approved persons from committing similar breaches, and demonstrating generally the benefits of compliant behaviour.

6.3. In determining the appropriate level of financial penalty, the FSA has regard to the need to ensure that those who are approved persons exercising management functions act with the appropriate levels of competence and capability and manage their businesses in accordance with regulatory requirements and standards. The FSA considers that a penalty should be imposed to demonstrate to you and others the seriousness with which the FSA regards such behaviour.

The nature, seriousness and impact of the breach in question

6.4. The FSA has concluded that your involvement in / failure to prevent David Mason's activities represents a serious failure to meet the minimum standards of due skill, care and diligence expected of approved persons. Your actions directly and indirectly affected at least 32 consumers who invested a total of £269,000 and suffered financial loss and stress.

6.5. The FSA recognises that the financial penalty imposed on you is likely to have an impact on you as an individual but it is considered to be proportionate in relation to the seriousness of the misconduct.

Whether the person on whom the penalty is to be imposed is an individual

6.6. When determining the appropriate level of financial penalty, the FSA has taken into account that individuals will not always have the same resources as a body corporate, that enforcement action may have a greater impact on an individual, and further, that it may be possible to achieve effective deterrence by imposing a smaller penalty on an individual than a body corporate.

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

6.7. The FSA considers that a financial penalty of the level proposed is appropriate, having taken into account all of the relevant factors. The FSA has taken into account the fact that the purpose of a financial penalty is not to render a person insolvent or threaten a person's solvency.

Conduct following the breach

6.8. You have cooperated fully with the FSA's investigation from the beginning. Axiom has also paid for all known investor losses and interest (as well as a contribution towards the FSA's costs in respect of the civil action against Axiom) in the total sum of £280,426.14, which has all been financed by you.

Disciplinary record and compliance history

6.9. The FSA has not previously taken any disciplinary action against you.

Previous action taken by the FSA

6.10. In determining the appropriate sanction, the FSA has taken into account sanctions imposed by the FSA on other approved persons for similar behaviour. These were considered alongside the deterrent purpose for which the FSA imposes sanctions. Having regard to the seriousness of your breach and risk posed to the FSA's statutory objectives of reducing financial crime and protecting consumers, the FSA has imposed a penalty of £68,000 on you.

Partial Prohibition Order

6.11. It is necessary and proportionate, in order to enable the FSA to achieve its regulatory objectives, for the FSA to exercise its powers to make a Partial Prohibition Order against you, prohibiting you from performing any significant influence functions, in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. This Partial Prohibition Order does not prohibit you from performing functions falling within the definition in the FSA's handbook of customer functions.

7. DECISION MAKERS

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

8. IMPORTANT

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

Manner of and time for Payment

8.2. The financial penalty of £68,000 must be paid in full within 14 working days of the date of the Final Notice as agreed with the FSA. Payment in full is to be received by 17 January 2011.

If the financial penalty is not paid

8.3. If all or any of the financial penalty is outstanding on the due dates, the FSA may recover the outstanding amount as a debt owed by you 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 the Notice relates 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 the matter generally, you should contact Andrea Bowe on 020 7066 5886 of the Enforcement and Financial Crime Division of the FSA.

ANNEX A

STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY

1. Statutory provisions

1.1. The FSA's regulatory objectives are set out in section 2(2) of the Act and include maintaining confidence in the financial system, the protection of consumers and the reduction of financial crime.

1.2. Section 56 of the Act provides that the FSA may make a prohibition order if it appears to the FSA that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person. Such an order may relate to a specific regulated activity, an activity falling within a specified description or all regulated activities.

1.3. Section 66 of the Act provides that the FSA may take action to impose a penalty on an individual of such amount as it considers appropriate where it appears to the FSA that the individual is guilty of misconduct and it is satisfied that it is appropriate in all the circumstances to take action. Misconduct includes failure, while an approved person, to comply with a statement of principle issued under section 64 of the Act or to have been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under the Act.

2. Regulatory provisions

2.1. In exercising its power to make a prohibition order and in determining the level of the financial penalty, the FSA has had regard to relevant regulatory guidance and policy published in the FSA's Handbook.

2.2. The FSA's Enforcement Guide ("EG") and Decision Procedure and Penalties Manual ("DEPP") came into effect on 28 August 2007. Although the references in this Warning Notice are to DEPP and EG, the FSA has also had regard to the appropriate provisions of the FSA's Enforcement Manual, which preceded DEPP and EG and applied during part of the relevant period.

2.3. The guidance and policy that the FSA considers relevant to this case is set out below.

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

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

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

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

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

2.8. The Statements of Principle relevant to this matter are:

(1) Statement of Principle 6 ("An approved person performing a significant influence function must exercise due skill, care and diligence in carrying out his controlled function").

2.9. APER 3.2.1E states that in determining whether or not the particular conduct of an approved person within his controlled function complies with the Statements of Principle, the FSA into account the following factors:

(1) whether that conduct relates to activities that are subject to other provisions of the Handbook;

(2) whether that conduct is consistent with the requirements and standards of the regulatory system relevant to this firm.

2.10. APER 4.2 lists types of conduct which, in the opinion of the FSA, do not comply with Statement of Principle 2.

Fit and Proper Test for Approved Persons ("FIT")

2.11. The FSA has issued specific guidance on the fitness and propriety of individuals in FIT. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function and FIT is also relevant in assessing the continuing fitness and propriety of approved persons.

2.12. FIT 1.3.1G provides that the FSA will have regard to a number of factors when assessing a person's fitness and propriety. One of the most important considerations will be a person's competence and capability.

2.13. FIT 1.3.3G provides that it would be impossible to produce a definitive list of all the matters which would be relevant to a determination of a particular person's fitness and propriety.

2.14. FIT 1.3.4G provides that if a matter comes to the FSA's attention which suggests that the person might not be fit and proper, the FSA will take into account how relevant and how important it is.

2.15. FIT 2.2.1G provides that in determining a person's competence and capability, the FSA will have regard to all relevant matters including, but not limited to, those set out in FIT 2.2.1G which may have arisen either in the United Kingdom or elsewhere.

Supervision ("SUP)

General Notification Requirements

2.16. SUP15.3.1 provides that a firm must notify the FSA immediately it becomes aware, or has information which reasonably suggests, that any of the following, inter alia, has occurred or may occur in the foreseeable future:

(1) the firm is failing to satisfy one or more of the threshold conditions; or

(2) any matter which could have a significant adverse impact on the firm's reputation

Decision Procedure and Penalties Manual ("DEPP")

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

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

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

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

Deterrence: DEPP 6.5.2G(1)

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

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

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

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

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

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

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

The size, financial resources and other circumstances of the person on whom the penalty is to be imposed: DEPP 6.5.2G(5)

2.25. The FSA may take into account whether there is verifiable evidence of serious financial hardship or financial difficulties if the person were to pay the level of penalty appropriate for the particular breach. The FSA regards these factors as matters to be taken into account in determining the level of a penalty, but not to the extent that there is a direct correlation between those factors and the level of penalty. The purpose of a penalty is not to render a person insolvent or to threaten a person's solvency. Where this would be a material consideration, the FSA will consider, having regard to all other factors, whether a lower penalty would be appropriate.

Conduct following the breach: DEPP 6.5.2G(8)

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

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

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

Enforcement Guide ("EG")

2.28. The FSA's approach to exercising its power to withdraw approval and to make a prohibition order under sections 56 and 63 of the Act is set out in Chapter 9 of EG.

2.29. EG 9.1 states that the FSA's power under section 56 of the Act to prohibit individuals who are not fit and proper from carrying out controlled functions in relation to regulated activities helps the FSA to work towards achieving its regulatory objectives. The FSA may exercise this power to make a prohibition order where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities, or to restrict the functions which he may perform.

2.30. EG 9.2 states that the FSA's effective use of the power under section 63 of the Act to withdraw approval from an approved person will also help to ensure high standards of regulatory conduct by preventing an approved person from continuing to perform the controlled function to which the approval relates if he is not a fit and proper person to perform that function. Where it considers this is appropriate, the FSA may prohibit an approved person, in addition to withdrawing their approval.

2.31. EG 9.4 sets out the general scope of the FSA's power in this respect. The FSA has the power to make a range of prohibition orders depending on the circumstances of

each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant.

2.32. EG 9.5 provides that the scope of the prohibition order will depend on the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk which he poses to consumers or the market generally.

2.33. EG 9.9 provides that when deciding whether to make a prohibition order against an approved person and/or withdraw its approval, the FSA will consider all the relevant circumstances of the case. These may include, but are not limited to, the following:

(1) whether the individual is fit and proper to perform the functions in relation to regulated activities. The criteria for assessing the fitness and propriety of approved persons are set out in FIT 2.1 (honesty, integrity and reputation), FIT 2.2 (competence and capability) and FIT 2.3 (financial soundness) (EG 9.9(2));

(2) whether, and to what extent, the approved person has failed to comply with the Statements of Principle issued by the FSA with respect to the conduct of approved persons, or been knowingly involved in a contravention by the relevant firm of a requirement imposed on the firm by or under the Act (including the Principles and other rules (EG 9.9(3)(a) and (b));

(3) the relevance and materiality of any matters indicating unfitness (EG 9.9(5));

(4) the length of time since the occurrence of any matters indicating unfitness (EG 9.9(6));

(5) the particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates (EG 9.9(7)); and

(6) the severity of the risk which the individual poses to consumers and to confidence in the financial system (EG 9.9(8)).

2.34. EG 9.12 provides a number of examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order or withdraw the approval of an approved person. The examples include:

(1) serious lack of competence (EG 9.12(4)); and

(2) serious breaches of the Statements of Principle for approved persons (EG 9.12(5)).

2.35. EG 9.23 provides that in appropriate cases the FSA may take other action against an individual in addition to making a prohibition order and/or withdrawing its approval, including the use of its power to impose a financial penalty.