
FINAL NOTICE

To: **DBS Financial Management PLC**

Of: **Oasis Park
Stanton Harcourt Road
Eynsham
Witney
Oxon
OX29 4AE**

Date: **24 March 2003**

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

1. THE PENALTY

- 1.1. The FSA gave you a decision notice on 20 February 2003 which notified you 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 £100,000 on DBS Financial Management Plc (“DBS”).
- 1.2. You have not referred the matter to the Financial Services and Markets Tribunal (the “Tribunal”) within 28 days of the date on which the Decision Notice was given to DBS. You have also agreed not to refer the matter to the Tribunal. Accordingly, for the reasons set out below, the FSA imposes a financial penalty on you in the amount of £100,000 (“the Penalty”).

2. REASONS FOR THE PENALTY

- 2.1 For the reasons set out below the FSA is imposing, pursuant to Section 206 of the Act, the Penalty on DBS in respect of breaches of Rules 4.1, 7.1.2, 7.1.5 of the Personal Investment Authority (“PIA”), Adopted FIMBRA Rules F.18.3, F18.7(1), F18.10, F18.11.3(1), Table F18B, and F29.8.3(1) and Principle 9 of the Statements of Principle of the Securities and Investments Board (“the SIB Principles”).

3. RELEVANT STATUTORY PROVISIONS AND REGULATORY RULES

- 3.1. Section 206 of the Act provides:

“If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act, it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate”.

- 3.2. The Financial Services and Markets Act 2000 (Transitional Provisions and Savings) (Civil Remedies, Discipline, Criminal Offences etc) (No2) Order 2001 provides, at Article 8(2), that the power conferred by Section 206 of the Act can be exercised by the FSA in respect of failures by a firm to comply with any of the provisions specified in Rules 1.3.1(6) of the PIA Rules as if DBS had contravened a requirement imposed by the Act.
- 3.3. PIA Rule 1.3.1(6) provided that a PIA Member which failed to comply with PIA Rule 1.3.1(2) or any of the SIB Principles was liable to disciplinary action.
- 3.4. PIA Rule 1.3.1(2) provided that a PIA Member had to obey the PIA Rules, which included the Adopted FIMBRA Rules and the SIB Principles. The SIB Principles were universal statements of the standards expected of firms by the Securities and Investments Board and applied to PIA Members.
- 3.5. PIA Rule 4.1 provided that anything said or written, or any document sent, given or shown, to an investor or potential investor in the course of its relevant business is clear and fair, and is not misleading, either in design or content.
- 3.6. PIA Rule 7.1.2 provided a PIA Member must establish procedures with a view to ensuring that its investment staff and other employees and its appointed representatives and their employees carry out their functions in such a way that DBS complies at all times with the Rules and Principles; and it must keep those procedures under review and revise them as appropriate from time to time.
- 3.7. PIA Rule 7.1.5 provided that a PIA Member must establish and maintain a system of internal control appropriate to the size and type of its business.
- 3.8. Rule F.18.3(1) of the Adopted FIMBRA Rules provided that a PIA Member must appoint a fully qualified financial adviser for the purpose of supervising the preparation or approval of advertisements and for ensuring and certifying compliance with PIA's advertising Rules.
- 3.9. Rule F18.7(1) of the Adopted FIMBRA Rules provided that advertisements must be presented in a way that is likely to be understood by the persons to whom it is

addressed, describe clearly the investment or investment service to which it relates, and disclose fairly the risks involved.

- 3.10. Adopted FIMBRA Rule F18.10 provided that if an advertisement includes a reference to any matter in Table F18B (which includes a reference to the requirements for projections) then the member must ensure that the advertisement includes all the appropriate disclosures listed in Table F18B.
- 3.11. Rule F18.11.3(1) of the Adopted FIMBRA Rules provided that information contained in the direct offer advertisement must be adequate and fair.
- 3.12. Rule F29.8.3(1)(a) of the Adopted FIMBRA Rules provided that a PIA Member must not publish or provide to a client, in respect of any life policy or scheme, any projection of benefits unless it is a projection (i) supplied for the purposes of Rule F29.8.3(1) by a product provider or (ii) (if not) which complies with the requirements of the applicable Adopted Lautro Rules. Rule F29.8.3(1)(b) provided that, if a firm publishes or provides a projection within F29.8.3(a)(ii), it must comply with the Adopted Lautro Rules for issuing projections as if it were the product provider.
- 3.13. The Adopted Lautro Rules provided in Schedule L: Part 4 “The Calculation of Projections” under Part III Rate of Return Assumptions that the following rates of return must be assumed by Members for projections in the category of business in which the Protected ISA product is grouped:

L2. *Monetary rates of return of:*

<i>Lower rate</i>	<i>Intermediate rate</i>	<i>Higher rate</i>
<i>5%</i>	<i>7%</i>	<i>9%</i>

- 3.14. Principle 9 of the SIB Principles provided that a firm should organise and control its internal affairs in a responsible manner, keeping proper records, and, where a firm employs staff or is responsible for the conduct of *investment business* by others, should have adequate arrangements to ensure that they are suitable, adequately trained and properly supervised and that it has well-defined compliance procedures.

4. REASONS FOR ACTION

- 4.1. The FSA has decided to impose a financial penalty on DBS in respect of breaches of the PIA Rules, including the Adopted FIMBRA Rules and the SIB Principles, arising from deficiencies identified in DBS’s compliance arrangements, particularly in respect of weaknesses in the way that DBS approved advertising material submitted by an appointed representative in June 2001.
- 4.2. Although only relating to one advertisement, DBS’s breaches are serious due to the following factors:
 - They resulted in a misleading direct offer advertisement, in the form of a 24-page brochure, being distributed with four and a half million copies of *The Daily Telegraph*, *The Sunday Telegraph* and *The Sunday Mirror*.

- The direct offer advertisement was promoting a very complicated investment product in a direct offer format. It contained many unusual features that would be unfamiliar to the ordinary unsophisticated retail customers to whom it was targeted via national newspapers. DBS therefore had a particular responsibility to ensure that the advertisement was presented in a way that is likely to be understood by the persons to whom it was targeted. DBS did not satisfy this requirement as the direct offer advertisement did not contain a clear and balanced description of the investment and fair disclosure of the risks involved.
- DBS had been instructed to amend its advertising approval procedures following a PIA Supervision visit in March 2000. DBS failed to take reasonable action to amend its procedures.
- The defects in the advertisement were identified by the FSA Financial Promotion Monitoring Team.

4.3. The failings in this case merit a significant penalty. In fixing the amount of such penalty, however, the FSA has recognised that the impact, actual and potential, of these failings has been substantially mitigated by the extensive and proactive remedial action undertaken by DBS. In particular:

- Since the misleading advertisement was issued, DBS has been acquired by Misys Life and Pensions (“Misys”) – a subsidiary of Misys plc. Misys has taken action aimed at improving quality standards at DBS. DBS has invested substantially in improved compliance procedures, particularly with regard to supervision and technology. None of the individuals in control functions at DBS in June and July 2001 at the time the misleading advertisement was issued remain in these positions.
- DBS has proactively reviewed its internal procedures relating to advertising approval.
- DBS has increased the human resource available for advertising approval by the creation of a central team (for networks within the Misys Group).
- DBS has taken remedial action to advise customers that responded to the advertisement of the failings and to make arrangements to offer redress. Where customers consider that they were mis-lead contributions have been returned.
- DBS has been open and cooperative with the FSA during the investigation. Its approach and its proactivity in identifying investors and arranging for refunds to be made has ensured that consumers have received redress in a timely and effective fashion.

Nevertheless, while recognising the steps taken by DBS to remedy the problems and its commitment to resolve the issues arising, the FSA notes that the full co-operation given by DBS has been largely in response to the regulator’s actions and instigation.

5. BACKGROUND

The regulated Firm

- 5.1 DBS was authorised by the FSA (Firm Reference Number 146318) on 1 December 2001. It was previously authorised by PIA from 23 September 1994 to 30 November 2001.
- 5.2 DBS is an IFA network and as at 27 September 2002 had 1,933 appointed representatives. The glossary to the FSA Handbook defines a network as "*an independent intermediary which has five or more appointed representatives*".
- 5.3 Misys plc acquired DBS on 29 August 2001 – after the Direct Offer Advertisement under investigation had been issued.
- 5.4 DBS operates from Head Office premises in Huddersfield, West Yorkshire.
- 5.5 At the time of the Enforcement investigation visit on 15/16 April 2002, DBS was an “authorised person” pursuant to the Financial Services and Markets Act 2000 and held permissions to undertake regulated activities including:
- Advising (excluding pension Transfer/Opt Outs);
 - Advising on Pension Transfer/Opt Outs;
 - Agreeing to carry on a regulated activity;
 - Arranging deals in investments; and
 - Making arrangements.

Discovery of Current Issues

- 5.6 The case concerns a direct offer advertisement entitled "*Protected ISAs*" which was distributed with *The Daily Telegraph*, *The Sunday Telegraph* and *The Sunday Mirror* in June 2001. Concerns that the direct offer advertisement was not clear, fair and not misleading were identified in July 2001 by the FSA's Financial Promotion Monitoring Team. The direct offer advertisement had been issued by Ensuredirect.com Ltd, an appointed representative of DBS. It was DBS's responsibility to approve the advertisement.
- 5.7 The direct offer advertisement was for a Protected ISA product that was described as offering both capital security and growth over a five-year investment period. Particular features of the product included, among other things, the use of “participation rates” and “averaged” returns whereby investors would not receive the full return of any growth achieved by the underlying investment portfolio.
- 5.8 The issue of the direct offer advertisement entitled "*Protected ISAs*" was approved on 15 June 2001 by DBS's Advertising Approval Officer. The direct offer advertisement attracted a total of 455 investors.

Issues with DBS's advertising approvals process

- 5.9 As an IFA network with numerous appointed representatives DBS is responsible for approving the advertisements of its appointed representatives. Upon receipt at DBS, advertisements are assigned to an Advertising Approval Officer who takes responsibility for approving and signing off the advertisements. In June and July 2001 all direct offers were the responsibility of DBS's principal Advertising Approval Officer. The Advertising Approval Officer would check the material, which was either approved or rejected. All rejected material would be returned to the relevant Appointed Representative with feedback on those areas requiring amendment. On resubmission, the Advertising Approval Officer would check the material to confirm that the necessary amendments had been made. If the Advertising Approval Officer was satisfied with the amendments the material would be stamped as approved. Alternatively, if the required amendments had not been made the advertisement would be returned to the Appointed Representative. The Advertising Approval Officer was not required under DBS's procedures to carry out a reassessment of the whole advertisement prior to final approval.
- 5.10 DBS operated an informal process whereby the Advertising Approval Officer could call upon the expertise/guidance of the Policy and Audit Department and/or the Technical and Research Department to assist with the approval of a particular advertisement. DBS's advertising approval procedures did not require the referral of a query to either the Policy and Audit Department or the Technical and Research Department or the outcome of any such referral to be recorded. Approval of advertisements at all times remained the responsibility of the Advertising Approval Officer. DBS's Advertising Approval Procedures required advertisements, "*of a very technical nature*" to be referred to the Research and Technical Department. DBS's procedures did not define "*very technical*". Therefore the decision to refer an advert to the Research and Technical Department was entirely a matter for the discretion of the Advertising Approval Officer.
- 5.11 DBS's Advertising Approval Procedures required the Advertising Approval Officer to refer all "*contentious*" advertisements, editorials and direct offers to the Policy and Audit Manager, although final approval of the material remained with the Advertising Approval Officer. However, DBS's procedures did not define "*contentious*". Therefore the decision to refer an advert to the Policy and Audit Manager was entirely a matter for the discretion of the Advertising Approval Officer. DBS's staff confirmed that they had not received any specific training on what constituted a "*contentious*" advertisement.

Remedial action

- 5.12 In July 2001, the FSA advised DBS that the direct offer advertisement was deficient. The defects identified included that:
- The nature and limitations of the capital guarantee and of the early surrender penalties were not clearly and fairly stated;
 - the projections given were substantially in excess of the growth rates that are permitted for these investments creating a misleading perception of unrealistically large growth rates;

- there was an inaccurate illustration of the participation rate; and
- a prominent and inaccurate claim that there were no initial charges.

5.13 A similar letter dated 12 July 2001 was sent to the plan manager of the Protected ISA product. As a result of that action DBS liaised with the plan manager who then wrote to all consumers who had taken up the direct offer advising them of the concerns indicated above and offering them the opportunity to withdraw from the plan at no cost. Those customers who indicated in their response that they wished to be reimbursed have received a full refund of their investment.

6. CONTRAVENTION OF RELEVANT STATUTORY REQUIREMENTS

6.1 The penalty is imposed pursuant to Section 206 of the Act in respect of breaches of PIA Rules, including the Adopted FIMBRA Rules and the SIB Principles. Details of the breaches are set out below.

(1) The information in the Direct Offer Advertisement was not adequate and fair and did not fairly disclose the risks involved

6.2 DBS was required to approve only advertisements that provided the customer with adequate information and where the information provided in the advertisement was accurate and fair, by virtue of Rules F18.7(1) and F18.11.3(1) of the PIA Adopted FIMBRA Rules and PIA Rule 4.1. DBS failed to do so.

Facts and Matters Relied On

6.3 The advertisement included a statement that the investment would provide "*100% Capital Security over 5 years*". The statement appeared in bold on page 1 of the advertisement and similar statements were repeated in five places. However, the key features information on pages 20 and 21 information that indicated that security of capital applied only at the fifth anniversary of the plan. The advertisement did not make sufficiently clear that the capital protection offered applied only at the five-year anniversary. The advertisement in order to be fair and not misleading should have also made it clear that the capital guarantee was only applicable if the clients held the product to maturity.

6.4 The front cover of the advertisement displayed prominently the statement, "*All at no initial charge*". Statements to similar effect also appeared in three other places in the advertisement. It was only later in the advertisement at page 21 that there was reference, in small font, to an initial charge of up to 6% and an annual management charge of up to 1.2% per annum levied by the manager of each of the selected Protected Funds. In addition, further expenses could be charged to each of the selected Protected Funds. A custody of assets charge at 0.2% per annum was given by way of an example.

6.5 While it appears that the plan manager of the Protected ISA product did not impose any initial charge of its own, the managers of the underlying Protected Funds imposed their usual initial and on-going charges. These charges were not passed on to clients explicitly but were reflected in the pricing of the Protected ISA product. The combined result of those charges and expenses was a 4.8% reduction in yield per annum. The product charges were illustrated by the early surrender table at page 21

of the advertisement. The last line of the table indicated that at the end of the five-year term, the total effect of charges and expenses on an investment of £6,000 would amount to £1,710, assuming an investment return of 7% per annum.

- 6.6 The advertisement displayed clearly at page 5 that the *"Protected funds are related to six of the most popular ISA funds available"*. Namely, J P Morgan Fleming Premier Equity Growth, ABN AMRO UK Growth, Gartmore European Selected Opportunities, INVESCO Perpetual European Growth, Framlington Health and Aberdeen Technology. However, after five years the investor would not receive the full growth of those selected funds but the average of the daily price during the five-year investment period. That fact was not prominently stated in the advertisement but was contained within the small print forming part of the key features literature at page 21 of the advertisement, *"The final level will be the average of the daily bid price over the full five year investment period ending 31st July 2006"*. Therefore while the investment return on the product was restricted to provide capital protection (by averaging and using participation rates), the advertisement did not clearly or fairly state that the effect of these features was likely to mean that an investor could receive substantially reduced returns when compared to unprotected returns.

(2) Inadequate and misleading projections and forecasts

- 6.7 Where projections of future benefits are to be provided, Rule F29.8.3(1), Rule F18.10 and Table F18B of the Adopted FIMBRA Rules required DBS to provide projections that comply with the relevant Rules relating to projections: specifically, that any projection should comply with the maximum growth rates applicable to that specific class of investment. DBS failed to do so.

Facts and Matters Relied On

- 6.8 The advertisement included an example of possible future growth over the five-year investment period of 100% and 200%, equivalent to 14.4% and 22.9% growth per annum respectively. While there was no apparent attempt or intention to mislead potential investors into believing that these rates were achievable, the projections were substantially in excess of the growth rate permissible for ISA type investments. Further, the examples of future growth quoted on page 5 of the advertisement took no account of the reductions that would have resulted due to the use of averaged returns. No other information was provided to give a more detailed summary of the basis of the projection and the factors that may effect it.

(3) Approving a deficient and misleading advertisement

- 6.9 DBS was required by Rule F.18.3 of the Adopted FIMBRA Rules to appoint a fully qualified financial adviser for the purpose of supervising the preparation or approval of advertisements and for ensuring and certifying compliance with PIA's advertising Rules and was required to be able to show that there were good grounds for it believing that the advertisement was fair and not misleading. DBS failed to do so.

Facts and Matters Relied On

- 6.10 The advertisement was submitted and resubmitted by Ensuredirect.com Ltd seven times before it was approved by DBS on 15 June 2001. The product was still under

development at the time of the initial submission of the advertisement. As a result, the table of charges and the reduction in yield figure in the key features literature had been left blank for completion at a later date. Those incomplete areas were not identified by the Advertising Approval Officer during the initial review of the advertisement, and consequently were not checked on resubmission for accuracy or compatibility with the content of the rest of the advertisement. The Advertising Approval Officer was not required under DBS's procedures to carry out a reassessment of the whole advertisement prior to final approval.

- 6.11 DBS's Advertising Approval Procedures required advertisements, "*of a very technical nature*" to be referred to the Research and Technical Department. DBS's procedures did not define "*very technical*". Therefore the decision to refer an advertisement to the Research and Technical Department was entirely a matter for the discretion of the Advertising Approval Officer.
- 6.12 DBS's Advertising Approval Procedures required the Advertising Approval Officer to refer all "*contentious*" advertisements, editorials and direct offers to the Policy and Audit Manager. However, DBS's procedures did not define "*contentious*". Therefore the decision to refer an advertisement to the Policy and Audit Manager was entirely a matter for the discretion of the Advertising Approval Officer.
- 6.13 The Advertising Approval Officer was not familiar with "*Protected ISAs*". DBS's Advertising Approval Officer had approached the Policy and Audit Manager and was referred to one of the Policy and Audit analysts for assistance with vetting and approval of the advertisement. In addition, the Advertising Approval Officer may have referred the advertisement to the Research and Technical Department for confirmation of the accuracy of the content although there was no record of any referral.
- 6.14 DBS's procedures did not require the Advertising Approval Officer to record the grounds on which that person believed each advertisement to be fair, accurate and not misleading. The approval of an advertisement was documented solely by means of the imprint of a rubber stamp.

(4) Failure to have in place appropriate procedures to approve advertisements and adequate compliance procedures

- 6.15 DBS was required by Rule F18.3 of the PIA Adopted FIMBRA Rules to appoint a fully qualified financial adviser for the purpose of supervising the preparation or approval of the advertisements and for ensuring and certifying compliance with PIA's advertising Rules. DBS failed to do so.
- 6.16 DBS was required by PIA Rule 7.1.2 to establish procedures to ensure that its investment staff carried out their functions so that DBS complied with the Rules and Principles. It was required to keep those procedures up to date. DBS failed to do so.
- 6.17 PIA Rule 7.1.5 required DBS to establish and maintain a system of internal control that was appropriate to the size and type of its business. DBS failed to do so.

- 6.18 SIB Principle 9 required firms to organise and control its internal affairs in a responsible manner and ensure that its staff were adequately trained and supervised. DBS failed to do so.

Facts and Matters Relied On

- 6.19 The Advertising Approval Officer did not hold the status of a fully qualified financial adviser. DBS classified the Advertising Approval Officer as a technical role, sitting at the material time within the Compliance Function. The Advertising Approval Officer received a two-week period of training on DBS's advertising approval procedures and the process for approving advertisements by way of an induction into the role. No further on-going training was provided.
- 6.20 As a result, the Advertising Approval Officer was not able to maintain appropriate levels of current expertise, especially as regards developments in relation to new products or products not previously encountered. The Advertising Approval Officer was unfamiliar with “*Protected ISA's*”.

Resource within the Advertising Approvals Team

- 6.21 There were no formal arrangements in place whereby additional resource was available to assist the Advertising Approval Officer. An ad hoc system operated whereby Policy and Audit staff could be called upon to provide additional resource. However, those staff were expected to assist the Advertising Approval Officer while continuing with their existing responsibilities. The Advertising Approval Officer was expected to deal with the approval of on average about 50/60 Internet web sites and direct offers a month rising to 80 per month during the peak ISA season. The Policy and Audit Manager himself expressed the view that the Advertising Approvals Team was under-resourced.

Remedial action following Supervision Visit in March 2000

- 6.22 DBS received a PIA Supervision visit in March 2000 when concerns regarding DBS's advertising approval procedures were identified. The particular concerns identified by PIA Supervision included:
- failure to have appropriate procedures for the approval of advertisements;
 - failure to ensure that advertisements were clear, fair and not misleading;
 - failure to ensure that advertisements contained only information that was accurate and up to date; and
 - failure to ensure that, where an advertisement contained information about past performance, the source of the information was included within the advertisement.
- 6.23 The remedial action specified by PIA as being required in relation to each of these concerns included a requirement for DBS to improve its procedures.
- 6.24 DBS's actions addressed the individual circumstances that had given rise to each of the concerns in that it:

- issued an instruction to the Advertising Approval Officer to approve advertisements only if the contents had been verified and documentation kept to demonstrate that there were good grounds for believing each advertisement to be fair and not misleading;
 - provided refresher training to the Advertising Approval Officer on the requirements regarding advertising approval;
 - discussed with the Advertising Approval Officer the requirements that information contained within advertisements were accurate, up to date and not misleading; and
 - confirmed with the appointed representative that the advertisement in question had been withdrawn.
- 6.25 DBS also moved its advertising approval function from the Business Assessment Department to the Compliance Function and issued further guidance to its appointed representatives on the submission of advertisements for approval. DBS's compliance procedures were amended to reflect these changes
- 6.26 However, DBS did not make any changes to its advertising approval procedures and the limited changes outlined in paragraphs 5.23 and 5.24 were neither adequate nor sufficiently permanent responses to the problems that had been detected at the Supervision visit. The advertising approval procedures themselves remained unchanged from the time of the previous PIA visit to when the advertisement for “*Protected ISA’s*” was approved. Therefore, when the Advertising Approval Officer subsequently changed, the incoming officer would not have been aware of the remedial action taken by DBS in response to the previous PIA visit and how this had impacted on the role and responsibilities of the Advertising Approval Officer.

7. RELEVANT GUIDANCE ON SANCTION

- 7.1 The FSA’s policy on the imposition of financial penalties is set out in Chapter 13 of the Enforcement Manual which forms part of the FSA Handbook (“ENF”). The principal purpose of a financial penalty is to promote high standards of regulatory conduct by deterring firms who have breached regulatory requirements from committing further contraventions, helping to deter other firms from committing contraventions and demonstrating generally to firms the benefits of compliant behaviour.
- 7.2 Article 8 (4) of the Pre-N2 Misconduct Order provides that, where the FSA proposes to impose a financial penalty, it must have regard to:
- “any statement made by the self-regulating organisation ...which was in force when the conduct in question took place with respect to the policy on the taking of disciplinary action and the imposition of, and amount of, penalties (whether issued as guidance, contained in the rules of the organisation or otherwise)”.*
- 7.3 Relevant PIA Guidance was contained in Annex D of “PIA’s Approach to Discipline – Statement of Policy” that was issued in December 1995. In all material respects this required consideration of the same factors as identified in Chapter 13 of the

Enforcement Manual. It has been taken into account by the FSA in determining the appropriate sanction in this case.

- 7.4 PIA's Statement of Policy made it clear, however, that the criteria for determining the level of sanction are not to be applied rigidly, as stated in paragraph 2 of Annex D:

“Each case is different and needs to be treated on its own merits. It is not possible to apply a mechanistic approach to the determination of the circumstances in which disciplinary action should be taken or of the sanctions to be applied. The criteria...should not be treated as exhaustive. Nor should it be assumed that regard would necessarily be had to a particular criterion in any given circumstances.”

- 7.5 Similarly, it is stated in Chapter 13 of the FSA Enforcement Manual at paragraph 13.3.4 that the criteria listed in the manual are not exhaustive and all relevant circumstances of the case will be taken into consideration.

- 7.6 In determining whether a financial penalty is appropriate, and its level, the FSA considers all the relevant circumstances of the case. The FSA considers the following factors (which are expressed in terms of both the FSA's and the equivalent PIA Guidance) to be particularly relevant in this case.

ENF 13: The seriousness of the misconduct or contravention.
PIA Guidance: The seriousness of the breaches

- 7.7 The level of financial penalty must be proportionate to the nature and seriousness of the contravention. The breaches identified in this case were potentially very serious. Due to the timely intervention of the regulator the risks to consumers were minimised.

- 7.8 Weaknesses in DBS's approval of advertisements had been identified as a result of a PIA Supervision visit in March 2000. As part of the remedial action DBS was instructed to amend its advertising approval procedures. DBS failed to amend its procedures.

- 7.9 As a result of inadequate approval procedures DBS approved a misleading direct offer advertisement, in the form of a 24-page brochure, that was distributed with four and a half million copies of *The Daily Telegraph*, *The Sunday Telegraph* and *The Sunday Mirror*. The advertisement had the potential to mislead seriously a substantial number of consumers.

- 7.10 These financial promotions were misleading on their face, and could (and did) induce people to buy the product without appropriate disclosures and warning, and where it would not have been suitable for those investors. These financial promotions also had wide circulation, being included in national newspapers – after little more than one month, 455 people had purchased the investment. Consumers should be reassured that regulatory action will be taken where clear and substantial breaches of the financial promotion or advertising Rules are identified.

- 7.11 The direct offer advertisement was promoting a very complicated investment product in a direct offer format. It contained many unusual features that would be unfamiliar to the ordinary unsophisticated retail customers at whom it was targeted via national newspapers. DBS therefore had a particular responsibility to ensure that the

advertisement was presented in a way that was likely to be understood by the persons at whom it was targeted.

- 7.12 Regulated firms should be warned that failure to issue financial promotions that are not clear, fair and/or are misleading will likely lead to disciplinary measures being taken. This should act as a deterrent to other firms and help to ensure that regulatory standards are being upheld.

ENF 13: The extent to which the contravention is deliberate or misconduct was deliberate or reckless

PIA Guidance: Whether the member intentionally or recklessly failed to meet PIA's requirements.

- 7.13 There is no indication that DBS deliberately contravened PIA Rules. However, the procedures that DBS had in place were unclear and poorly drafted, the approval process was under resourced and the approval officer did not have adequate experience. The fact that DBS had also failed to give due attention to previous findings and recommendations of PIA Supervision in relation to DBS's advertising approval process, together with the other failures, is a serious aggravating factor, whether or not DBS's behaviour and misconduct is classified as reckless.

ENF 13: The size, financial resources and other circumstances of the firm

PIA Guidance: The extent to which the member's governing body or senior management was culpable. The member's ability to pay.

- 7.14 DBS is a substantial firm and there is no doubt as to its ability to pay the penalty.

ENF 13: The amount of profit accrued or loss avoided

PIA Guidance: The extent to which, as a result of the breaches, the member gained a benefit or avoided suffering a loss.

- 7.15 There is no evidence that DBS deliberately set out to accrue additional profits as a result of its failings.

ENF 13: Conduct following the contravention

PIA Guidance: The firm's response once the breaches were identified

- 7.16 DBS did not itself identify the breaches. However, once the breaches were brought to DBS's attention, it actively sought to improve its procedures to ensure future compliance. It has undertaken a review of business written as a result of the offending advertisement by writing to the customers involved, pointing out the failings and agreeing to refund contributions where customers believe they were mis-sold.

ENF 13: Disciplinary record and compliance history

PIA Guidance: The firm's regulatory history

- 7.17 DBS has been disciplined twice by PIA.

- 7.18 In September 1997, PIA ordered DBS to pay a fine of £425,000 plus costs of £19,450 for rule breaches of PIA Rules in connection with the review of past pension business. Those breaches included the failure to take all reasonable steps to carry out the review

of past pension business transacted by its appointed representatives and the failure to take all reasonable steps to monitor the review of past pension business transacted by its appointed representatives prior to joining DBS. DBS also received a public reprimand.

- 7.19 In May 1999, DBS was fined the sum of £40,000 by PIA and ordered to pay costs of £20,000 for failing to monitor adequately the conduct of an appointed representative that resulted in an unsuitable recommendation being made.

ENF 13: Previous action by the FSA in relation to similar failings

- 7.20 The FSA (as opposed to PIA) has not previously imposed penalties on firms for similar failings.

ENF 13: Action taken by other regulatory authorities in relation to similar findings
PIA Guidance: The way in which PIA has dealt with similar cases in the past

- 7.21 PIA (DBS's previous regulator) has, in the past, taken action against a few firms for advertising failings. This action has included the imposition of financial penalties. The FSA has taken these penalties into account.

8. MANNER OF PAYMENT

- 8.1 The Penalty must be paid to the FSA in full.

9. TIME FOR PAYMENT

- 9.1 The penalty must be paid to the FSA no later than 16 April 2003, being not less than 14 days beginning with the date on which this notice is given to you.

10. IF THE PENALTY IS NOT PAID

- 10.1 If all or any of the Penalty is outstanding on 17 April 2003, the FSA may recover the outstanding amount as a debt owed by you and due to the FSA

11. IMPORTANT NOTICES

- 11.1 This Final Notice is given to you in accordance with section 390 of the Act

Publicity

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

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

FSA Contacts

11.4 For more information concerning this matter generally you should contact David Bates at the FSA (direct line: 020 7676 1446 / fax 020 7676 1447).

Julia Dunn

Group Leader

FSA Enforcement Division