Financial Services Authority

FINAL NOTICE

To:	**Exclusive Asset Management Limited (In Liquidation)**
Of:	**c/o Butcher Woods** **79 Caroline Street** **Birmingham** **B3 1UP**
FSA reference number:	**198002**
Date:	**8 July 2011**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the "FSA") gives Exclusive Asset Management Limited (In Liquidation) ("Exclusive") final notice about the publication of a statement of its misconduct.

1. ACTION

1.1. On 8 July 2011 the Financial Services Authority (the "FSA") gave Exclusive a Decision Notice which notified Exclusive that, pursuant to section 205 of the Financial Services and Markets Act 2000 (the "Act"), the FSA had decided to issue a

public censure of Exclusive. The public censure is in respect of Exclusive's failure to comply with Principles 3, 7 and 9 of the FSA's Principles for Businesses (the "Principles") in the period between 18 December 2008 and 21 April 2010 (the "relevant period").

1.2. Exclusive went into voluntary liquidation on 24 May 2011. Were it not for Exclusive's financial circumstances, the FSA would ordinarily have imposed a financial penalty of £60,000 in respect of its breaches Principles 3, 7 and 9. The FSA is not imposing a financial penalty, as to do so would not be appropriate given Exclusive's financial circumstances and lack of funds available to the Firm which led to its insolvency.

1.3. Exclusive confirmed that it would not be referring the matter to the Upper Tribunal (Tax and Chancery Chamber).

1.4. Accordingly, for the reasons set out below, the FSA hereby issues a public censure of Exclusive's misconduct. The public censure will take the form of this Final Notice, which will be published on the FSA's website.

2. SUMMARY OF REASONS

2.1. The FSA decided to issue this public censure of Exclusive for failing to comply with the following Principles during the relevant period. In summary, the FSA concluded that:

(1) Exclusive failed to take reasonable steps to establish and implement effective procedures to ensure that it complied with regulatory requirements, including procedures relating to fact finding, record keeping, monitoring of advisers and the suitability of their advice and training and competence. As such, Exclusive failed to control its business with adequate and appropriate compliance arrangements and risk management systems, in breach of Principle 3 (Management and control).

(2) Exclusive failed to pay due regard to the information needs of its clients, and communicate information to its clients in a way which was clear, fair and not misleading in contravention of Principle 7 (Communications with clients).

Exclusive's suitability letters were not appropriately tailored and omitted relevant information that would have enabled the clients to make properly informed decisions. The FSA found that on one of the files reviewed, there was no evidence that a suitability letter was actually issued to the client.

(3) Exclusive failed to take reasonable steps to ensure the suitability of its advice, in breach of Principle 9 (Customers: relationships of trust). In particular, Exclusive failed to gather and record relevant information about customers in order to assess suitability of advice and support the recommendation made, properly assess and record customer's attitude to risk and evidence that product research had been conducted and that alternative products had been considered and compared.

2.2. The FSA regarded Exclusive's failings as reckless and were particularly serious because:

(1) Exclusive exposed customers to the risk of receiving unsuitable advice and could not show that its recommendations were demonstrably suitable;

(2) Exclusive failed to act on issues that it had already become aware of; and

(3) Exclusive's failings related not only to suitability and customer communications but were systemic, in that they also related to compliance monitoring, record keeping and training and competence monitoring procedures.

2.3. The FSA considers, therefore, that Exclusive's failings would ordinarily merit the imposition of a financial penalty of £60,000, were it not for its liquidation.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS AND FSA GUIDANCE

3.1. The relevant statutory provisions, regulatory requirements, and FSA guidance are set out at Annex A to this Final Notice.

4. FACTS AND MATTERS RELIED ON

Background

4.1. Prior to its liquidation on 24 May 2011, Exclusive operated as a personal investment firm based in Enderby, Leicestershire. Exclusive became authorised and regulated by the FSA on 1 December 2001 and during the relevant period Exclusive was authorised to carry on the following regulated activities:

(1) advising on pension transfers and pension opt outs;

(2) advising on investments (except on pension transfers and pension opt outs);

(3) arranging (bringing about) deals in investments;

(4) making arrangements with a view to transactions in investments;

(5) assisting in administration of insurance; and

(6) agreeing to carry on a regulated activity.

4.2. On 21 April 2010, the FSA carried out an unannounced visit to Exclusive's offices as a result of information received from external sources relating to the activities of one of Exclusive's investment advisers ("Mr X"). During the visit, the FSA identified concerns about Exclusive's systems and controls and the quality of its advice. Based on the customer files reviewed during the visit, the FSA was unable to determine whether the advice given by Exclusive's advisers was suitable as fact finds were incomplete and other records were either missing or unclear.

Systems and controls – Principle 3

Compliance arrangements

4.3. The FSA found only limited evidence of compliance monitoring, and even this was undertaken on an infrequent basis. Specifically:

(1) Exclusive failed to comply with an undertaking it gave to the FSA on 19 December 2008 in relation to Mr X. Exclusive undertook to review all of Mr X's client files to ensure suitability of advice. Prior to June 2009 Exclusive

had failed to review any of Mr X's files, despite Exclusive's new business register recording that Mr X had conducted approximately 45 regulated transactions in the period up until June 2009.

(2) Exclusive's records show that in April 2009 it was identified that Mr X, who operated from a separate office, had failed to submit client details to Exclusive and that client files were not being held centrally in accordance with Exclusive's procedures. To address the issue, Exclusive proposed that Mr X provide all completed files to Exclusive for review. Despite these concerns about the way in which Mr X operated, it appears Exclusive did not perform an immediate review of Mr X's files or increase its level of oversight, in contravention of SYSC 6.1.1R, which requires that a firm must have sufficient procedures in place to ensure compliance of the firm with its obligations under the regulatory system.

(3) In June 2009, Exclusive reviewed a number of Mr X's files, deeming them to be compliant and without identifying any issues. The FSA found that the file reviews performed by Exclusive were inadequate in breach of SYSC 6.1.1R, as it had failed to pick up on a number of issues.

(4) Exclusive failed to perform any further reviews of Mr X's files between June 2009 and February 2010 despite the undertaking it gave the FSA and the fact that Mr X conducted a high level of regulated business during this period. Exclusive has acknowledged that the level of monitoring was insufficient and stated that this was due to resource constraints meaning it was unable to oversee adequately all of the advisers at the firm, in accordance with TC 2.1.3G, which states that firms should ensure that employees are appropriately supervised at all times.

(5) The FSA saw no evidence that Exclusive identified or took steps to address the deficiencies in its compliance monitoring arrangements before April 2010, in breach of SYSC 4.1.1R, which requires that a firm must have robust governance arrangements and effective processes to identify, manage and monitor the risks it may be exposed to.

(6) Exclusive failed to ensure that remedial steps were taken to address concerns arising from file reviews. In February 2010, Exclusive performed a review of Mr X's client files and identified various failings in relation to record keeping. Issues and problems were discussed between Exclusive and Mr X during one-to-one meetings. However, the issues were not followed up by Exclusive, in breach of SYSC 6.1.1R. The FSA reviewed a sample of Mr X's files from before and after February 2010 and noted that the issues identified, including failure to demonstrate suitability of advice and inadequate suitability reports (a breach of COBS 9.4.7R), were prevalent throughout and did not improve even after Exclusive performed its review in February 2010.

(7) In relation to the monitoring of other advisers more generally, the FSA identified various occasions when Exclusive had signed off document checks even though the relevant documents were not actually on file. Furthermore, there was no evidence that the suitability of advice provided by the advisors had been reviewed, in breach of TC 2.1.3G.

4.4. In summary, by failing to take reasonable steps to establish and implement effective procedures and processes to monitor its advisers, Exclusive failed to ensure that its advisers were giving suitable advice and complying with regulatory requirements. Exclusive performed basic document checks and even when issues were identified, Exclusive failed to ensure that they were followed up and rectified in a timely manner.

Training and Competence

4.5. Exclusive failed to implement an adequate process for reviewing the ongoing competence, knowledge, skills and training of its advisers or compliance staff, in breach of TC 2.1.12R, which requires that a firm must regularly review employees' competence and take appropriate action to ensure that they remain competent for their role. There was very limited evidence of regular formal assessments being conducted and quality of advice checks being carried out.

4.6. Exclusive's records indicate that the general focus of training and competence meetings tended to be on targets, productivity, leads and business generation rather

than identifying any training and development needs of its advisers or addressing issues relating to the suitability of advice given by advisers, in breach of TC 2.1.12R.

4.7. Specifically, the FSA reviewed development plans produced by Exclusive for four advisers and noted that:

(1) complaints made against the advisers were included in the plans but rather than identifying any possible training needs in accordance with TC 2.1.11G, the plans concentrated on how the complaints may have affected the advisers' confidence; and

(2) the plans did not generally include an in-depth assessment of skills, strengths, weaknesses and development needs. Even where a weakness was identified, training needs and proposed action points were not always identified.

4.8. The FSA also requested the training and competence files for Exclusive's compliance staff but was notified that Exclusive did not hold such files as compliance staff were not customer-facing. It is therefore unclear how Exclusive was able to satisfy itself about the competence of its compliance staff and ensure that its compliance function was adequate, in breach of TC 2.1.12R.

4.9. In summary, the FSA considered that Exclusive failed to implement an adequate process for assessing and addressing the training needs and ongoing competencies of its staff. This is particularly serious, because it meant that Exclusive may not have been able to identify whether its advisers were competent to give advice on certain products.

Communications with clients – Principle 7

Suitability reports

4.10. The FSA reviewed 13 of Exclusive's client files, one of which did not contain a suitability report. The FSA found the following deficiencies in the remaining twelve suitability reports that it reviewed:

(1) None of the suitability reports was adequately tailored to the individual client. For example, in all of the letters there was insufficient explanation of how the

recommended investments met the client's objectives and why the recommendation was suitable, in breach of COBS 9.4.7R, which states that a suitability report must specify the client's demands and needs, explain why the firm has made the relevant recommendation having regard to the information provided by the client, and the disadvantages of the investment recommended.

(2) None of the suitability reports gave a balanced explanation of the advantages and disadvantages of the proposed investments, including the risks of the investments, in breach of COBS 9.4.7R.

(3) The suitability reports set out the generic risks of the recommended investment but in five suitability reports, clients were asked to refer to the Key Facts Illustration ("KFI") for further information about the potential risks and disadvantages of the product. In at least four of the client files reviewed, there was little evidence that a KFI had actually been issued to the client.

(4) In five of the suitability reports, clients were advised to replace their existing investments with a new investment, without sufficient explanation of the charges and penalties that they might incur, why the replacement was in the client's best interests and why the switch was justified, in breach of COBS 9.4.7R.

(5) In none of the suitability reports reviewed were alternative products or providers detailed in the suitability reports, although Exclusive stated that other options were considered, in breach of COBS 9.2.1R.

(6) In at least four of the suitability reports reviewed, the disclosure provided to clients did not explain clearly to clients how Exclusive would be remunerated, in breach of COBS 4.2.1R.

4.11. Almost all of the twelve suitability reports reviewed by the FSA were inadequate and failed to set out adequately clients' demands and needs in writing. The lack of tailoring of suitability letters to individual customers is further evidence that Exclusive did not gather sufficient KYC information to deal with specific customer requirements.

Customers: relationships of trust – Principle 9

4.12. The FSA considered that Exclusive failed to take reasonable steps to ensure the suitability of its advice during the relevant period. In particular:

(1) None of the fact finds reviewed by the FSA were completed adequately, which meant that appropriate information regarding the customers personal and financial circumstances, objectives and needs were not always accurately recorded by Exclusive, in breach of COBS 9.2.1R and COBS 9.2.2R.

(2) Three of the files reviewed by the FSA did not contain records of clients' personal and financial circumstances, in breach of COBS 9.2.1R and COBS 9.2.2R.

(3) In two of the client files, there was insufficient information recorded about the basis for determining the client's investment risk appetites, in breach of COBS 9.2.1R and COBS 9.2.2R.

(4) Similar investments were recommended to two clients with different risk appetites and the rationale for making these recommendation was not adequately documented, suggesting that reasonable steps had not been taken to ensure that the recommendations given to clients were suitable, in breach of COBS 9.2.1R.

(5) Most of the recommendations did not appear to be consistent with the clients' recorded risk profiles, in breach of COBS 9.2.2R.

(6) In one instance, Exclusive allowed an adviser to advise on a pension transfer in the mistaken belief that the adviser was qualified to do so, thereby contravening TC 2.1.7R, which states that a firm must ensure that an employee does not carry on the activity of a pension transfer specialist without first attaining the appropriate qualification.

(7) None of the client files reviewed by the FSA contained evidence that product research had been conducted or that alternative investments or providers had been considered and compared, in breach of COBS 9.2.1R. Where clients were

advised to switch from existing investments, there was insufficient analysis on the files to demonstrate why the recommendations were in the best interests of the clients. Exclusive's advisers showed a marked preference for certain providers and investments.

4.13. By failing to obtain and record sufficient information about its clients and the product research it conducted, and by failing to assess adequately clients' risk appetites, Exclusive was not able to demonstrate why its recommendations to clients were suitable.

5. ANALYSIS OF BREACHES

5.1. For the reasons set out above, the FSA considered that Exclusive failed to:

(1) take reasonable care to organise, control and undertake risk management, responsibly and effectively, the suitability of its advice, compliance checking, fact-finding, record-keeping, training and competence monitoring procedures in relation to its investment business, in contravention of Principle 3;

(2) pay due regard to the information needs of its clients, and communicate information to them in a way which was clear, fair and not misleading. Specifically, a number of Exclusive's suitability reports were generic and contained limited tailoring to the customers' circumstances. A number of the suitability reports did not disclose information about the costs and risks associated with the recommended investments, in contravention of Principle 7; and

(3) take reasonable care to ensure the suitability of its advice to customers in contravention of Principle 9 by failing to:

a. obtain and record sufficient personal and financial information about its customers to assess suitability;

b. properly assess and record customers' attitude to risk; and

c. consider or evidence that it had considered other products that may have better suited the customers' needs.

5.2. Exclusive also failed to comply with the associated Conduct of Business, Systems and Controls, and Training and Competence rules and guidance set out at Annex A.

5.3. The FSA considered that Exclusive's misconduct was reckless, in that it failed to take reasonable steps to ensure that regulatory requirements were being complied with, despite being previously made aware of its failings by the FSA.

6. ANALYSIS OF THE SANCTION

Public censure

6.1. The FSA's policy in relation to the issue of public censures prior to 6 March 2010 was set out in Chapter 6 of the Decision Procedures and Penalties Manual ("DEPP"), which forms part of the FSA Handbook. All references to DEPP are references to that version of DEPP, in force at the relevant time of Exclusive's breaches. The FSA has also had regard to Chapter 7 of the Enforcement Guide ("EG"), the part of the FSA's Handbook setting out the FSA's policy on the imposition of public censures

6.2. Whilst part of Exclusive's misconduct took place after 6 March 2010, which is when the FSA's new penalties regime came into effect and changes were made to DEPP, the FSA is issuing the public censure in accordance with the guidance in place prior to 6 March 2010 given that the misconduct lasted for only a very short time under the new regime. There were no substantive changes to the guidance contained in Chapter 6 of DEPP relating to the issuing of public censures.

6.3. DEPP 6.1.2G stated that the principal purpose of issuing a public censure is to promote high standards of regulatory 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.

6.4. In determining whether a public censure is appropriate under the policy in place before 6 March 2010 the FSA is required to consider all the relevant circumstances of a case. Applying the criteria set out in the DEPP 6.2.1G (regarding whether or not to take action for a financial penalty or public censure) and 6.4.2G (regarding whether to issue a public censure rather than impose a financial penalty), the FSA considers that

a public censure is an appropriate sanction, given the serious nature of the breaches and the need to send out a strong message to other firms.

6.5. The FSA will consider the full circumstances of each case when deciding whether or not to issue a public censure. DEPP 6.4.2G states that the criteria for determining whether it is appropriate to issue a public censure rather than impose a financial penalty include those factors that the FSA will consider in determining the amount of penalty set out in DEPP 6.5. Some particular considerations that may be relevant when the FSA determines whether to issue a public censure rather than impose a financial penalty are:

(1) whether or not deterrence may be effectively achieved by issuing a public censure; …

(7) the FSA's approach in similar previous cases: the FSA will seek to achieve a consistent approach to its decisions on whether to impose a financial penalty or issue a public censure; and

(8) the impact on the person concerned. In exceptional circumstances, if the person has inadequate means (excluding any manipulation or attempted manipulation of their assets) to pay the level of financial penalty which their breach would otherwise attract, this may be a factor in favour of a lower level of penalty or a public statement. However, it would only be in an exceptional case that the FSA would be prepared to agree to issue a public censure rather than impose a financial penalty if a financial penalty would otherwise be the appropriate sanction. Examples of such exceptional cases could include where there is:

(a) verifiable evidence that a person would suffer serious financial hardship if the FSA imposed a financial penalty;

(b) verifiable evidence that the person would be unable to meet other regulatory requirements, particularly financial resource requirements, if the FSA imposed a financial penalty at an appropriate level; or

(c) in Part VI cases in which the FSA may impose a financial penalty, where there is the likelihood of a severe adverse impact on a person's shareholders or a consequential impact on market confidence or market stability if a financial penalty was imposed. However, this does not exclude the imposition of a financial penalty even though this may have an impact on a person's shareholders.

Financial Penalty

6.6. In determining the level of the financial penalty that the FSA would have otherwise imposed on Exclusive, were it not for its liquidation, the FSA has had regard to the following guidance in DEPP which was in force prior to 6 March 2010.

Deterrence (DEPP 6.5.2(1)G)

6.7. A financial penalty would promote high standards of regulatory conduct by deterring other firms from committing similar breaches and demonstrating generally the benefit of compliant behaviour.

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

6.8. In determining the appropriate sanction, the FSA had regard to the seriousness of the breaches by Exclusive, including the nature of the requirements breached, the number and duration of the breaches, the number of customers who have suffered or may suffer financial loss and the fact that the breaches revealed serious failings in Exclusive's systems and controls.

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

6.9. The FSA determined that Exclusive did not deliberately contravene regulatory requirements but in failing to take reasonable steps to ensure that regulatory requirements were being complied with, despite having its problems brought to its attention by the FSA, its actions were reckless.

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

6.10. The FSA took into consideration Exclusive's current financial circumstances and has concluded that the nature and seriousness of its misconduct is such that it would ordinarily merit the imposition of a £60,000 penalty on Exclusive. However, as Exclusive is in liquidation the FSA did not consider it appropriate to impose a financial penalty upon Exclusive.

The amount of benefit gained or loss avoided as a result of the breaches (DEPP 6.5.2(6)G)

6.11. The FSA took into account of the volume of relevant business done by Exclusive from the sale of investment products in the relevant period which amounted to 675 transactions in total.

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

6.12. The FSA took into account Exclusive's previous disciplinary record and general compliance history. The FSA had previously brought to Exclusive's attention the need to review its compliance arrangements and consider the need for professional compliance resource to address these concerns, and it is evident that Exclusive did not adequately address those concerns, which created an ongoing risk of inadequate monitoring of advisers and of customer detriment.

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

6.13. In determining the level of financial penalty that would have been imposed on Exclusive, the FSA took into account penalties imposed by the FSA on other authorised persons for similar behaviour.

6.14. The FSA, having regard to all the circumstances, considered the appropriate level of financial penalty to impose on Exclusive would have been £60,000, were it not for Exclusive's financial circumstances.

7. DECISION MAKERS

7.1. The decision which gave rise to the obligation to give this Final Notice was made on behalf of the FSA by Settlement Decision Makers for the purposes of the FSA's Decision Procedure and Penalties Manual.

8. IMPORTANT

8.1. This Final Notice is given to Exclusive in accordance with section 390 of the Act. The following statutory rights are important.

Publicity

8.2. 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 Exclusive or prejudicial to the interests of consumers.

8.3. The FSA intends to publish such information about the matter to which this Final Notice relates, including the statement of misconduct, as it considers appropriate.

FSA contacts

8.4. For more information concerning this matter generally, contact Chris Walmsley (direct line: 020 7066 5894/fax: 020 7066 5895).

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Tom Spender

Head of Department, Enforcement and Financial Crime Division

ANNEX A

RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE

1. Statutory provisions

1.1 The FSA's statutory objectives, set out in section 2(2) of the Act, include the protection of consumers.

1.2 Section 205 of the Act provides that:

"*If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act or by any directly applicable Community regulation made under the markets in financial instruments directive, the Authority may publish a statement to that effect"*

1.3 Section 206(1) of the Act provides that:

"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".

2. Relevant Handbook provisions

In exercising its power to issue a public censure, the FSA must have regard to relevant provisions in the FSA Handbook. The main provisions relevant to the action specified above are set out below.

3. Principles for Businesses

3.1 Under the FSA's rule-making powers as referred to above, the FSA has published in the FSA Handbook the Principles, which apply in whole, or in part, to all authorised firms.

3.2 The Principles are a general statement of the fundamental obligations of authorised firms under the regulatory system and reflect the FSA's regulatory objectives. An authorised firm may be liable to disciplinary sanction where it is in breach of the Principles.

3.3 The Principles relevant to this matter are:

(1) Principle 3 which provides that:

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

(2) Principle 7 which provides that:

"A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading"; and

(3) Principle 9 which provides 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."

3.4 The procedures to be followed in relation to the issuance of a public censure and the imposition of a financial penalty are set out in section 207 and 208 of the Act.

4. Conduct of Business

4.1 The Conduct of Business Sourcebook ("COBS"), which is part of the FSA Handbook, applied to authorised firms with effect from 1 November 2007.

4.2 All of the provisions of COBS set out below apply in relation to designated investment business.

4.3 COBS 4.2.1R requires an authorised firm to ensure that a communication to a client is fair, clear and not misleading.

4.4 COBS 4.5.2R requires that information provided by an authorised firm to retail clients 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.

4.5 COBS 9.2.1R provides that:

"(1) A firm must take reasonable steps to ensure that a personal recommendation, or a decision to trade, is suitable for its client.

(2) When making the personal recommendation or managing his investments, the firm must obtain the necessary information regarding the client's:

a. knowledge and experience in the investment field relevant to the specific type of designated investment or service;

b. financial situation; and

c. investment objectives;

so as to enable the firm to make the recommendation, or take the decision, which is suitable for him."

4.6 COBS 9.2.2 R provides that:

"(1) A firm must obtain from the client such information as is necessary for the firm to understand the essential facts about him and have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of managing:

a. meets his investment objectives;

b. is such that he is able financially to bear any related investment risks consistent with his investment objectives; and

c. is such that he has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.

(2) The information regarding the investment objectives of a client must include, where relevant, information on the length of time for which he wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.

(3) The information regarding the financial situation of a client must include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments."

4.7 COBS 9.2.6R requires that, if an authorised firm does not obtain the necessary information to assess suitability, it must not make a personal recommendation to the client.

4.8 COBS 9.4.7R requires that suitability reports provided to retail clients must at least specify the client's demands and needs; 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 explain any possible disadvantages of the transaction for the client.

5. Systems and Controls

5.1 During the relevant period, Chapter 3 of the FSA's Senior Management Arrangements, Systems and Controls sourcebook ("SYSC"), also part of the FSA Handbook, applied to Exclusive.

5.2 SYSC 3.1.1R states that an authorised firm must take reasonable care to establish and maintain such systems and controls as are appropriate to its business.

5.3 SYSC 3.1.2G states, as guidance, that, to enable it to comply with its obligation to maintain appropriate systems and controls, an authorised firm should carry out a regular review of them.

5.4 SYSC 3.1.6R states that an authorised firm must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.

5.5 SYSC 3.1.7R states that an authorised firm, when complying with SYSC 3.1.6R, must take into account the nature, scale and complexity of its business and the nature and range of financial services and activities undertaken in the course of that business.

5.6 SYSC 3.2.6R requires 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 and for countering the risk that the firm might be used to further financial crime.

5.7 SYSC 4.1.1R requires that a firm must have robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, and internal control mechanisms, including sound administrative and accounting procedures and effective control and safeguard arrangements for information processing systems.

5.8 SYSC 6.1.1R requires that a firm must establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the firm including its managers, employees and appointed representatives with its obligations under the regulatory system and for countering the risk that the firm might be used to further financial crime.

6. Training and Competence

6.1 The FSA's Training and Competence sourcebook ("TC") applies to authorised firms such as Exclusive advising on investment products.

6.2 TC 2.1.2R requires that a firm must not allow an employee to carry on an activity in TC Appendix 1 without appropriate supervision, which activities relating to designated investment business carried on for a retail client.

6.3 TC 2.1.3G states that firms should ensure that employees are appropriately supervised at all times. It is expected that the level and intensity of that supervision will be significantly greater in the period before the firm has assessed the employee as competent, than after. A firm should therefore have clear criteria and procedures relating to the specific point at which the employee is assessed as competent in order to be able to demonstrate when and why a reduced level of supervision may be considered appropriate. At all stages firms should consider the level of relevant experience of an employee when determining the level of supervision required.

6.4 TC 2.1.7R(4) requires that a firm must ensure that an employee does not carry on the activity of a pension transfer specialist without first attaining each module of an appropriate qualification.

6.5 TC 2.1.11G stated that firms should ensure that their employees' training needs are assessed at the outset and at regular intervals (including if their role changes). Appropriate training and support should be provided to ensure that any relevant training needs are satisfied. Firms should also review at regular intervals the quality and effectiveness of such training.

6.6 TC 2.1.12R requires that a firm must review on a regular and frequent basis employees' competence and take appropriate action to ensure that they remain competent for their role.

6.7 TC 2.1.13G states, as guidance, that a firm should ensure that maintaining competence for an employee takes into account such matters as:

(1) technical knowledge and its application;

(2) skills and expertise; and

(3) changes in the market and to products, legislation and regulation.