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**FINAL NOTICE**

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To: **The Ancient Order of Foresters Friendly Society Limited**

Of: **Foresters House  
29 – 33 Shirley Road  
Southampton  
SO15 3EW**

Date: 23 August 2006

**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.**

**THE PENALTY**

The FSA gave The Ancient Order of Foresters Friendly Society Limited ("Foresters") a Decision Notice on 22 August 2006 which notified Foresters that pursuant to section 206 of the Financial Services and Markets Act 2000 (“FSMA”), the FSA had decided to impose a financial penalty of £55,000 on Foresters in respect of breaches of:

- (a) FSA Principles 3 and 7;
- (b) Senior Management Arrangements, Systems and Controls (SYSC) Rules; and
- (c) Conduct of Business (COB) Rules;

in relation to its financial promotions, (as set out in the FSA Handbook).

The Firm confirmed on 21 August 2006 that it will not be referring the matter to the Financial Services and Markets Tribunal.

Accordingly, for the reasons set out below, and having agreed with Foresters the facts and matters relied on, the FSA imposes a financial penalty on Foresters in the amount of £55,000.

## **REASONS FOR THE ACTION**

- 1 The FSA has decided to impose a financial penalty on Foresters because it considers that Foresters failed in the period from 1 January 2004 to June 2005 ("the relevant period") to:
  - (a) pay due regard to the information needs of its customers and potential customers, and communicate information to them in a way which is clear, fair and not misleading (contrary to Principle 7 of the FSA's Principles for Businesses ("the FSA Principles")); and
  - (b) take reasonable care to organise and control its financial promotions compliance function responsibly and effectively resulting in inadequate risk management systems in relation to financial promotions compliance (contrary to Principle 3 of the FSA Principles).
  
- 2 These failings led to Foresters breaching Rules in the FSA's Conduct of Business sourcebook ("COB"). Specifically, Foresters failed to:
  - (a) ensure that all financial promotions issued by it were confirmed as compliant with the FSA's Rules in Chapter 3 of COB ("COB 3") before they were communicated;
  - (b) make and retain, either at all or for the requisite three or six years, records of each non-real time financial promotion which it had confirmed as complying with the COB 3 Rules;
  - (c) ensure that appropriate risk warnings were included in:
    - (i) the Autumn Gold television advertisement featuring Stephanie Cole ("the Stephanie Cole Autumn Gold" television advertisement);
    - (ii) the Autumn Gold television advertisement featuring Tommy Walsh ("the Tommy Walsh Autumn Gold" television advertisement); and
    - (iii) the TeddyTrust Child Trust Fund ("CTF") television advertisement.
  - (d) ensure that the Stephanie Cole and Tommy Walsh Autumn Gold direct offer packs were clear, fair and not misleading, appropriately balanced and in particular stated prominently that a customer should contact an appropriate adviser if they had any doubts about the policy's suitability; and
  - (e) adequately resource, train, and monitor the operation of, its compliance function.
  
- 3 In addition, the seriousness of Foresters' failings was exacerbated by:
  - (a) the elderly nature of the target market, whom Foresters did not emphasise should obtain advice where appropriate;

- (b) the length of time over which the failings occurred;
  - (c) the fact that the failings were only discovered as a result of the FSA's investigation rather than through any Foresters' internal system or procedure; and
  - (d) the fact that Foresters' failings occurred despite the warning signals set out in the "Dear CEO" letter, dated 30 June 2004, sent by the FSA to Foresters, in relation to some of the specific areas in which Foresters continued to fail over the relevant period.
- 4 The FSA considers financial promotions, and therefore failings such as Foresters', to be a priority. One of the FSA's three strategic aims is to help retail customers achieve a fair deal. Ensuring that financial promotions are clear, fair and not misleading is a key part of that strategy as the FSA aims to ensure that consumers have access to clear, simple and understandable information to help them make financial decisions.
- 5 Given the significant influence that "teaser advertisements" have on consumers' financial decisions, it is especially important that they are clear, fair and not misleading. Foresters' television, newspaper, magazine and flyer advertisements during the relevant period fall into this category.
- 6 However, the FSA has also taken into account a number of factors which have materially reduced the penalty which it would otherwise have imposed. These include:
- (a) the significant steps Foresters has taken which were aimed at making it substantially compliant with the FSA's Rules;
  - (b) the further steps Foresters is continuing to take in order to promote its compliance in the future including an independent review of its financial promotion systems and controls;
  - (c) the fact that Foresters' conduct was not deliberate or reckless, indeed it made attempts to comply with the FSA's financial promotions Rules and is continuing to make progress in complying with its regulatory obligations generally; and
  - (d) Foresters' cooperation with the FSA and the action it has taken to remedy some of its financial promotions breaches.
- 7 In all the circumstances, having agreed with Foresters the facts and matters relied on, the FSA considers it appropriate and proportionate to impose a financial penalty on Foresters of £55,000.

## **Relevant Statutory Provisions And Regulatory Rules**

### ***FSMA***

- 8 Section 206 of FSMA states:

*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.*

- 9 Foresters is an Authorised Person within the meaning of FSMA.

### ***FSA Principles for Businesses***

- 10 Principle 3 states:

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

- 11 Principle 7 states:

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

### ***Systems and Controls Rules***

- 12 SYSC 3.2.6 R states:

*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.*

### ***Conduct of Business Rules***

- 13 The Rules contained in COB 3 apply to every firm which communicates or approves a financial promotion (COB 3.1.1 R).

- 14 A financial promotion, as defined in section 21(1) of FSMA and secondary legislation, is an invitation or inducement, communicated in the course of business, to engage in investment activity. Investment activity includes effecting and carrying out contracts of insurance.

- 15 A non-real time financial promotion is defined in COB 3.5.5 R (2) as follows:

*A "non-real time financial promotion" is a financial promotion that is not a real time financial promotion<sup>1</sup>. It includes a financial promotion made by letter, e-mail or contained in a newspaper, journal, magazine, other periodical publication, website, television or radio programme, or teletext service.*

- 16 A specific non-real time financial promotion is defined in the FSA's Handbook as:

*A non-real time financial promotion which identifies and promotes a particular investment or service.*

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<sup>1</sup> A real time financial promotion is defined in COB 3.5.5R (1) as: *a financial promotion which is communicated in the course of a personal visit, telephone conversation or other interactive dialogue.*

- 17 A direct offer financial promotion is defined in the FSA's Handbook as:
- A non-real time financial promotion which:*
- (a) *contains:*
    - (i) *an offer by the firm or another person to enter into a controlled agreement with anyone who responds to the financial promotion; or*
    - (ii) *an invitation to anyone who responds to the financial promotion to make an offer to the firm or another person to enter into a controlled agreement; and*
  - (b) *specifies the manner of response or includes a form in which any response is to be made (for example by providing a tear-off slip).*
- 18 Pursuant to the FSA's Handbook and the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 as amended, a controlled agreement includes effecting and carrying out contracts of insurance as principal.
- 19 The relevant Rules, Guidance and Evidential Provisions of COB 3, as amended from time to time during the period from January 2004 to June 2005, are set out in Appendix 1 to this Notice.

### **Relevant Guidance**

- 20 When exercising its powers, the FSA seeks to act in a way it considers most appropriate for the purpose of meeting its regulatory objectives. The FSA considers that imposing a financial penalty of £55,000 on Foresters meets the regulatory objective set out in section 2(2)(c) of FSMA: the protection of consumers.
- 21 In deciding to take this action, the FSA has had regard to the guidance set out in Chapters 1.3 and 11.4 of the FSA's Enforcement manual ("ENF"), which is part of the FSA's Handbook.
- 22 In particular, ENF 1.3.1 G (2) states that the FSA will seek to exercise its enforcement powers in a manner that is transparent, proportionate and consistent with its publicly stated policies. The criteria for determining whether to take disciplinary action are set out in ENF 11.4.1 G. ENF 11.4.1 G states that the FSA will consider the full circumstances of each case and that the criteria listed are not exhaustive: not all of them may be relevant and there may be other factors that are relevant.
- 23 In April 2002, the FSA issued a publication entitled "The FSA's regulatory approach to financial promotions", which explained the FSA's approach to all financial promotions after 1 December 2001. The publication highlighted the need for all financial promotions to give a fair and balanced picture of the nature of the investment being promoted and the commitment and risk involved. It also identified

the FSA's three main areas of concern with poor quality financial promotions: hidden features, product complexity and misleading claims. In relation to misleading claims, the FSA stated:

*"Part of the creative challenge for those marketing products is to make advertisements stand out from those of competitors. The difficulty arises when they are tempted to 'gild the lily' to such an extent that they mislead consumers, either by presenting a seriously unbalanced impression of their own products, or by way of misleading comparisons with alternatives. Benefits may be exaggerated in the minds of consumers, and potential drawbacks glossed over, leading to unrealistic expectations.*

*...Our research revealed that around two-thirds of those consumers who had bought an investment using a promotion did not have a reasonable understanding of their product in terms of the risks involved, the length of the investment and the existence of charges. Such unfamiliarity increases the chances that consumers will take potentially misleading headlines at face value".*

- 24 During the relevant period the FSA made it clear in the Plan and Budget for 2003/04 and its Business Plans for 2004/05 and 2005/06 that it regarded financial promotions as a priority issue. The Business Plan for 2004/05 stated:

*"We have decided to sharpen the focus of, and significantly increase the resources committed to, our regulation of financial promotions in 2004/05. We are setting up a department to lead this work. We will expand our monitoring activities to include television commercials and we will also have a general focus on direct offer materials".*

- 25 Neither the April 2002 publication nor the FSA's Plan and Budget or Business Plans constitute formal guidance but they did set out the FSA's expectations clearly and they also emphasised the importance placed by the FSA on fair, balanced and compliant financial promotions.

- 26 Having regard in particular to the matters set out in paragraphs 4-6 above, to the guidance set out in ENF and to the FSA's statutory objective of the protection of consumers, the FSA considers it proportionate and appropriate in all the circumstances to take disciplinary action against Foresters for its failings in respect of its financial promotions in the period from 1 January 2004 to June 2005.

## **FACTS AND MATTERS RELIED ON**

### **Background: Foresters**

- 27 Foresters is a friendly society and an authorised person under FSMA. Its permissions, which include effecting and carrying out contracts of insurance, are limited to activities in respect of long term insurance.
- 28 Foresters was established in 1834 and it undertakes social and benevolent activities as well as providing financial services.
- 29 Foresters is a mutual society: consequently, members of the public who purchase Foresters' financial products become members of Foresters.

- 30 In the relevant period Foresters was managed by a Committee of Management and its sub committees; the Chief Executive Officer; and the Deputy Chief Executive Officer. The Committee of Management consisted solely of non-executive directors, who were members of Foresters nominated and elected by the members. Foresters' constitution prevented employees from serving on the Committee of Management and, accordingly, in the relevant period, the Chief Executive Officer and Deputy Chief Executive Officer were not members of the Committee of Management and they had no right to vote on its decisions; instead, they had a right to attend the Committee of Management's monthly meetings and to be heard. Foresters plans to alter its constitution shortly in order to appoint executive directors to the Committee of Management.
- 31 Foresters has been regulated by the FSA since 1 December 2001 when the responsibilities and powers of the Personal Investment Authority, the Registry of Friendly Societies and the Friendly Societies Commission were transferred to the FSA. Associated with this, Foresters undertook a significant structural reorganisation to move away from its historic, decentralised model, with the result that, by 2003, its financial services activities (but not its social and benevolent activities) were centralised in Foresters' headquarters in Southampton. As part of this reorganisation, Foresters set up centralised marketing and compliance functions and created the post of Deputy Chief Executive Officer.

#### **Background: Autumn Gold and TeddyTrust**

- 32 Prior to and in the relevant period, Foresters' products included a with-profits, whole of life assurance policy, known as "Autumn Gold". Cover was restricted in the first two years but, thereafter, the policyholder who paid a regular monthly premium until their death would receive into their estate a guaranteed cash sum plus, if declared, bonuses from the with-profits fund. The policy was available to anyone aged between 50 and 80 and there were no medical questions or examinations. The maximum contribution was £25 per month. This product was actively marketed by Foresters in 2004 and 2005.
- 33 In 2003, the government announced the creation of the child trust fund ("CTF"), where children born on or after 1 September 2002 would receive a £250 voucher (or £500 for lower income families) from the state, which would be paid into a new and separate account in the child's name, together with any contributions paid from time to time into that account by the child's family or friends, and could not be accessed by the child until s/he turned 18. CTFs first became available on 5 April 2005.
- 34 As a friendly society, in the relevant period legislation permitted Foresters to provide tax-exempt policies (described by Foresters as tax-exempt savings plans, or "TESPs"). These TESP's attracted various tax exemptions in respect of income and capital gains but the maximum annual contribution which could be made into a TESP was restricted to £300 per annum during the relevant period. TESP's could be purchased by both adults and children.

- 35 In the course of 2004, Foresters developed a marketing policy for 2005, in which it decided to focus its promotional material and advertising on three products only, two of which were linked. These were:
- (a) a CTF, to be known as the TeddyTrust CTF;
  - (b) a TESP marketed for children who were not eligible for a CTF (for example, elder siblings of CTF-eligible children), to be known as the TeddyTrust TESP; and
  - (c) the "Autumn Gold" with profits, whole of life assurance policy.
- 36 The main target market for the TeddyTrust products was grandparents; and for Autumn Gold it was exclusively 50 – 80 year olds. This corresponded with Foresters' traditional market. Foresters hoped for cross-selling opportunities, for example, to the children and parents in respect of the TeddyTrust products.
- 37 Foresters' financial promotions of Autumn Gold in 2004 and 2005, and the TeddyTrust products in 2005, took the form of "teaser" advertisements, to generate interest and enquiries; and in response to any enquiries, people were sent a direct offer pack containing promotional material and an application form relating to the product in question. Foresters did not give customers advice and, accordingly, its sales of the Autumn Gold and TeddyTrust products were non-advised sales and customers could purchase these products simply by completing and returning an application form.

### **Autumn Gold: promotions**

- 38 In 2004, Foresters' principal "teaser" advertisement for Autumn Gold was a television commercial featuring the actress Stephanie Cole, which was aired on subscription and free-to-air channels from 12 January 2004 to 13 April 2004; and again the following year in the period 10 January 2005 to 27 February 2005.
- 39 Foresters developed a new television advertisement for Autumn Gold during 2004, featuring the television personality Tommy Walsh<sup>2</sup>, which was aired on subscription and free-to-air channels from 17 January 2005 to 28 March 2005.
- 40 Foresters sent a direct offer pack to anyone enquiring about the Autumn Gold product as a result of Autumn Gold "teaser" advertisements, including the television commercials.
- 41 The pack designed to be sent to those responding to the Stephanie Cole commercial was sent out in the period covered by the FSA's investigation (that is, from 1 January 2004 to 28 February 2005).
- 42 The direct offer pack designed to be sent to those responding to the Tommy Walsh commercial was sent out in the period from 11 January 2005 to 3 June 2005; but a covering letter was included from 14 January 2005; a change of head office notification was first sent out on 2 March 2005; a Data Protection Notice was enclosed from 6 April 2005; and a page of Additional Information was added to the pack from 16 May 2005.

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<sup>2</sup> By way of example, a copy of this advertisement is attached as Appendix 2.



- 43 In 2004, Foresters sent out Autumn Gold direct offer packs in response to requests made following the television advertisements and 265 new policies were set up as a result. In 2005 (up to June 2005), Foresters sent out Autumn Gold direct offer packs in response to enquiries which were made following the television advertisements and 170 new policies were sold as a result. The premiums received from this business totalled approximately £44,900 in 2004 and in 2005 (up to June 2005) £29,800 was received.

#### **TeddyTrust CTF and TESP: promotions**

- 44 A common feature of the TeddyTrust CTF and the TeddyTrust TESP was that Foresters guaranteed to pay the child on maturity at least the amount of the contributions paid into the child's account. Any profits made by the with-profits funds in which the contributions were invested were, where possible, to be added to the CTF and TESP accounts as annual bonuses; and as a terminal bonus on maturity. Contributions, once paid, could not be reclaimed by the payer but instead became the property of the child in whose name the account was held; and generally speaking the child would not be able to access the funds in their account until, they were aged 18 in case of the TeddyTrust CTF and 16 years old in the case of the TeddyTrust TESP. Due to limits imposed by law, the amounts that could be invested in a CTF and TESP were restricted, in the relevant period, to £1,200 per annum and £300 per annum respectively.
- 45 An important difference between the TeddyTrust products was that the CTF afforded flexibility in contributions into the child's account, allowing monthly or lump sum contributions or, indeed, no contributions at all. By contrast, the TeddyTrust TESP required a minimum contribution of at least £5 a month for at least 10 years, failing which the policy would lapse with no value if contributions stopped within the first year or, thereafter, the policy would become a paid-up policy on which contributions could not be resumed.
- 46 The "teaser" promotions for the TeddyTrust products (CTF and TESP) were as follows:
- (a) A television advertisement (relating to the TeddyTrust CTF only), aired on subscription television in the period from 1 March 2005 to 25 April 2005.
  - (b) An advertisement in magazines and newspapers from time to time in the period from 15 March 2005 to 26 April 2005, including one advertisement inserted in the Daily Mirror on 16 March 2005 and one advertisement inserted in the Daily Express Saturday magazine on 2 April 2005.
  - (c) An A5-sized flyer:
    - (i) handed out at "Bear Mountain" at London Zoo on 18 February 2005, to approximately 500 people;
    - (ii) mailed to all Foresters' existing policyholders (totalling 32,998) on 20 April 2005 (together with notification that Foresters' head office had moved); and

- (iii) sent to 1,163 people enquiring about the Autumn Gold Plan, as part of a cross-selling exercise, from 17 March 2005.
  - (d) Promotional material on Foresters' website from 1 January 2005 to 1 June 2005.
  - (e) A new "TeddyTrust" website online from 1 March 2005 to 3 May 2005.
  - (f) A weblink from the website [www.savingsforchildren.co.uk](http://www.savingsforchildren.co.uk) to the TeddyTrust website between 1 March 2005 and 22 April 2005.
  - (g) Promotional material in Foresters' "Together" Magazine dated Winter/Spring 2005, which was sent to all existing Foresters' member households on 1 March 2005.
- 47 The TeddyTrust CTF direct offer pack and/or a TeddyTrust TESP direct offer pack (as appropriate) was sent to anyone who contacted Foresters in response to the above "teaser" advertisements.
- 48 In 2005 (up to June 2005), the TeddyTrust promotions led to the following activity:
- (a) TeddyTrust CTF direct offer packs were sent out in response to enquiries about the TeddyTrust CTF, leading to the sale of 1,295 TeddyTrust CTFs; and
  - (b) TeddyTrust TESP direct offer packs were sent out, as a result of which 308 TeddyTrust TESP were set up.
- 49 The total contributed into TeddyTrust CTFs as at 15 June 2005 was £563,000. This includes both one-off contributions and annual premiums. The annual premiums received in respect of the TeddyTrust TESP sold in 2005 amounted to £44,000.
- 50 Foresters involved external legal advisers in developing the TeddyTrust products and their associated literature. The responsibility for its financial promotions' regulatory compliance, however, remained with Foresters whether or not it instructed external advisers to assist it in that task. In any event, it appears that those legal advisers were not instructed to advise on the contents of the TeddyTrust financial promotions from a regulatory compliance point of view. Instead, they commented on them from a general legal viewpoint (such as data protection issues) and at times their advice included comments on regulatory compliance.

### **Remedial action**

- 51 Foresters sent a letter to all relevant Autumn Gold policyholders, highlighting significant features of the policy and its risks and correcting the misleading reference to it being a funeral plan, and giving the policyholders an opportunity to review their options in light of that further information. It has agreed to undertake similar remedial action, including offering a full refund, in respect of the customers who bought the TeddyTrust CTF and/or TESP.

## FSA letter to Foresters

- 52 On 30 June 2004, the FSA's Financial Promotions Department wrote to all chief executives of friendly societies, fund managers and insurers that used financial promotions to market investment products (such as with-profits or unit-linked endowment policies and investment trusts) as a way of investing money for children, in order to remind them of the FSA's regulatory requirements relating to financial promotions. The letter was also published on the FSA's website on 6 July 2004. It expressly did not relate to the government's child trust fund initiative.
- 53 This letter, a copy of which was received by Foresters, reminded firms and their senior managers that they were responsible for ensuring that each financial promotion complied with the regulatory requirements in COB 3, including in particular the requirements to take reasonable steps to ensure that non-real time financial promotions were clear, fair and not misleading and to include a fair and adequate description of the nature of the investment or service, the commitment required and the risks involved. It also emphasised that balance was an important part of ensuring that the overall effect of a financial promotion was not likely to mislead or to lead to unrealistic expectations.
- 54 In that letter, the FSA also stated the following:

*“Some firms are promoting investment products as a way of providing for the future financial security of children or grandchildren (for example, to help provide for a first car, education fees, or for a deposit to buy a property*

.....

*We remind you that, in line with our rules and guidance, financial promotions should provide adequate information, which the target audience is able to understand. This must explain the nature of the investment, the commitment required and the risks involved.*

*We would therefore be concerned if promotions of investments for children:*

- *emphasised the benefits of the product, without identifying or giving enough prominence to the nature of the investment, the commitment required, and the risks and drawbacks (which may include getting back less than invested, lack of access to the investment...);*
- .....
- *focused on the drawbacks of a bank or building society savings account, but failed to make clear that main differences between such a savings account and the investment product in the promotion.*

*We have set out specific examples of our concerns in Annex A”.*

55 The specific examples in Annex A included the following:

*“Financial promotions about investments for children may not be in line with existing rules and guidance if they:*

... ..

(6) *refer to certain drawbacks of a bank or building society savings account while not also making clear the main differences between such an account and the product being promoted – particularly the security of the capital, and the opportunity for greater certainty about growth in and access to the savings; or*

(7) *refer to the financial strength and size of the firm or its track record and achievements as a reason for applying for the product, without also stating in the main text of the promotion, unambiguously and without reservation, the fact that past performance is not a guide to future performance (in line with the past performance rules that came into force on 1 June 2004)”.*

56 This letter was of particular relevance to the TeddyTrust TESP, which Foresters actively marketed in 2005 (up to June 2005). It also served as a general reminder to Foresters of the importance of ensuring that all of its financial promotions were compliant, that is, including the Autumn Gold and TeddyTrust CTF promotions. It also served as a reminder that the financial promotions rules were from time to time amended by the FSA.

57 Foresters failed to ensure that any, or adequate, attention was paid to the warning signals set out in the FSA's above-mentioned letter in that:

(a) no steps were taken to ensure that any issues arising from that letter were addressed; and

(b) Foresters' Autumn Gold and TeddyTrust financial promotions in 2005, and in particular the TeddyTrust TESP financial promotions, breached the FSA's Rules in relation to matters specifically warned about by the FSA in that letter (see the concerns bullet-pointed above in paragraph 54 and at (6) and (7) in paragraph 55).

### **Principle 7: Communication with Clients**

58 Principle 7 of the FSA Principles provide 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.

59 Foresters' communications with its clients in promotion of Autumn Gold in the period from 1 January 2004 to 3 June 2005, and in promotion of the TeddyTrust CTF and TESP products in 2005 (up to June 2005), failed to be clear, fair and not misleading.

60 Set out below are examples which demonstrate Foresters' failings in relation to the financial promotions referred to above. These are grouped under the following headings:

- (a) Risk warnings;
- (b) Clear, fair and not misleading communications;
- (c) Compliance confirmation; and
- (d) Record keeping.

***Risk warnings***

61 In breach of COB 3.8.8 R (1) in the period from 12 January 2004 to 13 April 2004 and again from 10 January 2005 to 27 February 2005, Foresters failed to give a fair and adequate description of the risks involved in the Autumn Gold policy because the Stephanie Cole Autumn Gold television advertisement made no mention at all of any risks associated with the plan. In particular, the following risks were not set out:

- (a) It omitted to state that the total premium paid might be more than the amount payable on death, depending on how long the customer lived.
- (b) It also omitted to state that during the first two years the plan had no cash in value at all. Nor did it state that, if the policy was cashed in early, it was likely the total premium paid would exceed the amount payable.
- (c) The guaranteed cover under the plan was not inflation proofed, so its purchasing power would have decreased in real terms by the time it was paid out. However, the advertisement omitted to include any appropriate inflation risk warnings.

62 In breach of COB 3.8.8 R (1) in the period from 17 January 2005 to 28 March 2005, Foresters failed to give a fair and adequate description of the risks involved in the Autumn Gold policy in that the Tommy Walsh Autumn Gold television advertisement made no mention at all of any risks associated with the plan. In particular, the following risks were not set out:

- (a) The advertisement omitted to state that the total premium paid might be more than the amount payable on death, depending on how long the customer lived.
- (b) It omitted to state that it was possible that no annual and/or terminal bonuses would be paid from the with-profits fund.
- (c) It also omitted to state that during the first two years the plan had no cash-in value at all. Nor did it state that, if the policy was cashed in early, it was likely the total premium paid would exceed the amount payable.
- (d) The guaranteed cover under the plan was not inflation-proofed, so its purchasing power would have decreased in real terms by the time it was paid out. However, the advertisement omitted to include any appropriate inflation risk warnings.

- (e) The promotion "*guarantees a tax free lump sum*" on death but did not refer to the potential inheritance tax liability if the assured sum was paid to the policyholders' estate.
- 63 In breach of COB 3.8.8 R (1) the TeddyTrust CTF television advertisement failed to give a fair and adequate description of the risks involved in the TeddyTrust CTF because the advertisement made no mention at all of any risks associated with the product. In particular, the following risks were not set out:
- (a) The advertisement emphasised the increased cost of living in the future. However, the guaranteed payment was not inflation proofed and consequently its purchasing power would have decreased in real terms by the time it was paid out. The advertisement omitted to include an appropriate inflation risk warning.
  - (b) It omitted to state that it was possible that no annual and/or terminal bonuses would be paid from the with-profits fund.
- 64 In breach of COB 3.8.8 R (1) in the period from 1 January 2004 to 28 February 2005, Foresters failed to give a fair and adequate description of the risks involved in the Autumn Gold policy in that:
- (a) Foresters omitted to state anywhere in the Stephanie Cole Autumn Gold direct offer pack that the total premium paid might be more than the amount payable on death, depending on how long the customer lived.
  - (b) It also omitted to indicate anywhere in the pack that annual and/or terminal bonuses might not be paid from the with-profits fund.
  - (c) The inflation risk of the Autumn Gold policy was not fairly and adequately described in the Stephanie Cole Autumn Gold direct offer pack because it was not given sufficient prominence. At pages 5 and 6 of the key features, under the "Male example" and "Female example" respectively, there was a statement that "Do not forget that inflation will reduce what could be bought in the future with the amounts shown" in small but bold type. There was no inflation risk warning anywhere else in the direct offer pack.
- 65 In breach of COB 3.8.8 R (1) from 11 January 2005 to the dates specified below, Foresters failed to give a fair and adequate description of the risks involved in the Autumn Gold policy in that:
- (a) Prior to 16 May 2005, Foresters omitted to state anywhere in the Tommy Walsh Autumn Gold direct offer pack that the total premium paid might be more than the amount payable on death, depending on how long the customer lived.
  - (b) It omitted to indicate anywhere in the pack that annual and/or terminal bonuses might not be paid from the with-profits fund, thereby breaching the above Rule until 3 June 2005.
  - (c) The inflation risk of the Autumn Gold policy was not fairly and adequately described in the Tommy Walsh Autumn Gold direct offer pack prior to

16 May 2005 because it was not given sufficient prominence. Under the “Male example” and “Female example” in the key features, there was a statement: “Do not forget that inflation will reduce what could be bought in the future with the amounts shown”. There was no inflation risk warning anywhere else in the direct offer pack before this date.

- 66 In breach of COB 3.8.8 R (1) in 2005 (up to June 2005), Foresters failed to give a fair and adequate description of the risks involved in the TeddyTrust CTF direct offer pack in that Foresters omitted to indicate anywhere in the pack that annual and/or terminal bonuses might not be paid from the with-profits fund.
- 67 In 2005 (up to June 2005), Foresters breached COB 3.8.11 R (1) in that it stated in the TeddyTrust CTF covering letter and the brochure that “[Our/Foresters’] financial position remains strong and has consistently improved even over the past few years” but failed to state either in those documents or anywhere else in the direct offer pack that Foresters’ past performance should not be seen as an indication of future performance.
- 68 In 2005 (up to June 2005), Foresters breached COB 3.8.8 R (1)(b) by failing fairly or adequately to indicate that the TeddyTrust TESP was unsuitable as a short term investment, in particular:
- (a) The minimum commitment under the TESP was to contribute at least £5 each month for at least 10 years. The consequences of failing to meet the minimum commitment was that the policy would be made a paid-up policy on which contributions could not be resumed; and if contributions stopped within the first year the policy would lapse with no value. The application form made this clear and the key features referred to the need to pay all contributions throughout the term but the brochure was silent on this point and no mention was made of the need to pay at least £5 per month for at least 10 years in the covering letters. Further, the phrase "and providing the contributions are maintained" was deleted from a draft covering letter to grandparents and did not appear in the final version of that letter. In the circumstances, and particularly considering the consequences of failing to maintain the minimum contributions for the minimum period, this commitment was therefore not adequately described in the TeddyTrust TESP direct offer pack.
  - (b) If the investment in the TeddyTrust TESP was not maintained by regular monthly contributions for a sufficiently long period of time, the child could be liable to pay tax on any gains made by the investment.
- 69 In 2005 (up to June 2005), Foresters breached COB 3.8.8 R (1)(c) by failing in the TeddyTrust TESP direct offer pack fairly or adequately to describe the risk that no annual and/or terminal bonuses could be paid from the with-profits fund.
- 70 In 2005 (up to June 2005), Foresters breached COB 3.8.11 R (1) because the TeddyTrust CTF direct offer pack covering letter and the brochure stated “[Our/Foresters’] financial position remains strong and has consistently improved even over the past few years" but failed to make any statement, either in those documents or anywhere else in the TeddyTrust TESP direct offer pack, that Foresters' past performance should not be seen as an indication of its future performance.

- 71 Foresters also breached COB 3.9.6 R (2). This rule required a direct offer financial promotion to contain a prominent statement that no advice on investments had been given and, if a person had any doubt about the suitability of the agreement which was the subject of the financial promotion, that person should contact an appropriate firm for advice on investments. This rule applies where the firm communicating the promotion did not offer advice, as was the case with Foresters. Foresters failed to make any such statement in either the Stephanie Cole Autumn Gold direct offer pack or the Tommy Walsh Autumn Gold direct offer pack.

***Clear, fair and not misleading communication***

- 72 In breach of COB 3.8.4 R (1) in the period from 12 January 2004 to 13 April 2004 and again from 10 January 2005 to 27 February 2005, Foresters failed to take reasonable steps to ensure that the Stephanie Cole Autumn Gold television advertisement was clear, fair and not misleading in that:

- (a) The promotion emphasised the desirability of avoiding passing on funeral expenses and stated that the reason Foresters had introduced the plan was to enable people to avoid passing on such expenses. It concluded with the assertion that participating in the plan ensured that "*the only things you pass on to your loved ones are things you know they'll treasure,*" thereby implying that the plan would meet funeral expenses. However, there was no guarantee that the amount payable on death would be sufficient to meet the cost of a funeral. Consequently, the advertisement was misleading.
- (b) The advertisement strongly promoted the minimum contribution level and that no medical was necessary as benefits of the plan. However, the advertisement made no mention at all of any risks associated with the plan. As a result of this lack of balance the advertisement was unfair.

- 73 In breach of COB 3.8.4 R (1) in the period from 17 January 2005 to 28 March 2005, Foresters failed to ensure that the Tommy Walsh Autumn Gold television advertisement was clear, fair and not misleading in that:

- (a) The advertisement strongly promoted the minimum contribution level and that no medical was necessary as benefits of the plan. It also suggested the plan would provide support for loved ones after the customer's death and would bring "*peace of mind.*" However, the advertisement made no mention at all of any risks associated with the plan. As a result of this lack of balance, the advertisement was unfair.
- (b) The advertisement described the Autumn Gold policy as being a funeral plan. However, Foresters did not guarantee that the amount payable on death would be sufficient to meet the cost a funeral, nor did Foresters undertake to provide, or secure that another person provides, a funeral under the contract. Therefore, the Autumn Gold policy was not a funeral plan contract, as defined in Article 59 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001. As a result, the advertisement was misleading.



- 74 Foresters breached COB 3.8.4 R (1) in 2005 (up to June 2005) in that the TeddyTrust CTF direct offer pack was misleading in the following respects:
- (a) There was a comparison with a bank or building society account in the brochure and key features. The comparison omitted to say that it is possible that the TeddyTrust CTF might not receive any annual bonuses and/or a terminal bonus from the with-profits fund. Further, a standard bank or building society account allowed ready access to funds but, with limited exceptions, a child could not access the funds in a CTF until s/he reached the age of 18. By omitting to state that a bank or building society account had greater certainty of growth and better access to funds than the TeddyTrust CTF, the comparison contravened COB 3.8.5 E (1)(d), by failing to present the comparison in a fair and balanced way. The comparison also breached COB 3.8.5 E (1)(h) by omitting matters, the omission of which caused the financial promotion not to be clear, fair and not misleading.
  - (b) In the brochure, there was a statement that “If you haven’t chosen a scheme [CTF] after one year, the Inland Revenue [that is, HM Revenue & Customs] will invest the voucher for you, which means you will have no choice as to where it is invested”. This was potentially misleading because a parent/guardian could apply to be the registered contact of the selected account and could then change the type of account or the provider; accordingly, there would be a choice as to where the voucher was invested. This contravened COB 3.8.5 E (1)(i), which required that the accuracy of all material statements of fact in the TeddyTrust CTF direct offer pack should be substantiated.
- 75 Foresters breached COB 3.8.4 R (1) in 2005 (up to June 2005) in that the key features, under the "Example", stated that what the child would get back depended "on how much interest can be added over the term". This was inaccurate and thereby misleading in that the TeddyTrust TESP did not accrue any interest; instead, it had the potential of annual bonuses and/or a terminal bonus from the with-profits fund.
- 76 In 2005 (up to June 2005), Foresters breached COB 3.8.4 R (1) and (2) in that the TeddyTrust TESP direct offer pack contained a misleading comparison. The key features contained a comparison of the TeddyTrust TESP with a bank or building society account. The comparison omitted to say that it was possible that the TeddyTrust TESP might not receive any annual bonuses and/or a terminal bonus from the with-profits fund. Further, a standard bank or building society account allowed more ready access to funds than a TESP. By omitting to state that a bank or building society account had greater certainty of growth, and better access to funds, than the TeddyTrust TESP, the comparison contravened COB 3.8.5 E (1)(d), by failing to present the comparison in a fair and balanced way, and COB 3.8.5 E (1)(h), by omitting matters, the omission of which caused the financial promotion not to be clear, fair and not misleading.

### ***Compliance confirmation***

- 77 In breach of COB 3.6.1 R (1), Foresters failed to confirm that the following financial promotions complied with the COB 3 Rules before the promotions were communicated:
- (a) The covering letter in the Tommy Walsh Autumn Gold direct offer pack (compliance was confirmed on 9 February 2005 but the letter was being included in the pack from 14 January 2005).
  - (b) The TeddyTrust web pages on the Foresters website (compliance confirmation was given on 7 February 2005 but it was online from 1 January 2005).
  - (c) There is no evidence of compliance confirmation of the final version of the Tommy Walsh Autumn Gold television commercial before it was aired, although draft scripts for the promotion were reviewed and amended in September 2004.
  - (d) The Autumn Gold promotion on Foresters' website, which was online from 1 January 2005 to 1 June 2005, was reviewed and amended in draft form but there is no evidence that compliance confirmation was given in respect of the final version of the web pages.
  - (e) There is no evidence of compliance confirmation of a final version of the weblink from the savings for children website to the TeddyTrust website, although there is evidence of compliance confirmation of drafts of that weblink.
  - (f) The TeddyTrust promotional material contained in Foresters' "Together" Magazine dated Winter/Spring 2005 (drafts were reviewed and amended but there is no evidence of confirmation of compliance of a final version).
  - (g) Although several drafts were reviewed and amended by, amongst others, Foresters' marketing department, an actuary, Foresters' legal advisers and compliance department, there is no evidence of compliance confirmation of the final versions of the following promotional material:
    - (i) the covering letters; the key features; and the application form contained in the TeddyTrust CTF direct offer pack; and
    - (ii) the covering letters; and the application form contained in the TeddyTrust TESP direct offer pack.
  - (h) It is not clear what elements of the Stephanie Cole Autumn Gold direct offer pack were confirmed as compliant before it was sent out. Foresters only provided the FSA with one direct offer pack, purporting to be that which was used throughout the period from 1 January 2004 to 28 February 2005. However, with the exception of the covering letter (a copy of which has not been provided to the FSA), the other constituent parts of the pack were revised and confirmed as compliant on various dates between 12 July 2004 and 1 October 2004 but it is unclear if the revised versions were then incorporated in the direct offer pack. Accordingly, it is unclear whether the pack remained

unchanged throughout that period. If it remained unchanged, there is no evidence that compliance confirmation was given in respect of the Stephanie Cole Autumn Gold direct offer pack.

### ***Record keeping***

78 In addition, on a number of occasions when compliance confirmation did occur, Foresters breached COB 3.7.1 R by failing to make and retain, either at all or for three/six years (as appropriate), a record of the version finally confirmed as compliant, and communicated as a financial promotion. This failing was found in respect of:

- (a) The Foresters' website pages insofar as they related to Autumn Gold (consequently, it is unclear what went online).
- (b) The FSA has been sent a single version of the Stephanie Cole Autumn Gold direct offer pack as used between the period 1 January 2004 to 28 February 2005. However, the constituent parts of the pack (with the exception of the covering letter) were revised and confirmed as compliant on various dates between 12 July 2004 and 1 October 2004. The effect of those revisions on the direct offer pack actually sent out to potential customers is unclear. Further, no copy of the covering letter has been provided to the FSA and accordingly Foresters' records of the Stephanie Cole Autumn Gold direct offer pack are incomplete and therefore inadequate.
- (c) The TeddyTrust CTF television advertisement.
- (d) The A5-sized flyer handed out at London Zoo on 18 February 2005, sent to all Foresters' existing policyholders on 20 April 2005 and sent to people enquiring about the Autumn Gold Plan from 17 March 2005.
- (e) The TeddyTrust website pages.
- (f) The Foresters' website pages insofar as they related to the TeddyTrust.
- (g) The TeddyTrust advertisement inserted in various magazines and newspapers in March/April 2005.
- (h) All versions of the covering letters contained in the TeddyTrust CTF direct offer pack.
- (i) All versions of the covering letters contained in the TeddyTrust TESP direct offer pack.

### **Principle 3: Systems and Controls**

79 Principle 3 provides that a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

80 Foresters failed in the relevant period to take reasonable care to organise and control its financial promotions compliance function responsibly and effectively resulting in inadequate risk management systems in relation to financial promotions compliance.

This failure is demonstrated by Foresters' non-compliance with the FSA's Systems and Controls Rules.

- 81 SYSC 3.2.6 R of the FSA's Rules required Foresters at all times to take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system.
- 82 COB 3.6.1 R (2) required a firm to arrange for the confirmation exercise in COB 3.6.1 R (1) to be carried out by an individual or individuals with appropriate expertise. Guidance at COB 3.6.2 G stated that "appropriate expertise" would vary depending on the complexity of the financial promotion and the investment or service to which it related.
- 83 In the relevant period, Foresters breached SYSC 3.2.6, by failing to take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system, in particular the Rules in COB 3, in the following respects:
- (a) The extent and persistence of the Rule breaches, (outlined above in paragraphs 58 to 78), by reason of Foresters' promotion of the Autumn Gold and TeddyTrust products. In particular, Foresters lacked any effective procedures for monitoring whether:
    - (i) all new financial promotions had been submitted for, and received, confirmation of compliance with COB 3 ("compliance confirmation");
    - (ii) all amended financial promotions had been re-submitted for, and received, compliance confirmation;
    - (iii) the final versions of all financial promotions had been submitted for, and received, compliance confirmation before they were issued; and
    - (iv) adequate records of all finalised financial promotions which had received compliance confirmation were retained at all or for the appropriate period (three/six years).
  - (b) No, or no adequate, review or monitoring was undertaken, in any regular and robust way, by Foresters or its senior management of the performance of the compliance function. Further, from September 2004 until at least April 2005, Foresters' compliance function was not reviewed or monitored in any way by any external compliance support. Prior to September 2004, external compliance support had undertaken a review of the organisation of the compliance function. The FSA notes that Foresters are implementing steps which should have the effect of addressing this issue.
  - (c) The two individuals who worked on compliance matters for Foresters self-assessed their training needs and, accordingly, Foresters did not have a system for identifying training needs and suitable training courses. In particular, the Foresters employee who in or around July 2004 was given the day-to-day responsibility for reviewing draft financial promotions for compliance with the FSA's Rules did not attend a training course in relation to

the FSA's requirements concerning financial promotions until December 2004, despite having had little or no prior experience of this area of compliance. Foresters had systems in place for obtaining confirmation of compliance with the Rules in COB 3 prior to publication. However, Foresters failed to ensure that the individuals carrying out the confirmation exercise in COB 3.6.1 R (1) had appropriate expertise, in breach of COB 3.6.2 R (2).

- (d) Foresters did not have any systems in place for ensuring that it kept up-to-date with FSA Rule changes, particularly those relating to Foresters' financial promotions contained in COB 3. The FSA's Rules in COB 3 have been amended from time to time before, during (and after) the relevant period, including on the following dates: 1 June 2004, 16 July 2004, 9 October 2004, 1 December 2004 and 1 October 2005. The frequency of these amendments made it particularly important that Foresters kept up-to-date with the Rules as they were changed and took steps to ensure that its financial promotions continued to comply with the FSA's Rules. The FSA notes that Foresters would tend to refer to the FSA's website and online Handbook prior to confirmation of compliance of a financial promotion with COB 3. However, in the absence of an up-to-date compliance manual which covered the FSA's Rules on financial promotions this was, in the circumstances, inadequate.
- (e) There was no compliance monitoring programme, that is, a programme designed to assess, review and monitor Foresters' compliance with the FSA's Rules.
- (f) Foresters had no process for reviewing and updating its compliance manual at an appropriate frequency. For example, during the relevant period, the compliance manual indicated that several members of Foresters' senior management were responsible for legal and/or regulatory compliance but in practice those matters were solely the responsibility of the compliance officer and his compliance assistant.

## **PENALTY**

- 84 The FSA's policy on the imposition of financial penalties is set out in Chapter 13 of ENF. The principal purpose of the imposition 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 generally demonstrating to firms the benefits of compliant behaviour.
- 85 It is stated at ENF 13.3.4 G that the criteria listed in Chapter 13 of ENF are not exhaustive and all relevant circumstances of the case will be taken into consideration.
- 86 Accordingly, in determining whether a financial penalty is appropriate and its level, the FSA is required to consider all the relevant circumstances of the case.
- 87 The FSA considers the following factors to be particularly relevant in this case:
  - (a) The misconduct continued throughout the period from 1 January 2004 to June 2005 and covered many aspects of the FSA's financial promotions Rules.

- (b) The failings arose because of serious and systemic weaknesses in Foresters' management systems and internal controls relating to its compliance function.
- (c) There was a risk of loss to consumers, who comprised a target market of elderly people.
- (d) Foresters' marketing of the Autumn Gold policy in 2004 and 2005, and the TeddyTrust products in 2005, resulted in Foresters receiving:
  - (i) CTF contributions (including both one-off amounts and annual premiums) of approximately £563,000 in 2005.
  - (ii) TESP annual premiums of approximately £44,000 in 2005.
  - (iii) Autumn Gold annual premiums of approximately £29,800 in 2005 and £44,900 in 2004.

Much of the income from these product sales is ongoing. It is unclear what proportion of those sums is directly attributable to the misconduct in question.

- (e) Despite receiving the letter dated 30 June 2004 from the FSA's financial promotions department, which was sent to all CEOs of friendly societies (amongst others) to remind them of the FSA's regulatory requirements relating to financial promotions, particularly in relation to non-CTF products marketed as a way of investing for children, Foresters failed to improve its compliance with the FSA's financial promotions Rules and, moreover, to ensure compliance of the TeddyTrust TESP.
- (f) Foresters' failings were only discovered as a result of the FSA's investigation rather than through any Foresters' internal system or procedure.
- (g) The misconduct was not, however, deliberate or reckless. Indeed, Foresters made efforts to comply with the FSA's financial promotions Rules and is continuing to make progress in complying with its regulatory obligations generally.
- (h) Furthermore, while large for a friendly society, Foresters is a relatively small financial services firm.
- (i) Foresters has fully cooperated with the FSA's investigation and quickly proposed a good remedial package in respect of the Autumn Gold product. It also indicated that it was willing to take such remedial action in relation to the TeddyTrust CTF and TeddyTrust TESP products as the FSA saw fit.
- (j) No disciplinary action has previously been taken against Foresters by the FSA or its predecessor organisations.

## CONCLUSION

- 88 In all the circumstances, and taking into account previous action taken by the FSA in relation to similar behaviour, the FSA has imposed a financial penalty on Foresters of £55,000.

## **DECISION MAKERS**

89 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.

## **IMPORTANT**

90 This Final Notice is given to Foresters in accordance with section 390 of FSMA.

## **MANNER OF AND TIME FOR PAYMENT**

91 The financial penalty must be paid in full by Foresters to the FSA by no later than 6 September 2006, 14 days from the date of this Notice.

## **IF THE FINANCIAL PENALTY IS NOT PAID**

92 If all or any of the financial penalty is outstanding on 7 September 2006, the FSA may recover the outstanding amount as a debt owed by Foresters and due to the FSA.

## **PUBLICITY**

93 Sections 391(4), 391(6) and 391(7) of FSMA 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.

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

## **FSA CONTACTS**

95 For more information concerning this matter generally, you should contact John Winfield (direct line: 020 7066 1348/fax: 020 7066 1349) at the FSA.

**Jonathan Phelan**  
**Head of Department**  
**FSA Enforcement Division**

## Conduct of Business Rules

### NOTES:

Rules and certain parts of Rules which are not applicable to this matter have been excluded.

"In force" dates are used where Rules were amended during the period January 2004 to June 2005. In the event that such amendments did not impact upon the wording of applicable parts of a Rule, "in force" dates have been omitted.

## COB 3 – Financial promotion

### Firms

#### COB 3.1.1 **R**

This chapter applies to every *firm* (other than an *ICVC*) which *communicates* or *approves* a *financial promotion*.

### COB 3.6 Confirmation of compliance

#### Confirmation of compliance

##### 3.6.1 **R**

(1) Before a *firm communicates* or *approves* a *non-real time financial promotion*, it must confirm that the *financial promotion* complies with the *rules* in this chapter.

(2) A firm must arrange for the confirmation exercise in (1) to be carried out by an individual or individuals with appropriate expertise.

##### 3.6.2 **G**

(1) In COB 3.6.1 R (2) 'appropriate expertise' will vary depending on the complexity of the *financial promotion* and the *investment* or service to which it relates. The individuals engaged by a *firm* to confirm the compliance of its *financial promotions* with this chapter may themselves have different levels of expertise and therefore a different level of authority for confirmation depending on the type of *financial promotion* and the *investment* or service involved.

(2) ....

### COB 3.7 Records

#### Requirement to make and retain records

##### 3.7.1 **R**

(1) A *firm* must make an adequate record of each *non-real time financial promotion* which it has confirmed as complying with the *rules* in this chapter.



(2) A record in (1) must be retained for the following periods:

(a)...

(b) six years in the case of a *financial promotion* relating to a *life policy, pension contract or stakeholder pension scheme*;

(c) three years in any other case.

## Content of records

### 3.7.2

In deciding what is an adequate record under COB 3.7.1 R, a *firm* should consider including, or providing reference to, where appropriate matters such as:

(1) the name of the individual or individuals who confirmed that the *financial promotion* complied with the *rules* in this chapter;

(2) the date of confirmation and (where appropriate) *approval*;

(3) details of the medium for which the *financial promotion* was authorised;

(4) the evidence supporting any material factual statement about an investment matter in the *financial promotion*.

### 3.7.3

(1) A *firm* should also retain a copy of the *financial promotion* as finally published or, if this is not practicable, monitor the published version to verify that it is in substantially the same format as the version which the *firm* confirmed complied with the *rules* in this chapter.

(2) Records which should be retained include:

(a)....

(b) any written material which is used in an organised marketing campaign (including, for example, written mailshots whether sent by e-mail, post, facsimile or other media)

(3)....

## COB 3.8 Form and content of financial promotions

### Application

#### 3.8.1 (This rule was in force from Dec 1 2001 - Sep 30 2005.)

This section applies as follows:

(1) COB 3.8.2R to COB 3.8.20G apply to a *firm* which *communicates* or approves a *non-real time financial promotion* ;

(2)...

## **Non-real time financial promotions: name and contact point**

### **3.8.2 R**

A *non-real time financial promotion* must contain the name of the *firm* or the name of its *appointed representative* and either an address of the *firm* or a contact point from which an address is available.

### **3.8.3 G**

(1) For the purposes of COB 3.8.2 R, the name may be a trading name or shortened version of the legal name of the *firm* (although other legislation, for example, the Companies Act 1985, may require a *firm* to include information not required by this *rule*).

(2) The type of contact point envisaged for a *firm* by COB 3.8.2 R is: an e-mail address, or telephone or facsimile number, where a *person* can contact the *firm* for its address.

(3) ....

## **Non-real time financial promotions: clear, fair and not misleading; comparisons; restriction of information on compensation**

### **COB 3.8.4 R**

(1) A *firm* must be able to show that it has taken reasonable steps to ensure that a *non real-time financial promotion* is clear, fair and not misleading.

(2) A *non-real time financial promotion* which includes a comparison or contrast must:

(a) compare *investments* or services meeting the same needs or which are intended for the same purpose;

(b) objectively compare one or more material, relevant, verifiable and representative features of those *investments* or services, which may include price;

(c) ....

### **3.8.5 E**

(1) A *firm* should take reasonable steps to ensure that, for a *non-real time financial promotion*

(a) ....

(d) the facts on which any comparison or contrast is made are verified, or, alternatively, that relevant assumptions are disclosed and that the comparison or contrast is presented in a fair and balanced way, which is not misleading and includes all factors which are relevant to the comparison or contrast.

(e) ....

(h) it does not omit any matters the omission of which causes the *financial promotion* not to be clear, fair and not misleading; and

(i) the accuracy of all material statements of fact in it can be substantiated.

(2) ...

(a) Compliance with COB 3.8.5E (1) may be relied on as tending to show compliance with COB 3.8.4R (1).

(b) Contravention of COB 3.8.5E (1) may be relied on as tending to show contravention of COB 3.8.4R (1).

### **Specific non-real time financial promotions: general requirements**

#### **3.8.8 R**

*A specific non-real time financial promotion* must;

(1) include a fair and adequate description of:

(a) the nature of the *investment* or service;

(b) the commitment required;

(c) the risks involved; and

(2) ...

#### **3.8.9 G (This rule was in force from Jan 1 2004 - Jul 15 2004.)**

(1) *A specific non-real time financial promotion* should give a fair and balanced indication of the requirements in COB 3.8.8R (1)(a) to (c), to meet COB 3.8.4R (1).

(2) The details of the commitment which is required by COB 3.8.8R (1)(b) will depend on the nature of the *investment* being promoted. This could be, for example, the minimum amount which can be invested, minimum or maximum period of *investment* or, where it is the case, the fact that it could be some time before a *person* may see a return on his *investment*.

(3) In giving a fair and adequate explanation of the *investment* or service being promoted *firms* should avoid:

(a) accentuating the potential benefits of an *investment* without also giving a fair indication of the risks;

(b)...

#### **3.8.9 G (This rule was in force from Jul 16 2004 onwards.)**

(1) *A specific non-real time financial promotion* should give a fair and balanced indication of the requirements in COB 3.8.8R(1)(a) to (c), to meet COB 3.8.4R(1).

(2) The details of the commitment which is required by COB 3.8.8R(1)(b) will depend on the nature of the *investment* being promoted. This could be, for example, the minimum amount which can be invested, minimum or maximum period of *investment* or, where it is the case, the fact that it could be some time before a *person* may see a return on his *investment*. Where an investor's capital would be tied up for more than one month following the last fixed

payment due to be made under the contract, this should be made clear in any *financial promotion* for that product.

(3) In giving a fair and adequate explanation of the *investment* or service being promoted *firms* should avoid:

- (a) accentuating the potential benefits of an *investment* without also giving a fair indication of the risks;
- (b) ....

(7) In giving a fair and adequate explanation of the risk involved, *firms* should, where relevant:

- (a) have regard to the provisions in COB 5.4.12E and COB 5.4.13G; and
- (b) identify where there is a possibility of loss of initial capital invested and disclose this as one of the main points in the *specific non-real time financial promotion*.

(8) ....

### **Specific non-real time financial promotions: past performance**

#### **3.8.11 R (This rule was in force from Dec 1 2001 - May 31 2004.)**

A *specific non-real time financial promotion* which gives information about the past performance of *specified investments* or of a *firm* must include:

(1) suitable text:

- (a) that is specifically designed as suitable for the type of *financial promotion*<sup>G</sup> being promoted and its target audience; and
- (b) which draws attention to the fact that past performance will not necessarily be repeated; and

(2) information relating to a relevant and sufficient period of past performance to provide a fair and balanced indication of the performance.

#### **3.8.11 R (This rule was in force from Jun 1 2004 onwards.)**

A *specific non-real time financial promotion* which gives information about the past performance of a *specified investment* or of a *firm* must include:

(1) suitable text which states unambiguously, and without reservation, that past performance should not be seen as an indication of future performance:

- (a) that is specifically designed for the type of *financial promotion* concerned and its target audience; and
- (b) which is presented legibly in the main text of the *financial promotion* ; and

(2) information relating to a relevant and sufficient period of past performance to provide a fair and balanced indication of the performance.

### 3.8.12 **G**

(1) The purpose of COB 3.8.11R is to:

- (a) prevent an *investment* being promoted in such a way as to induce a *person* to believe that any previous periods of favourable performance will necessarily be repeated in the future; and
- (b) encourage *firms* to draft warnings which are tailored to fit the design of the *financial promotion* and the audience to which they are primarily directed; so, for example, text used in a warning included in a specialist magazine may not be appropriate in a *financial promotion* in the popular press.

(2) Any of the following may mean that a *specific non-real time financial promotion* does not meet the requirement of COB 3.8.4 R (1) of being clear, fair and not misleading:

- (a) an unfair comparison with the performance of another type of *investment*;
- (b) ....
- (e) a comparison with *deposits* without an indication in clear terms, and with equal prominence, that the *investment* does not include the security of capital which is characteristic of a *deposit* with a *bank* or *building society*.

(5) *Firms* are reminded of the *guidance* in COB 3.6.4 G (2) about ensuring that *specific non-real time financial promotions* remain compliant with COB 3. To meet COB 3.8.11 R (2), a *specific non-real time financial promotion* that contains past performance information and is intended for use over a period of time should make clear:

- (a) the period of time to which the past performance information relates;
- (b) where relevant, the fact that this information may not be current; and
- (c) if (b) applies, an explanation of where up-to-date past performance information may be found.

(6) Where a *specific non-real time financial promotion*, such as a brochure or a promotion on the Internet, includes past performance information that is presented over a number of pages, the past performance warning required by COB 3.8.11 R (1) should be included on each page on which past performance information is presented.

(7) ....

## **COB 3.9 Direct offer financial promotions**

### 3.9.1 **R**

This section applies to a *firm* which communicates or *approves a direct offer financial promotion*.

## Direct offer financial promotions: general requirements

### 3.9.6 **R** (This rule was in force from Mar 1 2003 - Oct 8 2004.)

(1) A *direct offer financial promotion* must contain sufficient information to enable a *person* to make an informed assessment of the *investment* or service to which it relates.

(2) In particular, a *direct offer financial promotion* must contain the information set out in COB 3.9.7R.

### 3.9.6 **R** (This rule was in force from Oct 9 2004 - Nov 30 2004.)

(1) A *direct offer financial promotion* must be in a *durable medium* and contain sufficient information to enable a *person* to make an informed assessment of the *investment* or service to which it relates.

(2) In particular, a *direct offer financial promotion* must contain:

(a) the information set out in COB App 1 (the information in COB App 1.1.1R(1) and (4) must be provided in relation to the *person* offering the *investment* or service and, if different, the *firm communicating* or *approving* the *financial promotion*);

(b) a prominent statement that, if the *person* has any doubt about the suitability of the agreement which is the subject of the *financial promotion*, he should contact the *firm* which has *communicated* or *approved* the *financial promotion* for advice (or an independent financial adviser if the *firm* does not offer *advice*);

(c) ....

### 3.9.6 **R** (This rule was in force from Dec 1 2004 onwards.)

(1) A *direct offer financial promotion* must be in a *durable medium* and contain sufficient information to enable a *person* to make an informed assessment of the *investment* or service to which it relates.

(2) In particular, a *direct offer financial promotion* must contain:

(a) the information set out in COB App 1 (the information in COB App 1.1.1R(1) and (4) must be provided in relation to the *person* offering the *investment* or service and, if different, the *firm communicating* or *approving* the *financial promotion*);

(b) where it is the case that no *advice on investments* has been given, a prominent statement that:

(i) no *advice on investments* has been given; and

(ii) if a *person* has any doubt about the suitability of the agreement which is the subject of the *financial promotion* he should contact the *firm* for *advice on investments* (or another appropriate *firm* if the *firm* does not offer *advice on investments*).

(c) ....

## Appendix 2

View the [video clip](#) of the television commercial.