FINAL NOTICE

To:	Mr Stephen Hocking 24 Biddlesden Road Yeovil BA21 3UX	Pave Financial Management Limited 2 The Office Village Roman Way, Bath Business Park Peasedown St John Bath BA2 8SG
Individual ref:	SMH01136	Firm ref: 435205
Date:	22 March 2013	

TAKE NOTICE: The Financial Services Authority of 25 the North Colonnade, Canary Wharf, London E14 5HS (the "FSA") gives final notice about the following action:

1. ACTION

1.1. On 3 November 2011 the FSA gave a Decision Notice to Stephen Hocking ("Mr Hocking") informing him that, for the reasons listed below, the FSA had decided:

(1) pursuant to section 66 of the Financial Services and Markets Act (the "Act"), to publish a statement of the misconduct of Mr Hocking for his failure to comply with Statements of Principle 1, 2 and 7 of the FSA's Statements of Principle for Approved Persons (the "Statements of Principle");

(2) pursuant to section 63 of the Act, to withdraw the approval given to Mr Hocking to perform the controlled functions CF1 (Director) and CF30 (Customer) at Pave Financial Management Limited ("Pave") because he lacks integrity and the competence and capability to perform these functions; and

(3) to make an order, pursuant to section 56 of the Act, prohibiting Mr Hocking from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm because he is not a fit and proper person in terms of a lack of integrity and a lack of competence and capability.

1.2. The Decision Notice also stated that the FSA considered that Mr Hocking's misconduct in this case should warrant a financial penalty of £25,000, but that he had provided verifiable evidence that imposing such a financial penalty would cause him serious financial hardship. Instead, taking into account all the circumstances, the FSA decided to publish a statement of Mr Hocking's misconduct.

1.3. On 3 November 2011 the FSA also issued related Decision Notices to Pave and Mr Hocking's fellow director at Pave, Timothy Simon Pattison ("Mr Pattison"). On 30 November 2011 Mr Hocking, Mr Pattison and Pave all referred their Decision Notices to the Upper Tribunal (Tax and Chancery Chamber) (the "Tribunal"). The references were all consolidated and due to be heard together. However, Mr Pattison died before the hearing could take place and the FSA subsequently discontinued its action against Mr Pattison. Mr Hocking decided, given his financial circumstances and Mr Pattison's death, that he was unwilling to proceed with his reference. He therefore withdrew his reference and the Tribunal gave its consent to the withdrawal.

1.4. Accordingly, the FSA hereby:

(1) pursuant to section 66 of the Act, publishes a statement of the misconduct of Mr Hocking for his failure to comply with Statements of Principle 1, 2 and 7;

(2) pursuant to section 63 of the Act, withdraws the approval given to Mr Hocking to perform the controlled functions CF1 (Director) and CF30 (Customer) at

Pave because he lacks integrity and the competence and capability to perform these functions; and

(3) makes an order effective from the date of this Notice, pursuant to section 56 of the Act, prohibiting Mr Hocking from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm because he is not a fit and proper person in terms of a lack of integrity and a lack of competence and capability.

1.5. The FSA considers that Mr Hocking's misconduct in this case warrants a financial penalty of £25,000 but that he has provided verifiable evidence that imposing such a financial penalty would cause him serious financial hardship. Instead, taking into account all the circumstances, the FSA hereby publishes a statement of Mr Hocking's misconduct.

2. SUMMARY OF REASONS

2.1. Between 1 November 2007, when Mr Hocking was approved to perform the CF30 (Customer) function at Pave, and 4 August 2010 he failed to act with integrity and to demonstrate competence and capability by virtue of the manner of his dealings with individual customers of Pave, particularly in respect of making unsuitable recommendations to customers to disinvest from existing arrangements and to invest in unregulated collective investment schemes ("UCIS").

2.2. More specifically, Mr Hocking acted recklessly by:

(1) advising one customer to re-mortgage his home to raise funds to invest in UCIS and to transfer out of an existing pension scheme, contrary to the advice of Pave's pension transfer specialist; and

(2) increasing the risk profile of a vulnerable elderly client and advising her to surrender six of her eight bonds totalling £885,000 and to re-invest the proceeds including a total of £680,200 into two UCIS funds;

2.3. Between 10 June 2008, when Mr Hocking became approved to perform the CF1 (Director) function at Pave, and 4 August 2010 he contributed to Pave's ongoing

failure to comply with the requirements and standards of the regulatory system by accepting all aspects of Pave's sales model and sales practices without any meaningful question or challenge. Mr Hocking demonstrated a lack of competence and capability by adopting the flawed strategy and day-to-day policies of Pave and he did not critically examine, or seek to challenge and influence their operation as a director.

2.4. The impact of these failures was serious. Both Mr Hocking, and Pave more generally, made unsuitable personal recommendations to customers to invest in UCIS.

2.5. Mr Hocking lacks integrity and the competence and capability to perform any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. If Mr Hocking performed any functions he would pose a serious risk to consumers and therefore it is necessary and proportionate to prohibit Mr Hocking from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

2.6. The failings identified in this case have been mitigated to some extent by:

(1) the fact that by the time Mr Hocking was approved as a CF1 (Director) at Pave, the strategy and day-to-day policies at the firm were firmly established; and

(2) the fact that Pave's other director, Mr Pattison, was the dominant influence over every aspect of the operation of Pave.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

Provisions related to UCIS

3.1. A UCIS is defined in the glossary to the FSA Handbook of Rules and Guidance (the "Glossary") as

"*a collective investment scheme which is not a regulated collective investment scheme*".

3.2. Unless a collective investment scheme ("CIS") falls within the narrow Glossary definition of a regulated CIS, it will be a UCIS. Whilst a UCIS does not carry the

same level of regulatory oversight as a regulated CIS, it is still subject to regulation, notably around the extent to which it may be marketed and the persons to whom it may be marketed.

3.3. UCIS investments can seem attractive as they typically aim to generate high returns and they are not subject to the same restrictions as regulated CIS. For example, the latter are restricted in the underlying assets that can be held and their ability to borrow funds, whilst UCIS are not so restricted. The risks typically associated with UCIS investments include many of those that exist with regulated mainstream investments. However, there are a number of additional risks that are often inherent in a UCIS which an adviser should consider when making a recommendation.

3.4. The inherent risks of the UCIS recommended by Pave were very high when compared with mainstream investments. They variously involved high levels of risk in respect of liquidity, valuation, currency, gearing, transparency, management, enterprise and other factors that could influence their success or failure.

3.5. Furthermore, individuals who invest in UCIS have no recourse to the Financial Ombudsman Service ("FOS") and the Financial Services Compensation Service ("FSCS") in respect of the schemes themselves or the providers of those schemes. However, they may have recourse to the FOS and the FSCS in respect of advice received by authorised firms to invest in UCIS.

3.6. For these reasons there is a restriction on the categories of investor to whom such schemes can be promoted.

3.7. Section 238 of the Act states that an authorised person must not communicate an invitation or inducement to participate in a collective investment scheme although there are exceptions including:

(1) those exemptions set out in the Financial Services and Markets Act 2000 (Promotion of collective investment schemes) (Exemptions) Order 2001 (the "PCIS Order"). The PCIS Order provides for authorised firms to promote UCIS to individuals if they fall within a particular category of exemption set out in the order. The exemptions tend to be narrow in scope and subject to

specific requirements including reasonable checks, disclosure of appropriate warnings, the investments of the underlying fund, and the certification of the investor's status. These exemptions pertain to individuals classed as certified high net worth individuals, certified sophisticated investors or self-certified sophisticated investors; and

(2) those exemptions set out in the FSA Handbook, namely COBS 4.12.1(4)R. In order to be exempt under the COBS rules the inducement or invitation must be made only to recipients whom the firm has taken reasonable steps to establish are persons in that category or be directed at recipients in such a way as to reduce, as far as possible, the risk of participation in the CIS by persons not in that category. There is no provision for these steps to be taken retrospectively.

Suitability

3.8. The fact that a customer is eligible to receive a communication promoting a UCIS under one or more exemption does not mean that the UCIS will be suitable for that customer.

3.9. Principle 9 of the FSA's Principles for Businesses states 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.

3.10. From 1 November 2007, in considering the suitability of a particular scheme for a specific customer, a firm is required by COBS 9.2.2R to obtain the necessary information to understand the essential facts about the customer. COBS 9.2.6R provides that if a firm does not obtain the necessary information to assess suitability, it must not make a personal recommendation to the customer.

3.11. Further detail and guidance in relation to the above is set out in the Annex to this Notice, together with other relevant statutory and regulatory provisions.

4. FACTS AND MATTERS RELIED ON

The firm

4.1. Pave operated as a small firm of independent financial advisers based in Bath. It was authorised by the FSA on 15 November 2005. It has been a Capital Adequacy Directive ("CAD") exempt firm since 12 December 2007.

4.2. Mr Hocking has been approved by the FSA to perform CF30 (Customer) at Pave since 1 November 2007. Since 10 June 2008 he has also been approved by the FSA to perform CF1 (Director) at Pave. He has a shareholding of five percent in Pave; the remaining 95 percent was held by Pave's other director, Mr Pattison.

Sales process

Pave's approach to KYC (the Lifeplanner)

4.3. When Pave applied to the FSA for authorisation (before Mr Hocking joined Pave), its proposed sales process included the use of a personal customer questionnaire, the purpose of which was to obtain hard facts about the customer's personal and financial circumstances and needs and objectives. This document was referred to as an essential part of the planning process which should be kept up-to-date. In practice, the customer questionnaires were either only partially completed or not used at all within the sales process.

4.4. In practice Pave did not therefore use a standalone fact find form to establish and record all relevant KYC information in one place. Some KYC information was recorded on detailed minutes of meetings with clients. Pave's practice was to input information including a customer's current income, assets and expenditure on a spreadsheet which it called the "Lifeplanner", which was used as an alternative to completing its personal customer questionnaire.

4.5. In its initial meetings with a customer, or at least at any early stage in the customer's relationship with Pave, Pave introduced the customer to the Lifeplanner tool. Customers were then asked to provide information about matters such as their current income, assets and expenditure, which Pave staff then entered on the Lifeplanner.

4.6. The Lifeplanner is an Excel spreadsheet which extrapolated the inputted data and projected a customer's current expenditure and income and the value of their assets into the future (up to age 100, and in one instance to age 135) using percentage uplift assumptions about inflation and investment growth. Pave could change the variables in many ways to show the customer the impact of changes on their future wealth and to help them think about financial planning and the impact on their lifestyle of different inputs and outcomes. The Lifeplanner plotted any future changes in the customer's income and expenditure on a chart and showed at what age, based on the relevant assumptions, the customer's outgoings would start to exceed their income or, in Pave's words, it showed when they "are likely to run out of liquid capital".

4.7. The main purpose of the Life Planner was to identify the rate of growth from the customer's assets deemed to be necessary to maintain their current income, and therefore to maintain or enhance their current lifestyle through to retirement and up to their death. As a customer's investment strategy changed, for example by replacing current investments with those recommended by Pave, the Lifeplanner would recalculate the projections based on the new assumed rates of return, which were based on headline rates advertised in the UCIS marketing materials and were as high as 35% per annum for some UCIS.

4.8. If the Lifeplanner calculations showed a customer that their existing savings and investment portfolio, when matched against their projected expenditure, would lead to cash shortages in future years, consideration would be given to alternative investments offering potentially higher returns.

4.9. The versions of the Lifeplanner reviewed by the FSA assumed that the customers' lifestyles and expenditure would remain the same (indexed for inflation) to the age of 100 (and in one instance to age 135), and took no account of planned changes in lifestyle (e.g. health, working arrangements, active and later retirement phases, tax status and inheritance issues).

4.10. The Lifeplanner was used to project anticipated returns on investments in one or more UCIS and other potential investments. However, the Lifeplanner was not used to project the future impact on a customer's assets (liquid or otherwise) of the failure of

any of the investments recommended by Pave. Nor did it factor in the impact of fees and charges and therefore the level of growth required for the customer to achieve the projected returns illustrated in the tool.

4.11. Pave used the outputs from the Lifeplanner to quantify a customer's attitude to risk by effectively working back from the projected age that the customers were expected to run out of liquid capital. In essence, if the customer wanted to maintain their lifestyle goals and objectives, this tool showed the level of risk that the customer needed to take to stand a chance of funding these aspirational goals. It did not assess either the customer's attitude to risk or their risk tolerance.

4.12. By the time Mr Hocking became a director of Pave, the Lifeplanner was an established tool. The FSA found no evidence that Mr Hocking reviewed or commented on the ongoing but partial use of the personal customer questionnaire or that he critically examined the manner in which the Lifeplanner was used.

Suitability of advice

4.13. In its introductory meetings with customers, Pave explained to the customers the guiding principles that underpinned its service to them. The following guiding principles were found in various client files:

(1) "Never run out of money;

(2) Don't die with too much;

(3) Achieve financial independence."

4.14. These high level objectives were common to most of Pave's customers and they were the words of Pave and not the customer, on to which would be added more customer-specific objectives such as:

"…lifestyle requirements to be maintained inflation-proofed until attaining age 100, and number three ensure that both income and appreciation of capital assets are tax efficient…"

4.15. Pave did not produce any single document described or referred to as a suitability report or any other document which contained in one place its reasons for its recommendations. Pave's advice was instead recorded in documents such as meeting agendas, minutes of meetings, and executive summaries. Pave's executive summaries generally included the following introductions:

"This proposal is considered in conjunction with our discussions and the financial planning cash flow document which details your assets and liabilities plus detailed income and expenditure information."

"This report should be read in conjunction with the key facts information, provider profiles and literature supplied".

4.16. Pave produced an executive summary for each investment that it recommended, which included information from the marketing literature for the UCIS that it recommended. Customers were also given copies of the underlying marketing literature and advised to read them. If a customer was recommended to invest in five UCIS (accessed via an investment platform and held within a SIPP), then they would be given an executive summary for each UCIS and copies of the underlying product literature and executive summaries for the platform and the SIPP.

4.17. The executive summaries did not contain statements in which it was made explicit that the UCIS in question was recommended by Pave as being suitable. Instead, the executive summaries used a form of words which implied that the customer had decided, based on their discussions with Pave, that such an investment fitted in with their aspirational objective of creating wealth:

"Having discussed attitude to risk you have confirmed that you wish to expose this proportion of your investment portfolio to a high risk and illiquid asset class."

4.18. Pave's business model was such that it provided its customers with information so that they could decide for themselves whether the investment was suitable.

4.19. Pave's executive summaries for customers contained the same generic references to attitude to risk and investment objectives; that is to say, they were not tailored to reflect each customer's individual circumstances or objectives. Of 44 executive

summaries reviewed that pertained to UCIS recommendations, 35 did not confirm the customer's attitude to risk. In these cases, the summaries stated that the customer's attitude to risk had been discussed and documented elsewhere.

4.20. Pave adopted an inconsistent approach when setting out in executive summaries the general and specific risk warnings associated with each investment that it recommended. By way of example, Pave's executive summary template for one fund contained detailed risk warnings over four pages. Its template for another fund had limited general risk warnings (three lines of text) and referred the customer to the offering memorandum for confirmation of the full associated risks.

4.21. 15 of the 44 executive summaries pertaining to UCIS contained very limited or no risk warnings. For example, Pave's executive summary template for one fund stated that the fund was a UCIS, but mentioned no other risks. Whilst Pave stated that the summary should be read in conjunction with the product fact sheet, the summary itself highlighted the advantages but made no reference to the risks of investing in this fund.

4.22. Some written communications with customers about UCIS contained inconsistent information about the level of risks, for example in relation to the same UCIS, the customers would sometimes be warned about "*higher levels of volatility*" and sometimes be told the fund offered "*low volatility*".

4.23. The FSA found no evidence that Mr Hocking reviewed or commented on Pave's sales model and sales practices or on the manner in which it sought to demonstrate the suitability of its advice.

Pave's claim that it provided whole of market service

4.24. Pave communicated to customers in its initial disclosure that it provided a whole of market service, which was not the case. In practice Pave selected from a narrow range of products and adopted a similar investment strategy with each of the customers whose files were reviewed by the FSA. Pave appeared to have a shortlist of preferred investments mainly comprising UCIS which constituted the majority of recommended investments to certain customers, and recommended the same investment platform and SIPP provider to its customers.

4.25. There were seven schemes which Pave regularly recommended to customers. Pave also recommended CIS that offered higher rates of return. The schemes were represented by Pave as being the best investments in their respective sectors (e.g. East European property, fine wines, Mexican resorts etc) on the basis of analysis of the marketing literature, meetings with the funds' distributors and Pave's own 'asset & provider assessment selection tool', which was an Excel spreadsheet in which funds were scored according to factors such as "*has to be an area where returns are likely*" and "*essential that the underlying investments are clear and can be understood.*"

4.26. The FSA found no evidence that Mr Hocking reviewed or commented on the basis on which Pave identified and recommended a limited number of investments from the same asset class to customers.

Wealth creation strategy, gearing and concentration of risk

4.27. Included within Pave's wealth creation strategy was a recommendation that customers should establish a SIPP on the basis that this would provide a more cost effective and flexible means of managing their pension investments. In practice, Pave recommended long term and illiquid investments which undermined the logic of its use of a SIPP.

4.28. Furthermore where some customers did not have the liquid assets to invest in UCIS, Pave recommended that they borrow against properties, transfer out of existing pension schemes, and liquidate other investments so that they would be able to invest.

Summary of Mr Hocking's contribution to Pave's failures

Suitability of advice

4.29. Pave breached Principle 9 in the relevant period because it failed to take reasonable steps to ensure the suitability of its advice to customers who were entitled to rely on its judgment in relation to UCIS.

4.30. Mr Hocking had a responsibility to critically examine and challenge Mr Pattison about Pave's strategy and day-to-day policies and to identify any irregularities, such as whether Pave was really providing a whole of market service, whether the disclosure of investment risks was clear, fair and not misleading.

4.31. In addition to the matters referred to below concerning Mr Hocking's conduct as a customer adviser, Mr Hocking played a role in Pave's breaches in this regard because both directly and as a director of Pave:

(1) he failed to ensure he and Pave communicated clearly to customers the risks involved in investing in UCIS. Pave gave undue weight to the potential advantages of low volatility without explaining that this low volatility was in large part due to the fact that these types of investments cannot be traded on any recognised market. Pave also failed to give due weight to the fact that UCIS fund valuations are subjective and made typically by or on the instruction of the fund managers;

(2) he failed to ensure that he and Pave recognised and explained clearly the risks associated with gearing to raise investment capital and pension switching combined with investments in UCIS;

(3) he failed to ensure that he and Pave undertook and/or record appropriate assessments of customers' attitudes to risk which took into account their historic risk profile and investment approaches;

(4) he failed to ensure that he and Pave had aligned the customers' objectives with Pave's own understanding of their attitude to risk were consistent. In practice, customers' failed to understand that the loss of capital could result

in loss of their retirement income and repossession of their residential properties;

(5) he failed to ensure that he and Pave took into account customers' objectives when recommending investments products; and

(6) he failed to ensure that he and Pave did not issue letters inappropriately classifying customers as "sophisticated investors" when they were not sophisticated investors.

Misleading information about fees and commission

4.32. Pave provided what it described as a fee-based service and maintained a notional account for all customers. The notional account was a record of credits and debits that a customer had accrued through investment commission (credits) and the cost of the advice service they received from Pave (debits). The debits were service charges calculated according to the time spent by Pave's staff, and credits were fees and commission received by Pave. The fee was charged on the understanding that Pave would not derive any income from commissions and any commissions received would be offset against the fees.

4.33. Pave's approach to charging fees and taking commission was not communicated clearly to customers.

4.34. On the key facts document relating to Pave's charges, the following option was ticked:

> ***"Paying by fee****. Whether you buy a product or not, you will pay us a fee for our advice and services. If we also receive commission from the product provider when you buy a product, we will pass on the full value of that commission to you in one or more ways. For example, we could reduce our fee; or reduce your product charges; or increase your investment amount; or refund the commission to you."*

4.35. Pave's introductory Powerpoint presentations to customers included the following statements:

> *"We do not derive our income from commissions."*

"Not commission orientated endorsing the independence of the advice and recommendations – Truly Independent advice cannot be remunerated by a sales commission"

"We endeavour to obtain commissions, arrangement fees on your behalf:"

"We credit all income received on your behalf: Retainers, commission etc".

4.36. However, section 13 of Pave's operations manual, dated February 2005, headed "Timesheet and Commission Recording" made it clear to staff of Pave that it provided a service to its customers on the basis of charging for its time and achieving profit. All recorded time was to be charged to the customer's notional account. In this section of the manual Pave described the relationship between fees and commission as follows:

"Pave offsets costs of providing the service against retention fees ***and all commissions received****. Commission receipts are entered from commission statements received from Institutions.*

NOTE: This account is a notional account utilised for the purposes of establishing profit contribution to Pave. It is a notional account and therefore is not issued to clients without sanction from a Director." (emphasis added)

4.37. Two former advisers at Pave said that retrospective adjustments had been made to the notional accounts to avoid the customer having a credit balance. The FSA found some evidence of retrospective adjustments to some customers' notional accounts some 12 months after the cost would have been incurred which, at the very least, suggested a lack of transparency in the way that notional accounts were maintained by Pave. Although Pave told the FSA that it provided a copy of notional accounts to customers at every annual review, four customers told the FSA that they had not received a copy of their notional accounts. Three other customers did not understand how the notional account worked. The FSA did not see evidence in any customer file that the balance of a notional account was paid to the customer**.**

4.38. When Mr Hocking was asked to explain the rationale for the use of the notional account its lack of transparency was evident from Mr Hocking's response:

"What our experience has shown is that clients who, who are charged on a time clock basis in that way, tend to be very economic with what they say. They tend not to be too verbose because they know it's costing them money. If they're just chatting ad lib, at will, on things which are not necessarily absolutely specific to the reason that they're in that room having that meeting, they know it's costing them money …

… So drilling down a client's aspirations, so that we can understand the cost implication of that, is hugely important. And if metaphorically that clock-clock-clock is tick-tick-ticking, with a huge expense, where a client, I say, huge expense to the, in the client's mind, from a value add point of view, they might not get it. So, if they were to pay, and we were to present those invoices, a lot of our clients would say, that's all very good, and I can see there could be merit, but quite frankly, I'm not sure that I can afford this cost going forward, because I don't know what the end result is yet, because you quite rightly haven't done all of your fact finding to present the answer. It could be that, actually, that's all very interesting, but I'm not sure we're going to take it up anyway, and I've now got a bill for 15,000 quid, plus the VAT."

4.39. The lack of transparency in the way that the notional account operated meant that customers did not appreciate the true cost of Pave's investment advice, as illustrated in the three examples below.

(1) Between July 2008 and April 2009 Pave charged a total of £11,393 for attending five meetings with a married couple who were customers. The customers started with an investment portfolio of £170,700, meaning that in 10 months they had effectively surrendered an amount equivalent to 6.7 percent of their portfolio in payment for those meetings.

(2) Between 2 May 2008 and 17 June 2009 Pave collected £30,106 through fees and commission which constituted an amount equivalent to 17 percent of a customer's investment portfolio.

(3) One customer calculated, retrospectively, that over a ten year period an amount equivalent to 25 percent of their portfolio had been surrendered to cover Pave's fees and charges.

4.40. In some cases the notional account included significant credits to the customers. When the customers enquired about their notional account and/or sought repayment of the balance, such requests were not met and/or the balance on the notional account was belatedly reduced by the imposition of backdated or previously unrecorded time.

4.41. By failing adequately to inform customers of the existence, nature and amount of the commissions, in a manner that was comprehensive, accurate and understandable, before making the investments for which the commission was received, Pave breached COBS 2.3.1R. Mr Hocking contributed to this breach by failing to ensure that the firm communicated in a manner that was fair and which ensured the transparency to customers of the notional account and the purportedly fees based service.

Mr Hocking's conduct as CF1 (Director)

4.42. Mr Pattison, the firm's founder and majority shareholder, designed Pave's business model and has had a prevailing influence over its sales model and sales practices. The deficiencies in Pave's sales model and sales practices took root before Mr Hocking became approved as a CF1 (Director) on 10 June 2008.

4.43. However, this does not absolve Mr Hocking from his own responsibilities as a CF1 (Director). The FSA has seen no evidence that once Mr Hocking became a director he sought to critically assess Pave's investment ethos and meaningfully challenge Mr Pattison to remedy weaknesses. Pave was obliged to ensure that its two directors should be sufficiently experienced as to ensure the sound and prudent management of the firm (SYSC 4.2.1R and 4.2.2R) and as FSA guidance makes clear Mr Hocking should have played a part in the decision-making process on all significant decisions and should have demonstrated the qualities and application to influence strategy, day-to-day policy and its implementation (SYSC 4.2.G). Therefore, Mr Hocking must accept a degree of responsibility for the regulatory breaches that occurred at Pave and are identified in this Notice.

4.44. Pave was alerted to risks and/or weaknesses in its sales model and sales practices by its external compliance consultant, including in a report made in March 2008, shortly before Mr Hocking became CF1 (Director). This report could have formed a basis for Mr Hocking to critically review and challenge aspects of Pave's business model. He closed his mind to the risks identified in the report.

Mr Hocking's conduct as CF30 (Customer)

4.45. In performing CF30 (Customer), Mr Hocking propagated Pave's investment strategy when making recommendations to his customers. In some instances he did so as a secondary adviser to a customer; in others, he was entirely responsible for giving the advice. Of the files reviewed by the FSA it is apparent that he charged four customers for his attendance as the sole adviser at investment advisory meetings following which those customers invested in UCIS.

4.46. The following examples support the FSA's view that Mr Hocking lacks integrity and competence and capability in terms of performing CF30 (Customer).

Customer X

4.47. Pursuant to COBS 19.1.1R, which was applicable at the time of the relevant advice and remains in force, Pave was obliged to ensure that any recommendations about a pension transfer or opt-out made by Mr Hocking were checked by a pension transfer specialist.

4.48. Mr Hocking acted as a financial adviser to Customer X. In December 2007 he met Customer X and advised him to consider transferring the non-contracted out benefits of an occupational pension scheme into a particular SIPP. Mr Hocking recommended a programme of re-investment in a number of UCIS. He gave this advice at a face-to-face meeting in December 2007, and then again at a further face-to-face meeting on January 2008, without holding the necessary information to determine whether a pension transfer was in the customer's best interests.

4.49. By the time that Pave had engaged its pension transfer specialist, in January 2008, Customer X had already signed documents confirming his agreement to the recommended transfer. The pension transfer specialist produced a report in which he

advised Pave that the proposed transfer was unsuitable because; the pension scheme had a significant element of inflation proofing; the pension scheme had guarantees via both the scheme itself and the Pension Protection Fund; there was a widow's pension available; and the critical yield was too high. Mr Hocking communicated the pension transfer specialist's advice to Customer X as being distinct and separate from Pave's advice, breaching Pave's terms of business with the pension transfer specialist which required that Pave present the advice as its own advice. Furthermore Mr Hocking presented the pension transfer specialist's advice as an isolated viewpoint that was not allied to Pave's own recommendations. Having already agreed in principle to follow Mr Hocking's recommendations, Customer X continued with a transfer that Mr Hocking knew had been deemed unsuitable by the pension specialist and which he knew, on the basis of figures available to him, could not be justified financially by him.

Customer Y

4.50. Mr Hocking was the adviser to Customer Y, with whom he had had a professional relationship since 1997 in his previous employment. When Customer Y followed Mr Hocking to become a customer of Pave in 2007 she was 88 years old, widowed, and with no surviving immediate family, and she owned her own home without a mortgage. Her existing investments were worth approximately £1,000,000 and comprised eight Guaranteed Equity Bonds and Investment Bonds. (In December 2009 power of attorney for Customer Y was granted to a firm of solicitors.)

4.51. Customer Y's objective was to fund her lifestyle (including her gambling expenditure) whilst preserving the value of her estate. Previously she had invested in with profit bonds, and cautious/balanced ISAs or guaranteed funds. Mr Hocking made an initial assessment of Customer Y's attitude to risk and allocated a score of 3 out of 10. However in order to achieve the "necessary" returns, he then revised this to 6 out of 10 and recommended that Customer Y surrender six investment bonds and re-invest approximately 76 percent of her assets in two UCIS that offered no capital guarantee. One of these UCIS has been suspended, putting over £150,000 of Customer Y's assets at risk of loss. Mr Hocking failed to heed Customer Y's attitude to investment risk or her stated desire to preserve her assets.

4.52. Mr Hocking asked Customer Y to sign a 'sophisticated investor certificate' for the purposes of applying to hold UCIS on an investment platform, but there was no evidence that this was appropriate.

4.53. The FSA instructed an independent expert to review Customer Y's client file. The independent expert's findings included the following statements:

"There were material shortcomings in the essential KYC information about [Customer Y] that was established by Pave. Although her attitude to risk was established using a risk questionnaire, the resulting risk profile was rejected by Pave without reasonable justification. It is likely that Pave increased [Customer Y's] risk profile in order to support a recommendation to invest in UCIS funds. We also identified material weaknesses in relation to the robustness of Pave's establishment of [Customer Y's] objectives. Other essential information was not obtained at all. Pave should not therefore have made personal recommendations to invest in UCIS.

Notwithstanding the inadequate KYC information, in our opinion it is also clear from the information that was established and recorded on the file that the advice given by Pave to [Customer Y] was unsuitable. In particular, [Customer Y] was a vulnerable elderly client who was recommended to liquidate almost her entire portfolio which, in our view, was invested in vehicles that matched her risk profile, and to re-invest over 70% of her savings in unregulated funds. These funds carried a materially greater risk which could not be justified in her particular circumstances. [Customer Y] was particularly exposed to Pave's recommendation to invest over 70% of her investments across only two funds. In our view, this involved considerable concentration risk and was highly irresponsible advice. The subsequent suspension of one of the two funds has resulted in the threat to a substantial proportion of her investment…

… From the information which was established by Pave, we found a number of major failings with the suitability of the UCIS recommendations. For example, [Customer Y's] objectives of preserving capital as far as possible, providing short term capital needs and whilst maintaining an increase in income to fund her living and gambling requirements could, in our opinion, have reasonably been achieved without the strategy recommended by Pave involving surrendering almost all of her existing

portfolio and re-investing into UCIS and Offshore Bonds. For an investor in [Customer Y's] circumstances, we would typically have expected an adviser to consider some adjustments to her portfolio in order to provide the relatively modest income increase and capital requirements that had been identified. Pave failed to provide a reasonable and sustainable argument as to why the majority of her existing investments were not meeting her investment objectives and why they should be surrendered."

5. REPRESENTATIONS, FINDINGS AND CONCLUSIONS

Representations

5.1. Mr Hocking made oral and written representations in conjunction with Mr Pattison and Pave. In his representations Mr Hocking denied the allegations made against him and he argued that there was no basis upon which to conclude that he either lacked integrity or competence and capability. Additionally Mr Hocking also commented on matters not directly relevant to this Notice.

5.2. Mr Hocking submitted that the evidence presented by the investigation team failed, on the balance of probabilities, to disclose a case that was sufficient to discharge the burden of proof upon the FSA, particularly when his unblemished history in the financial services industry was taken into account. He submitted that the FSA had not put forward compelling evidence sufficient to demonstrate that he had acted without integrity or that he lacked competence and capability. Furthermore Mr Hocking criticised the conduct of the FSA investigation team and alleged that their partiality was demonstrated by the fact that they had put forward a case founded upon hearsay, innuendo and speculation.

The conduct of the FSA

5.3. Mr Hocking criticised the conduct of those from the FSA who had investigated this matter. He submitted that they had not acted in a fair or balanced manner and that this had caused them to misinterpret evidence and to use evidence very selectively. He asserted that their bias had resulted in an unbalanced investigation which had been conducted without integrity. He further submitted that the investigative team had been so fixated upon demonstrating that he, along with Mr Pattison, had engaged in misconduct that they had overlooked evidence which was helpful to his cause. He submitted that as a result of these failings the investigation had been wholly inadequate and it had resulted in a very weak case which was characterised by "innuendo, guesswork, misquotation, deliberate misrepresentation and subjective opinion" which he submitted did not "constitute cogent and persuasive evidence".

His conduct as a director of Pave

5.4. Notwithstanding the fact that he was not said by the FSA to be culpable in his role as a director of Pave for the firm's lawful promotion of UCIS in breach of section 238 of the Act, Mr Hocking sought to downplay the seriousness of this breach. Mr Hocking accepted that Pave had promoted UCIS in breach of section 238 of the Act. However he submitted that this breach had been inadvertent and hence it was his submission that the FSA should not infer from this breach that Pave was a firm which did not seek to meet its regulatory obligations. Furthermore Mr Hocking argued that though Pave had committed a technical breach of section 238 this was because at all times the firm had acted upon advice. He noted that the FSA made no criticisms of conduct relating to the promotion of UCIS by Pave in the period after March 2007 when the firm had received incorrect advice from an external compliance consultant concerning the restrictions applicable to the sale of UCIS. He thus submitted that having made this late concession, the FSA should go further and concede that Pave had also been acting on advice in the period prior to March 2007. He contended that as the firm had engaged others to advise on issues relating to Pave's regulatory compliance the firm was entitled to expect them to provide advice about the Firm's unlawful promotion of UCIS. It was submitted that in the absence of any concerns having been raised by those who had been engaged to assist with such matters the firm was entitled to

assume that Pave was acting lawfully when it promoted UCIS. Indeed he noted that the existence of external compliance support had given him reassurance, throughout his time as a director of the firm, about all aspects of the firm's compliance with its regulatory obligations.

5.5. In addition to seeking to diminish the seriousness of Pave's breach of section 238, Mr Hocking also made more wide ranging submissions concerning the quality of the advice that had been given to former customers of Pave in his time as director of the firm. He asserted that Pave had endeavoured to do the best for its customers and that the advice that had been given to the firm's customers had reflected that fact. He submitted that when UCIS had been promoted to customers this was because they were the most suitable products. He denied that UCIS were ever promoted to customers because they offered more favourable commission to Pave. Indeed he commented that the level of commission which the firm received in relation to UCIS did not "significantly vary from the level of commission that could be earned from recommending regulated investments".

5.6. Mr Hocking submitted that the Lifeplanner had not been designed to provide a scenario for customers that would inevitably result in their seeking to invest in UCIS. Instead he contended that the Lifeplanner was a tool that helped Pave to learn about the needs of their customers and to present them with "what if" scenarios rather than a sales tool designed to encourage customers to invest in products that paid large commissions to Pave.

5.7. Mr Hocking added that though Pave did not actively seek to promote UCIS over other products they would recommend carefully selected UCIS to clients where these were the best products to meet the aspirations of particular customers. He noted that many regulated products had failed to outperform inflation, and that it was therefore unsurprising if Pave had advised customers about the possibility of investing in UCIS. He argued that it was far too simplistic to suggest that because something was a UCIS that would make it an inherently bad product. As a corollary of the foregoing he also submitted that it was wrong to assert that Pave was necessarily giving customers poor advice when it had advised individuals about investing in UCIS.

5.8. In the light of the foregoing submissions Mr Hocking rejected the conclusions that the FSA sought to draw about the allegedly poor advice given by Pave to its former customers. Instead he submitted that on a proper analysis of the circumstances for the advice given to each of Pave's former customers it was clear that, in his time as a director at the firm, Pave had provided fair and balanced advice which was informed by the knowledge that Pave's customer advisers had of their clients. He complained that the FSA had not only made minor factual errors in its analysis of Pave's conduct towards various former clients, but he also submitted that the FSA had overlooked pertinent facts and it had also overstated other matters in an attempt to prove the case against Pave. He further submitted that the investment decisions which had been taken by the customers of Pave had been ones that they had taken of their own volition in an attempt to achieve their financial goals. He argued that, whilst it was not for Pave to "tell people that they (were) being too ambitious in life", the advice that had been given to Pave's customers had been good advice tailored to their aspirations.

5.9. In addition to advancing the foregoing submissions concerning the conduct of Pave Mr Hocking also argued that he should not be considered to be culpable or responsible for any failures at the firm if the FSA should make any finding adverse to Pave. Mr Hocking noted that the FSA had accepted that Mr Pattison had been the dominant influence at Pave and therefore he argued that he was not responsible for Pave's conduct. Mr Hocking submitted that as a consequence of having had only a 5% shareholding of the firm he had not been in a position to influence the processes, strategies or policies at the firm particularly as these had been in place prior to his having assumed the role of a director.

Fees and commissions

5.10. Mr Hocking submitted that when carrying out his CF30 (Customer) function he had not misled customers about the basis and amount of remuneration received by Pave. Furthermore he also sought to defend the firm's general conduct in relation to fees. He insisted that he as a customer adviser and Pave more generally had treated its former clients fairly and that it had not misled them about the fees which the firm charged and the commissions it had received from product providers. He asserted that the FSA had no basis upon which to allege that Pave's fees were excessive as there

were no rules governing the level of fees. He therefore submitted that Pave's fee structure could not be said to be unfair. He also rejected the suggestion that customers had been misled about the use of the notional account. He submitted that the notional accounts which had been maintained for all of Pave's customers had operated in a transparent way. He argued that the transparency of how fees, commissions and the notional accounts were dealt with, was illustrated by the telling absence of any clear evidence from former customers of Pave. Mr Hocking submitted that the FSA could not maintain that former customers were confused by the operation of the notional account without putting forward evidence from these former customers supporting this allegation. Instead he submitted that it was the FSA who had become confused about this issue as it had failed to distinguish between a notional account and a real account and that as a consequence of this confusion the FSA had incorrectly alleged that he had misled any of his former customers.

The advice he gave to customers

5.11. Mr Hocking submitted that in addition to having done all that he could as a director of Pave he had also maintained high standards when acting as a customer adviser. He asserted that he had always sought to do the best for his clients and that he would never have put personal profit ahead of their interests. He claimed that, as was evidenced by the references he relied upon, he was a diligent and honest man. He submitted that he had an unblemished record, with no complaints having been made against him, and that he was an individual with a strong moral code informed by his faith. As such he denied the suggestion that he had ever acted without integrity when advising any of his former clients.

5.12. Mr Hocking asserted that he could not be said to have acted without integrity when he advised Customer X. He submitted that the problems that had beset this customer were an unfortunate consequence of decisions which he had made of his own volition. Customer X had decided that he wanted to take early retirement and thus the changes to his financial circumstances were a result of this decision. Therefore, and in the absence of sufficient evidence to demonstrate that he had breached the rules relating to pension transfers, Mr Hocking submitted that nothing could be inferred about his conduct on the basis of this case.

5.13. Mr Hocking submitted that in the case of Customer Y the evidence showed that far from there being any suggestion that his advice might have been to this customer's detriment, his advice had actually been in her best interests. He claimed that the advice he had given to Customer Y meant that she was able to avoid incurring losses that she would otherwise have suffered as a consequence of the downturn in the value of the assets that she had held. Mr Hocking further submitted that this case provided ample evidence of the bias of the FSA investigation as this individual had been characterised as having been a frail and vulnerable person. Mr Hocking asserted that the evidence actually demonstrated that she had been quite capable of taking complex financial decisions at the relevant time. He submitted that the FSA had placed far too much reliance upon the fact that a power of attorney had been placed over her estate two years after his dealings with her and he submitted that the FSA had ignored the other evidence which tended to show that she had been perfectly capable of making these decisions at the relevant time. He thus asserted that the suggestion that he was shown to have acted without integrity was not borne out by the facts of this case.

5.14. Mr Hocking also denied the suggestion that it could be inferred that he lacked competence and capability as a consequence of his communications with former customers about the risks, volatility, liquidity and cost of UCIS.

The definition of integrity

5.15. When disputing the allegations made against him Mr Hocking criticised the FSA for having failed to properly define what amounted to conduct lacking in integrity. He submitted that the FSA had incorrectly characterised behaviour lacking in integrity as being constituted by reckless conduct. Instead he asserted that behaviour lacking in integrity was characterised by deliberate and wilful breaches of the law. Mr Hocking argued that the FSA did not have evidence that demonstrated that he, an individual of previously blameless character, had engaged in conduct amounting to deliberate and wilful breaches of the law and therefore he submitted that the FSA could not allege that he lacked integrity.

Sanction

5.16. Despite the fact that the FSA had not alleged that he was personally culpable for the unlawful promotion of UCIS by Pave, Mr Hocking suggested that as a consequence of this misconduct it was appropriate for the FSA to impose some form of sanction upon him. However he submitted that the proposed withdrawal of approval and prohibition were far too harsh. Mr Hocking thus argued that the FSA should instead allow him to resign all of his authorisations. He argued that this would achieve the regulatory outcome which the FSA were seeking and it would be a proportionate response to the very limited failings which he had accepted.

Findings

5.17. The FSA rejected Mr Hocking's submissions having taken all relevant factors including his previously unblemished character into account. Instead the FSA found that the evidence demonstrated that he has breached Statements of Principle 1, 2 and 7 and that he is not a fit and proper person because of his lack of integrity and his lack of competence and capability.

The conduct of the FSA

5.18. The FSA rejected the suggestion that Mr Hocking's many and varied criticisms of the conduct of the investigation team demonstrated that the evidence in this matter was of limited probative value. As noted above, there is clear evidence showing that Mr Hocking had engaged in the alleged misconduct. Furthermore the FSA did not agree that evidence has been 'cherry picked' or that it may have been misinterpreted to Mr Hocking's detriment. The FSA thus considered that his criticisms of the investigation team had no impact on this Notice.

His conduct as a director of Pave

5.19. The FSA does not consider that Mr Hocking was culpable for Pave's breach of section 238. However to the extent that Mr Hocking sought to dispute the conclusions which the FSA sought to draw from the unlawful promotion of UCIS the FSA rejected his submissions on this point. Though Pave may have had external compliance support in the period prior to March 2007, the firm was still culpable for its breach of section 238

at this time. Pave failed to take any steps to consider and apply the restrictions relating to the promotion of UCIS. Whilst the FSA did not seek to draw any adverse conclusions about Pave for its continuing promotion of UCIS after the firm had sought advice about these products, the FSA rejected the submission that the firm can rely on the absence of advice prior to this point to absolve it of responsibility for the breach of section 238. It was the firm's responsibility to ensure regulatory compliance and that it should have proactively sought advice about the promotion of such products particularly in the light of the clear warnings which were contained in much of the UCIS marketing material to the effect that it was unlawful to distribute the material beyond limited categories of potential investors.

5.20. The FSA further rejected Mr Hocking's submissions concerning the quality of the advice given by Pave to its former customers. Former customers received poor advice resulting from a number of failures at Pave for which Mr Hocking as a director of the firm was culpable.

5.21. Regardless of the breach of section 238 by Pave, it was inappropriate to have promoted UCIS to the firm's customers to the extent that it did. There is significant risk to investing in UCIS and these risks were magnified by the fact that Pave advised retail customers to invest large proportions of their wealth directly in UCIS, and in some cases this was through gearing and as part of their pension provision. Pave made recommendations to customers to invest in UCIS which were not suitable for them in the light of factors such as: the customers' investment history; the customers' previous attitudes to investment risk; Pave's methods of raising finance for some of these investments; and the high concentration of UCIS in each customer's portfolio. The inappropriateness of this advice was compounded by the fact that written communications were sent to customers about UCIS which contained inaccurate and inconsistent information about the nature and level of risks associated with these products. These poor communications were also mirrored in the firm's failure to make clear, during the sales process, the level of investment growth required to offset the costs of a particular scheme, and the impact of a failing or underperforming scheme.

5.22. The quality of the sales process at Pave was also severely undermined by the use of the Lifeplanner, which the FSA considers to have been ineffective in facilitating Pave's understanding of their customers. The Lifeplanner was used as a sales tool; it did not provide realistic assessments of the projected returns from particular products. Instead the Lifeplanner, which modelled dangerously optimistic projected returns, had the effect of persuading customers, about whom the firm had conducted flawed assessments of their attitudes to risk, to accept very high levels of investment risk because it sought to project a scenario in which an individual's lifestyle necessitated the investment in such products.

5.23. Pave gave poor advice to customers and Mr Hocking was culpable for this from the date he became a director of Pave. Mr Hocking, as a director of the company, should have sought to provide some meaningful challenge to a wealth creation strategy which was patently and inherently flawed. The FSA rejected the submission that Mr Hocking was not culpable for his conduct because he was a minority shareholder in the firm alongside the dominant figure of Mr Pattison. To some extent the seriousness of his misconduct is mitigated by this fact; however Mr Hocking remains culpable as he had taken on a CF1 (Director) role at the firm and the FSA expects individuals taking on such roles to take their responsibilities seriously.

Fees and commissions

5.24. It is clear on the evidence that Pave did not communicate clearly to its customers about the fees it charged and the commissions it received. The FSA accepts that a firm is entitled to charge fees at whatever level it considers appropriate which have been agreed with the customers. However a firm must be open and transparent with its customers about the levels of these fees. Pave was not open with its customers on this topic and Mr Hocking was culpable for producing and sending written communications containing misleading information about the basis and amount of remuneration received by Pave.

The advice he gave to customers

5.25. Mr Hocking acted recklessly by making personal recommendations to Customers X and Y to invest in UCIS. The FSA rejected Mr Hocking's submissions about the

quality of the advice he gave to these individuals and instead concluded that he must have known the risks posed by the advice he gave, as he must have known that these recommendations were unsuitable in the circumstances of the two individuals.

5.26. Mr Hocking must have known that it was unsuitable for Customer X to remortgage his house in order to raise funds to invest in UCIS and for him to have transferred out of his existing occupational pension scheme in the circumstances set out above. The FSA rejected the submission that the decisions taken by Customer X exonerated Mr Hocking from culpability for his reckless advice, and therefore the FSA concluded that Mr Hocking was culpable for the advice he gave to Customer X. Mr Hocking must have been aware of the risks posed to Customer X and he should not have given the unsuitable advice.

5.27. Mr Hocking must have known that it was unsuitable for Customer Y to invest in UCIS to the extent that she did, and that despite being aware of the risks caused by this unsuitability he still gave the advice that he did. The FSA rejected Mr Hocking's submissions about the advice he gave to Customer Y and instead concluded that this advice was reckless. Regardless of the age and health of Customer Y, this was very poor advice. Mr Hocking failed to heed Customer Y's attitude to investment risk or her stated desire to preserve her assets and that the advice to invest in UCIS was not justified in the context of her objectives of preserving capital, providing short term capital needs and maintaining an increase in income to fund her living and gambling requirements.

5.28. Mr Hocking's conduct towards other customers when undertaking his CF30 (Customer) function demonstrated that he lacks competence and capability. Mr Hocking produced and sent written communications to customers about UCIS which misrepresented the implications of the volatility of these products and which contained inconsistent information about the level of risk associated with the UCIS. Mr Hocking failed to make clear to customers the level of growth of the UCIS required to offset the costs of Pave's advice and the impact of a failing or underperforming scheme. These are significant and unjustifiable failings which demonstrate a lack of competence and capability.

The definition of integrity

5.29. The FSA rejected Mr Hocking's submissions concerning the definition of integrity. Conduct lacking in integrity is not necessarily marked by "deliberate and wilful breaches of the law". Conduct lacking in integrity can also be marked by recklessness. In the excerpt from paragraph 49 of Fox Hayes v. FSA [2009] EWCA Civ 76, upon which Mr Hocking sought to rely in support of his submission, Longmore LJ made clear that there was a distinction between reckless and deliberate misconduct. Reckless conduct, as seen in this matter, clearly equates to conduct lacking in integrity.

Sanction

5.30. Mr Hocking's submission that a sanction is merited in his case as a result of the unlawful promotion of UCIS has been made in error, and thus the FSA has ignored this concession. In the light of the foregoing findings, the sanctions set out above are merited in this case. The FSA rejected Mr Hocking's additional submissions about the appropriate sanctions in this case. The proportionate response in this case is to impose a public statement of misconduct, withdraw his approval and to prohibit him in the terms set out in paragraph 1.1(3) of this Notice. The FSA hereby publishes a statement of Mr Hocking's misconduct in the light of the seriousness of his conduct. In relation to the other two sanctions, the FSA concluded that it is necessary to withdraw Mr Hocking's approval and to prohibit him, as he engaged in serious misconduct and he continues to pose a risk to the FSA's objectives.

Conclusions

5.31. On the basis of the facts and matters set out above, the FSA concluded that:

(1) Mr Hocking acted recklessly and thus failed to act with integrity in carrying out his CF30 (Customer) function, in contravention of Statement of Principle 1, by making personal recommendations to Customers X and Y to invest in UCIS (and for Customer X to remortgage his house to raise funds to invest in UCIS and to transfer out of his existing occupational pension scheme against

the advice of a pension transfer specialist) which any reasonable adviser would have known to be unsuitable taking into account all the circumstances;

(2) in carrying out the CF30 (Customer) function, Mr Hocking failed to act with competence and capability, and he failed to act with due skill, care and diligence (in contravention of Statement of Principle 2), by his involvement in the following conduct by Pave:

(a) producing and sending written communications to customers about UCIS which emphasised low volatility of UCIS without explaining that low volatility was in large part due to the fact that these types of investment cannot be traded on any recognised markets. These communications also contained inconsistent information about the level of risk associated with the UCIS;

(b) producing and sending written communications to customers which contained misleading information about the basis and amount of remuneration received by Pave (i.e. Pave told customers it provided a fee only service, but in fact it also benefitted from commission);

(c) failing to make clear to customers the level of investment growth required to offset these costs and/or disclose to them the impact of a failing or underperforming scheme; and

(3) once he became a CF1 (Director) at Pave, Mr Hocking failed to take reasonable steps to ensure that Pave complied with the relevant requirements and standards of the regulatory system, in breach of Statement of Principle 7, by failing to challenge or exert influence over Pave's wealth creation strategy which contained inherent flaws in the application of risk profiling of customers' attitudes to risk, in the method of assessing customers' knowledge and understanding of the investment recommendations and in the consideration of customers' needs and objectives, all of which contributed to the failures described in this Notice.

5.32. In the light of the foregoing, the FSA concludes that it is appropriate to publish a statement of Mr Hocking's misconduct, withdraw his approval and to prohibit him from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. A further analysis of these sanctions is provided below.

6. ANALYSIS OF THE SANCTIONS

Imposition of financial penalty

6.1. The FSA's policy on the imposition of financial penalties relevant to the misconduct detailed in this Notice is set out in Chapter 6 of the version of the Decision Procedure and Penalties Manual ("DEPP") in force prior to 6 March 2010, which formed part of the FSA Handbook. All references to DEPP in this section are references to that version of DEPP.

6.2. The principal purpose of imposing a financial penalty 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 providing an incentive for compliant behaviour.

6.3. In determining whether a financial penalty is appropriate the FSA is required to consider all the relevant circumstances of a case.

6.4. DEPP 6.5.2G sets out a non-exhaustive list of factors that may be of relevance in determining the level of a financial penalty. The FSA considers that the following factors are particularly relevant in this case.

Deterrence (DEPP 6.5.2(1))

6.5. In determining the level of the financial penalty, the FSA has had regard to the need to ensure those who are approved persons exercising significant influence functions act in accordance with regulatory requirements and standards. A penalty should be imposed to demonstrate to Mr Hocking and others the seriousness of failing to meet these requirements.

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

6.6. The prohibition is for the purpose of protecting those customers from the risks associated with potentially high risk sophisticated investments which they may not properly understand.

6.7. As a result of Mr Hocking's failings, Pave exposed retail customers (including Mr Hocking's own customers) to a risk of investing in schemes for which they did not have adequate knowledge or experience and which were not suitable. Consequently, these customers invested significant proportions of their assets, sometimes geared by raising additional debt, in schemes that were not suitable taking into account their circumstances, objectives, level of understanding of the investments, attitude to risk and ability to sustain losses.

6.8. Some of the unsuitable schemes have been wound up or suspended, resulting in crystallised or potential financial losses for customers, many of whom could not afford to lose the sums they did. Customers also face difficulties and potential financial losses in disinvesting from illiquid and/or underperforming UCIS which were not suitable for them.

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

6.9. The FSA has concluded that in certain specified respects Mr Hocking's conduct was reckless. On his own admission, the notional account was a means of disguising from customers the true cost of Pave's investment advice. The advice that Mr Hocking gave to Customer X and Customer Y was reckless, because he must have been aware of the risks of ignoring the particular advice of the pension transfer specialist in respect of Customer X, and of exposing Customer Y to the highly concentrated UCIS investment risk in her circumstances.

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

6.10. When determining the appropriate level of financial penalty, the FSA will take into account that individuals will not always have the same resources as a body corporate, that enforcement action may have a greater impact on an individual, and further, that it

may be possible to achieve effective deterrence by imposing a smaller penalty on an individual than a body corporate. The FSA will also consider whether the status, position and/or responsibilities of the individuals are such as to make a breach committed by the individual more serious and whether the penalty should therefore be set at a higher level.

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

6.11. The FSA considers that a financial penalty of £25,000 would have been appropriate, having taken account of all relevant factors. However, Mr Hocking provided verifiable evidence to the FSA that such a financial penalty would cause him serious financial hardship.

The amount of benefit gained or loss avoided (DEPP 6.5.2.G(6))

6.12. The FSA is aware that Mr Hocking received dividends as a result of his shareholding in Pave, and therefore stood to gain benefit from the increased revenue generated by Pave's sales model.

Conduct following the breach (DEPP 6.5.2G(8))

6.13. The FSA has taken into account Mr Hocking's co-operation with the FSA's investigation.

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

6.14. The FSA has taken into account the fact that Mr Hocking has not been the subject of previous disciplinary action by the FSA.

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

6.15. The FSA has taken into account action against other approved persons for similar conduct.

6.16. Taking into account the above and in particular the verifiable evidence he has provided demonstrating that a financial penalty would cause him serious financial hardship, the FSA has not imposed a financial penalty on Mr Hocking.

Withdrawal of approval and prohibition

6.17. Given the nature and seriousness of the failures outlined above the FSA, having had regard to the guidance in Chapter 9 of the Enforcement Guide ("EG"), has concluded that Mr Hocking lacks integrity and is not competent and capable, and is therefore not fit and proper. Thus, it is appropriate to prohibit Mr Hocking from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm and to withdraw his approval. The relevant provisions of EG are set out in the Annex to this Notice.

7. DECISION MAKER

Decision maker

7.1. The decision which gave rise to the obligation to give this Final Notice was made by the Regulatory Decisions Committee.

7.2. This Final Notice is given under, and in accordance with, section 390 of the Act.

Publicity

7.3. 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 Mr Hocking or prejudicial to the interests of consumers.

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

FSA contacts

7.5. For more information concerning this matter generally, contact Rebecca Irving (direct line: 020 7066 2334) of the FSA's Enforcement and Financial Crime Division.

……..

Bill Sillett
Enforcement and Financial Crime Division
Financial Services Authority

ANNEX

RELEVANT STAUTORY PROVISIONS, REGULATORY REQUIREMENTS AND FSA 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. The FSA has the power, by virtue of section 66 of the Act, to impose a financial penalty on you of such amount as it considers appropriate where it appears to the FSA that you are guilty of misconduct and it is satisfied that it is appropriate in all the circumstances to take action against you.

1.3. You are guilty of misconduct if, while an approved person, you fail to comply with a statement of principle issued under section 64 or have been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under the Act.

1.4. Pursuant to section 63 of the Act, the FSA has the power to withdraw the approval given to you under section 59 of the Act – to perform the significant controlled functions of CF4 Partner, CF10 Compliance Oversight and CF11 Money Laundering Reporting – if it considers that you are not a fit and proper person to perform them.

2. Statements of Principle for Approved Persons

2.1. The Statements of Principle are issued pursuant to section 64 of the Act. It sets out Statements of Principle with which approved persons are required to comply when performing a controlled function for which approval has been sought and granted. They are general statements of the fundamental obligations of approved persons under the regulatory system. The Statements of Principle also contain descriptions of conduct which, in the opinion of the FSA, constitutes a failure to comply with a particular Statement of Principle and describes factors which the FSA will take into account in determining whether an approved person's conduct complies with it.

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

2.3. APER 3.1.4G states, as guidance, that an approved person will only be in breach of a Statement of Principle if they are personally culpable, that is in a situation where their conduct was deliberate or where their standard of conduct was below that which would be reasonable in all the circumstances.

2.4. In this case, the FSA considers the most relevant Statements of Principle to be Statements of Principle 1, 2 and 7.

2.5. Statement of Principle 1 requires that an approved person must act with integrity in carrying out his controlled function.

2.6. Statement of Principle 2 requires that an approved person must act with due skill, care and diligence in carrying out his controlled function.

2.7. Statement of Principle 7 requires that an approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system.

2.8. APER 4.1.2E to 4.1.15E provide examples of the types of behaviour that, in the opinion of the FSA, do not comply with Statement of Principle 1. These include:

(1) Deliberately misleading (or attempting to mislead) by act or omission a client (APER 4.1.3(1)E);

(2) deliberately misleading a client about the likely performance of investment products by providing inappropriate projections of future investment returns (APER 4.1.4(4)E); and

(3) deliberately recommending an investment to a customer where the approved person knows that he is unable to justify its suitability for that customer (APER 4.1.5E).

2.9. APER 4.2.2E to 4.2.13E provide examples of the types of behaviour that, in the opinion of the FSA, do not comply with Statement of Principle 2. These include**:**

(1) failing to inform a customer of material information in circumstance where the approved person ought to have been aware of such information and of the fact that he should provide it, including failing to explain the risks of an investment to a customer (APER 4.2.3E and 4.2.4E);

(2) recommending an investment to a customer where the approved person does not have reasonable grounds to believe that it is suitable for that customer (APER 4.2.5E); and

(3) recommending transactions without a reasonable understanding of the risk exposure of the transaction to a customer including where that recommendation is made without a reasonable understanding of the liability (either potential or actual) of the transaction (APER 4.2.6E and 4.2.7E)).

2.10. APER 4.7.2E to 4.7.10E provide examples of the types of behaviour that, in the opinion of the FSA, do not comply with Statement of Principle 7. These include:

(1) failing to take reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems of control to comply with the relevant standards of the regulatory system in respect of the relevant firm's regulated activities (APER 4.7.3E);

(2) failing to take reasonable steps to monitor (either personally or through a compliance department or other departments) compliance with the relevant requirements and standards of the regulatory system in respect of the relevant firm's regulated activities (APER 4.7.4E);

(3) failing to take reasonable steps to ensure that procedures and systems of control are reviewed and, if appropriate, improved, following the identification

of significant breaches (whether suspected or actual) of the relevant requirements and standards of the regulatory system relating to its regulated activities, including but not limited to:

(a) unreasonably failing to implement recommendations for improvements in systems and procedures; or

(b) unreasonably failing to implement recommendations for improvements to systems and procedures in a timely manner;

(APER 4.7.7E and 4.7.8E).

(4) in the case of an approved person performing a significant influence function responsible for compliance, failing to take reasonable steps to ensure that appropriate compliance systems and procedures are in place (APER 4.7.10E).

Persons who effectively direct the business

2.11. SYSC 4.2.2R of the part of the FSA Handbook entitled Senior Management Arrangements, Systems and Controls ("SYSC") requires that a common platform firm (e.g. exempt CAD firms such as Pave) must ensure that its management is undertaken by at least two persons meeting the requirements laid down in SYSC 4.2.1R. SYSC 4.2.1R sets out that the senior personnel of a common platform firm must be sufficiently experienced as to ensure the sound and prudent management of the firm.

2.12. The guidance in SYSC 4.2.4G states that at least two independent minds should be applied to both the formulation and the implementation of the policies of a common platform firm and that, where a common platform firm nominates just two individuals to direct its business, each individual should play a part in the decision-making process on all significant decisions and both should demonstrate the qualities and application to influence strategy, day-to-day policy and its implementation. The guidance in SYSC 4.2.5G goes on to state that where a single individual is particularly dominant in such a firm this will raise doubts about whether SYSC 4.4.2R is met.

3. FSA's policy on exercising its power to impose a financial penalty

3.1. The FSA's statement of policy with respect to the imposition and amount of penalties under the Act, as required by sections 69(1), 93(1), 124(1) and 210(1) of the Act, and guidance on those matters is provided in Chapter 6 of the FSA's Decision Procedure and Penalties Manual ("DEPP"), entitled "Penalties", which is part of the FSA's Handbook. In summary, chapter 6 of DEPP states that the FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty, and sets out a non-exhaustive list of factors that may be relevant for this purpose.

3.2. The principal purpose of imposing a financial penalty 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.

3.3. The FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty. DEPP6.2.1G sets out guidance on a non-exhaustive list of factors that may be of relevance in determining whether to take action for a financial penalty, which include the following.

(1) DEPP 6.2.1G(1): The nature, seriousness and impact of the suspected breach.

(2) DEPP 6.2.1G(2): The conduct of the person after the breach.

(3) DEPP 6.2.1G(3): The previous disciplinary record and compliance history of the person.

(4) DEPP 6.2.1G(4): FSA guidance and other published materials.

(5) DEPP 6.2.1G(5): Action taken by the FSA in previous similar cases.

4. Determining the level of the financial penalty

4.1. The FSA will consider all the relevant circumstances of a case when it determines the level of financial penalty. DEPP 6.5.2G sets out guidance on a non exhaustive list of factors that may be of relevance when determining the amount of a financial penalty.

4.2. Factors that may be relevant to determining the appropriate level of financial penalty include:

(1) whether the breach revealed serious or systematic weaknesses in the person's procedures or of the management systems or internal controls relating to all or part of a person's business (DEPP 6.5.2G(2)(b)); and

(2) the general compliance history of the person, including whether the FSA has previously brought to the person's attention, issues similar or related to the conduct that constitutes the breach in respect of which the penalty is imposed (DEPP 6.5.2(9)(d)).

5. Fit and Proper Test for Approved Persons

5.1. The part of the FSA Handbook entitled "FIT" sets out the Fit and Proper Test for Approved Persons. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.

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

5.3. As set out in FIT 2.2, in determining a person's competence and capability, the FSA will have regard to matters including but not limited to:

(1) whether the person satisfies the relevant FSA training and competence requirements in relation to the controlled function the person performs or is intended to perform; and

(2) whether the person has demonstrated by experience and training that the person is able, or will be able if approved, to perform the controlled function.

6. FSA's policy for exercising its power to make a prohibition order and withdraw a person's approval

6.1. The FSA's approach to exercising its powers to make prohibition orders and withdraw approvals is set out at Chapter 9 of the Enforcement Guide ("EG").

6.2. EG 9.1 states that the FSA's power to make prohibition orders under section 56 of the Act helps it work towards achieving its regulatory objectives. The FSA may exercise this power where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he may perform.

6.3. EG 9.4 sets out the general scope of the FSA's powers in this respect, which include the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant. EG 9.5 provides that the scope of a prohibition order will vary according to the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk posed by him to consumers or the market generally.

6.4. In circumstances where the FSA has concerns about the fitness and propriety of an approved person, EG 9.8 to 9.14 provides guidance. In particular, EG 9.8 states that the FSA may consider whether it should prohibit that person from performing functions in relation to regulated activities, withdraw that person's approval or both. In deciding whether to withdraw approval and/or make a prohibition order, the FSA will consider whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions.

6.5. EG 9.9 states that the FSA will consider all the relevant circumstances when deciding whether to make a prohibition order against an approved person and/or to withdraw that person's approval. Such circumstances may include, but are not limited to, the following factors:

(1) whether the individual is fit and proper to perform functions in relation to regulated activities, including in relation to the criteria for assessing the fitness and propriety of an approved person in terms of competence and capability as set out in FIT 2.2;

(2) the relevance and materiality of any matters indicating unfitness;

(3) the length of time since the occurrence of any matters indicating unfitness;

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

(5) the severity of the risk which the individual poses to consumers and to confidence in the financial system; and

(6) the previous disciplinary record and general compliance history of the individual.

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

7. Inducements

7.1. COBS 2.3.1R states that a firm which carries out designated investment business (e.g. arranging deals in units in CIS) must not pay or accept any fee or commission in relation to designated investment business carried on for a customer other than:

(1) a fee or commission paid or provided to or by the customer or a person on behalf of the customer; or

(2) a fee or commission paid or provided to or by a third party or a person acting on behalf of a third party, if:

(a) the payment of the fee or commission does not impair compliance with the firm's duty to act in the best interests of the customer; and

(b) the existence, nature and amount of the fee or commission, or, where the amount cannot be ascertained, the method of calculating that amount, is clearly disclosed to the customer, in a manner that is comprehensive, accurate and understandable, before the provision of the service;

(c) in relation to MiFID or equivalent third country business (e.g. making a personal recommendation in relation to units in a CIS), the payment of the fee or commission, or the provision of the non-monetary benefit is designed to enhance the quality of the service to the customer ; or

(3) proper fees which enable or are necessary for the provision of designated investment business or ancillary services, such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and which, by their nature, cannot give rise to conflicts with the firm's duties to act honestly, fairly and professionally in accordance with the best interests of its customers.

7.2. COBS 2.3.2R states that a firm will satisfy this disclosure obligation if it:

(1) discloses the essential arrangements relating to the fee or commission in summary form;

(2) undertakes to the customer that further details will be disclosed on request; and

(3) honours the undertaking in (2).

8. UCIS

The Glossary defines a UCIS as a CIS which is not a regulated CIS. A regulated CIS is defined in the Glossary as:

(1) an investment company with variable capital (a body incorporated under the Open Ended Investment Companies Regulations 2001 or the equivalent Northern Ireland regulations);

(2) an authorised unit trust scheme (a unit trust scheme which is authorised for the purposes of the Act by an FSA authorisation order; or

(3) a recognised scheme, i.e. a scheme under:

(a) section 264 of the Act (schemes constituted in other EEA states);

(b) section 270 of the Act (schemes authorised in designated countries or territories); or

(c) section 272 of the Act (individually recognised overseas schemes);

whether or not the units are held within a PEP, ISA or personal pension scheme.

Promotion of collective investment schemes

8.2. Section 238(1) of the Act provides that an authorised person must not communicate an invitation or inducement to participate in a collective investment scheme ("CIS"), and therefore also an UCIS. Section 21 of the Act imposes an equivalent restriction in relation to unauthorised persons.

8.3. Section 238 goes on expressly to carve out circumstances where this prohibition will not apply. These include the following.

(1) Where the CIS in question is an authorised unit trust/open ended investment company.

(2) The circumstances set out in the Financial Services and Markets Act 2000 (Promotion of collective investment schemes)(Exemptions) Order 2001 ("the PCIS Order").

(3) The exemptions listed in table 4.12.1R(4) of the Conduct of Business Sourcebook.

8.4. The PCIS Order provides for authorised firms to promote UCIS to individuals if they fall within a particular category of exemption set out in the order.

8.5. These exemptions pertain to individuals classed as certified high net worth individuals, certified sophisticated investors or self-certified sophisticated investors (articles 21, 23 and 23A of the PCIS Order).

The PCIS Order exemptions - Certified high net worth individuals

8.6. Article 21(2) defines a certified high net worth individual as being an individual who has signed a statement complying with Part I of the Schedule to the PCIS Order in the past 12 months. Part I of the Schedule to the PCIS Order sets out the form and content which such a statement must have. This includes confirmation that at least one of the following sets of circumstances applies:

(1) the person had, during the previous financial year, an annual income of £100,000 or more; and/or

(2) the person held, throughout the previous financial year, assets to the value of £250,000 or more, not including that person's primary residence/mortgage, life insurance or death in service benefits.

8.7. The statement also contains a confirmation that the individual accepts that he can lose his property and other assets from making investment decisions based on financial promotions and is aware it is open to him to seek specialist advice.

8.8. If the person making the communication (i.e. the promotion) believes on reasonable grounds that he is making it to a certified high net worth individual, then the section 238 restriction will not apply as long as the communication:

(1) is a non-real time communication or a solicited real time communication;

(2) relates only to units in a UCIS which invests wholly or predominantly in the shares in or debentures of one or more unlisted companies;

(3) does not invite or induce the recipient to enter into an agreement under the terms of which he can incur a liability or obligation to pay or contribute more than he commits by way of investment;

(4) includes a specified warning in the following terms which is given both orally (in respect of a real-time communication) and in writing in the manner prescribed in Article 21:

"*Reliance on this promotion for the purpose of buying the units to which the promotion relates may expose an individual to a significant risk of losing all of the property or other assets invested.*"; and

(5) is accompanied by an indication that the promotion is exempt from section 238 on the grounds that it is communicated to a certified high net worth individual, together with details of the requirements for certified high net worth individuals and a reminder that the individual should consult a specialist if in any doubt about participating in a UCIS.

8.9. There are similar provisions for high net worth companies and associations at Article 22.

The PCIS Order exemptions - Sophisticated investors

8.10. There are two sorts of sophisticated investors referred to in the PCIS Order – certified and self-certified.

Certified sophisticated investors

8.11. A certified sophisticated investor is defined in Article 23(1) as someone:

(1) who has a current certificate (signed and dated in the past three years) in writing or other legible form signed by an authorised person to the effect that he is sufficiently knowledgeable to understand the risks associated with participating in a UCIS; and

(2) who has signed, within the previous 12 months, a statement in the following terms:

"*I make this statement so I can receive promotions which are exempt from the restriction on promotion of unregulated schemes in the Financial Services and Markets Act 2000. The exemption relates to certified sophisticated investors and I declare that I qualify as such. I accept that the schemes to which the promotions will relate are not authorised or recognised for the purposes of that Act. I am aware that it is open to me to seek advice from an authorised person who specialises in advising on this kind of investment.*"

8.12. The communication must be accompanied by an indication that section 238 does not apply, of the requirements to be a certified sophisticated investor, a prescribed risk warning and a reminder to seek independent advice.

8.13. Provided all this is met, and the communication is not to participate in a UCIS carried on by the person who certified the investor as sophisticated, then the section 238 restriction will not apply.

Self-certified sophisticated investors

8.14. Article 23A defines a self-certified sophisticated investor as an individual who has signed a statement complying with Part II of the Schedule to the PCIS Order in the past 12 months. Part II of the Schedule to the PCIS Order sets out the form and content which such a statement must have. This includes confirmation that at least one of the following sets of circumstances applies to the investor:

(1) he is a member of a network or syndicate of "business angels" and has been so for at least the last six months;

(2) he has made more than one investment in an unlisted company in the past two years;

(3) he is working, or has worked in the past two years, in a professional capacity in the private equity sector, or in the provision of finance for small and medium enterprises;

(4) he is currently, or has been in the two years before signing the statement, a director of a company with an annual turnover of at least £1 million.

8.15. As with certified high net worth individuals, the statement also contains a confirmation that the investor accepts he can lose his property and assets from making investment decisions based on financial promotions and that he is aware that it is open to him to seek specialist advice.

8.16. If the person making the communication (i.e. the promotion) believes on reasonable grounds that he is making it to a self-certified sophisticated investor, then the section 238 restriction will not apply as long as the communication:

(1) relates only to units in a UCIS which invests wholly or predominantly in the shares in or debentures of one or more unlisted companies;

(2) does not invite or induce the recipient to enter into an agreement under the terms of which he can incur a liability or obligation to pay or contribute more than he commits by way of investment;

(3) includes a specified warning in the following terms which is given both orally (in respect of real time communications) and in writing in the manner prescribed in Article 23A:

"Reliance on this promotion for the purpose of buying the units to which the promotion relates may expose an individual to a significant risk of losing all of the property or other assets invested."; and

(4) is accompanied by an indication that the promotion is exempt from section 238 on the ground that it is made to a self-certified sophisticated investor, together with details of the requirements for self-certified sophisticated investors and a reminder that the individual should consult a specialist if in any doubt about participating in a UCIS.

The relevant COBS 4.12 exemptions

8.17. A firm may communicate an invitation or inducement to participate in a UCIS without breaching the section 238 restriction if the promotion falls within an exemption listed in the table at 4.12.1R(4) of the Conduct of Business Sourcebook (COBS).

8.18. The inducement or invitation must be made only to recipients whom the firm has taken reasonable steps to establish are persons in that category or be directed at recipients in such a way as to reduce, as far as possible, the risk of participation in the CIS by persons not in that category. There is no provision for these steps to be taken retrospectively.

8.19. Category 1 covers people who are already participants in a UCIS or have been so in the last 30 months. An authorised person can promote to these persons the UCIS in which they are already participants (and any successor scheme) or one whose underlying property and risk profile are both "substantially similar" to those of the UCIS in which they participate.

8.20. Category 2 deals with those persons for whom the firm has taken reasonable steps to ensure that investment in the UCIS is suitable and who is a customer of the firm or a company in its group.

8.21. Category 7 provides that if a customer is categorised as a professional customer or eligible counterparty then an authorised person can promote to that customer any UCIS in relation to which the customer is so categorised.

8.22. Category 8 (which was not previously included in COB 3 Annex 5) allows financial promotion of UCIS to a person:

(1) in relation to whom the firm has undertaken an adequate assessment of his expertise, experience and knowledge and that assessment gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the person is capable of making his own investment decisions and understanding the risks involved;

(2) to whom the firm has given a clear written warning that this will enable the firm to promote UCIS to the customer; and

(3) who has stated in writing, in a document separate from the contract, that he is aware of the fact the firm can promote certain UCIS to him.

9. Suitability of advice

9.1. The fact that a customer is eligible to receive a communication promoting an unregulated scheme under one or more exemptions does not mean that the unregulated scheme will be automatically suitable for that customer.

9.2. Principle 9 of the FSA's Principles for Businesses states 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.

9.3. COBS 9.2.2R provides that:

(1) A firm must obtain from the customer 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 customer 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 customer 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.

9.4. COBS 9.2.6R provides that if a firm does not obtain the necessary information to assess suitability, it must not make a personal recommendation to the customer.