
FINAL NOTICE

To: **Henry Neil Limited**

Of Sunnymead,
1 Bromley Lane
Chislehurst
Kent
BR7 6LH

FSA reference number: **430847**

Date: **9 September 2009**

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

1. THE PENALTY

- 1.1 The FSA gave Henry Neil Limited (“HNL”) a Decision Notice on 7 September 2009 which notified HNL that pursuant to section 206 of the Financial Services and Markets Act 2000 (“the Act”), and on the basis that HNL has agreed to undertake certain remedial action (as detailed at paragraph 2.4(1) to (3) below), the FSA had decided to impose a financial penalty of £14,000 on HNL in respect of breaches of the FSA’s Principles for Businesses (“Principles”), between 10 June 2005 and 22 September 2008 (“the relevant period”).
- 1.2 HNL has breached Principle 9 (customers: relationships of trust) in relation to failings in its advice and sales processes in respect of the sale of investment products during the relevant period.

- 1.3 HNL agreed to settle at an early stage of the FSA's investigation. It therefore qualified for a 30% (stage 1) discount under the FSA's executive settlement procedures. Were it not for this discount, the FSA would have imposed a financial penalty of £20,000 on HNL.
- 1.4 HNL confirmed on 14 August 2009 that it would not refer the matter to the Financial Services and Markets Tribunal.
- 1.5 Accordingly, for reasons set out below and having agreed with HNL the facts and matters relied on, the FSA imposes a financial penalty on HNL in the amount of £14,000.

2. REASONS FOR THE ACTION

- 2.1 The FSA has decided to impose a financial penalty on HNL for breaches of the FSA Principles for Business that occurred during the relevant period. These breaches relate to failings in the steps taken by HNL to ensure that it demonstrated the suitability of its investment advice.
- 2.2 In summary, HNL failed:
- (1) to take adequate steps to determine its customers' attitude to risk;
 - (2) to undertake adequate or independent product research to support its recommendations;
 - (3) to explain adequately to its customers the reason for, or suitability of, its recommendations;
 - (4) to adequately tailor suitability reports to individual customers;
 - (5) to explain the main consequences, including associated costs and charges, of its recommendations, particularly in relation to its recommendations that customers surrender a segment of a particular existing offshore investment bond (the "bond") and reinvest the proceeds into a new bond (such recommendations being "bond reinvestment recommendations");
 - (6) in relation to its bond reinvestment recommendations, explicitly to link its recommendation to surrender segments of the bond with its advice to reinvest the proceeds in a new bond and adequately to explain the consequences of the transaction as a whole;
 - (7) in the case of the bond reinvestment recommendations, to ensure that customers' attitude to risk was consistent with the risk rating of the recommended underlying funds held in the new bond; and
 - (8) to demonstrate that it had taken reasonable steps to ensure that its bond reinvestment recommendations were suitable.
- 2.3 The FSA regards these failings as particularly serious because:

- (1) HNL could not demonstrate the suitability of its recommendations, particularly in relation to its bond reinvestment recommendations;
- (2) HNL could not demonstrate that it provided its customers with adequate information in respect of its bond reinvestment recommendations to ensure that they were in a position to make an informed decision - in so doing, it exposed at least 13 customers to the risk of being sold investment products which were not suitable for them; and
- (3) HNL's inadequate risk assessment meant that it was unable to demonstrate that it sold products to customers which were suitable to their risk profile and personal circumstances.

2.4 The FSA has taken into account the following points which are regarded as mitigating factors:

- (1) HNL has agreed to appoint an external compliance consultant to conduct a risk-based phased past business review of investment products sold between 10 June 2005 and 31 December 2007 and to compensate any customers who may have suffered loss;
- (2) HNL has agreed to ensure that its external compliance consultant continues to sign off all new business for a period of six months;
- (3) HNL has agreed to continue the training and competence programme implemented for all advisers following the FSA's visit;
- (4) HNL has cooperated fully with the FSA's investigation; and
- (5) The sales associated with the bond reinvestment recommendations represent a small proportion of HNL's business.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

3.1 The relevant statutory provisions and regulatory requirements are attached at Annex A to this Final Notice.

4. FACTS AND MATTERS RELIED ON

Background

4.1 HNL is a small independent financial adviser with one director. HNL's main business is the provision of investment advice and it has four customer advisers, including its sole director. HNL has been authorised since 10 June 2005 and is permitted by the FSA to carry on the following regulated activities:

- (1) advising on investments (except on pension transfers and pension opt outs);
- (2) advising on regulated mortgage contracts;
- (3) agreeing to carry on a regulated activity;

- (4) arranging (bringing about) deals in investments;
 - (5) arranging (bringing about) regulated mortgage contracts;
 - (6) making arrangements for regulated mortgage contracts; and
 - (7) making arrangements for transactions in investments.
- 4.2 The FSA has conducted an investigation into HNL to review its compliance with relevant regulatory requirements and standards in connection with its investment business during the relevant period.
- 4.3 As a result of this investigation, the FSA found deficiencies in HNL's investment advice and sales process and identified a number of failings in relation to the suitability of HNL's advice and communications with its clients. A number (but not all) of the deficiencies identified specifically relate to HNL's bond reinvestment recommendations.
- 4.4 During the relevant period, 22 of HNL's customers surrendered segments of their bonds and reinvested the proceeds in new bonds. Of these 22 cases, nine were as a result of advice from the customer's accountants or solicitors, while the remaining 13 were initiated by HNL.

Suitability of advice

- 4.5 HNL was unable to demonstrate that it had taken reasonable care to ensure the suitability of its advice. Specifically:-
- (1) HNL failed to ensure that it conducted a proper individual assessment of its customers' attitude to risk across their different objectives. In all of the 35 customer files reviewed, HNL assessed its customers as having a medium/balanced attitude to risk with a risk rating of five out of ten. Further, in interview HNL's director stated that the customers determined their own attitude to risk and HNL did not assess or explore it further.
 - (2) HNL could not demonstrate that it had considered the needs and circumstances of each customer prior to making a recommendation as there was little or no evidence that HNL had undertaken adequate or independent product research. In the 35 files reviewed there was limited reference to alternative products and/or providers and no explanation was provided for discounting alternative providers.
 - (3) HNL issued suitability reports which were often long and complicated and lacked sufficiently clear information for customers to make an informed decision. The suitability reports contained a significant amount of generic and duplicated information, which served to dilute the key messages such as the product risk warnings.
 - (4) The suitability reports often lacked clear and relevant information and were not individually tailored to the particular customer. They did not adequately explain why, having regard to the customer's personal and financial

circumstances, HNL had concluded that the recommended investment was suitable for that customer and how it matched their attitude to risk and investment objectives.

- (5) The suitability reports contained little or no reference to alternative products or providers. Where the suitability reports made reference to alternative products, the same products such as Individual Savings Accounts and National Savings products were considered for each customer and HNL used generic reasons for discounting these. Furthermore, the customer files did not contain any evidence of research into these or any other products or providers.

4.6 The FSA investigation raised particular concerns concerning HNL's bond reinvestment recommendations. Specifically:-

- (1) HNL's advisors entered search criteria into its research software for the bond reinvestment recommendations which included a requirement for the ability to make unlimited free fund switches. This did not always appear to be required or was rarely utilised by customers but frequently resulted in an identification of the particular bond provided as the only appropriate provider.
- (2) HNL could not demonstrate whether or not its bond reinvestment recommendations would mitigate any potential tax liability or be financially beneficial to the customer. In 13 of the 35 customer files reviewed, there was little or no evidence of any calculations or cost benefit analysis to support the recommendations.
- (3) HNL did not match the customers' attitude to risk with the risk rating of all of the underlying funds. This was particularly evident in eight of the bond reinvestment recommendations, where more than 50% of each customer's investment was in underlying funds that were inconsistent with their recorded attitude to risk.
- (4) The suitability reports did not detail all the charges and costs associated with the recommendation. This was particularly apparent in HNL's bond reinvestment recommendations. As a result, HNL did not provide customers with the appropriate information to enable them determine to what extent, if any, its recommendations would mitigate against future tax liability.
- (5) The suitability reports failed to link the recommendation to surrender segments of the bond with HNL's advice to invest the proceeds in a new bond, meaning that the overall consequences of these related courses of action were not clear. Further, the suitability reports did not explain the advantages and disadvantages of this strategy.

5. ANALYSIS OF BREACHES

- 5.1 By failing to conduct a proper individual assessment of its customers' attitude to risk, failing to demonstrate that it had researched alternative products and failing to provide adequate suitability reports, HNL failed to ensure the suitability of its recommendations for each customer. Therefore, HNL was unable to demonstrate that

it took reasonable care to ensure the suitability of its advice in breach of Principle 9 and the associated COB and COBS rules listed in Annex A.

6. ANALYSIS OF SANCTION

- 6.1 The FSA's policy on the imposition of financial penalties as at the date of this notice is set out in Chapter 6 of the Decision Procedures and Penalties Manual ("DEPP"), which forms part of the FSA Handbook. In addition, the FSA has had regard to the corresponding provisions of Chapter 13 of the Enforcement Manual ("ENF") in force during the relevant period until 27 August 2007 and Chapter 7 of the Enforcement Guide ("EG"), in force thereafter.
- 6.2 The principal purpose of a financial penalty is to promote high standards of regulatory conduct by deterring firms who have committed breaches from committing further breaches, and helping to deter other firms from committing similar breaches, as well as demonstrating generally the benefits of compliant business.
- 6.3 In determining whether a financial penalty is appropriate the FSA is required to consider all the relevant circumstances of a case. Applying the criteria set out in the DEPP 6.2.1 (regarding whether or not to take action for a financial penalty or public censure) and 6.4.2 (regarding whether to impose a financial penalty or a public censure), the FSA considers that a financial penalty is an appropriate sanction, given the serious nature of the breaches and the risks they created for customers of HNL, the amount of commission gained by HNL as a result of its bond reinvestment recommendations (approximately £98,000 in the relevant period) and the need to send out a strong message of deterrence to other firms of the consequences of recommending a course of action to its customers without demonstrating the suitability of those recommendations.
- 6.4 DEPP 6.5.2 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 A financial penalty will deter HNL from further breaches of regulatory rules and Principles. In addition, other firms will be deterred from allowing similar failings to occur and it will therefore promote the message to the industry that the FSA expects firms to maintain high standards of regulatory conduct. The fine will reinforce the message that the FSA expects firms to be able to evidence the suitability of their advice to customers and to ensure that where such recommendations involve an investment strategy to mitigate against tax, customers are provided with sufficient information to determine whether and to what extent they would benefit from the recommended investment strategy.

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

- 6.6 In determining the appropriate sanction, the FSA has had regard to the seriousness of the breaches, including the nature of the requirements breached, the duration and frequency of the breaches, whether the breaches revealed serious failings in HNL's

systems and controls and the number of customers who were affected and/or placed at risk of loss.

6.7 HNL's failings covered the period from 10 June 2005 to 22 September 2008 and are viewed as being particularly serious because:

- (1) HNL could not demonstrate the suitability of its recommendations, particularly (but not exclusively) in relation to its bond reinvestment recommendations;
- (2) HNL could not demonstrate that it provided its customers with adequate information in respect of its bond reinvestment recommendations to ensure that they were in a position to make an informed decision; and
- (3) HNL's inadequate risk assessment meant that it was unable to demonstrate that it sold products to customers which were suitable to their risk profile and personal circumstances.

6.8 The FSA has also taken into account the following steps taken by HNL which have served to mitigate its failings:

- (1) prior to the Enforcement investigation and as a result of visits by the FSA to HNL in September 2007 and July 2008, HNL accepted that there were issues with its sales processes and took steps to rectify these shortcomings, including (a) the appointment of an external compliance consultant, who conducted a full business review of HNL's systems, controls and procedures, and (b) the implementation of updated procedures, including an updated training and competence programme;
- (2) HNL has completed all the remedial action required by the FSA prior to this investigation;
- (3) HNL has agreed to the remedial action set out in paragraph 2.4(1) to (3) above; and
- (4) HNL has co-operated fully with the FSA investigation.

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

6.9 The FSA has found no evidence to show that HNL acted in a deliberate or reckless manner.

The size, financial resources and other circumstances of HNL (DEPP 6.5.2(5))

6.10 In determining the level of penalty, the FSA has considered the following issues:

- (1) the cost of the external compliance consultant incurred by HNL prior to the Enforcement investigation;
- (2) HNL's latest financial statements;

- (3) the cost of the past business review to be conducted and the ongoing cost of the external compliance consultant to sign off new business for a six month period; and
- (4) the potential need for HNL to be able to afford the cost of paying financial redress to any customers who choose to seek it within the three year timescale permitted by the Financial Ombudsman Service.

6.11 Having considered the above issues, the FSA considers that the level of financial penalty proposed above is appropriate.

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

6.12 The FSA notes that HNL earned approximately £98,000 in commission from the bond reinvestment recommendations during the relevant period and continues to earn a limited amount of trail commission.

Conduct following the breach (DEPP 6.5.2(8))

6.13 HNL has been proactive in taking steps to rectify its shortcomings as described in paragraph 6.8 above.

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

6.14 HNL has not been the subject of previous disciplinary action.

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

6.15 In determining the level of financial penalty, the FSA has taken into account penalties imposed by the FSA on other authorised persons for similar behaviour.

7. DECISION MAKERS

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

8. IMPORTANT

8.1 This Final Notice is given to HNL under section 390 of the Act.

Manner of and time for payment

8.2 The financial penalty must be paid in full by HNL to the FSA by no later than 24 September 2009, 14 days from the date of the Final Notice.

If the financial penalty is not paid

8.3 If all or any of the financial payment is outstanding on 25 September 2009, the FSA may recover the outstanding amount as a debt owed by HNL and due to the FSA.

Publicity

8.4 Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Final Notice relates. Under those provisions, the FSA must publish such information about the matter to which this Final 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 HNL or prejudicial to the interests of consumers.

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

FSA contact

8.6 For more information concerning this matter generally, you should contact Anna Hynes (Tel: 0207 066 9464) of the Enforcement Division of the FSA.

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Tom Spender
Head of Department
FSA Enforcement Division

ANNEX A

RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE

1. Statutory provisions

- 1.1 The FSA's regulatory objectives are set out in section 2(2) of the Act and include market confidence, public awareness, the protection of consumers and the reduction of financial crime.
- 1.2 Section 138 of the Act provides that the FSA may make such rules applying to authorised persons as appear to it to be necessary or expedient for the purpose of protecting consumers.
- 1.3 The FSA has the power, pursuant to section 206 of the Act, to impose a financial penalty of such amount as it considers appropriate where the FSA considers an authorised person has contravened a requirement imposed on him by or under the Act.

2. Relevant Handbook provisions

- 2.1 In exercising its power to impose a financial penalty, the FSA must have regard to relevant provisions in the FSA Handbook of rules and guidance ("the FSA Handbook"). The main provisions relevant to the action specified above are set out below.

Principles for Businesses

- 2.2 Under the FSA's rule-making powers as referred to above, the FSA has published in the Handbook the Principles for Business ("Principles") which apply either in whole, or in part, to all authorised persons.
- 2.3 The Principles are a general statement of the fundamental obligations of firms under the regulatory system and reflect the FSA's regulatory objectives. A firm may be liable to disciplinary sanction where it is in breach of the Principles.
- 2.4 The Principle most relevant to this matter is Principle 9 (customers: relationships of trust) which states that "a firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment."

Conduct of Business Rules

- 2.5 Guidance on the Conduct of Business Rules is set out in the Conduct of Business manuals of the FSA handbook.
- 2.6 Conduct of Business Rules ("COB") was in force for part of the relevant period (until 31 October 2007).

- 2.7 COB 5.2.5R requires that before a firm gives a personal recommendation concerning a designated investment to a private customer, it must take reasonable steps to ensure that it is in possession of sufficient personal and financial information about that customer relevant to the services that the firm has agreed to provide.
- 2.8 COB 5.2.9R requires that a firm must make and retain a record of a private customer's personal and financial circumstances that it has obtained in satisfying COB 5.2.5R.
- 2.9 COB 5.3.5R requires that firm must take reasonable steps to ensure that a personal recommendation concerning a designated investment to a private customer business is suitable for the client.
- 2.10 COB 5.3.14R provides that a firm that gives a personal recommendation, in relation to a life policy, to a person who is a policyholder or a prospective policyholder of a life policy, must provide the person with a suitability letter.
- 2.11 COB 5.3.16R requires that the suitability letter must: (1) explain why the firm has concluded that the transaction is suitable for the customer, having regard to his personal and financial circumstances; and (2) contain a summary of the main consequences and any possible disadvantages of the transaction.
- 2.12 COB 5.3.18R requires that a firm must provide a suitability letter when or as soon as possible after the transaction is effected.
- 2.13 COB 5.3.30G sets out guidance on the contents of suitability letters. COB 5.3.30G(2) provides that a suitability letter, to be successful, should explain simply and clearly why the recommendation is viewed as suitable having regard to the customer's personal and financial circumstances, needs and priorities identified through the fact finding process, and attitude to risk in the area of need to which the recommendation relates. COB 5.3.30G(5) provides that any standard paragraphs are best limited to the description of the most common needs and the products which will satisfy those needs, and that the firm should clearly link the customer's own needs, priorities and attitude to risk to the product recommended rather than just setting out stock motives that may apply to all customers.
- 2.14 COB 5.4.3R provides that a firm must not, amongst other things, make a personal recommendation of a transaction to a private customer unless it has taken reasonable steps to ensure that the private customer understands the nature of the risks involved.
- 2.15 Conduct of Business Sourcebook ("COBS") applied to firms for part of the relevant period (with effect from 1 November 2007).
- 2.16 COBS 9.2.1R(1) (assessing suitability) requires that a firm must take reasonable steps to ensure that a personal recommendation or decision to trade, is suitable for its client.
- 2.17 COBS 9.2.2R requires that a firm must obtain from the client such information as is necessary for the firm to understand the essential facts about him.
- 2.18 COBS 9.4.2R requires that a firm making a personal recommendation in relation to a life policy, must provide the client with a suitability report.

- 2.19 COBS 9.4.7R provides that the suitability report must at least specify the client's demands and needs; explain why the firm has concluded that the recommended transaction is suitable for the client having regard to the information provided by the client; and explain any possible disadvantages of the transaction for the client.