
FINAL NOTICE

To: Highbury Financial Services Ltd
Of: c/o DLA Piper Rudnick Gray Cary UK LLP
3 Noble Street
London
EC2V 7EE

Date: 3 March 2005

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

THE PENALTY

The FSA gave the Firm a decision notice dated 1 March 2005 which notified the Firm that, pursuant to section 206 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to impose a financial penalty of £35,000 on the Firm in respect of: breaches of FSA Rules 3.1.1, 3.2.6, 3.2.20(1) in the part of the FSA's Handbook entitled Senior Management Arrangements, Systems and Controls; Rules 2.6.1, 2.3.1 in the part of the FSA's Handbook entitled Training and Competence; Rules 3.6.1(2), 3.7.1(1), 3.8.4(1), 3.8.8(1), 3.8.11, 3.8.15, 3.9.6(1), 3.9.15, 3.9.24 in the part of the FSA's Handbook entitled Conduct of Business; and Principles 2, 3 and 7 of the FSA Principles for Businesses.

Accordingly, for the reasons listed below and having agreed with the Firm the facts and matters relied upon, the FSA imposes a financial penalty of £35,000 (the "Penalty") on the Firm.

1. REASONS FOR ACTION

1.1 The FSA has decided to impose the Penalty on the Firm in respect of breaches of the FSA Rules and Principles in relation to the Firm's:

- (1) failure to put in place appropriate systems and controls for:
 - (a) establishing and maintaining effective systems and controls to ensure compliance with the FSA rules on financial promotions;
 - (b) identifying that three financial promotions ("the Promotions") published in two national newspapers and a national publication in February and March 2004 did not comply with various FSA Rules;
 - (c) maintaining and conducting appropriate reviews of the internal compliance manual;
 - (d) ensuring adequate record-keeping in relation to the evidence supporting any material factual statements made in the Promotions and the Penny Share Focus Magazine ("the Magazine"); and
 - (e) ensuring that Mr Scott Chapman ("the Compliance Officer"), a director at the Firm and the person responsible for all aspects of the systems and controls at the Firm, who had been assessed as competent to oversee the FSA rules on financial promotions maintained his competence.
- (2) failure to issue Promotions that were clear, fair and not misleading.

1.2 The Firm's breaches are viewed as serious in view of the following particular factors:

- (1) The contraventions posed a risk to retail consumers in that the Promotions were unbalanced and had the potential to induce inexperienced investors to subscribe to the Magazine, without understanding the risks of investing in Penny Shares and small companies;
- (2) The absence of appropriate systems and controls to ensure that the Compliance Officer was appropriately supervised and that he maintained his competence in relation to the approval of financial promotions;
- (3) The Promotions falsely stated that the Firm used a "panel of financial experts" and received "secret tip-offs".

1.3 The breaches resulted in the misleading Promotions being distributed to a large number of consumers through the national press namely: The Sunday Telegraph on 15 February 2004 (Appendix 1) which has a circulation of approximately 696,000; The Investors Chronicle on 20 February 2004 (Appendix 2) which has a circulation of approximately 41,000; and The Mail on Sunday on 14 March 2004 (Appendix 3) which has a circulation of approximately 2,382,000. The impact of the misleading Promotions was however limited and as a result of these Promotions only 156 people subscribed to the Magazine.

The FSA's General Approach to Financial Promotions

- 1.4 Financial promotions are defined in detail in the Act, the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 No. 1335 ("The Financial Promotion Order"), and in the FSA's Handbook. In essence, a financial promotion is any communication made in the course of business, which invites or induces a person to engage in investment activity. A penny share tipping service provides investment advice, which constitutes an investment activity, and is therefore subject to the FSA's regulation as set out in its handbook, and in particular in its sourcebooks Senior Management Arrangements, Systems and Controls ("SYSC"); Training and Competence ("T&C"); Conduct of Business ("COB"); and Principles for Businesses. The Promotions issued by the Firm induced people to become subscribers to its service or to act on recommendations made and therefore constituted financial promotions.
- 1.5 In April 2002, the FSA issued the FSA's Regulatory Approach to Financial Promotions ("the FSA's April 2002 Publication"). The FSA's April 2002 publication made it clear that one of its key regulatory priorities was the enhancement of the minimum standards for information given by firms to customers. The publication stated that vigorous enforcement action would be taken in relation to serious breaches and specifically warned against the following deficiencies:
- (a) A lack of balance, with headline benefits emphasised without clear and fair mention of material risks or drawbacks;
 - (b) Misleading claims, and the creation of unrealistic expectations; and
 - (c) Key information hidden in small print.
- 1.6 While the FSA's April 2002 Publication does not constitute and is not treated by the FSA as having the effect of formal guidance, it does contain detailed statements regarding the FSA's expectations. This publication stressed the importance of promoting a balanced picture.
- 1.7 The publication stated that a key aim is to help consumers get a fair deal, with a view to ensuring that consumers' expectations are met. It highlighted the need to avoid misleading claims, buried risk warnings and unrealistic past performance or headline rates.
- 1.8 Further, the FSA made it clear that it regarded financial promotion as a priority issue in both the 2002/3 and the 2003/4 FSA Plans and Budgets. In the Plan and Budget 2002/3, one of the FSA's key priorities for the year was to be the pursuit *"of fair treatment of consumers by enhancing the minimum standards for information given by firms to customers."* In the Plan and Budget 2003/4, the reduction of unclear and misleading financial promotions was identified as a major work stream.
- 1.9 In the Plan and Budget 2004/5, the FSA again stated its focus on financial promotions. This has led to the creation of a new department within the FSA, with greater resources and an ability to look at a wide range of issues.

Actions Taken by the Firm

- 1.10 The defects in the Firm's Promotions published in 2004 were identified not by the Firm but by the FSA's Financial Promotion Monitoring Team ("FPMT") and/or by the

FSA's investigators during its investigation. However, following the identification of the failings by the FSA, the Firm has:

- agreed not to approve any further financial promotions until the relevant person, for the purpose of approving the issue of financial promotions, is assessed as competent;
- sent a remedial letter to new subscribers offering a full refund and outlining the FSA's concerns;
- been open and co-operative with the FSA during the investigation;
- quickly agreed the facts and actively sought to agree a basis on which enforcement action could be concluded;
- agreed to review its systems and controls; and
- agreed that the relevant person, for the purpose of approving the issue of financial promotions, will undertake an agreed training program in order to update his knowledge regarding systems and controls and financial promotions compliance issues.

1.11 In all the circumstances, the FSA has concluded that a penalty of £35,000 is appropriate. Were it not for the matters referred to in paragraph 1.10, the penalty imposed would have been higher.

2. RELEVANT STATUTORY PROVISIONS AND REGULATORY REQUIREMENTS

2.1 The statutory provisions and regulatory requirements breached are listed below, relevant financial promotions background statutory provisions and regulatory requirements are listed at Appendix 4.

The Act

2.2 Section 206 of the Act provides:

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

Systems and Controls Rules - General Application, Compliance and Records

2.3 FSA Rule SYSC 3.1.1 requires that:

"A firm must take reasonable care to establish and maintain such systems and controls as are appropriate to its business."

2.4 FSA Rule SYSC 3.2.6 states that:

"A firm must take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system and"

2.5 FSA Rule SYSC 3.2.20(1) provides that:

"A firm must take reasonable care to make and retain adequate records of matters and dealings (including accounting records) which are the subject of requirements and standards under the regulatory system."

Training and Competence - General Application

2.6 FSA Rule T&C 2.6.1 requires

"A firm must have appropriate arrangements in place to ensure that an employee who has been assessed as competent to engage in or oversee an activity maintains competence."

2.7 FSA Rule T&C 2.3.1 provides

"If a firm's employees engage in or oversee an activity with or for private customers, the firm must:

(1) at intervals appropriate to the circumstances, determine the training needs of those employees and organise appropriate training to address these needs; and

(2) ensure that training is timely, planned, appropriately structured and evaluated"

Conduct of Business Rules for Financial Promotions

2.8 FSA Rule COB 3.1.1 provides that:

"This chapter [Chapter 3] applies to every firm (other than ICVC) which communicates or approves a financial promotion."

Rules about Procedures of Confirmation of Compliance and Record Keeping

2.9 FSA Rule COB 3.6.1 requires that:

"(1) Before a firm communicates or approves a non-real time financial promotion, it must confirm that the promotion complies with the rules in this chapter [Chapter 3 of COB].

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

2.10 FSA Rule COB 3.7.1(1) requires that:

"A firm must make an adequate record of each non-real time financial promotion which it has confirmed as complying with the rules in this chapter [Chapter 3 of COB]."

Clear, fair and not misleading - General Application

2.11 FSA Rule COB 3.8.4(1) provides that:

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

Evidential Provisions

- 2.12 The relevant parts of COB 3.8.5(1) contain the evidential provisions applicable to this rule and provides:

"A firm should take reasonable steps to ensure that, for a non-real time financial promotion:

(b) any statement of fact, promise or prediction is clear, fair and not misleading and discloses any relevant assumptions;

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

(f) the design, content or format does not disguise, obscure or diminish the significance of any statement, warning or other matter which the financial promotion is required by this chapter to contain;

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

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

- 2.13 FSA COB 3.8.5(2) provides that:

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

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

General Requirements - General Application

- 2.14 FSA Rule COB 3.8.8(1) provides that:

"A specific non-real time financial promotion must include a fair and adequate description of:

(a) the nature of the investment or service;

(c) the risks involved."

Past Performance - General Application

- 2.15 FSA Rule COB 3.8.11 provides as follows:

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

(1) suitable text:

(a) that is specifically designed as suitable for the type of financial promotion being promoted and its target audience; and

(b) which draws attention to the fact that past performance will not necessarily be repeated; and

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

2.16 FSA Rule COB 3.8.15 provides that:

"Information about past performance in a specific non-real time financial promotion must not be presented in such a manner as to suggest that it constitutes a projection illustrating the possible future value of an investment contract or fund; "

Direct Offer Financial Promotions: General Requirements

2.17 FSA Rule COB 3.9.6 provides that:

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

Investments Which Can Fluctuate in Value

2.18 FSA Rule COB 3.9.15 provides that:

(1) "A direct offer financial promotion relating to an investment which can fluctuate in value, or which offers income distributions which can fluctuate, must make clear in terms which are likely to be understood by the kind of recipient to whom the financial promotion is communicated.

(2) The explanation given in conformity with (1) must be set out with due prominence and in a print size no smaller than that used in the main text of the financial promotion."

Penny Shares

2.19 The FSA's Glossary of definitions defines a Penny Share as:

"a readily realisable security in relation to which the bid-offer spread is 10 per cent or more of the offer price, but not:

(a) a government and public security; or

(b) a share in a company quoted on The Financial Times Stock Exchange 100 Index; or

(c) a security issued by a company which, at the time that the firm deals or recommends to the client to deal in the investment, has a market capitalisation of £100 million or more (or its equivalent in any other currency at the relevant time)."

2.20 FSA Rule COB 3.9.24 requires that:

"If an indication of the price of a particular penny share is included in a direct offer financial promotion, the bid-offer spread must also be included (based on the best price available in the relevant market at the time for transactions of the largest bid or offer price of that share)."

FSA Principles - General Application

2.21 FSA Principle 2 states that a firm must conduct its business with due skill, care and diligence.

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

2.23 FSA Principle 7 states that a firm must communicate with its clients in a way that is clear, fair and not misleading.

3. BACKGROUND

Background to the Firm

3.1 The Firm was incorporated on 22 July 1991 and is a wholly owned subsidiary of Highbury House Communications PLC. ("Highbury House"), which is a leading international print and online publisher of over 200 consumer, business to business and client magazines. Highbury House, as the Firm's parent company has ultimate responsibility for the oversight of the Firm, its functions and staff. Highbury House staff also provides administrative and printing services to the Firm.

3.2 The Firm has traded under the name of Highbury Financial Services since 5 July 2002. The Firm's registered office is at The Publishing House, 1-3 Highbury Station Road, London N1 1SE. The Firm's trading address is The Queens Head, Rede Road, Hawkedon, Bury St. Edmunds, Suffolk, IP29 4NN.

3.3 The Firm is the only authorised entity within the Highbury House Group and holds the following permissions under Part IV of the Act to undertake the following regulated activities:

- Advising (ex Pension Transfers/Opt Outs); and
- Agreeing to carry on a regulated activity.

3.4 The Firm has been authorised by the FSA since 1 December 2002 and was previously regulated by the Personal Investment Authority ("PIA") from 20 February 1995.

3.5 The Compliance Officer, who is also a Director of the Firm, did not work on any other magazine produced by Highbury House. He is registered as an approved person with the Firm for the following five controlled functions: CF1 Director; CF8 Apportionment and Oversight; CF10 Compliance Oversight; CF11 Money Laundering Reporting; and CF21 Investment Adviser.

3.6 The Firm's only activity is the publication of the Magazine, which is a share tipping service to its subscribers. It does not arrange deals for subscribers or provide individual advice services.

- 3.7 The production and control of the Magazine is undertaken by the Compliance Officer. He conducts office-based research, provides the analytical input and writes the Magazine. He is also responsible for drafting, editing and approving financial promotions for the Firm, as well as updating the Firm's Compliance Manual and procedures.

The Firm's 2004 Financial Promotions

- 3.8 In the first quarter of 2004 the Firm placed the Promotions entitled "The 25 Shares most likely to DOUBLE in 2004!" to advertise the Magazine. Two were the same promotion and were placed in The Sunday Telegraph on 15 February 2004 (Appendix 1) and The Investors Chronicle on 20 February 2004 (Appendix 2). The third promotion was a slightly amended version of the previous promotion and was placed in The Mail on Sunday on 14 March 2004 (Appendix 3).
- 3.9 The Promotions offer subscription to the Magazine, which is a share tipping magazine. Subscribers pay £59.50 per annum, which is the Firm's only source of revenue from the Magazine, it also earns a small fee for distributing non related advertisement flyers, with its Magazine.
- 3.10 The Promotions offered a one year introductory price of £19.95 to all of the Firm's subscribers who returned the coupon within 10 days of the Promotion being placed. It also offered to refund the subscription in full, after 12 months, if the subscribers were in any way dissatisfied with the performance of the Firm's '25 Shares Most Likely to Double in 2004'.
- 3.11 The Firm attracted 156 subscribers as a result of the Promotions.

4. CONTRAVENTION OF RELEVANT STATUTORY PROVISIONS AND REGULATORY REQUIREMENTS

- 4.1 The proposed penalty is to be imposed pursuant to section 206 of the Act in respect of breaches of the FSA Rules and Principles. Details of the breaches are set out below.

Systems and Controls

- 4.2 By virtue of FSA Rules SYSC 3.1.1, SYSC 3.2.6, SYSC 3.2.20, T&C 2.6.1, T&C 2.3.1 and COB 3.6.1 the Firm was required to take reasonable care to establish appropriate systems and controls to comply with regulatory requirements for:
- (a) ensuring compliance with the FSA rules on financial promotions;
 - (b) identifying that the Promotions did not comply with various FSA Rules;
 - (c) maintaining and conducting appropriate reviews of the internal Compliance Manual;
 - (d) ensuring adequate record-keeping in relation to the evidence supporting any material factual statements made in the Promotions and the Magazine; and
 - (e) ensuring that the Compliance Officer, who had been assessed as competent to oversee the FSA rules on financial promotions maintained his competence by receiving appropriate training.

- 4.3 The Firm did not establish and maintain effective systems and controls to ensure compliance with the FSA Rules on financial promotions. The Firm did have a Compliance Manual, which was maintained by the Compliance Officer. The Compliance Officer said in interview that the Compliance Manual was written when PIA changed to the FSA in 1998 and it has not changed substantially since then.
- 4.4 The Firm's Compliance Manual for financial promotions is a summary of the relevant COB 3 rules. It lacks information in relation to the action that the Firm should take to adhere to the rules. The Compliance Officer drafted and approved the Promotions in 2004. After the FSA made him aware that it believed that the Promotions breached the financial promotion COB rules, he acknowledged that this was the case. These breaches occurred even though the Firm's Compliance Manual included references to the fact that financial promotions should be clear, fair and not misleading; risk warning explanations should not be in very small print and at the end; and Penny Share advertisements should show the bid offer spread.
- 4.5 The Firm did not retain any documentation in relation to the evidence supporting any material factual statements made in the Promotions or the Magazine.
- 4.6 The FSA believe that the circumstances described above illustrate the Firm's weak compliance procedures as the Compliance Manual was outdated. Although references to the financial promotion rules were included in the Firm's Compliance Manual, these were not acted upon.

The Firm's Training and Competence Procedures

- 4.7 The Compliance Officer passed his Financial Planning Certificates exam in 1997 and attended the FSA's "Regulatory Process Overview" course in March 2002.
- 4.8 The Firm did not provide or organise any formalised training, rather the Compliance Officer self assessed his own training needs. This fell short of the expected regulatory standard of training as it failed to be timely, planned, appropriately structured and evaluated.
- 4.9 The Compliance Manual states the research and publication of the Magazine will keep the Investment Adviser's technical knowledge up to date and keep him conversant with any changes in the market. However, such procedure fails to comply with the FSA's requirement set out in T&C 2.3.1 and falls short of the proper regulatory standard. The training failed to be organised and appropriately structured and did not ensure that changes in the markets, products, legislation and regulation are taken into account.
- 4.10 Consequently, by virtue of FSA Rule T&C 2.6.1 and T&C 2.3.1, the Firm failed to have appropriate arrangements in place to ensure that an employee who had been assessed as competent to approve financial promotions maintained his competence. The FSA regards the Firm's Compliance Manual as insufficient, as it did not ensure that the Compliance Officer was sufficiently trained about regulatory developments and requirements.

Conduct of Business Rules for Financial Promotions

- 4.11 A firm must be able to show that it has taken reasonable steps to ensure that a non-real time financial promotion is clear, fair and not misleading to satisfy the FSA's financial promotion COB rules. The Firm, however, issued the Promotions in The

Sunday Telegraph on 15 February 2004; The Investors Chronicle on 20 February 2004; and The Mail on Sunday on 14 March 2004, which were not clear, fair and not misleading and acted in breach of COB 3.8.4(1).

The headlines of the Promotions

- 4.12 The Promotion's title and some text contained misleading claims, created an unrealistic expectation and were not balanced. The headline benefits were emphasised without clear and fair mention of material risks and drawbacks of investing in shares generally and Penny Shares in particular.
- 4.13 The title on the Promotions was *"The 25 Shares most likely to DOUBLE in 2004!"*. The first line of the advertisement then stated *"Our panel of financial experts has recently compiled its portfolio of The 25 Shares most likely to DOUBLE in 2004"*. Whilst an outside source was consulted, no panel existed and the list of 25 Shares was compiled by the Compliance Officer.

The unbalanced text of the Promotions -

- 4.14 The Promotions were not balanced and created an unrealistic expectation of the service by the use of the following statements in the Promotions:
- (1) *"With positive sentiment finally established this is almost certainly the time to buy smaller company shares."*
 - (2) *"There are plenty of solid, profitable, low-gearred and tightly-managed growing smaller companies, many at depressed prices, which are sure to surge in value once the recovery gains momentum."*
 - (3) *"Penny Shares repeatedly top the list of these opportunities, a fact well known to our readers —you only have to look at the tables opposite for proof!"*
 - (4) *"When this happens the biggest profits in any economic cycle are made, however, if you're to benefit, you need to invest now, before the best bargains are taken!"*
 - (5) *"Now is the Right Time to Invest in Penny Shares".*
 - (6) *"...it is possible for YOU to achieve incredible profits from the stock market. Why? Because it's so much easier for a small company with drive to double in value than it is for a large, unwieldy conglomerate."*
 - (7) *"Here's your opportunity to get in on the ground floor of investments that we believe look set to rocket in value".*
- 4.15 The statements above accentuated the benefits of investing in Penny Shares, which are being recommended in the Firm's Magazine. However, the Firm did not retain any documentation in relation to the evidence supporting any material factual statements made in the Promotions regarding the potential benefits and the claimed substantial profits which Penny Shares are likely to achieve.

Misleading indications

- 4.16 The Promotions used words that suggest that the Firm had information above and beyond that available to the public:
- (1) *"It contains the comprehensive, cutting edge inside information normally only available to City professionals. And it could help you make the amounts of money you always dreamed of!"; and*
 - (2) *"Breaking news, company visits, exhaustive research and expert analysis, including details of when shares have been traded by directors in their own companies, all combined with perfectly legal, but secret 'tip-offs' from 'inside' the City sources deliver the hottest, most profitable tips in the market-time and time again. With a host of 'well-placed' contacts from the trading floor to the boardroom".*
- 4.17 The Firm confirmed that the information used was publicly available information but that this information was not readily available to the average person. The Firm also confirmed that they did not receive "secret 'tip-offs'" or undertake any company visits. The Firm accepted, when the FSA first wrote to the Firm, that because of the technical connotations of "inside information", it could be misleading to use and offered to change it. The above statements do not contain sufficient information to enable subscribers to make an informed assessment of the service the Firm provides in contravention of COB 3.9.6(1).
- 4.18 The above statements also contain false indications in contradiction to evidential provision 3.8.5(1)(e) about the Firm's resources and its scale of activities as it claims to obtain valuable non-public company information from 'well-placed' contacts within the companies. However, this is in contrast to financial information actually available to the Firm, which was neither obtained from the claimed sources nor was it information which was not publicly available.

Misleading tables

- 4.19 The Promotions contained tables of shares, which contained misleading and unbalanced information. The tables were misleading in that prices of the featured shares referred to the recommended mid point prices against the highest mid point prices since recommendation. None of the Penny Share prices included the bid-offer spread in contravention of COB 3.9.24. The calculated percentage gain figures based on the difference of both prices are misleading as they take no account of the spread of each price, which is at least 10% of the price of each Penny Share and which may substantially decrease the calculated gain of each Penny Share.
- 4.20 The selected Penny Share prices taken were the highest price since recommendation and did not state when the highest price was reached. It did not take into account the current price of the shares many of which were lower. In using this price point, the tables presented a misleading impression to potential clients. The Firm accepts that the table could have been clearer.
- 4.21 The Promotions further failed to mention that the portfolio of shares referred to in the tables is actually a 'virtual' portfolio as no shares are actually held by the Firm.

Risk warning

- 4.22 The substantial profit claims are in stark contrast to the small printed risk warnings at the bottom of the Promotions which does not make it sufficiently clear that Penny Shares are high risk investments. The Firm accepts that the risk warnings were not sufficiently clear or prominent. This is in breach of COB 3.8.8.
- 4.23 The Promotions had key information that was contained in small print, at the foot of the advertisement, which diminished the significance of the risk warnings. In fact all the risk warnings were in small print at the foot of the Promotions. As the Penny Shares are investments which fluctuate in value, the respective risk warning was not set out with due prominence and in a print size no smaller than that used in the main text of the financial promotion in contravention of COB 3.9.15.
- 4.24 The Promotions stated *"Just take a look at the performance of our most recent portfolios - 'The 25 Shares for 2002' and 'The 25 Shares for 2003', which we recommended at the beginning of each respective year. We think you'll agree that the figures speak for themselves!"* This text implies that the value of the portfolio has risen. However, the Promotions did not contain suitable text which draws attention to the fact that past performance will not necessarily be repeated in breach of COB 3.8.11 as the risk warning contained in the Promotions was in small print at the bottom of each promotion.

Records of the approval of the Promotions

- 4.25 The Firm approved the 2004 Promotions in the following manner *"Historical copies of advertisements are sent to [The Compliance Officer].... for his comments and approval. [The Compliance Officer] updates the advert and checks the accuracy of the financial information using the Financial Times and a database called ADVFN. The advertisements are then initialled and dated by [the Compliance Officer] and copies are kept on the advertisement file and compliance file."*
- 4.26 The Firm did not retain any documentation in relation to evidence supporting any material factual statements made in the Promotions in breach of COB 3.7.1. Additionally, the Firm did not retain any records evidencing the source of amended figures in the tables in the Promotions.
- 4.27 For the reasons set out in paragraphs 4.11 to 4.26 above the Firm's three Promotions breached the following financial promotions COB Rules 3.6.1(2), 3.7.1(1), 3.8.4(1), 3.8.8(1), 3.8.11, 3.8.15, 3.9.6(1), 3.9.15 and, 3.9.24.

Breach of FSA Principles

- 4.28 By virtue of FSA Principles 2, 3, and 7 the Firm was required to conduct its business with due care, skill and diligence, take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems and communicate with its clients in a way that was clear, fair and not misleading:
- (1) The Firm failed to pay due regard to the information needs of its clients in that it published financial promotions, which were not clear, fair and not misleading. Consequently, the Firm acted in breach of Principle 7.
 - (2) The Firm has failed to exercise due skill, care and diligence; and to organise and control its internal affairs in a responsible manner. It failed to ensure that

arrangements were in place to ensure that there were appropriate review and approval procedures to ensure that misleading and unfair advertisements were not issued. The existing compliance systems and the internal Compliance Manual were not effective nor were they put into practice. Consequently, the Firm acted in breach of Principle 2, 3 and 7.

5. RELEVANT GUIDANCE ON SANCTION

- 5.1 The FSA's policy on the imposition of financial penalties is set out in Chapter 13 of the Enforcement Manual, which forms part of the FSA Handbook ("ENF"). The principal purpose of a financial penalty is to promote high standards of regulatory conduct by deterring firms who have breached regulatory requirements from committing further contraventions, helping to deter other firms from committing contraventions and demonstrating generally to firms the benefits of compliant behaviour.
- 5.2 It must be made clear to regulated firms that failure to issue financial promotions that are clear, fair and not misleading represents misconduct, which may lead to disciplinary measures being taken. This should act as a deterrent to other firms and help to ensure that regulatory standards are upheld. Financial promotions are, as set out above, an area which the FSA has, since April 2002, repeatedly said is a priority. It is critical that firms, in all sectors of the market, understand the importance the FSA places on such communications to potential consumers.
- 5.3 It is stated at ENF 13.3.4 that the criteria listed in the manual are not exhaustive and all relevant circumstances of the case will be taken into consideration.
- 5.4 In determining whether a financial penalty is appropriate, and its level, the FSA considers all the relevant circumstances of the case. The FSA considers the following factors to be particularly relevant in this case.

The Seriousness of the Misconduct or Contravention.

- 5.5 The level of financial penalty must be proportionate to the nature and seriousness of the contravention.
- 5.6 The Firm did not operate effective systems and controls and compliance procedures to identify or prevent the rule breaches. The Firm did not identify that the Promotions were misleading and featured numerous material breaches of FSA Rules relating to financial promotions. The Promotions were issued to the general public despite the considerable material issued by the FSA highlighting the importance of financial promotions and setting out the regulatory approach to this area. The Compliance Officer said in interview that he was not aware of the FSA's April 2002 publication which made clear that one of the FSA's key regulatory priorities was the enhancement of the minimum standards for information given by firms to customers.
- 5.7 However, the impact of the Promotions can be balanced against the purpose of the Promotions. The Promotions were to encourage people to subscribe to the Magazine which gave advice on investing in Penny Shares.

Conduct Following the Contravention

- 5.8 The defects in the Promotions were identified not by the Firm but by the FSA's Financial Promotion Monitoring Team ("FPMT") and/or by the FSA's investigators

during its investigation. However, following the identification of the failings by the FSA, the Firm has:

- agreed not to approve any further financial promotions until the relevant person, for the purpose of approving the issue of financial promotions, is assessed as competent; and
- sent a remedial letter to new subscribers offering a full refund and outlining the FSA's concerns.
- been open and co-operative with the FSA during the investigation;
- quickly agreed the facts and actively sought to agree a basis on which enforcement action could be concluded;
- agreed to review its systems and controls; and
- agreed that the relevant person, for the purpose of approving the issue of financial promotions, will undertake an agreed training program in order to update his knowledge regarding systems and controls and financial promotions compliance issues.

Disciplinary Record and Compliance History

5.9 The Firm has not been subject to any previous enforcement action.

Impact of the Financial Promotions

5.10 Although the Promotions had a wide circulation, in fact the number of subscribers as a result of the Promotions was 156, therefore the actual impact on the market was low.

Previous Action by the FSA in Relation to Similar Failings

5.11 The FSA has in the past, taken action against firms for advertising/financial promotions failings. This action has included the imposition of financial penalties. The FSA has taken these penalties into account in deciding the level of penalty.

6. IMPORTANT NOTICES

6.1 The Final Notice is given to the Firm in accordance with section 390 of the Act.

Manner of payment

6.2 The Penalty must be paid to the FSA in full.

Time for payment

6.3 The Penalty must be paid to the FSA no later than 17 March 2005, being not less than 14 days beginning with the date on which this Notice is given to the Firm.

If the Penalty is not paid

- 6.4 If all or any of the Penalty is outstanding on 18 March 2005, the FSA may recover the outstanding amount as a debt owed by the Firm and due to the FSA.

Publicity

- 6.5 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 these provisions, the FSA must publish such information about the matter to which this Notice relates as it considers appropriate. The information may be published in such a 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 the Firm or prejudicial to the interests of consumers.
- 6.6 FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Third Party Rights

- 6.7 The FSA has given a copy of this Notice to Highbury House and the Compliance Officer.

FSA contacts

- 6.8 For more information concerning this matter generally, you should contact John Tutt or Rhian Nunan at the FSA (direct lines: 020 7066 1240 / 020 7066 0108).

Alison Wheeler

**Manager - Retail Selling
FSA Enforcement Division**

SPECIAL OFFER

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The simple fact is that in spite of periodic short-term falls, over the longer-term the stock market has always provided excellent profits for investors giving far superior returns to gilts, bonds, interest on cash deposits and even art as investments. Penny Shares repeatedly top the list of these opportunities, a fact well known to our readers - you only have to look at the tables opposite for proof!

With low rates and concerns over the housing market starting to emerge even the most cautious investors have started to return to the stock market. When this happens the biggest profits in any economic cycle are made, however, if you're to benefit, you need to invest now, before the best bargains are taken!

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As any successful investor will tell you, by investing at an early stage in high quality growing companies, it is possible for YOU to achieve incredible profits from the stock market. Why? Because it's so much easier for a small company with drive to double in value than it is for a large, unwieldy conglomerate.

In a small enterprise directors and senior managers frequently have large personal shareholdings in the business, often mortgaged against property or possessions. As a result they suffer or gain directly, which motivates them more intensely towards survival and expansion.

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Here's your opportunity to get in on the ground floor of investments that we believe look set to rocket in value!

All percentages shown are calculated mid-price and do not include any commission. You can run an extra risk of loss if the selling price of these shares, if you sell them immediately, you may get back much less than what you paid for them. The price may change quickly and may go down as well as up. It may be difficult to sell or realise your investment and obtain reliable information about its value or the extent of the risks to which it is exposed. The past is not necessarily a guide to future performance.

Company	Recomm. Mid-price (p)	High Since Mid-price (p)	% Change
Photo-Me International	24.00p	145.75p	507%
WSP Group	40.00p	200.50p	401%
Stanley Gibbons Group	15.75p	65.50p	316%
Mayborn Group	73.50p	267.50p	264%
Celsis International	13.50p	40.75p	202%
Medical Solutions	22.00p	58.75p	167%
ComputerLand UK	98.50p	212.50p	116%
Country & Metropolitan	94.50p	203.50p	115%
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Premier Oil	(adj) 270.00p	546.00p	102%
Cobra Bio-Min	77.00p	153.50p	99%
Stirling Energy	7.00p	13.75p	96%
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Antisoma	28.50p	51.00p	79%
Buckland Group	0.60p	1.00p	67%
ASOS Holdings	6.25p	10.20p	62%
Auket Group	3.50p	5.25p	50%
Hartest Holdings	5.13p	7.50p	46%
Delltron Electronics	59.00p	85.50p	45%
Synstar	61.50p	85.00p	33%
Oasis Healthcare	25.25p	32.00p	27%
The Wignmore Group	2.75p	3.50p	27%
First Artist Corporation	8.75p	9.50p	9%
Private & Commercial Finance	67.50p	68.50p	1%
Theo Fennell	37.50p	37.50p	0%

1 Price adjusted for 10:1 share consolidation.

Company	Recomm. Mid-price (p)	High Since Mid-price (p)	% Change
Oxus Mining	10.50p	92.00p	+776%
Trio Holdings	11.75p	28.75p	+145%
Trafficmaster	49.00p	111.00p	+127%
UKbetting	35.00p	68.00p	+94%
Stadium Group	39.50p	71.00p	+80%
Producers	36.50p	62.00p	+70%
Reading Group	33.00p	52.00p	+58%
Private & Commercial Finance	60.00p	90.50p	+51%
Parkwood Holdings	54.00p	77.50p	+44%
Westmount Energy	50.00p	69.00p	+38%
Retail Decisions	17.00p	22.75p	+34%
Southern Vectis	30.50p	40.50p	+33%
Reversus (formerly TransEda)	26.00p	33.00p	+27%
Plowit Holdings	51.50p	63.50p	+23%
Delltron Electronics	91.00p	109.00p	+20%
Eurosis Electron	80.00p	95.00p	+19%
Oasis Healthcare	43.50p	50.50p	+16%
Chorion	(adj) 300.00p	345.00p	+15%
mm02	82.75p	94.75p	+15%
Anic Group	159.50p	180.50p	+13%
Corac Group	53.50p	59.50p	+11%
Synstar	74.00p	82.00p	+11%
Theratac	70.50p	75.00p	+6%
Urban	(adj) 750.00p	788.00p	+5%
James R. Knowles	60.00p	62.00p	+3%
Clarity Commercial Solutions	90.50p	92.50p	+2%

1 Price adjusted for 3:1 share consolidation.
2 De-listed from CTA from 2002. 25 shares, price adjusted for 20:1 share consolidation.

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Here's your opportunity to join those people who are already reaping the rewards of this invaluable information by accepting our offer of your first year's subscription to Penny Share Focus for only £19.95 (normally £59.50). That's a massive 66% saving...and with 12 information packed issues, backed by our Money-Back Pledge, it could be the smartest £19.95 you've ever spent! Act now - this is a strictly time-limited offer. If you want to enter the world of inside information on the spectacular growth potential of Penny Shares, you must return the coupon below within 10 days!

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Because we're sure of our ability to pick the best performing penny shares in the market, we're willing to pledge that if, after 12 months, you are in any way dissatisfied with the performance of our '25 Shares Most Likely to Double in 2004' we'll refund your membership in full, straight away and without argument.

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Regulated by the Financial Services Authority

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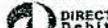
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Complete this form and return to: Penny Share Focus, 8 Bartholomew's Walk, Ely, Cambridgeshire, CB7 4ZD. Your Name: _____

YES! Please start my subscription to Penny Share Focus at the special introductory rate of £19.95 (official publishers price £59.50). At the end of the first year my subscription will continue to be renewed at the official publishers price unless I decide otherwise. I understand I am fully covered by your Money Back Pledge and that you will dispatch my welcome pack within 14 days of receiving this coupon. Address: _____

Postcode: _____

INSTRUCTION TO YOUR BANK OR BUILDING SOCIETY TO PAY DIRECT DEBITS



Originator's Identification Number

7 6 8 0 9 1

1 Name & full address of your Bank or Building Society branch

To The Manager _____ Bank/Building Society
Address _____
Post code _____

5 Reference Number (office use only)

2 Name(s) of Account holder(s)

6 Instructions to your Bank or Building Society

Please pay Chase Search Financial Services Ltd, Direct Debits from the account detailed on this instruction subject to the safe guards assured by the Direct Debit Guarantee. I understand that this instruction may remain with Chase Search Financial Services Ltd and if so details will be passed electronically to my Bank/Building Society.

Signature(s) _____

3 Branch Sort Code

4 Bank or Building Society Account Number

Date _____

This Guarantee should be detached and retained by the payer

The Direct Debit Guarantee



* This guarantee is offered by all Banks and Building Societies that take part in the Direct Debit Scheme. The efficiency and security of the scheme is monitored and protected by your own bank.
* If the account is not paid or the payment date changes Chase Search Financial Services Ltd will notify you 10 working days in advance of any direct debit not being paid.
* If a error is made by Chase Search Financial Services Ltd or your Bank or Building Society, you are guaranteed a full and immediate refund from your branch of the amount paid.
* You can cancel a Direct Debit at any time by writing to your bank or building society. Please send a copy of the form to us.
PLEASE NO CHEQUES OR CREDIT CARDS. LETS KEEP ADMINISTRATION TO A MINIMUM FOR THIS SPECIAL OFFER. WE HOPE TO BE ABLE TO OFFER YOU A VARIETY OF FURTHER INTERESTING OPPORTUNITIES FROM REPUTABLE ORGANISATIONS. IF YOU PREFER NOT TO RECEIVE SUCH OFFERS, PLEASE WRITE TO: DEPT. CUM, 8 BARTHOLOMEW'S WALK, ELY, CAMBRIDGESHIRE, CB7 4ZD
There is a big difference between the buying price and the selling price of these shares. If you sell them immediately, you may get back much less than what you paid for them. The price may change quickly and may go down as well as up. It may be difficult to sell or realise your investment and obtain reliable information about its value or the extent of the risks to which it is exposed. The past is not necessarily a guide to future performance.

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Synstar	74.00p	82.00p	+11%
Therastase	70.50p	75.00p	+6%
Urbium ¹	(adj) 750.00p	788.00p	+5%
James R. Knowles	60.00p	62.00p	+3%
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¹ Price adjusted for 30:1 share consolidation.
² Demerged from Chorion, (thence 26 shares), price adjusted for 50:1 share consolidation.

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Complete this form and return to: Penny Share Focus, 8 Bartholomew's Walk, Ely, Cambridgeshire, CB7 4ZD. Your Name: _____ IC/02/04

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Postcode: _____

INSTRUCTION TO YOUR BANK OR BUILDING SOCIETY TO PAY DIRECT DEBITS



Originator's Identification Number

7 6 8 0 9 1

1 Name & full address of your Bank or Building Society branch

To The Manager _____ Bank/Building Society

Address _____

Post code _____

5 Reference Number (office use only)

6 Instructions to your Bank or Building Society

Please pay Chartsearch Financial Services Ltd. Direct Debits from the account detailed on this instruction subject to the safe guards assured by the Direct Debit Guarantee. I understand that this instruction may remain with Chartsearch Financial Services Ltd and if so details will be passed electronically to my Bank/Building society.

Signature(s) _____

Date _____

Banks and Building Societies may not accept Direct Debit Instructions for some types of account

This Guarantee should be detached and retained by the payer

The Direct Debit Guarantee

This guarantee is offered by all Banks and Building Societies that take part in the Direct Debit Scheme. The efficiency and security of the scheme is monitored and protected by your own bank. If the amounts to be paid or the payment dates change Chartsearch Financial Services Ltd will notify you 10 working days in advance of your account being debited or as otherwise agreed. If an error is made by Chartsearch Financial Services Ltd, or your Bank or Building Society, you are guaranteed a full and immediate refund from your branch of the amount paid. You can cancel a Direct Debit at any time by writing to your Bank or Building Society. Please also send a copy of the letter to us.



PLEASE NO CHEQUES OR CREDIT CARDS. LETS KEEP ADMINISTRATION TO A MINIMUM FOR THIS SPECIAL OFFER. WE HOPE TO BE ABLE TO OFFER YOU A VARIETY OF FURTHER INTERESTING OPPORTUNITIES FROM REPUTABLE ORGANISATIONS. IF YOU PREFER NOT TO RECEIVE SUCH OFFERS, PLEASE WRITE TO DEPT. CDM, 8 BARTHOLOMEW'S WALK, ELY, CAMBRIDGESHIRE, CB7 4ZD

All percentages shown are calculated mid-price and do not include the bid offer spread. All gains exclude dealing cost and dividend payments. Shares can go down as well as up in value and you may not get back the full amount invested. You can run an extra risk of losing money when you buy shares in certain smaller companies including 'Penny shares'. There is a big difference between the buying price and the selling price of these shares. If you sell them immediately you may get back much less than what you paid for them. The price may change quickly and may go down as well as up. It may be difficult to sell or realise your investment and obtain reliable information about its value or the extent of the risks to which it is exposed. The past is not necessarily a guide to future performance.

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Portfolio of 25 Shares for 2003			
	+1 Gain of 507%	+5 Gains of 200%	+22 Gains of 20%
	+10 Gains of 100%	+22 Gains of 20%	Average High Since Recommendation - 131%
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Maybarn Group	73.50p	293.00p	299%
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ComputerLand UK	98.50p	220.50p	124%
Synergy Healthcare	140.00p	285.00p	104%
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ASUS Holdings	6.25p	12.50p	100%
Contra Bio-Mat	77.00p	153.50p	99%
Starling Energy	7.00p	13.75p	96%
Aptamer	53.00p	95.25p	80%
Antisoma	28.50p	53.00p	79%
Blackland Group	0.00p	1.00p	67%
Aukett Group	3.50p	5.25p	50%
Harvest Holdings	3.13p	7.50p	46%
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Now is the Right Time to Invest in Penny Shares

As any successful investor will tell you, by investing at an early stage in high quality growing companies, it is possible for YOU to achieve incredible profits from the stock market. Why? Because it's so much easier for a small company with drive to double in value than it is for a large, unwieldy conglomerate.

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Your Name: _____
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INSTRUCTION TO YOUR BANK OR BUILDING SOCIETY TO PAY DIRECT DEBITS



1 Name & full address of your Bank or Building Society branch

To The Manager: _____ Bank/Building Society
 Address: _____
 Post code: _____

5 Reference Number (where we may)

2 Name(s) of Account holder(s)

6 Instructions to your Bank or Building Society
 Please pay Chasebank Financial Services Ltd, Direct Debits from the account detailed on this instruction subject to the safe guards assured by the Direct Debit Guarantee. I understand that this instruction may remain with Chasebank Financial Services Ltd and all details will be passed electronically to my Bank/Building Society.

3 Branch Sort Code _____
 4 Bank or Building Society Account Number _____

Signature(s) _____
 Date _____

The Direct Debit Guarantee

This Guarantee should be checked and returned by the payer.

1. This guarantee is subject to all terms and conditions of the Direct Debit Guarantee. The offer is only available to the account holder and is not available to third parties.
 2. It is the account holder's responsibility to ensure that the account details are correct and that the account is in good standing with the bank/building society.
 3. If you are unable to pay a Direct Debit, you will be notified by the bank/building society and you will be given a grace period before the account is closed.
 4. If you are unable to pay a Direct Debit, you will be notified by the bank/building society and you will be given a grace period before the account is closed.
 5. If you are unable to pay a Direct Debit, you will be notified by the bank/building society and you will be given a grace period before the account is closed.
 6. If you are unable to pay a Direct Debit, you will be notified by the bank/building society and you will be given a grace period before the account is closed.
 7. If you are unable to pay a Direct Debit, you will be notified by the bank/building society and you will be given a grace period before the account is closed.
 8. If you are unable to pay a Direct Debit, you will be notified by the bank/building society and you will be given a grace period before the account is closed.
 9. If you are unable to pay a Direct Debit, you will be notified by the bank/building society and you will be given a grace period before the account is closed.
 10. If you are unable to pay a Direct Debit, you will be notified by the bank/building society and you will be given a grace period before the account is closed.



BACKGROUND STATUTORY PROVISIONS AND REGULATORY REQUIREMENTS FOR FINANCIAL PROMOTIONS

The glossary of definitions of the FSA's handbook defines a financial promotion as

"(in accordance with section 21(1) of the Act (Restrictions on financial promotion)) an invitation or inducement to engage in investment activity".

Section 21 (8) of the Act defines:

"Engaging in investment activity' means:

- (a) entering or offering to enter into an agreement the making or performance of which by either party constitutes a controlled activity; or*
- (b) exercising any rights conferred by a controlled investment to acquire, dispose of, underwrite or convert a controlled investment."*

Section 21 (9) of the Act defines:

"An activity is a controlled activity if –

- (a) it is an activity of a specified kind or one which falls within a specified class of activity; and*
- (b) it relates to an investment of a specified kind, or to one which falls within a specified class of investment."*

Section 21 (10) of the Act defines:

"An investment is a controlled investment if it is an investment of a specified kind or one which falls within a specified class of investment."

Article 4 of The Financial Promotion Order defines:

"(1) For the purpose of section 21 (9) of the Act, a controlled activity is an activity which falls within any of paragraphs 1 to 11 of Schedule 1.

(2) For the purpose of section 21 (10) of the Act, a controlled investment is an investment which falls within any of paragraphs 12 to 27 of Schedule 1."

Paragraph 7 of Part 1 "Controlled Activities" of Schedule 1 of The Financial Promotion Order defines:

"Advising a person is a controlled activity if the advice is

- (a) given to the person in his capacity as an investor or potential investor, or in his*

capacity as agent for an investor or a potential investor; and

(b) advice on the merits of his doing any of the following (whether as principal or agent) –

(i) buying, selling, subscribing for or underwriting a particular investment which is a security or a contractually based investment; or

(ii) exercising any right conferred by such an investment to buy, sell, subscribe for or underwrite such an investment."

Paragraph 14 (1) (a) of Part 2 "Controlled Investments" of Schedule 1 of The Financial Promotion Order lists:

"Shares or stock in the share capital of

(a) any body corporate (wherever incorporated);"

Definition of a "non- real time" financial promotion

FSA Rule 3.5.5 (1) and (2) define:

"(1) A "real time financial promotion" is a financial promotion which is communicated in the course of a personal visit, telephone conversation or other interactive dialogue.

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

Rules which only apply to the Direct Offer Promotions

A direct offer promotion is defined in the FSA's glossary of definitions as:

"A financial promotion which

(a) contains:

(i) an offer by the firm or another person to enter into a controlled agreement with anyone who responds to the financial promotion; or

(ii) an invitation to anyone who responds to the financial promotion to make an offer to the firm or another person to enter into a controlled agreement;

(b) specifies the manner of response or includes a form in which any response is to be made (for example by providing a tear-off slip); and

(c) is not a real time financial promotion."