
FINAL NOTICE

To: **Mr Ian David Jones**
Of: **Arle Court, Hatherley Lane, Cheltenham, GL51 6PN**
Individual Ref: **IDJ00004**
Date: **21 September 2011**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives Ian David Jones final notice of the following action:

1. THE ACTION

1.1. The FSA gave Mr Ian David Jones (“Mr Jones”) a Decision Notice on 21 September 2011 which notified him that the FSA had decided to take the following action against him:

- (1) pursuant to section 66 of the Financial Services and Markets Act 2000 (“the Act”), to impose on Mr Jones a financial penalty of £16,000 for breaches of Statement of Principle 7 of the FSA’s Statements of Principle and Code of Practice for Approved Persons (“the Statements of Principle”) arising from the promotion of unregulated collective investment schemes (“UCIS”) between 1 January 2008 and 31 December 2009 (“the relevant period”); and
- (2) pursuant to section 56 of the Act, to make an order prohibiting Mr Jones from performing any significant influence function at an authorised person, exempt person or exempt professional firm in relation to the promotion of UCIS, and performing any customer function in relation to the promotion of UCIS, because he is not currently a fit and proper person for such a role in terms of his competence and capability. The FSA would be minded to revoke the prohibition order, on his application, in the event that Mr Jones is able to demonstrate to the satisfaction of the FSA that he has taken adequate steps to remedy his lack of competence and capability.

- 1.2. Mr Jones agreed to settle at an early stage of the FSA's investigation and therefore qualified for a 20% (stage 2) discount under the FSA's executive settlement procedures. The FSA would have otherwise imposed a financial penalty of £20,000 on him.
- 1.3. Mr Jones agreed that he would not be referring the matter to the Upper Tribunal (Tax and Chancery Chamber).
- 1.4. Accordingly, and for the reasons set out below, the FSA takes the action set out above. The prohibition order takes effect from 21 September 2011.

2. REASONS FOR THE ACTION

Introduction

- 2.1. On the basis of the facts and matters described below, the FSA has decided to sanction Mr Jones for breaches of Statement of Principle 7 within the relevant period. In summary, the FSA has concluded that, in his role as director and significant influence function holder at Specialist Solutions Public Limited Company ("Specialist Solutions"/ "the Firm") he failed during the relevant period to:
 - (1) implement internal compliance procedures which adequately ensured UCIS were promoted in accordance with the relevant regulations;
 - (2) implement an appropriate training and competence programme to ensure that advisers who promoted UCIS complied with the relevant regulatory provisions;
 - (3) ensure that adequate due diligence was conducted into the UCIS funds promoted by Specialist Solutions; and
 - (4) ensure that customers were given suitable advice to invest in UCIS.
- 2.2. Consequently, Specialist Solutions promoted UCIS to 101 retail customers in breach the restrictions on promotion pursuant to section 238 of the Act during the relevant period and exposed those customers to the risk of receiving unsuitable advice.
- 2.3. The FSA regards these failings as particularly serious because:
 - (1) the number of retail customers affected and the amount of money invested by certain customers in UCIS is significant; and
 - (2) in almost 50% of the 20 customer files reviewed by the skilled person for suitability, the advice given by Specialist Solutions to customers to invest in UCIS was found to be unsuitable.
- 2.4. The FSA considers that the failings identified have been mitigated to a considerable extent by the significant improvements Mr Jones has made to Specialist Solutions' sales processes and compliance arrangements since the failings were

identified, including the replacement of the external compliance consultants who were advising Specialist Solutions during the relevant period. In addition, under Mr Jones' management Specialist Solutions has undertaken a past business review and has agreed, in principle, to contact customers who may have been missold UCIS with a view to providing redress to those customers, if any, who have suffered detriment.

- 2.5. Furthermore, under Mr Jones' management Specialist Solutions voluntarily applied to the FSA for an immediate change to its permissions, as a result of which the Firm has not promoted or given advice on UCIS since June 2010.

3. RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND FSA GUIDANCE

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

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. Throughout the relevant period, Mr Jones was approved to perform controlled functions 1 (director), 10 (compliance oversight), 11 (money laundering reporting) and 30 (customer function) at Specialist Solutions.
- 4.2. Specialist Solutions is a firm of independent financial advisors based in Cheltenham currently retaining the services of eight self-employed customer advisers approved to carry out controlled function CF30 (customer function).
- 4.3. The Firm has been authorised by the FSA since 21 December 2004 to undertake the following regulated activities: advising on Pension Transfers and Pension Opt Outs; advising on investments (except on Pension Transfers and Pension Opt Outs); advising on regulated mortgage contracts; agreeing to carry on a regulated activity; arranging (bringing about) deals in investments; arranging (bringing about) regulated mortgage contracts; making arrangements with a view to regulated mortgage contracts; and, making arrangements with a view to transactions in investments.
- 4.4. Potential issues regarding Specialist Solutions' recommendations to invest in UCIS came to the FSA's attention following a visit by the FSA to the Firm on 25 February 2010. The visit was undertaken as part of the FSA's thematic review into the promotion of UCIS (the "UCIS Project visit").
- 4.5. Specialist Solutions started promoting and giving advice on UCIS in 2007. During the relevant period, Specialist Solutions advised approximately 3,000 customers. Of those customers, Specialist Solutions recommended UCIS to 101 customers who invested a total of £11,244,923 in one or more of three UCIS and generated commission of £321,827 by these investments. Approximately 98% of the firm's UCIS business was invested through a product wrapper (e.g. SIPP or bond).
- 4.6. During the relevant period, the majority of Specialist Solutions' recommendations to invest in UCIS were made by two advisers, who have since left the Firm. Of the 101

customers to whom UCIS was recommended, Mr Jones personally advised three customers to invest in UCIS.

- 4.7. The FSA's visit to Specialist Solutions in February 2010 and its review of nine customer files in which UCIS were recommended highlighted a number of causes for concern regarding the Firm's failure to comply with section 238 of the Act, the suitability of advice given to customers by the Firm in relation to UCIS, the firm's monitoring and compliance functions and the Firm's training and competence procedures in relation to UCIS. These concerns were explained to Specialist Solutions in a post visit letter from the FSA dated 9 June 2010, by which time Specialist Solutions had already reviewed and amended its internal procedures regarding UCIS, as communicated to the FSA at the end of April 2010.
- 4.8. On 28 October 2010, the FSA required Specialist Solutions to appoint a skilled person pursuant to section 166 of the Act to review the firm's promotion of UCIS and advice given to customers about UCIS. The skilled person reviewed the files for all 101 customers who were recommended UCIS by Specialist Solutions during the relevant period. The findings of the skilled person are referred to below.

Conduct in issue

Breach of Statement of Principle 7

- 4.9. During the relevant period, Mr Jones failed to take reasonable steps to ensure that Specialist Solutions complied with the relevant requirements and standards of the regulatory system in relation to the promotion of UCIS and, as such, he breached Statement of Principle 7. Specifically, Mr Jones was not aware of the regulatory regime governing the promotion of UCIS and failed to ensure that Specialist Solutions complied with section 238 of the Act during the relevant period.
- 4.10. Section 238(1) of the Act generally prohibits the promotion of UCIS by authorised firms. However, an authorised firm may promote UCIS to customers in certain circumstances where there is an exemption to section 238(1) provided in the Promotion of Collective Investment Schemes (Exemptions) Order 2001 ("the PCIS Order") and/or the Conduct of Business Sourcebook ("COBS") 4.12.
- 4.11. The skilled person reviewed all 101 customer files in which UCIS were promoted by Specialist Solutions to customers during the relevant period in order to determine whether the promotions complied with the relevant legislation and regulations. The skilled person found that Specialist Solutions promoted UCIS to all 101 customers without first adequately assessing whether the customer was eligible to receive such promotions pursuant to an exemption contained in the PCIS Order and/or COBS 4.12. The skilled person found that, for 55 of those 101 customers, a relevant exemption to section 238 of the Act could have potentially applied (for example, because a customer was a high net worth individual) but for 46 customers of the 101 there was no applicable exemption. The Firm failed to demonstrate that the exemptions were applicable to the respective customers.
- 4.12. In Mr Jones' role as director (CF1) and holder of CF 10 (compliance oversight) during the relevant period, he failed to ensure that:

- (1) Specialist Solutions' internal compliance procedures addressed the need to comply with regulations governing the promotion of UCIS. The Firm's documented compliance procedures for the relevant period were high level and did not detail any procedures for the promotion of UCIS;
- (2) Specialist Solutions had sufficient internal compliance checks to identify when advisers had promoted UCIS to customers without regard to the relevant legislation and to correct this. Although 10% of Specialist Solutions' files were reviewed by external compliance consultants, who also failed to identify that UCIS were being promoted in breach of section 238 of the Act, this does not detract from the finding that Specialist Solutions' internal compliance checks were inadequate;
- (3) Specialist Solutions' training and competence scheme included training on the promotion of UCIS. The Firm's advisers attended some presentations from UCIS fund managers about their funds, but advisers were not tested to assess their understanding of the funds' status as UCIS or risk profile prior to promoting those funds. The advisers who sold UCIS were not aware of or did not understand the regulatory provisions governing the promotion of UCIS;
- (4) Specialist Solutions conducted adequate due diligence on the UCIS funds it promoted. The promotional literature provided by each of the UCIS promoted by Specialist Solutions specifically referred to the funds being UCIS and to there being provisions in the Act which restricted the promotion of UCIS to certain categories of investors (although in one case these were not correctly cited). Mr Jones did not take sufficient notice of the content of the funds' literature to identify that the funds, as UCIS, were subject to a particular regulatory regime.

4.13. As a result of these failings, UCIS were promoted to 101 customers of Specialist Solutions who were not eligible to receive such promotions and were exposed to the risk of receiving unsuitable advice to invest in UCIS.

4.14. The skilled person conducted a more detailed review of 20 customer files in which Specialist Solutions had recommended to its customers that they invest in UCIS. Of those 20 customer files, exemptions to the section 238 restriction could have been applied to 13 customers. The skilled person found that, of those 20 files, only three files demonstrated suitable advice, nine files demonstrated unsuitable advice and in the remaining eight files it could not be determined whether the advice was suitable (i.e. the documentation on the files was not sufficient).

4.15. Because of the above facts, Mr Jones is not currently a fit and proper person in terms of his competence and capability to carry out significant influence functions or customer functions with regard to the promotion of UCIS.

5. ANALYSIS OF BREACHES

5.1. As a result of the facts and matters set out in paragraphs 4.9 to 4.15 above, the FSA considers that Mr Jones has breached Statement of Principle 7 by failing to take reasonable steps to ensure that Specialist Solutions complied with the relevant

requirements and standards of the regulatory system in relation to the promotion of UCIS, and, as such, he is not a fit and proper person to carry out significant influence functions or customer functions in relation to the promotion of UCIS.

6. ANALYSIS OF SANCTION

- 6.1. The FSA's policy on imposing a financial penalty is set out in Chapter 6 of the Decision Procedures and Penalties Manual ("DEPP"), which is part of the FSA Handbook. In addition, the FSA has had regard to Chapter 7 of the Enforcement Guide ("EG").

Financial penalty

- 6.2. The principal purpose of imposing a financial penalty is to promote high standards of conduct by deterring persons who have committed regulatory breaches from committing further breaches, helping to deter others from committing similar breaches and demonstrating generally the benefits of compliant behaviour.
- 6.3. In determining whether a financial penalty is appropriate, the FSA is required to consider all the relevant circumstances of the case. Applying the criteria set out in DEPP 6.2.1 and 6.4.2, the FSA considers that a financial penalty would be an appropriate sanction in this case, given the serious nature of the breaches, the risks created for customers of Specialist Solutions and the need to send out a strong message of deterrence to others.
- 6.4. DEPP 6.5.2G sets out a non-exhaustive list of factors which may be relevant to determining the appropriate level of financial penalty. The FSA considers that the following factors are particularly relevant in this case.

Deterrence (DEPP 6.5.2(1))

- 6.5. Imposing a financial penalty will deter individuals who have committed breaches from committing further breaches and deter others from committing similar breaches, as well as demonstrating generally the benefits of compliant behaviour.

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, the duration and frequency of the breaches, and whether the breaches revealed serious failings in Mr Jones' oversight of Specialist Solutions' systems and controls. The FSA considers the breaches are serious as they:
- (1) affected a significant number of retail customers who invested significant sums in UCIS; and
 - (2) arise from a fundamental lack of awareness of the regulatory regime governing the promotion of UCIS.
- 6.7. In determining the appropriate sanction, the FSA has had regard to the following mitigating factors:

- (1) UCIS were promoted to a small proportion (approximately 3%) of the Firm's customers.
- (2) Mr Jones did not encourage Specialist Solutions' advisors to promote UCIS to customers and it was not part of the Firm's strategy to do so.
- (3) The skilled person found that the UCIS chosen by Specialist Solutions were relatively "mainstream" rather than "exotic" in terms of the underlying investment(s).
- (4) Under Mr Jones' direction, the Firm retained an independent compliance consultant to conduct quarterly client file reviews. From June 2009, Specialist Solutions sent 10% of its customer files to the compliance consultant for review. These included three UCIS files. On reviewing these files, the compliance consultant did not identify that UCIS had been promoted to retail customers without consideration of the relevant regulations. (However, the fact that the consultant failed to identify that UCIS potentially had been incorrectly recommended does not absolve Mr Jones from failing to make himself aware of and ensure compliance with the relevant regulation.)

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

- 6.8. The FSA has found no evidence that the breaches were deliberate or reckless.

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

- 6.9. The FSA has taken into account that the penalty is to be imposed on an individual and that the penalty may have a greater impact on the individual than it would do on a body corporate.

Conduct following the breach (DEPP 6.5.2(8))

- 6.10. The FSA has taken into account that Mr Jones has cooperated fully with the its investigation and has implemented changes to Specialist Solutions' systems and controls and procedures to ensure that similar issues do not arise in the future, including the appointment of new compliance consultants. He has conducted a past business review and made proposals to undertake a customer contact exercise in relation to those customers who were sold UCIS in breach of the relevant regulations.
- 6.11. Further, under Mr Jones' direction the Firm applied to the FSA to vary its permissions to exclude the promotion of UCIS as soon as he became aware of the regulatory breaches.

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

- 6.12. Mr Jones has not been the subject of any previous FSA investigations.

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

- 6.13. In determining the level of financial penalty, the FSA has taken into account penalties imposed on other approved persons for similar behaviour.
- 6.14. Having regard to all the circumstances, the FSA considers the appropriate level of financial penalty is £20,000 before discount for early settlement.

Withdrawal of approval and prohibition

- 6.15. The FSA has had regard to the guidance in Chapter 9 of the EG in proposing that Mr Jones be prohibited from performing significant influence functions in relation to the promotion of UCIS. The FSA would be minded to revoke the prohibition order, on Mr Jones' application, in the event that Mr Jones is able to demonstrate to the satisfaction of the FSA that he has taken adequate steps to remedy his lack of competence and capability. The relevant provisions of EG are set out in Annex A of this Notice.
- 6.16. Given the nature and seriousness of the failures outlined above, the FSA has concluded that Mr Jones is not fit and proper to perform significant influence functions or customer functions in relation to the promotion of UCIS.
- 6.17. In particular, Mr Jones demonstrated a fundamental lack of understanding of the restrictions and risks associated with promoting UCIS to retail customers. In the interests of consumer protection, the FSA deems it appropriate to impose a prohibition order on Mr Jones in the terms set out above.

7. DECISION MAKER

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

8. IMPORTANT

- 8.1. This Final Notice is given to Mr Jones in accordance with section 390 of the Act.

Time and manner of payment

- 8.2. The financial penalty must be paid in full by Mr Jones to the FSA by no later than 5 October 2011, being 14 days from the date of this Final Notice.

If the financial penalty is not paid

- 8.3. If all or any part of the financial penalty is outstanding on 6 October 2011, the FSA may recover the outstanding amount as a debt owed by Mr Jones 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 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 Jones or prejudicial to the interest 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 about this matter, contact Rachel West of the Enforcement and Financial Crime Division at the FSA (direct line: 020 7066 0142 /fax: 020 7066 0143).

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Tom Spender
Head of Department
FSA Enforcement and Financial Crime Division

RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND FSA GUIDANCE

1. Statutory provisions

- 1.1. The FSA's statutory objectives are set out in section 2(2) of the Act. In this case, the most relevant statutory objective is the protection of consumers.
- 1.2. Section 56 of the Act provides that the FSA may make a prohibition order prohibiting and individual from performing a specified function.
- 1.3. Section 66 of the Act provides that the FSA may take action against a person if it appears to the FSA that he is guilty of misconduct and the FSA is satisfied that it is appropriate in all the circumstances to take action against him. Misconduct includes failure, while an approved person, to comply with a statement of principle issued under section 64 of the Act. The action that may be taken by the FSA includes the imposition of a penalty on the approved person of such amount as it considers appropriate.
- 1.4. 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. Section 238(4) provides that certain authorised schemes are exempted from this prohibition.
- 1.5. UCIS is defined in the glossary to the FSA Handbook of Rules and Guidance as "*a collective investment scheme which is not a regulated collective investment scheme*". Unless a collective investment scheme ("CIS") falls within the narrow definition of a regulated CIS¹, it will be a UCIS.
- 1.6. The PCIS Order and COBS 4.12 provide for circumstances when UCIS may be promoted to customers without advisers falling foul of section 238 of the Act. There are a number of exemptions that may be applied to the section 238 restriction. For example, under the PCIS Order, UCIS may be promoted to persons defined as "certified high net worth investors" and "sophisticated investors".
- 1.7. Section 4.12 of COBS defines eight categories of persons to whom an authorised person may promote UCIS. These include:
 - (1) Category 2: a person for whom a firm has taken reasonable steps to ensure that investment in a collective investment scheme is suitable and who is an "established" or "newly accepted" client of the firm; and

¹ A CIS is defined in the Handbook Glossary as follows: (a) an investment company with variable capital; or (b) an authorised unit trust scheme; or (c) a recognised scheme, (ie a CIS constituted overseas and formally recognised under sections 264, 270 or 272 of the Financial Services and Markets Act 2000); whether or not the units are held within an ISA or personal pension scheme.

- (2) Category 8: a person to whom the firm has undertaken an adequate assessment of expertise, experience and knowledge and to whom the firm has provided certain written warnings.
- 1.8. An authorised firm must take reasonable steps to ensure that its personal recommendations to customers are suitable in compliance with the rules in Chapter 9 of COBS and Principle 9.

2. 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.

Statements of Principle and the Code of Practice for Approved Persons (“APER”)

- 2.2. APER sets out the Statements of Principle as they relate to approved persons and descriptions of conduct which, in the opinion of the FSA, do not comply with a Statement of Principle. It further describes factors which, in the opinion of the FSA, are to be taken into account in determining whether or not an approved person’s conduct complies with a Statement of Principle.
- 2.3. APER 3.1.3G states that when establishing compliance with or a breach of a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, including the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour to be expected in that function.
- 2.4. APER 3.1.4G provides that an approved person will only be in breach of a Statement of Principle where he is personally culpable, that is in a situation where his conduct was deliberate or where his standard of conduct was below that which would be reasonable in all the circumstances.
- 2.5. APER 3.1.6G provides that APER (and in particular the specific examples of behaviour which may be in breach of a generic description of conduct in the code) is not exhaustive of the kind of conduct that may contravene the Statements of Principle.
- 2.6. Statement of Principle 7 provides 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.
- 2.7. APER 3.1.8G provides, in relation to applying Statements of Principle 5 to 7, that the nature, scale and complexity of the business under management and the role and responsibility of the individual performing a significant influence function within the firm will be relevant in assessing whether an approved person’s conduct was reasonable.
- 2.8. APER 3.3.1E states that in determining whether or not the conduct of an approved person performing a significant influence complies with Statements of Principle 5 to

7, the following are factors which, in the opinion of the FSA, are to be taken into account:

- (1) whether he exercised reasonable care when considering the information available to him;
- (2) whether he reached a reasonable conclusion which he acted on;
- (3) the nature, scale and complexity of the firm's business;
- (4) his role and responsibility as an approved person performing a significant influence function; and
- (5) the knowledge he had, or should have had, of regulatory concerns, if any, arising in the business under his control.

2.9. APER 4.7 lists types of conduct which, in the opinion of the FSA, do not comply with Statement of Principle 7.

2.10. APER 4.7.3E states that 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 requirements and standards of the regulatory system in respect of its regulated activities is conduct that does not comply with Statement of Principle 7.

2.11. APER 4.7.4E states that 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 regulated system in respect of its regulated activities is conduct that does not comply with Statement of Principle 7.

2.12. APER 4.7.7E provides that failing to take 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 is conduct that does not comply with Statement of Principle 7.

3. Other relevant regulatory provisions

Fit and proper test for Approved Persons

3.1. 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.

3.2. 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.

3.3. 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.

Enforcement Guide (“EG”)

- 3.4. The FSA’s policy on exercising its enforcement power is set out in the EG, which came into effect on 28 August 2007.

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

- 3.5. The FSA’s approach to exercising its powers to make prohibition orders and withdraw approvals is set out at Chapter 9 of EG.
- 3.6. 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.
- 3.7. 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.
- 3.8. 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.
- 3.9. 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.
- 3.10. 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.

Decision Procedure and Penalties Manual (“DEPP”)

- 3.11. Guidance on the imposition and amount of penalties is set out in Chapter 6 of DEPP.
- 3.12. DEPP 6.1.2G provides that the principal purpose of imposing a financial penalty is to promote high standards of regulatory and/or market 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. Financial penalties are tools that the FSA may employ to help it to achieve its regulatory objectives.
- 3.13. DEPP 6.5.1G(1) provides that the FSA will consider all the relevant circumstances of a case when it determines the level of financial penalty (if any) that is appropriate and in proportion to the breach concerned.
- 3.14. DEPP 6.5.2 sets out a non-exhaustive list of factors that may be relevant to determining the appropriate level of financial penalty to be imposed on a person under the Act. The following factors are relevant to this case:

Deterrence: DEPP 6.5.2G(1)

- 3.15. When determining the appropriate level of financial penalty, the FSA will have regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business.

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

- 3.16. The FSA will consider the seriousness of the breach in relation to the nature of the rule, requirement or provision breached, which can include considerations such as the duration and frequency of the breach, whether the breach revealed serious or systemic weaknesses in the person’s procedures or of the management systems or internal controls relating to all or part of a person’s business, the nature and extent of any

financial crime facilitated, occasioned or otherwise attributable to the breach and the loss or risk of loss caused to consumers, investors or other market users.

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

- 3.17. The FSA will regard as more serious a breach which is deliberately or recklessly committed, giving consideration to factors such as whether the person has given no apparent consideration to the consequences of the behaviour that constitutes the breach. If the FSA decides that the breach was deliberate or reckless, it is more likely to impose a higher penalty on a person than would otherwise be the case.

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

- 3.18. When determining the amount of penalty to be imposed on an individual, the FSA will take into account that individuals will not always have the resources of 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 on a body corporate. The FSA will also consider whether the status, position and/or responsibilities of the individual 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 6.5.2G(5)

- 3.19. The FSA may take into account whether there is verifiable evidence of serious financial hardship or financial difficulties if the person were to pay the level of penalty appropriate for the particular breach.

Conduct following the breach: DEPP 6.5.2G(8)

- 3.20. The FSA may take into account the degree of co-operation the person showed during the investigation of the breach by the FSA.

Other action taken by the FSA (or a previous regulator): DEPP 6.5.2G(10)

- 3.21. The FSA seeks to apply a consistent approach to determining the appropriate level of penalty. The FSA may take into account previous decisions made in relation to similar misconduct.

FSA guidance and other published materials: DEPP 6.5.2G(12)

- 3.22. The FSA will consider the nature and accessibility of the guidance or other published materials when deciding whether they are relevant to the level of penalty and, if they are, what weight to give them in relation to other relevant factors.