Financial Services Authority

FINAL NOTICE

To: **Integrated Financial Arrangements plc**

FSA Reference Number: **190856**

Address: **Domain House**
5-7 Singer Street
London EC2A 4BQ

Date: **5 December 2011**

ACTION

1. For the reasons given in this notice, the FSA hereby imposes on Integrated Financial Arrangements plc ("Integrated Financial") a financial penalty of £3.5 million pursuant to section 206 of the Financial Services and Markets Act 2000 ("the Act").

2. Integrated Financial agreed to settle at an early stage of the FSA's investigation and qualified for a 30% (Stage 1) discount under the FSA's executive settlement procedures. Were it not for this discount, the FSA would have imposed a financial penalty of £5 million.

SUMMARY OF REASONS

3. The FSA has imposed a penalty on Integrated Financial because of the Firm's breaches of:

   (i) Principle 3 (Management and control) and Principle 10 (Clients' assets); and

   (ii) associated FSA Rules set out in the CASS sourcebook and previously in the COB sourcebook,

between 1 December 2001 and 30 June 2010 (the "Relevant Period").

4. These breaches relate to failings by Integrated Financial in respect of its management and protection of client money during the Relevant Period. In particular, Integrated Financial failed to:

   (i) perform client money calculations to check whether its client money resource, being the aggregate balance on the Firm's client bank accounts as at the close of business on the previous business day, was at least equal to its client money requirement as at the close of business on that day and, as a consequence, Integrated Financial failed to fund any shortfall in its client money bank accounts;

   (ii) put in place adequate trust documentation in relation to three of its 28 client money bank accounts in accordance with the FSA's rules; and

   (iii) take reasonable care to organise and control its affairs in relation to client money responsibly and effectively with adequate risk management systems in that it did not ensure that its procedures, systems and controls met all of the FSA's client money requirements and did not identify the need to fund any shortfall (or remove any surplus) of client money in its client money bank accounts.

5. The FSA considers Integrated Financial's failings to be serious because:

   (i) the failings took place over a period of more than eight years;

   (ii) the requirement to perform a client money calculation (to check whether a firm's client money resource is at least equal to its client money requirement) and to fund any shortfall (or remove any surplus) in client money bank accounts is a key requirement of the FSA's client money rules to protect clients from the risk of loss in the event that an authorised firm becomes insolvent;

   (iii) Integrated Financial failed to identify the breaches itself and accordingly failed to report the breaches to the FSA even though there was a high level of awareness towards the end of the Relevant Period in the financial services industry of the importance of adequately protecting client money following the collapse of Lehman Brothers in 2008. This has been emphasised in correspondence from the FSA including a "Dear Compliance Officer" letter ("Dear CO letter") and a "Dear Chief Executive Officer" letter ("Dear CEO letter");

   (iv) Integrated Financial failed to put in place adequate systems and controls to ensure the Firm's compliance with the FSA's client money rules, and in particular the requirement to perform a daily client money calculation to check whether the Firm's client money resource was at least equal to its client money requirement and to fund any shortfall (or remove any surplus); and

   (v) as a result of the failings, had Integrated Financial become insolvent at any point during the Relevant Period, Integrated Financial's clients could have

faced difficulties and delay in recovering their money, and clients' money could have been exposed to the risk of diminution or loss.

6. In mitigation of the seriousness of Integrated Financial's failings, the FSA recognises that:

   (i) Integrated Financial's clients have not suffered any loss or detriment as a result of the issues raised in this Final Notice;

   (ii) Integrated Financial maintained records in respect of client money, recorded all client money transactions and matched these to the bank statements;

   (iii) Integrated Financial engaged a skilled person to review its client money processes in light of the FSA's concerns and will implement all recommendations from that review;

   (iv) Integrated Financial has made enhancements to its processes and training, including the appointment of additional staff, to supplement and broaden the Firm's overall knowledge and experience in relation to the FSA's client money requirements; and

   (v) Integrated Financial has strengthened its Board and governance arrangements with the appointment of additional non-executive directors and the creation of additional Board committees.

7. When exercising its powers, the FSA seeks to act in a way it considers most appropriate for the purpose of meeting its regulatory objectives, which are set out in section 2(2) of the Act. Having considered the nature of the breaches outlined above, the FSA considers that imposing a financial penalty of £3.5 million (a 30% discount on 1% of the average client money balance held by the Firm over the Relevant Period) meets the regulatory objectives of the protection of consumers and of market confidence.

DEFINITIONS

8. The definitions below are used in this Final Notice:

"**the Act**" means the Financial Services and Markets Act 2000;

"**CASS**" means the Client Assets sourcebook;

"**COB**" means the Conduct of Business sourcebook;

"**the Firm**" means Integrated Financial Arrangements plc;

"**Integrated Financial**" means Integrated Financial Arrangements plc;

"**the FSA**" means the Financial Services Authority;

"**the Principles**" means the FSA Principles for Businesses; and

"**the Relevant Period**" means the period between 1 December 2001 and 30 June 2010.

FACTS AND MATTERS

Background

9. Integrated Financial introduced and has operated since February 2000 the UK's first wrap platform, which allows independent financial advisers to consolidate their clients' portfolios in a tax-efficient way under one administrative umbrella. The Firm, as at 30 September 2011, administered around 94,000 retail customers with around £10.1 billion assets, of which approximately £1 billion was in cash.

10. Integrated Financial has been authorised since 1999, and has been regulated by the FSA to hold and control client money since 2001.

11. Clients, through their advisers, use Integrated Financial to buy assets (unit trusts, OEICS, exchange traded funds, equities and other investments) and allocate them to tax wrappers provided by Integrated Financial and its subsidiaries. Over the past ten years the business has grown substantially and it is now the UK's biggest wrap platform.

12. In the course of its business, Integrated Financial received money on behalf of its clients in accordance with agreements for the provision of its wrap services. This money was "client money" for the purpose of the FSA's COB and CASS Rules. The amount held by Integrated Financial as client money during the Relevant Period averaged £508 million.

Client assets and money thematic project

13. The FSA became aware of Integrated Financial's client money failings through its thematic project on firms' management of client assets and client money.

14. As part of this project, the FSA issued a "Dear CO" letter in March 2009 followed by a "Dear CEO" letter in January 2010. These letters reminded firms of their responsibilities under Principle 10 to ensure that they had adequate arrangements in place to protect client money and assets. The letters highlighted issues for firms to consider and informed firms of potential FSA visits in 2009 and 2010. The "Dear CEO" letter enclosed a "Client Money and Asset Report", which set out the failings identified by the FSA during its thematic work in 2009.

15. The FSA visited Integrated Financial in May 2010 to review its client money arrangements. During that visit, the FSA identified issues as to the Firm's compliance with the client money rules. After further investigation, the FSA has identified the following concerns in respect of Integrated Financial's client money processes.

Client money calculations and failure to fund any shortfall in client money

16. While the FSA recognises that the Firm did maintain records in respect of client money, recorded all client money transactions and matched these to the bank statements, Integrated Financial did not, throughout the Relevant Period, perform

client money calculations to check whether its client money resource was at least equal to its client money requirement.

17. As a result of not performing these client money calculations, Integrated Financial failed to fund shortfalls in its client money accounts which arose in the instances detailed below and therefore clients' money was used to cross-fund other clients.

    (i) In cases where a client made a deposit by cheque of less than £50,000, Integrated Financial allowed clients to trade on these deposits before the cheques had cleared and there were insufficient other funds in their account.

    (ii) Integrated Financial allowed clients to use uncleared sales proceeds upon receipt of a contract note to purchase and pay for assets. This would have created a shortfall in cases where there were insufficient other funds in their account.

18. During the period between April and June 2011, the client money funding requirement resulting from these issues ranged between £1.1 million and £6.9 million.

Trust documentation

19. During the Relevant Period, Integrated Financial operated 28 client money bank accounts. It is important that firms put adequate trust documentation in place in respect of their client money bank accounts to ensure that, in the event of a firm's insolvency, its clients' beneficial interest in the money contained in the bank accounts will take precedence over any rival interest asserted by the bank.

20. In respect of one client money bank account Integrated Financial was unable to show that: (a) it received an acknowledgment of trust letter from the bank within 20 business days after it dispatched the written notice (an acknowledgement of trust was received nine business days after this deadline had passed); and (b) in the absence of such acknowledgment, it withdrew all money standing to the credit of the account until the acknowledgement of trust was received. This resulted in £706 million of client money being placed at risk for a further nine days without an acknowledgment of trust in place. This was despite the fact that Integrated Financial's external auditors had drawn the Firm's attention to the need to remove funds in such circumstances.

21. In respect of one client money bank account, the acknowledgement of trust letter did not identify the account as a client money account thereby distinguishing the client money bank account from any bank account containing Firm money.

22. In respect of two client money bank accounts, the acknowledgement of trust letters that were in place did not confirm that all money standing to the credit of the account was held by Integrated Financial as trustee.

23. Integrated Financial has recently undertaken a thorough review of its trust documentation, and ensured that best practice documentation is in place in respect of all of its client money bank accounts.

Organisational arrangements

24. The FSA has the following concerns in relation to Integrated Financial's governance framework, policies and procedures and Compliance function.

Policies and procedures

25. Integrated Financial failed to put in place adequate documented systems and controls during the Relevant Period that ensured the Firm's compliance with the client money requirements. In particular, while the Finance function had documented procedures in place outlining its day-to-day responsibilities, these procedures were not sufficiently linked to the client money requirements. As a result, the business was unaware that it was not complying with some of the CASS Rules and, before the CASS Rules came into force, the COB Rules.

Compliance function

26. Integrated Financial's Compliance function did not undertake any detailed monitoring of the Firm's compliance with client money requirements. Rather, the Compliance function was reliant on external audit and internal audit findings which suggested that Integrated Financial was compliant with the FSA's client money rules and wrongly concluded that the existing procedures and controls were robust. As a result, the Compliance function failed to identify Integrated Financial's breaches of CASS Rules and, before the CASS Rules came into force, the COB Rules, and the Firm failed to report these breaches to the FSA. This highlights the importance of firms retaining proper oversight of their own regulatory obligations and not being over reliant on external auditors.

Governance Framework

27. Integrated Financial's governance framework and arrangements in respect of client money issues were not effective in identifying and reporting client money risks for a firm of Integrated Financial's size. In particular Integrated Financial did not have adequate control frameworks in place to facilitate the consistent assessment and identification of material types of management information about client money compliance that should have been presented to the Board.

28. Integrated Financial has taken steps to address issues around the Firm's organisational arrangements. In particular, it has: (a) introduced additional training for its staff on client money requirements; (b) revised its Finance and Compliance procedures to reflect the Firm's client money obligations; and (c) recruited senior compliance staff with experience of the FSA's client money requirements.

FAILINGS

29. The issues referred to in paragraphs 16 to 28 above constitute breaches of the FSA's Principles and Rules. The regulatory provisions relevant to this Final Notice are referred to in the Annex.

Breach of Principle 3

30. As set out in paragraphs 24 to 28 above, Integrated Financial failed to put in place adequate systems and controls to ensure the Firm's compliance with the FSA's client money rules and failed to identify its client money breaches itself. These failings amount to a breach of Principle 3, in that Integrated Financial failed to take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems.

Breach of Principle 10

31. As set out in paragraphs 16 to 23 above, Integrated Financial failed to arrange adequate protection for its clients' money throughout the Relevant Period in breach of Principle 10.

Breach of CASS and COB Rules

32. Integrated Financial's failings detailed above also amount to specific breaches of the FSA's CASS and COB Rules:

Client money calculations

(i) Integrated Financial failed to perform client money calculations to check whether its client money resource was at least equal to its client money requirement throughout the Relevant Period. As a result, Integrated Financial failed to fund any shortfall in its client money bank accounts. These failures amounted to breaches of: CASS 7.3.1R and CASS 7.6.13R together with the guidance at CASS 7.6.6G and CASS 7 Annex from 1 November 2007; of CASS 4.3.66R and CASS 4.3.87R prior to 1 November 2007; and of COB 9.3.100R and COB 9.3.121R prior to 1 January 2004.

Trust documentation

(ii) Paragraphs 19 to 23 above identify Integrated Financial's failures with respect to trust documentation amounting to breaches of: CASS 7.3.1R and 7.8.1R from 1 November 2007; and CASS 4.3.49R prior to 1 November 2007.

Organisational arrangements

(iii) As set out in paragraphs 24 to 28 above, Integrated Financial did not put in place adequate organisational arrangements in respect of client money, and failed to implement and maintain adequate policies and procedures to detect and manage its client money risks. These failings amount to breaches of CASS 7.3.2R from 1 November 2007.

SANCTION

33. Having regard to the issues above, the FSA considers it appropriate and proportionate in all the circumstances to take disciplinary action against Integrated Financial for its breaches of the Principles and associated FSA Rules.

34. The FSA's policy on the imposition of financial penalties and public censures is set out in Chapter 7 of the Enforcement Guide ("EG") and Chapter 6 of the Decision Procedures and Penalties Manual ("DEPP").

35. With regard to DEPP, since the majority of Integrated Financial's failings started and occurred before the change in the regulatory provisions governing the determination of financial penalties on 6 March 2010, the FSA has applied the penalty regime set out in DEPP that was in place before 6 March 2010.

36. In deciding to take the action proposed, the FSA has also had regard to the provisions of Chapter 13 of the Enforcement Manual ("ENF"), which were in force up until 28 August 2007.

37. The relevant sections of DEPP and ENF are set out in more detail in the Annex.

38. In determining whether a financial penalty is appropriate, and if so its level, the FSA is required to consider all the relevant circumstances of a case. DEPP and ENF set out a non-exhaustive list of criteria that may be of particular relevance in this regard. The FSA considers the following factors to be particularly relevant in this case.

Deterrence

39. The principal purpose of a financial penalty is to promote high standards of regulatory conduct by deterring firms that have breached regulatory requirements from committing further contraventions, helping to deter other firms from committing similar breaches, and demonstrating generally to firms the benefits of compliant behaviour.

40. The FSA views compliance with its rules relating to client money as an issue of significant importance. The FSA considers that a financial penalty is an appropriate sanction, given the serious and prolonged nature of the breaches and the risks created for clients of Integrated Financial. The FSA also considers there to be a need to send a strong message to the industry that firms must handle client money in a way which is compliant with the CASS Rules and the Principles, and of the consequences of failing to ensure adequate protection of client money.

The nature, seriousness and impact of the breach in question

41. Integrated Financial's breaches are serious as they relate to the control of money belonging to retail clients, and exposed Integrated Financial's clients to a potential risk of financial loss in the event of the firm's insolvency.

42. The breaches took place over more than eight years. The Firm failed to put in place adequate systems and controls to ensure compliance with the FSA's client money rules and, as a result, failed to identify or report these breaches itself.

43. The amount Integrated Financial held as client money ranged from £19 million to £1,255 million during the Relevant Period and averaged £508 million.

The extent to which the breach was deliberate or reckless

44. The FSA has not found that the breaches were deliberate or reckless.

The size, financial resources and other circumstances of the firm

45. In determining the level of the penalty, the FSA has considered the size and financial resources, including regulatory capital position, of the firm.

Disciplinary record and compliance history

46. Integrated Financial has not previously been subject to FSA action.

Other action taken by the FSA

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

Conclusion

48. In light of the matters above, the FSA proposes to impose a financial penalty of £3.5 million on Integrated Financial for breaching Principle 3, Principle 10, the CASS Rules and the COB Rules. This penalty is equivalent to approximately 1% of the average client money balances held by Integrated Financial during the Relevant Period, less a discount for early settlement.

PROCEDURAL MATTERS

Decision maker

49. The decision which gave rise to the obligation to give this Final Notice was made by the Settlement Decision Makers.

50. This Final Notice is given under section 206 of the Act and in accordance with section 390 of the Act.

Manner of and time for payment

51. The financial penalty must be paid in full by Integrated Financial to the FSA by no later than 19 December 2011, 14 days from the date of the Final Notice.

If the financial penalty is not paid

52. If all or any of the financial penalty is outstanding on 20 December 2011, the FSA may recover the outstanding amount as a debt owed by Integrated Financial and due to the FSA.

Publicity

53. 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 you or prejudicial to the interests of consumers.

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

FSA contact

55. For more information concerning this matter generally Integrated Financial should contact Anthony Monaghan (direct line: 020 7066 6772) of the Enforcement and Financial Crime Division at the FSA.

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Georgina Philippou
FSA Enforcement and Financial Crime Division

ANNEX

STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY

1. STATUTORY PROVISIONS

1.1. The FSA's statutory objectives are set out in section 2(2) of the Act and include market confidence and the protection of consumers.

1.2. Section 206 of the Act states:

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

1.3. The procedures to be followed in relation to the imposition of a financial penalty are set out in sections 207 and 208 of the Act.

1.4. Integrated Financial is an authorised person for the purposes of section 206 of the Act. The requirements imposed on authorised persons include those set out in the FSA's Principles and Rules made under section 138 of the Act. Section 138 provides that the FSA may make such rules applying to authorised persons as appear to be necessary or expedient for the purposes of protecting the interests of consumers.

2. REGULATORY PROVISIONS

2.1. In exercising its power to impose a financial penalty, the FSA has had regard to the relevant regulatory provisions and policy published in the FSA Handbook. The main provisions that the FSA considers relevant to this case are set out below.

Principles for Businesses ("Principles")

2.2. Under the FSA's rule-making powers, the FSA has published in the FSA Handbook the Principles which apply either in whole, or in part, to all authorised persons.

2.3. The Principles are a general statement of the fundamental obligations of firms under the regulatory system and reflect the FSA's regulatory objectives. A firm may be liable to disciplinary sanction where it is in breach of the Principles.

2.4. The Principles relevant to this case are:

Principle 3 (Management and control) which states that:

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

Principle 10 (Clients' assets) which states that:

"A firm must arrange adequate protection for clients' assets when it is responsible for them".

Associated FSA Rules

2.5. Throughout the Relevant Period, the FSA's rules changed although obligations on Integrated Financial remained relatively constant. The applicable rules across the Relevant Period are as follows.

Client Assets sourcebook ("CASS") (in force from 1 November 2007 to end of Relevant Period)

2.6. CASS 7.3.1R provides that a firm must, when holding client money, make adequate arrangements to safeguard the client's rights and prevent the use of client money for its own account.

2.7. CASS 7.3.2R provides that a firm must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of client money, or of rights in connection with client money, as a result of misuse of client money, fraud, poor administration, inadequate record-keeping or negligence.

2.8. CASS 7.6.6G(1) states that carrying out internal reconciliations of records and accounts of the entitlement of each client for whom the firm holds client money with the records and accounts of the client money the firm holds in client bank accounts and client transaction accounts should be one of the steps a firm takes to satisfy its obligations under CASS 7.6.2 R, and where relevant SYSC 4.1.1 R and SYSC 6.1.1 R.

2.9. CASS 7.6.6G(2) provides that a firm should perform such internal reconciliations: (a) as often as is necessary; and (b) as soon as reasonably practicable after the date to which the reconciliation relates; to ensure the accuracy of the firm's records and accounts.

2.10. CASS 7.6.6G(3) states that the standard method of internal client money reconciliation sets out a method of reconciliation of client money balances that the FSA believes should be one of the steps that a firm takes when carrying out internal reconciliations of client money.

2.11. CASS 7.6.13R provides that when any discrepancy arises as a result of a firm's internal reconciliations, the firm must identify the reason for the discrepancy and ensure that:

(1) any shortfall is paid into a client bank account by the close of business on the day that the reconciliation is performed; or

(2) any excess is withdrawn within the same time period (but see CASS 7.4.20 G and CASS 7.4.21 R).

2.12. CASS 7 Annex 1 sets out a method of reconciliation the FSA believes firms should use to comply with CASS 7.6.2R (the standard method of internal client money reconciliation).

2.13. CASS 7.8.1R(1) provides that when a firm opens a client bank account, the firm must give or have given written notice to the bank requesting the bank to acknowledge to it in writing that: (a) all money standing to the credit of the account is held by the firm

as trustee (or if relevant, as agent) and that the bank is not entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against money in that account in respect of any sum owed to it on any other account of the firm; and (b) the title of the account sufficiently distinguishes that account from any account containing money that belongs to the firm, and is in the form requested by the firm.

2.14. CASS 7.8.1R(2) states that in the case of a client bank account in the United Kingdom, if the bank does not provide the required acknowledgment within 20 business days after the firm dispatched the notice, the firm must withdraw all money standing to the credit of the account and deposit it in a client bank account with another bank as soon as possible.

CASS (in force from 1 January 2004 to 31 October 2007)

2.15. CASS 4.3.48R states that when a firm opens a client bank account, the firm must give or have given written notice to the bank requesting the bank to acknowledge to it in writing: (1) that all money standing to the credit of the account is held by the firm as trustee (or if relevant, as agent) and that the bank is not entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against money in that account in respect of any sum owed to it on any other account of the firm; and (2) that the title of the account sufficiently distinguishes that account from any account containing money that belongs to the firm, and is in the form requested by the firm.

2.16. CASS 4.3.49R provides that in the case of a client bank account in the United Kingdom, if the bank does not provide the acknowledgment referred to in CASS 4.3.48 R within 20 business days after the firm dispatched the notice, the firm must withdraw all money standing to the credit of the account and deposit it in a client bank account with another bank as soon as possible.

2.17. CASS 4.3.66R states that each business day, a firm that adopts the normal approach in accordance with CASS 4.3.8R must: (1) check whether its client money resource, being the aggregate balance on the firm's client bank accounts as at the close of business on the previous business day, was at least equal to the client money requirement, as defined in CASS 4.3.71 R, as at the close of business on that day; and (2) ensure that: (a) any shortfall is paid into a client bank account by the close of business on the day the calculation is performed; or (b) any excess is withdrawn within the same time period unless CASS 4.3.5R or CASS 4.3.6R applies.

2.18. CASS 4.3.87R states that a firm must notify the FSA immediately if it is unable to, or does not, perform the daily calculation required by CASS 4.3.66R or CASS 4.3.67R.

Conduct of Business Sourcebook ("COB") (in force from start of Relevant Period to 31 December 2003)

2.19. COB 9.3.100R(2) provides that each business day, a firm that adopts the normal approach in accordance with CASS 4.3.8R must: (1) check whether its client money resource, being the aggregate balance on the firm's client bank accounts, as at the close of business on the previous business day, was at least equal to the client money requirement as defined in COB 9.3.105R, as at the close of business on that day; and

(2) ensure that: (a) any shortfall is paid into a client bank account by the close of business on the day the calculation is performed; or (b) any excess is withdrawn within the same time period unless COB 9.3.39 R or COB 9.3.40 R applies.

2.20. COB 9.3.121R states that a firm must notify the FSA immediately if it is unable to, or does not, perform the daily calculation required by COB 9.3.100R or 9.3.101R.

3. Decision Procedure and Penalties Manual ("DEPP") and the Enforcement Manual ("ENF")

3.1. The FSA's policy in relation the imposition and amount of penalties that applied during the majority of the Relevant Period was set out in: Chapter 6 of DEPP that was in force between 28 August 2007 and 6 March 2010; and Chapter 13 of ENF that was in force from the start of the Relevant Period to 28 August 2007.

Decision Procedure

3.2. 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 therefore tools that the FSA may employ to help it to achieve its regulatory objectives.

3.3. 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.

3.4. DEPP 6.5.2G 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)

3.5. 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)

3.6. 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 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)

3.7. 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.

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

3.8. The degree of seriousness of a breach may be linked to the size of the firm. For example, a systemic failure in a large firm could damage or threaten to damage a much larger number of consumers or investors than would be the case with a small firm: breaches in firms with a high volume of business over a protracted period may be more serious than breaches over similar periods in firms with a smaller volume of business.

3.9. In addition, the size and resources of a person may also be relevant in relation to mitigation, in particular what steps the person took after the breach had been identified; the FSA will take into account what it is reasonable to expect from a person in relation to its size and resources, and factors such as what proportion of a person's resources were used to resolve a problem.

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

3.10. The FSA may have regard to the amount of benefit gained or loss avoided as the result of the breach, for example the FSA will impose a penalty that is consistent with the principle that a person should not benefit from the breach, and the penalty should also act as an incentive to the person (and others) to comply with regulatory standards and required standards of market conduct.

Conduct following the breach: DEPP 6.5.2G(8)

3.11. The FSA may take into account the degree of co-operation the person showed during the investigation of the breach by the FSA any remedial steps taken since the breach was identified, including whether these were taken on the person's own initiative or that of the FSA, for example, identifying whether consumers or investors or other market users suffered loss and compensating them where they have and taking steps to ensure that similar problems cannot arise in the future.

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

3.12. The FSA may take the previous disciplinary record and general compliance history of the person into account.

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

3.13. 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.

3.14. ENF 13.1.2G provides that the principal purpose of financial penalties 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.

3.15. ENF 13.3.1G 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 contravention in question.

3.16. ENF 13.3.3G sets out a non-exhaustive list of factors which may be relevant when the FSA determines the amount of a financial penalty for a firm or approved person. The following factors are relevant to this case:

The seriousness of the misconduct or contravention: ENF 13.3.3G(1)

3.17. The FSA recognises the need for a financial penalty to be proportionate to the nature and seriousness of the misconduct or contravention in question. The following may be relevant:

(a) the seriousness of the contravention in relation to the nature of the requirement contravened;

(b) the duration and frequency of the misconduct or contravention;

(c) whether the misconduct or contravention revealed serious or systemic weaknesses of the management systems or internal controls relating to all or part of a firm's business;

(d) the loss or risk of loss caused to consumers or other market users.

The extent to which the contravention or misconduct was deliberate or reckless: ENF 13.3.G(2)

3.18. In determining whether a contravention or misconduct was deliberate, the FSA may have regard to whether the firm's behaviour was intentional, in that they intended or foresaw the consequences of their actions. If the FSA decides that behaviour was deliberate or reckless, it may be more likely to impose a higher penalty on a firm than would otherwise be the case.

The size, financial resources and other circumstances of the firm: ENF 13.3.1G(3)

3.19. The degree of seriousness of a contravention may be linked to the size of the firm. For example, a systemic failure in a large firm could damage or threaten to damage a much larger number of consumers than would be the case with a small firm: contraventions in firms with a high volume of business over a protracted period may therefore be more serious than contraventions over similar periods in firms with a smaller volume of business.

3.20. The size of a firm and its resources may also be relevant in relation to mitigation, in particular what steps the firm took after the contravention had been identified; the FSA will take into account what it is reasonable to expect from the firm in relation to its size and resources, and factors such as what proportion of a firm's resources were used to resolve a problem.

The amount of profits accrued or loss avoided: ENF 13.3.1G(4)

3.21. The FSA may have regard to the amount of profits accrued or loss avoided as a result of the contravention or misconduct, for example the FSA will propose a penalty which is consistent with the principle that a firm should not benefit from the contravention or misconduct and the penalty should also act as an incentive to the firm (and others) to comply with regulatory standards.

Conduct following the contravention: ENF 13.3.1G(5)

3.22. The FSA may take into account the conduct of the firm in bringing (or failing to bring) quickly, effectively and completely the contravention or misconduct to the FSA's attention and:

(a) the degree of cooperation the firm showed during the investigation of the contravention or misconduct (where a firm has fully cooperated with the FSA's investigation, this will be a factor tending to reduce the level of financial penalty);

(b) any remedial steps taken since the contravention or misconduct was identified, including identifying whether consumers suffered loss, compensating them, taking disciplinary action against staff involved (if appropriate), and taking steps to ensure that similar problems cannot arise in the future.

Disciplinary record and compliance history: ENF 13.3.1G(6)

3.23. The previous disciplinary record and general compliance history of the firm will be taken into account.

Previous action taken by the FSA: ENF 13.3.1G(7)

3.24. The action that the FSA has taken previously in relation to similar behaviour by other firms may be taken into account. The FSA will seek to ensure consistency when it determines the appropriate level of penalty.