Financial Services Authority

FSA

FINAL NOTICE

To: **Integrity Financial Solutions Limited (in liquidation)**

Of: Systems Technology Park
Elettra Avenue
Waterlooville
Hampshire
PO7 7XW

FSA Reference Number: 218428

Date: 12 May 2010

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

1. ACTION

1.1. The FSA gave Integrity Financial Solutions Limited ("Integrity/ the Firm") a Decision Notice on 29 April 2010 which notified Integrity that pursuant to 205 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to impose a public censure on Integrity in respect of breaches of Principles 7 and 9 of the FSA's Principles for Businesses ("the Principles") and associated FSA Rules, between 29

January 2003 and November 2007 ("the relevant period") in relation to its activities with respect to the Geared Traded Endowment Policies ("GTEP") product.

1.2. Integrity confirmed on 27 April 2010 that it will not be referring the matter to the Upper Tribunal (Tax and Chancery Chamber).

1.3. Integrity was the provider of the GTEP product and also advised customers though its IFA practice to invest in this product.

1.4. Integrity went into voluntary liquidation on 12 October 2009. The Firm agreed to settle the investigation under the FSA's executive settlement procedures at stage 2. Were it not for Integrity's financial circumstances, the FSA would have imposed a financial penalty of £350,000 in respect of the breaches identified. The FSA is not imposing a financial penalty, as to do so would not be appropriate given Integrity's financial circumstances and lack of funds available to the Firm which led to its insolvency.

1.5. As part of the settlement Integrity will write to all its direct GTEP customers explaining that they may have been given unsuitable advice and directing them to the Financial Services Compensation Scheme ("FSCS") should they consider they have a valid claim.

2. REASONS FOR ACTION

2.1. On the basis of the facts and matters described below, the FSA has decided to issue a public censure of Integrity for breaches of Principles 7 and 9 and related FSA Handbook rules due to failures in its direct sales of GTEP products and for breaches of Principle 7 and related FSA Handbook rules in relation to its role as the provider of the GTEP product during the relevant period. These failings are set out in summary below and in more detail in Sections 4 and 5.

Summary of breaches in respect of Integrity's direct sales

2.2. Integrity failed to pay due regard to the information needs of its clients, and communicate information to them in a way which was clear, fair and not misleading in contravention of Principle 7 by inadequately communicating:

(1) why it had concluded that a GTEP product was suitable for the client; and

(2) the characteristics of and risks associated with the GTEP product, also breaching COB 5.4.3R.

2.3. Integrity also failed to take reasonable care to ensure the suitability of its advice in contravention of Principle 9 by:

(1) failing to gather or record adequate Know Your Customer ("KYC") information to support its assessment of suitability;

(2) failing to record adequately why the GTEP product was the most suitable product for the client. In particular, Integrity failed to record evidence of having

conducted research on other financial products that could have met the particular client's needs; and

(3) failing to demonstrate that clients' attitudes to risk were consistent with the risk profile applied by Integrity to the product.

Summary of breaches in respect of Integrity as "product provider"

2.4. Integrity in its role as product provider failed to ensure that its GTEP promotional material was drafted in compliance with the requirement to be clear, fair and not misleading, in contravention of Principle 7 by:

(1) failing to ensure that the GTEP promotional material, particularly its earliest brochures, that were provided to IFAs and subsequently to clients explained the product in a manner that was clear, fair and not misleading;

(2) failing to give the IFAs sufficiently balanced information in relation to the risks of the GTEP product. This contributed to IFAs advising clients to purchase a GTEP product that was potentially unsuitable considering their individual circumstances, also breaching COB 3.8.8.R; and

(3) not ensuring that Integrity clearly and consistently communicated to IFAs the appropriate risk rating to be attached to the GTEP product.

2.5. Integrity's failures are regarded by the FSA to be serious for the following reasons:

(1) as product provider, the lack of a balanced explanation of the risks of GTEPs in its brochures may have contributed to IFAs advising clients to purchase GTEPs that were unsuitable to their individual circumstances; and

(2) a significant proportion of Integrity's direct GTEP sales reviewed by the FSA consisted of clients who had raised the capital for the investment by re-mortgaging their primary residence. Failing to demonstrate adequately the suitability of the product is more serious when the security used for the investment loan is the family home as the impact on clients is potentially the loss of this home.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

3.1. The relevant statutory provisions, regulatory requirements and FSA guidance are set out in Appendices 1 to 3 of this Final Notice.

4. FACTS AND MATTERS RELIED ON

GTEP products

4.1. Traded endowment policies ("TEPs") are with-profits endowment policies which are no longer required by their original holder and have been sold on the secondary market. The purchaser of such policies agrees to pay the remaining premiums on the policy and in return receives the value of the policy at maturity or when the original owner dies, depending on which occurs first. This payout will include both bonuses

declared at the time of the sale and subsequent bonuses, though such bonuses are not guaranteed.

4.2. Investment in GTEPs involves gearing and is typically funded by the customer using cash savings, funds raised through a mortgage on the investor's home or a charge on a bond already owned by the investor. These funds are used together with a GTEP investment loan to purchase a portfolio of TEPs. The portfolio of TEPs is security for the GTEP investment loan. Once a customer decides to invest, Integrity would compile the portfolio of TEPs for the GTEP product and arrange the GTEP investment loan at the same time. The GTEP investment loan is used to fund the TEP premiums and annual review fees payable on the TEPs as well as the monthly withdrawals (income), where required. The GTEP investment loan is designed to be repaid by the maturity values of the TEPs within the portfolio. The investment rationale is that by the time the final TEP matures, the loan will be repaid and any additional capital remaining can be taken as profit by the holder of the GTEP product or used to pay any mortgage that remains outstanding.

4.3. The gearing element introduces the following risks to the investment strategy: an interest rate risk and increased exposure to the usual risks of the investment (such as fluctuations in the performance or the underlying TEPs and secondary market demand). These varying levels of gearing are effectively using the strategy of borrowing to invest, which can be a high risk strategy. In order for the investor to make a profit, the product has to outperform the interest rate payable on the loan.

4.4. The loan is a rolling facility, meaning that it is renewed on an annual basis, thus allowing for premiums, charges and income to be paid each year during the life time of the plan. Integrity reviewed each product annually and the lending institution provided the annual loan review. The lending institution will agree to extend the facility for the coming year provided the ratio of loan value (“LV”) to the current surrender value (“CSV”) of the TEPs is within stated parameters. In circumstances where the ratio of LV to CSV is not within stated parameters, the lending institution will not renew the facility. The consequence for the client is serious if the facility is not renewed as the loan is used to pay premiums and income. In certain circumstances, clients may be required to inject further capital into the scheme in order to bring the ratio of LV to CSV within the agreed levels. Integrity used two lending institutions for all but four GTEP products to provide loans to its clients. Lender One provided the loan facility in approximately 75 % of the cases and Lender Two in approximately 24 %.

Integrity

4.5. Integrity was established in 1998, and has held permissions to advise and arrange designated investment business since 29 January 2003. Integrity marketed its GTEP product in a number of plans designed to meet particular financial objectives such as paying school fees, funding a foreign property or a pension fund.

4.6. Integrity marketed its GTEP product through its own IFA practice (which consisted of self-employed IFAs) and an external IFA distributor network which consisted of approximately 93 IFA Firms. It sold 58 GTEP products through its own practice and 601 GTEP products through the external network, during the relevant period.

4.7. The sale of the GTEP product generated income from several sources. Integrity received arrangement fees, annual review fees and fees for obtaining cover for death benefits. It earned a total of £1,551,381 in arrangement fees during the relevant period.

4.8. As the provider of the GTEP product, Integrity produced a number of brochures designed for IFAs, clients or both. During the relevant period, these brochures were entitled as follows: "Client Brochure", "Key Features Document" and "IFA Product information". There were a number of types of GTEP product and each type (e.g. "Cash Maximiser", "Education Fees Funding Plan" and the "Property Income Plan" to name a few), had its own version of one or all of these brochures until October 2006, when the product (and subsequently the brochure) was simplified and became known either as a "Cash Maximiser"or "Bond Maximiser".

4.9. Integrity closed its own IFA practice on 29 June 2007, and provided its last GTEP through its external distribution network in the first half of 2008.

Performance of Integrity's GTEPS

4.10. Integrity conducted an annual review of each GTEP product to identify how the product was performing and to establish whether or not the CSV of the TEP portfolio was in line with stated parameters when compared with the value of the loan facility provided by the lender. It assigned each plan a colour coding rating based on a traffic light system (green, amber and red) as a result of the review:

(1) a 'green' rating signifies that the plan is performing as expected and the current loan balance does not exceed the lender's limit against the CSV of the TEPs in the clients GTEP portfolio. Therefore, a 'green' GTEP product can continue to fund withdrawals (income) as requested by the client and pay the premiums on the underlying TEPs;

(2) an 'amber' rating signifies that the client needs to take steps to address a potential future issue with the performance of the product. The product can continue to provide an income; however, in order to sustain the current level of income, the product requires a high CSV growth rate. If the CSV growth rate is too low the lender will suspend (or reduce) income payments. These income payments are suspended (or reduced) until the product has sufficient capacity to make income payments again. Clients with amber products need to review the current level of income with their IFA (with a view to reducing the income paid in the following year); and

(3) a 'red' rating signifies that immediate action must be taken. The current loan balance exceeds the lender's limit when compared with the CSV of the TEPs in the client's GTEP portfolio. This means that income payments and /or payments of TEP premiums may have been suspended until the GTEP product loan balance falls below the limit. If the loan balance on a 'red' GTEP product does not reduce to the lender's limit against the CSV, the client may need to contribute cash to the loan facility or sell the portfolio prematurely.

4.11. In 2008 and 2009, Integrity provided the FSA with annual reviews covering 111 and 126 GTEP products respectively. The Integrity review provided in 2008 showed that,

at that time, 24 (22%) of the 111 products were categorised as ‘green’, 62 (56%) as ‘amber’ and 25 (22%) as ‘red’. In 2009, Integrity’s review showed that, at that time, 15 (12%) of the 126 products were categorised as ‘green’, 51 (40%) as ‘amber’ and 60 (48%) as ‘red’.

4.12. The administration of the annual review process was switched from Integrity to Integrity Reviews Ltd in 2008.

Complaints in relation to Integrity’s GTEPS

4.13. The FSA is aware of the following consumer complaints in relation to Integrity GTEPs. As at September 2009 Integrity received 133 complaints between 30 June 2006 and 31 December 2008. As at 17 December 2009 the FOS had received in excess of 23 GTEP complaints in relation to Integrity GTEPs. As a result of Integrity’s liquidation the Financial Services Compensation Scheme (“FSCS”) is now dealing with the customers claims against Integrity and FOS has passed the complaints it had received to the FSCS. As at 12 March 2010 the FSCS had received 47 claims against Integrity, not all of these may be in relation to GTEPs.

4.14. Of the 23 GTEP FOS complaints seven related to GTEPs sold by Integrity’s own IFA practice. The other 16 complaints relate to Integrity GTEP sales by other IFAs. At least seven of the complaints were made by individuals who had had their income stopped and, at least two have been told by the lending institution that they have to inject further capital into the plan.

Past Business Review carried out by Integrity

4.15. The FSA conducted a thematic project on GTEPs, which examined the process by which IFAs had advised their customers to invest in the GTEP product. As a result of this thematic project Integrity engaged advisers to carry out a Past Business Review (“PBR”). The PBR related only to the direct sales by Integrity.

4.16. The PBR reviewed the 58 direct sales and identified ten themes:

(1) The client's attitude to risk was important when considering whether a GTEP product was suitable. GTEP products were constructed individually and there was no generic level of risk which a firm could apply to all clients. Raising capital via a remortgage, however, increased the level of risk and there was evidence on some of the files reviewed that either the advisers did not clearly explain the risks associated with a GTEP plan or that the client’s risk profile did not match the stated level of risk.

(2) In some cases the adviser did not record the circumstances, needs and objectives of the client and/or failed to record the reason why the client wanted income.

(3) Illustrations in many cases were misleading at the outset because they did not describe the GTEP portfolios the client would own.

(4) Suitability letters were not tailored to the client, sometimes not having any client specific figures or explaining the recommendation and how this was linked to the client's circumstances.

(5) In some cases, Integrity's advisers did not meet clients. Instead, they relied upon information provided by introducing IFAs.

(6) Client objectives used a number of standard phrases, including: "retain full ownership of the property", "retain the maximum amount of net property equity", "continue living in the property" and "retain the ability to sell the property and move".

(7) Within the suitability letter, the investment loan to surrender value was always classed as being at a conservative level which helped to reduce the risk but there was no explanation of the limits of a conservative level.

(8) Risk warnings were usually standardised and not therefore always appropriate to the client.

(9) The relevant risk warnings did not appear to have sufficient prominence within the suitability letter and there were many statements in the letter which could be considered misleading.

(10) There was, in some instances, a lack of evidence to demonstrate that Integrity considered affordability.

Breaches in Integrity's direct sales process

4.17. The FSA's findings in relation to Integrity's direct sales are based on the PBR, and the FSA's own review of 20 client files, which supports the findings of the PBR. The FSA reviewed these 20 client files as Integrity did not accept the findings of the PBR.

4.18. The FSA found deficiencies in the following areas:

(1) Failure to take reasonable care to ensure the suitability of its advice due to:

(i) inadequate 'know your client' information gathering and recording; and

(ii) a failure to demonstrate that Integrity's IFAs appropriately matched their clients' needs and objectives (including attitude to risk and suitability of the product) to the GTEP products recommended.

(2) Failure to communicate to direct sales clients in a manner that was clear, fair and not misleading due to:

(i) failure to communicate clearly with clients, including inadequate suitability letters; and

(ii) the inclusion of inaccurate information in communications with clients.

Failure to take reasonable care to ensure the suitability of its advice

4.19. The FSA identified, as a result of its review, the following issues:

(1) in 5 of the 20 files reviewed, the client's attitude to risk did not align with the risk rating applied by Integrity to the product at that time, for example:

(i) in one case the client's stated attitude to risk was "cautious". However, in the suitability letter, the IFA altered the client's attitude to risk to "medium" as the IFA thought a higher risk rating was more in keeping with the client's existing investments. There is no evidence on the file to suggest that the increased risk rating was discussed or agreed with the client.

(ii) four cases involved couples where the individuals had conflicting attitudes to risk, with no evidence that an overall attitude to risk had been agreed with them. In each of these cases, the suitability letters acknowledge the difference in the attitudes to risk between the individuals and broadly state that the person with the lower attitude to risk is willing to accept a higher degree of risk to achieve their objectives. There is no evidence in these files to suggest that Integrity's advisers discussed and agreed the final, increased risk with the both individuals.

(2) Integrity failed to gather and record sufficient client information to ensure that it accurately assessed the suitability of the product for the client. The following deficiencies were noted:

(i) in 14 of the 20 fact finds reviewed, relevant sections were left blank or completed with insufficient information, including details of the clients' needs, objectives and details of the clients' outgoings and expenditure;

(ii) in at least 14 of the 20 fact finds reviewed, Integrity did not establish whether there were sufficient funds available, which clients were prepared to use, if a future capital injection into their GTEP product was required; and

(iii) in at least two cases, the fact finds were completed by telephone, mail or email. In these cases, it is not clear that the IFA ensured that all appropriate information was gathered.

(3) Integrity did not demonstrate that it had considered the needs and circumstances of each client prior to making a recommendation to invest in the GTEP product. It considered alternative products in 14 out of the 20 files reviewed. However, all the alternative products were listed in a standardised manner and there was no attempt made to link the products to the clients' individual needs and circumstances. There was little or no explanation as to why the alternative products were deemed unsuitable for the client. In the six remaining cases, the suitability letters did not contain any information to

indicate that the adviser had considered or discussed any alternative products with the clients. There was no evidence on any of the files that the adviser had carried out any research into alternative products which may have been more suitable for the client.

Failure to communicate to direct sales clients in a manner that was clear, fair and not misleading

4.20. Integrity failed to communicate with its clients in a manner that was clear, fair and not misleading in its suitability letters. The FSA identified the following issues:

(1) the suitability letters contained standard explanations of the GTEP product and its advantages and disadvantages. They failed to explain, in particular, why Integrity had concluded that the GTEP product was a suitable investment for the particular client, on the basis of the personal and financial circumstances disclosed to it. Further, there was no explanation of why the level of required income justified the risks associated with the GTEP product over and above possible alternative investments;

(2) the risk warnings in the suitability letters were inadequate. The risk warnings were standardised rather than tailored to the client and they were placed at the end of the suitability letters, which served to dilute their message. In particular, a significant number of the suitability letters reviewed failed to state that the gearing element of the product increased the risk for each client;

(3) the suitability letters were standardised and not sufficiently tailored to the individual client. They lacked a sufficiently clear explanation of the risks of the product for a client to make an informed decision as to whether to accept the advice or not;

(4) six of Integrity's direct sales clients were provided with an investment loan from Lender Two but the suitability letter provided to them referred to the terms that applied to loans provided by Lender One. In particular, the letter stated that the applicable interest rate was 1.5% above the Bank of England base lending rate. This was inaccurate and misleading to these six clients as the interest rate that applied to their loans was based on LIBOR: and

(5) the suitability letters for each of these six clients also referred to the fact that the product would be in breach of the lender's terms and conditions if the loan value exceeded 100% of the CSV of the underlying TEPs. This was inaccurate and misleading as according to these clients' lender's loan facility letter, the product would be in breach if the loan value exceeded 83% or 85% (at differing periods) of the CSV of the TEPs.

4.21. The following examples demonstrate that Integrity's processes did not ensure that its IFAs communicated with its clients in a manner that was clear, fair and not misleading:

(1) on one occasion, a fact find was produced on the individual IFA's letter headed paper in circumstances where the advice was given to the client in his capacity as an Integrity IFA;

(2) on four occasions, Integrity's IFAs failed to meet with the clients and relied solely on fact finds and anti-money laundering checks provided by introducers; and

(3) on one occasion, Integrity failed to communicate the risks associated with the product clearly with the client. This is demonstrated in an email sent by the client to Integrity in which the client questioned the annual growth of 8.8% needed to maintain the payment of income from the product. The client stated: "*This seems optimistic, and now that interest rates have started to rise I fear this will not be achievable. I broke my golden rule of not investing in anything I do not fully understand. As this plan has become our main regular income I am wondering whether I have made a huge mistake*."

Breaches by Integrity as GTEP "product provider"

4.22. The FSA considers that there are a number of areas where Integrity's conduct as a provider was deficient when measured against the relevant Principles and Rules, which are set out in Appendix 1. The FSA has also had regard to the relevant FSA policy and guidance in this area, including its financial promotions policy and its policy statement on the responsibilities of providers (Appendices 2 and 3).

4.23. The FSA found that Integrity failed to communicate in a manner that was clear, fair and not misleading in its GTEP brochures which the FSA considers formed the main generic promotional material. These brochures were:

(1) provided to IFA distributors; and

(2) provided to direct clients.

Information to distributors

4.24. Integrity failed to provide its IFA distribution network with consistent information in relation to the appropriate risk rating to be applied to the product. This is evidenced by the inconsistent approach to the risk rating that appeared in the GTEP promotional brochures. By way of example:

(1) in 2003, the brochure for the Bond Maximiser product stated a risk rating of "4 to 5 out of 10" for a typical Maximiser product;

(2) for the period from March 2004 to August 2005, the brochure for the Bond Maximiser product did not include any risk ratings;

(3) from August 2005 to October 2006, the brochure stated that the risk rating for the Bond Maximiser product was "5 to 6 out of 10" for a typical Maximiser product;

(4) from October 2006 to May 2007, the brochure for the Bond Maximiser product did not include a specific risk rating but referred to TEPs issued by financially secure insurers as generally being considered to be low risk and stated that "*the introduction of borrowing can increase risk. However, all portfolios are*

constructed in such a way as to reduce risk by employing tried and tested fundamentals".

(5) from May 2007 to October 2007, the brochure stated that the product should be considered as a medium to high risk product.

4.24 Although the GTEP product remained unchanged throughout the relevant period, it is apparent from the above that the risk rating applied by Integrity to the product changed and increased over the lifetime of the product. The FSA has not seen any evidence that the rationale for the changes to the risk rating of the product was explained to Integrity's external IFA distribution network.

Information to clients

4.25 The FSA has identified a number of areas where the financial promotion material produced by Integrity failed to communicate information in a way that was clear, fair and not misleading.

4.26 Integrity produced a number of brochures for the GTEP product. The FSA's review of the brochures highlighted the following deficiencies;

(1) until 2006, the brochures did not highlight that borrowing to invest increased the complexity and the risks of the investment strategy; and

(2) until 2006, there was insufficient balance in the brochures as the risk warnings were not clear and were located towards the end of the brochures thus not giving them the same prominence as the positive reasons to invest in the GTEP product. The FSA accepts that from 2007 onwards Integrity's brochures addressed this issue.

4.27 The following specific areas of the brochures do not meet the requirement of being clear, fair and not misleading to the consumer.

(1) Brochures from October 2004 to 2007 contained a diagram labelled "Loan Repayment" and "Leveraged Loan Repayment". The last client brochure it was used in was issued up until October 2006. It continued to be used in IFA Product Information brochures up until October 2007; in these brochures it was labelled "Investment Loan Repayment". This diagram purported to show how the plan aimed to reduce the investment loan over time as the value of the plan increased. There were no scales attached to the diagram and the growth depicted appeared disproportionate to the value of the loan. In addition the diagram only presented a positive outcome, it did not demonstrate what would happen if the value of the underlying TEPs fell.

(2) Brochures from March 2004 contained a table setting out why and how it was possible to buy TEPs at a discount in the secondary market. The language in the table was positive, but it did not contain any figures so the table was neither clear nor balanced. The last client brochure it was used in was issued up until October 2006. This table can be seen in IFA Product Information brochures as late as May 2007.

(3) The brochures contained a list of risk factors towards the back but there was no attempt made to explain the consequences of these risks for the client such as, for example, the fact that the client might lose their home if they used their home as security for the loan.

(4) In total, 157 of the GTEPs sold were financed by a facility loan provided by Lender Two. The FSA has reviewed six of these files. The brochures provided to each of the individuals contained inaccurate and misleading information in one or more of the following respects:

(i) in the brochure it asked *"can the investment loan provider insist on early loan repayment"* and the answer provided was *"if the loan plus one years interest plus TEP premiums exceeds the surrender value of the portfolio, you may need to reduce the loan balance by investing further capital…"* This statement does not reflect the actual review criteria applied to the GTEP product by Lender Two who reviewed the plans with reference to the CSV of the underlying TEPs against the current loan balance;

(ii) in the "risk factors" section of the brochure it stated *"The Lender could request further funds or liquidation of assets held as security if the investment loan exceeds 100% of the surrender value of the TEPs"*. This again does not accurately reflect the circumstances in which a GTEP portfolio financed by Lender Two would be in breach. According to Lender Two's facility loan letter, the plan would be in breach of the terms and conditions if the loan value exceeded 83% or 85% (depending on when the GTEP was purchased) of the current surrender value of the TEPs; and

(iii) in the "questions answered" section of the brochure it stated *"what are the criteria for setting up a portfolio?"* The answer provided was *"As a maximum, investment loans aims not to exceed 80% of the cash surrender value of the TEPs. Loan interest is variable and typically 1.5% over the base lending rate…."* This again is a misleading statement as Lender Two's facility loans prior to March 2007 were linked to LIBOR and not the Bank of England base lending rate.

5. ANALYSIS OF BREACHES

Analysis of direct sales breaches

5.1. As set out in paragraphs 4.17 to 4.19 above, by failing to gather and record sufficient personal and financial information about clients, failing to explain why it had concluded that GTEP products were suitable for each client and failing to carry out appropriate client related market research into alternative products, Integrity was not able to demonstrate that its recommendations to invest in GTEP products were suitable. Taking these deficiencies together, Integrity therefore failed to take reasonable care to ensure the suitability of its advice, in breach of Principle 9.

5.2. As set out in paragraphs 4.17, 4.20 and 4.21 above, by failing to ensure documentation provided to clients was sufficiently clear and balanced, in particular by failing to ensure that its suitability letters explained the characteristics of and risks associated with its GTEP products and why Integrity had concluded that an investment in GTEP products was suitable, Integrity failed to pay due regard to the information needs of its clients, or communicate with them in a way which was clear, fair and not misleading, in breach of Principle 7. By failing to ensure that clients understood the nature of the risks involved, Integrity breached COB 5.4.3R.

Analysis of breaches in Integrity's role as "provider" of the GTEP product

5.3. As detailed in paragraphs 4.24 to 4.28, Integrity failed to ensure that the contents of its GTEP product brochures gave sufficient weight and prominence to all of the relevant characteristics of the GTEP product, both positive and negative, to enable IFAs and consumers to fully understand the product. In failing to ensure that the contents of its financial promotions material was clear, fair and not misleading, Integrity breached Principle 7 and COB 3.8.8R.

6. ANALYSIS OF PROPOSED SANCTION

Policy on public censure

6.1. The FSA's policy in relation to the imposition of a public censure is set out in Chapter 6 of the Decision Procedure and Penalties Manual ("DEPP"), which forms part of the FSA Handbook. DEPP sets out the factors that may be of particular relevance in determining whether it is appropriate to issue a public censure rather than impose a financial penalty. The criteria are not exhaustive and all relevant circumstances of the case will be taken into consideration. Relevant extracts from DEPP are set out in Appendix 1.

Deterrence

6.2. The principal purpose of issuing a public censure is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour.

The financial resources and other circumstances of the firm

6.3. The facts and matters set out above demonstrate that Integrity has breached Principles 7 and 9. These breaches are serious and the FSA would have imposed a financial penalty of £350,000, on Integrity as a result. However, a financial penalty is not appropriate given Integrity's insolvency and the fact that the Firm's liabilities are considerably more than its assets.

Previous action taken in relation to similar failings

6.4. In determining the appropriate sanction, the FSA has taken into account sanctions imposed by the FSA on other authorised persons for similar behaviour. This was considered alongside the principal purpose for which the FSA imposes sanctions, namely to promote high standards of regulatory 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.

7. DECISION MAKER

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

8. IMPORTANT

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

Publicity

8.2 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.

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

FSA contacts

8.4. For more information concerning this matter generally, you should contact Anna Hynes at the FSA (direct line: 020 7066 9464).

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Tom Spender
Head of Department
FSA Enforcement and Financial Crime Division

APPENDIX 1

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. The Act

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

1.2. Section 138 of the Act provides that the FSA may make such rules applying to authorised persons as appear to it to be necessary or expedient for the purpose of protecting consumers.

1.3. To enable the appropriate discharge of its functions, FSMA provides the FSA with certain powers. Section 205 of FSMA provides:

"*If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act, the Authority may publish a statement to that effect*".

2. Principles for Businesses

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

2.2. Principles which are relevant to this matter are:

Principle 7 (Communications with clients) provides that:

A firm must *pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

Principle 9 (Customers: relationships of trust) provides that:

A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.

3. Conduct of Business Rules (COB)

3.1. The relevant provisions of the module of COB (which was in force at the time of the relevant transactions) are as follows:

COB 3.8.8 R

Requires that a specific non-real time financial promotion must include a fair and adequate description of the nature of the investment, the commitment required and the risks involved.

COB 5.4.3R

Requires that a firm must not, amongst other things, make a personal recommendation of a transaction to a private customer unless it has taken reasonable steps to ensure that the private customer understands the nature of the risks involved.

4. **Decision Procedures and Penalties ("DEPP")**

4.1. The FSA's policy in relation to the issue of public censures is set out in Chapter 6 of DEPP which forms part of the FSA Handbook. It was previously set out in Chapter 12 of the Enforcement Manual (ENF), to which the FSA has also had regard. The principal purpose of issuing a public censure is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour.

4.2 The relevant section of DEPP is 6.4.2 which states:

The criteria for determining whether it is appropriate to issue a public censure rather than impose a financial penalty are similar to those for determining the amount of penalty set out in DEPP 6.5. Some particular considerations that may be relevant when the FSA determines whether to issue a public censure rather than impose a financial penalty are:

(1) whether or not deterrence may be effectively achieved by issuing a public censure;

(2) if the person has made a profit or avoided a loss as a result of the breach, this may be a factor in favour of a financial penalty, on the basis that a person should not be permitted to benefit from its breach;

(3) if the breach is more serious in nature or degree, this may be a factor in favour of a financial penalty, on the basis that the sanction should reflect the seriousness of the breach; other things being equal, the more serious the breach, the more likely the FSA is to impose a financial penalty;

(4) if the person has brought the breach to the attention of the FSA, this may be a factor in favour of a public censure, depending upon the nature and seriousness of the breach;

(5) if the person has admitted the breach and provides full and immediate co-operation to the FSA, and takes steps to ensure that those who have suffered loss due to the breach are fully compensated for those losses, this may be a factor in favour of a public censure, rather than a financial penalty, depending upon the nature and seriousness of the breach;

(6) if the person has a poor disciplinary record or compliance history (for example, where the FSA has previously brought disciplinary action resulting in adverse findings in relation to the same or similar behaviour), this may be a factor in

favour of a financial penalty, on the basis that it may be particularly important to deter future cases;

(7) the FSA's approach in similar previous cases: the FSA will seek to achieve a consistent approach to its decisions on whether to impose a financial penalty or issue a public censure; and

(8) the impact on the person concerned. In exceptional circumstances, if the person has inadequate means (excluding any manipulation or attempted manipulation of their assets) to pay the level of financial penalty which their breach would otherwise attract, this may be a factor in favour of a lower level of penalty or a public statement. However, it would only be in an exceptional case that the FSA would be prepared to agree to issue a public censure rather than impose a financial penalty if a financial penalty would otherwise be the appropriate sanction. Examples of such exceptional cases could include where there is:

   (a) verifiable evidence that a person would suffer serious financial hardship if the FSA imposed a financial penalty;

   (b) verifiable evidence that the person would be unable to meet other regulatory requirements, particularly financial resource requirements, if the FSA imposed a financial penalty at an appropriate level; or

   (c) in Part VI cases in which the FSA may impose a financial penalty, where there is the likelihood of a severe adverse impact on a person's shareholders or a consequential impact on market confidence or market stability if a financial penalty was imposed. However, this does not exclude the imposition of a financial penalty even though this may have an impact on a person's shareholders.

APPENDIX 2

FINANCIAL PROMOTIONS POLICY

The FSA's approach to financial promotions

1.1. In April 2002, the FSA issued a publication entitled 'The FSA's Regulatory Approach to Financial Promotions' which set out information about the FSA's approach to the regulation of financial promotions after 30 November 2001. In the publication the FSA stated:

A key aim for the FSA … is helping retail customers get a fair deal. The FSA has set high-level rules for firms requiring them to pay due regard to the interests of their customers and treat them fairly, and to communicate information to them in a way that is clear, fair and not misleading.

1.2. In respect of non-compliance with the FSA's requirements the FSA explained:
Where serious or persistent rule breaches are found, firms may be referred to the FSA's Enforcement Division to be pursued under the disciplinary procedures…

Financial Promotions: Taking stock and moving forward

1.3. In February 2005 the FSA issued a report entitled 'Financial Promotions: Taking stock and moving forward' which set out an update on the FSA's regulation of financial promotions. In the report the FSA stated:

Financial promotions have always been a particular risk area for consumers – they play an important and influential role in how consumers make decisions. But because consumers may not have a sufficiently complete understanding of products, and of the risks associated with them, consumers may be misled by financial promotions.

1.4. In the report the FSA identified five key issues based on information collected by the FSA on promotions and on systems and controls that it considered to be non-compliant. Two of the issues identified were Clarity of Product and Risk Warnings, which are particularly relevant in this matter. The FSA explained these concerns as follows:

Clarity of Product

A financial promotion should clearly indicate what the product or service is. This may seem to be a basic and obvious point, but in many cases it is simply not clear. Firms should produce material that describes products and services in a way that is relevant and meaningful to their intended customers. It is not necessary, however, and in some cases not helpful, to describe the product in technical terms, as many customers will not understand such a description. Where firms are exposing the general public, as opposed to a limited class of investor, to a particular promotion they should not assume that the inherent risks of a product or service will be understood by all.

Risk Warnings

Financial promotions should include a description of the risks associated with the product. We are often asked how much information on risks a firm is expected to include in a promotion. We require that financial promotions present a balanced indication of the product, but they do not necessarily need to be all encompassing – we do not expect every possible risk to be described in a short advert. The risk warnings should have sufficient prominence within the promotion and should not be buried in the small print or on the back page of a brochure, for example.

APPENDIX 3

THE RESPONSIBILITIES OF PROVIDERS – POLICY STATEMENT

1.1. In July 2007, the FSA published a Policy Statement entitled "*The Responsibilities of Providers and Distributors for the Fair Treatment of Customers"* Annex 1 to the Policy Statement contains a Regulatory Guide ("the Guide") identifying the responsibilities of product providers. The Guide did not determine or change the existing responsibilities of providers or distributors; rather, it articulated the existing regulatory responsibilities.

1.2. Broadly speaking, the Guide identifies five areas of responsibility for providers – product design, information to distributors, information to customers, selecting distribution channels and post-sale responsibility. The overarching theme of the Guide is the need for firms to meet the reasonable expectations that they have created for customers.

1.3. The Guide set out product provider responsibilities in relation to the FSA Principles for Businesses. It states, for example, that the product provider:

(1) when providing information to distributors -
(i) …….
(ii) should ensure the information is sufficient, appropriate and comprehensible in substance and form;

(2) when providing information to customers -
(i) should take account of what information the customer needs to understand the product or service, its purpose and the risks, and communicate information in a way that is clear, fair and not misleading;
(ii) should have in place systems and controls to manage effectively the risks posed by providing information to customers; and

(3) In the area of post-sale responsibility -
(i) …….
(ii) should periodically review products whose performance may vary materially to check whether the product is continuing to meet the general needs of the target audience that it was designed for, or whether the product's performance will be significantly different from what the provider originally expected and communicated to the distributor or customer at the time of the sale. If this occurs, the provider should consider what action to take, such as whether and how to inform the customer of this (to the extent the customer could not reasonably have been aware) and of their option to seek advice, and whether to cease selling the product.