Financial Services Authority

FINAL NOTICE

To: **Katharine Prichard**

Of: **90 Feversham Avenue**
Bournemouth
BH8 9NJ

IRN: **KXJ00019**

Date: **16 February 2010**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives you final notice about its decision to issue a statement of misconduct.

1. ACTION

1.1. For the reasons set out below and pursuant to section 66 of the Financial Services and Markets Act 2000 ("FSMA"), the FSA has decided to issue a statement of misconduct.

1.2. Ms Prichard confirmed on 15 February 2010 that she will not be referring the matter to the Financial Services and Markets Tribunal ("the Tribunal").

1.3. Accordingly for the reasons set out below the FSA will issue a statement of misconduct.

2. REASONS FOR THE ACTION

2.1. The FSA has decided to publish a statement of misconduct in respect of Ms Prichard for breaches of the FSA's Statements of Principle for Approved Persons ("the Principles") in her role as Compliance Director of Wills & Co Stockbrokers Limited ("Wills & Co"/ the "Firm") between 1 November 2007 and 28 July 2009 ("the Relevant Period"). Wills & Co is a stockbroking firm which specialises in advising retail customers, recommending and trading in, "high risk" securities that have been admitted to trading on the AIM and PLUS markets or are unlisted (the "Relevant Business"). The Firm makes recommendations and sales to its customers primarily by telephone.

2.2. During the Relevant Period, Ms Prichard held Controlled Functions CF10 (Compliance and Oversight) and CF11 (Money Laundering Reporting) which are significant influence functions. Ms Prichard held the role of Compliance Director and had oversight of the Compliance Department at Wills & Co and was responsible for the day to day activities of the Compliance Department. Ms Prichard was a member of the Firm's board of directors and was registered as a director at Companies House from 18 March 2008 to date.

2.3. Wills & Co was fined £49,000 by the FSA on 31 October 2007 in relation to the Relevant Business on the basis of failings in its sales practices, the information provided to its customers and its systems and controls (the "2007 Final Notice"). The Enforcement investigation was concluded via executive settlement and the FSA required the Firm to confirm in writing to the FSA that certain remedial actions to

deal with the issues identified in the Final Notice had been implemented by 23 December 2007 ("the Undertaking").

2.4. Ms Prichard was responsible for ensuring that the remedial work required by the FSA was undertaken. The Firm provided the FSA with the Undertaking which stated that the majority of the corrective action had been undertaken, that its monitoring procedures were now robust and satisfied the FSA's Principles and Rules. The Undertaking stated that the remedial work had been undertaken to Ms Prichard's satisfaction, as Group Compliance Director, and was signed by the Firm. At the time of the Undertaking Ms Prichard was not a director of the Firm.

2.5. The FSA visited Wills & Co in May 2008 to assess whether it had implemented the remedial actions required by the settlement agreement and rectified the failings identified in the Final Notice. As part of the visit, the FSA identified similar failings in sales practices and compliance monitoring as set out in the 2007 Final Notice. The FSA reviewed a further 19 transactions between 17 January and 17 March 2009 as part of its Enforcement investigation and identified similar failings in sales practices and compliance monitoring as set out in the 2007 Final Notice.

2.6. The FSA has decided that Ms Prichard, as an approved person performing a significant influence function, failed to:

(1) exercise due skill, care and diligence in managing the Relevant Business for which she was responsible in her controlled function, in contravention of Principle 6; and

(2) take reasonable steps to ensure that the Relevant Business complied with the relevant requirements and standards of the regulatory system, in contravention of Principle 7.

2.7. During the Relevant Period, Ms Prichard's conduct fell short of the FSA's prescribed regulatory standards for approved persons for the following reasons:

(1) despite being aware of the breaches outlined in the 2007 Final Notice Ms Prichard failed to ensure that the Firm took adequate and sufficient steps to ensure that the remedial action required of the Firm was undertaken;

(2) Ms Prichard failed to act with due skill, care and diligence in permitting the Firm to sign the Undertaking to the FSA without taking reasonable steps to ensure that the remedial action required by the FSA, as outlined in the 2007 Final Notice, had been completed by the Firm given that the undertaking stated that she was so satisfied;

(3) Ms Prichard exhibited a lack of competence in failing to adequately record the work undertaken by the Firm following the 2007 Final Notice;

(4) Ms Prichard failed to take reasonable steps to ensure that the Relevant Business was undertaken in compliance with the relevant regulatory requirements, despite being on notice of the breaches outlined in the 2007 Final Notice;

(5) Ms Prichard failed to take reasonable steps to ensure that the Firm established and maintained robust systems and controls that were adequate for the Relevant Business of recommending high risk securities, including the failure to establish and implement a suitably comprehensive compliance monitoring programme; and

(6) Ms Prichard failed to take reasonable steps to ensure that the Firm established an adequate complaints handling procedure which ensured that customer complaints were dealt with efficiently, fairly and professionally and that a process was in place to ensure that the Firm's senior management could undertake a root cause analysis of complaints to mitigate the risk of customer detriment in the future.

2.8. The FSA views Ms Prichard's failings as particularly serious in view of the following considerations:

(1) Ms Prichard, as CF10 was aware of the 2007 Final Notice, which detailed the failings of the Firm in respect of the Relevant Business, yet failed to take reasonable steps to ensure that the Firm's systems and controls were adequate and that its sales practices were sufficiently improved. Ms Prichard, as CF10, was on express notice that the FSA did not consider that the Relevant Business was being run in compliance with the relevant regulatory standards;

(2) Ms Prichard, as CF10 was responsible for and directly involved in implementing and reviewing many of the Firm's systems and controls in respect of the 2007 Final Notice and as such is personally culpable for the Firm's failure to establish and implement a suitably comprehensive compliance monitoring programme and complaints handling process; and

(3) Ms Prichard, as CF10 was on express notice of the FSA's ongoing concerns regarding the Relevant Business from May 2008 after the FSA visit, however she failed to take reasonable steps to ensure that the Firm took the adequate steps to address the FSA's concerns and to mitigate the risk of customer detriment.

2.9. The FSA recognises that there were some improvements to the Firm's compliance monitoring procedures since the date of the 2007 Final Notice and the visit in May 2008. However, the Firm's sales and monitoring practices fell below the relevant regulatory standard for the Relevant Period.

3. RELEVANT STATUTORY PROVISIONS

3.1. The FSA's statutory objectives are set out in Section 2(2) of FSMA. The relevant objectives for the purpose of this case are Public Awareness and the Protection of Consumers.

3.2. The FSA has the power pursuant to section 66 of FSMA to impose a financial penalty on an individual and to issue a public statement of misconduct.

3.3. Section 66 of FSMA provides:

"(1) The Authority [FSA] may take action against a person under this section if-

(a) it appears to the Authority that he is guilty of misconduct; and

(b) the Authority is satisfied that it is appropriate in the circumstances to take action against him.

(2) A person is guilty of misconduct if, while an approved person –

(a) he has failed to comply with a statement of principle issued under section 64 of the Act [FSMA]; or

(b) he has been knowingly concerned in a contravention by the relevant authorise person of a requirement imposed on that authorised person by or under the Act.

(3) If the Authority is entitled to take action under this section against a person, it may –

(b) publish a statement of his misconduct…"

3.4. The FSA issued statements of principle under section 64 of FSMA to codify the conduct expected of approved persons.

3.5. Principle 6 provides that an approved person performing a significant influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his controlled function.

3.6. 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.

3.7. In considering whether to publish a statement of misconduct the FSA has had regard to the provisions of the Enforcement Guide which were also in force during the Relevant Period.

4. FACTS AND MATTERS RELIED ON

The Undertaking

4.1. Wills & Co was fined £49,000 by the FSA on 31 October 2007 in relation to the Relevant Business on the basis of failings in its sales practices, the information provided to its customers and its systems and controls. The failings in the 2007 Final Notice can be summarised as follows:

(1) failing to establish and maintain robust systems and controls that were adequate for the Relevant Business, including the failure to establish and implement a suitably comprehensive compliance monitoring programme;

(2) failing to take reasonable steps to ensure customers understood the nature of the risks involved and by not paying due regard to the information needs of its customers, communicating information in a manner which was not clear, fair and not misleading;

(3) failing to maintain adequate and documented procedures detailing its approach to compliance monitoring; and

(4) failing to establish and implement a comprehensive compliance monitoring programme and robust compliance controls that were sufficiently tailored to its regulated business.

4.2. From 1 November 2007, Ms Prichard as CF10 with oversight of and responsibility for the day to day management of the Compliance Department, was responsible for implementing the remedial actions at the Firm as required by the FSA. Ms Prichard

was responsible for ensuring that the Firm's systems and controls in respect of the Relevant Business:

(1) were strengthened to ensure compliance with the relevant regulatory standards;

(2) were complied with and maintained; and

(3) addressed the failings identified in the 2007 Final Notice and were robust enough to ensure that such failings would not reoccur.

4.3. The settlement agreement required the Firm to:

(1) adopt and implement a number of remedial actions which included the re-training of advisers with an increased emphasis within the training materials to the provision of risk warnings, implementing a risk based compliance monitoring system, consideration of Treating Customers Fairly at board level and ensuring that its back-log of customer complaints was addressed;

(2) make changes to its systems and controls to ensure that the Relevant Business was undertaken in compliance with the FSA's Principles for Businesses and the Conduct of Business Sourcebook; and

(3) make changes to its systems and controls to ensure that the failings identified in the 2007 Final Notice had been remedied and rectified adequately.

4.4. The settlement agreement required the Firm to confirm to the FSA that the remedial actions outlined above had been adopted and were being adhered to by the Firm, by way of the Undertaking.

4.5. Ms Prichard failed, as CF10, to undertake a comprehensive review of the Relevant Business and the Firm's systems and controls, and its compliance with the relevant regulatory standards to ensure that the failings identified in the 2007 Final Notice had

been addressed prior to reaching the view that the conditions of the settlement agreement had been satisfied.

4.6. Ms Prichard did not review the failings identified in the 2007 Final Notice when considering what remedial steps were appropriate for the Firm to take during the Relevant Period and failed to ensure that the Firm documented the work which it undertook in order to comply with the settlement agreement. Ms Prichard failed to take any steps to confirm the Firm's compliance with the conditions of the settlement agreement, prior to the undertaking being signed.

The Firm's ongoing sales practices

4.7. The FSA visited the Firm in May 2008 in order to establish whether the Firm had rectified the failures identified in the 2007 Final Notice and had implemented the remedial actions required by the settlement agreement. The FSA reviewed 27 transactions in respect of the Relevant Business, including 7 transactions which had been reviewed by the Firm's Compliance Department, which had been conducted by the Firm after 1 November 2007, and concluded that the Firm had failed to take adequate steps to address the issues identified in the 2007 Final Notice. In June 2008 the FSA informed the Firm that it had continuing concerns with the Firm's selling practices and the Firm's failure to provide satisfactory evidence that adequate steps had been taken to strengthen its systems and controls and improve the selling practices. These transactions were undertaken by the Firm during the Relevant Period and during the period in which Ms Prichard was CF10 at the Firm and was responsible for oversight of and the day to day management of the Compliance Department.

4.8. The FSA undertook a further review of the Firm's sales practises in respect of the Relevant Business between 17 January and 17 March 2009 as part of an Enforcement investigation. The FSA reviewed 19 transactions which were representative of the Relevant Business undertaken during that time, three of which had been reviewed by

the Firm's internal compliance monitoring function. The FSA identified compliance failings in all 19 transactions, a number of which related to the same, or similar, failings as highlighted in the 2007 Final Notice. These failings related to unacceptable sales practices (including unbalanced statements and poor risk warnings), suitability of recommendations, undue pressure being placed on the customer and poor explanations of normal market size. These failings are detailed below.

Unacceptable sales practices

4.9. A general risk warning was given in 16 of the 19 transactions; in those three in which it was not given, the adviser had attempted to give it but the customer had indicated that they did not wish to hear it. However, in eight of the 19 transactions the general risk warning was given (or attempted) only after the sale had been agreed by the customer. In four of the 19 transactions the general risk warning was undermined by the adviser.

4.10. In 18 of the 19 transactions, no security specific risk warnings were given to the customer, with the result that there was no, or little, balance in the recommendation. In the one transaction where security specific risks were given, they were given only in response to a specific question from the customer and the risks were then immediately dismissed by the adviser.

4.11. In eight of the 19 transactions, the adviser did not communicate clearly the mark-up received by Wills & Co on the securities being sold (i.e. the difference between the price at which Wills & Co took the principal position in the securities being sold and the price at which the transaction was executed for the customer). In those cases where the adviser did clearly disclose the mark-up, this disclosure was made only after the customer had agreed to purchase the security. As a result, customers may not have been aware of the nature and extent of the mark-up on the securities being recommended to them and, therefore, the amount of money which Wills & Co was making on the transaction.

4.12. In eight of the 19 transactions, the adviser gave an unbalanced account of the past performance of the security, with no indication that past performance was not a reliable indicator of future results.

4.13. In 15 of the 19 transactions, the adviser made unsubstantiated comments about the future performance of the security being recommended. In eight of those 15 transactions, the adviser gave specific but unsubstantiated projections for the security price.

4.14. These, or similar, issues had all been identified in the 2007 Final Notice. The Firm's sales practices had not therefore improved significantly in these areas notwithstanding the Undertaking in December 2007 that the required remedial actions had been undertaken.

Suitability of recommendations

4.15. In all of the 19 transactions reviewed by the FSA, there was a risk that the recommendation may not have been suitable for the customer involved as in none of the 19 transactions did the adviser seek to obtain up-to-date personal and financial information about the customer before making the recommendation.

Placing undue pressure on customers

4.16. In some of the 19 transactions reviewed, advisers applied undue pressure on customers to make investment decisions. This put customers at risk of detriment as there was a risk that the securities may not have been suitable for their needs. Customers were also put at risk of detriment as they were pressured to make higher risk investment decisions quickly and without time to consider the risks of the securities and whether they wanted to invest. Examples of undue pressure include:

(1) in six of the 19 transactions, the customer had indicated that they did not want to make the specific investment and in five of the 19 transactions, the customer

had indicated that they did not want to make the type of investment, but the adviser persisted with the recommendation;

(2) in four of the 19 transactions the adviser suggested that the customer was running out of time in which to purchase the security, either because the Firm's allocation was running out or because the price of the recommended security was about to increase. The implication was that the customer should buy now before the price increased even further or the security ran out. Although the FSA did not have enough information to verify whether the Firm's allocation was in fact running out, or whether the price was in fact about to increase, the time pressure imposed on the customer may have meant that the customer did not have enough time to consider whether he wanted to invest;

(3) in 10 of the 19 transactions the adviser persuaded the customer either to purchase more securities than the customer had initially stated he wanted to purchase or to spend more than he had initially stated he wanted to spend (in three of those 10 transactions, the customer had initially indicated that he did not want to purchase any securities at all).

4.17. These are additional failings to those identified in the 2007 Final Notice.

Normal market size

4.18. In all of the transactions where the adviser informed the customer of the Normal Market Size ("NMS") for the recommended securities (nine of the 19 transactions), the size of the trade significantly exceeded the NMS. The implication of the NMS being exceeded was that it might impact on the liquidity/future selling price of the securities (i.e that the customer may have difficulty selling a volume of securities greater than the NMS for the market price). In none of the trades where the NMS was

given and exceeded did the adviser fully explain the implications of this to the customer during the sales call.

4.19. For instance, one customer was sold 125,000 securities when the NMS was 3,000 and another customer was sold 125,000 securities when the NMS was 2,000. In six of the nine transactions where the NMS was given (and exceeded), the customer was told that they may need to sell their securities in more than one block and/or that they might not get the indicated price, but the adviser did not put any emphasis on this being a particular difficulty and/or did not present it clearly and/or immediately undermined it. In two sales calls, the customer was told that NMS does not apply on the PLUS market, when this is not in fact the case. This is an additional failing to those identified in the 2007 Final Notice.

Compliance monitoring

4.20. Three of the 19 transactions reviewed by the FSA had been reviewed by the Firm's internal compliance monitoring function for which Ms Prichard was responsible during the Relevant Period. The FSA identified that, in all three trades, the monitoring team had failed to identify concerns or compliance issues which should have been followed up with the adviser.

4.21. The FSA considers that the Firm's compliance monitoring function remained inadequate during the Relevant Period. The call monitoring procedures at the Firm were not comprehensive and the Firm's Compliance Department continued to fail to identify that customers were not being provided with appropriate information about the recommended securities. The failure of the Firm's Compliance Department to identify such issues is particularly serious given that many of these issues were similar to, or the same as, those which had been identified in the 2007 Final Notice. The following concerns in particular were highlighted in the 2007 Final Notice but do not appear to have been picked up as part of the Firm's compliance monitoring process:

(1) lack of security specific risk warnings;

(2) undermining of general risk warning;

(3) unclear and unbalanced statements about past performance;

(4) misleading and unbalanced statements about future performance;

(5) unsupported and unbalanced comparisons with other securities; and

(6) failure to clearly explain the mark-up payable or the Firm's principal position or providing such explanation only after the transaction had been agreed.

4.22. The proportion of sales calls which were reviewed by the Firm's Compliance Department were also inadequate. The Compliance Department reviewed, on average, three calls for each dealer per month, although the number of calls monitored could be increased to six or eight depending on the dealer's risk status. In relation to trainee dealers, the Firm monitored six calls per month for the first three months of dealing. This process was in place in January 2009, when there were nine advisers employed in the Relevant Business, and on average, each adviser made 49 calls each month which resulted in a completed transaction. Therefore, the compliance function monitored between 6% and 16% of calls that resulted in a transaction.

4.23. These levels of compliance monitoring were inadequate given the nature of the Firm's sales process, the volume of monthly small cap sales, the high risk nature of the securities sold and the fact that issues relating to sales calls had been the subject of FSA disciplinary action. The 2007 Final Notice had identified that it was inadequate for the Firm to be monitoring only five sales per month for each trainee adviser and three sales per month for each adviser it had classified as competent, on the basis that the number of transactions reviewed was not proportionate to the overall volume of

monthly small cap securities sales. It appears that the Firm had not significantly increased the level of call monitoring since then.

4.24. This concern had not therefore been adequately addressed by the Firm and it continued to fail to monitor sufficient levels of sales calls for each adviser.

Conduct by the Firm after 28 July 2009

4.25. The FSA communicated its concerns about the results of its review of the 19 transactions to the Firm in July 2009 and proposed an own initiative variation of permission to stop the Firm from advising on securities. The Firm responded to the threat of FSA action by enhancing its compliance monitoring process by employing a consultant, at considerable expense, to rigorously review the Firm's compliance monitoring arrangements and sales practices in relation to the Relevant Business. This included reviewing a significant proportion of calls made by its advisers, each of whom had to be deemed competent to advise by the retained consultant. The retained consultant reported to the FSA's Regulatory Decisions Committee on 18 August and 30 October 2009. Notwithstanding these reports, the FSA considered that the Firm continued to pose a risk to customers and published a Second Supervisory Notice in respect of this matter on 15 February 2010[1].

4.26. It was the action the FSA took in July 2009 which led to the Firm retaining the external consultant. Prior to this, Ms Prichard had failed to take reasonable steps to ensure that the Firm established and implemented adequate monitoring processes in respect of the Relevant Business to ensure compliance with the FSA's regulatory requirements. This failure indicates that Ms Prichard failed to take reasonable steps to ensure that the business of the firm for which she is responsible in her controlled

[1] [Hyperlink to Second Supervisory Notice dated 1 December 2009]

function complies with the relevant requirements and standards of the regulatory system

Complaints handling

The process of handling complaints

4.27. The process for handling complaints set out in Wills & Co's Internal Complaints Procedure does not detail the practical steps which should be taken to investigate the complaint, what information should be considered by the complaints handler, how any decision in respect of the complaint should be made or who, within the Firm, has authority to determine the appropriate outcome of the complaint.

4.28. During the Relevant Period, Wills & Co employed three dedicated complaints handling staff.

4.29. Wills & Co produced Compliance Monitoring Reports which were provided to the Firm's board which detailed various high level statistics on the complaints being dealt with by the Firm, including the total redress that had been paid in the month. However, no underlying information was provided, in these reports or otherwise, to enable the Firm to assess whether the complainant had been treated fairly at the point of sale or as a complainant.

Volume of complaints

4.30. Wills & Co received 194 complaints from consumers during the period 1 January to 31 December 2009 and during this period 94 complaints were referred to the Financial Ombudsman Service (the "FOS"). Most of the complaints referred related to transactions undertaken prior to the 2007 Final Notice.

Financial Ombudsman Service

4.31. The FOS was established pursuant to Part XVI of FSMA. The statutory objective of the FOS is to operate a scheme for the resolution of customer complaints which is independent and resolves the complaints quickly and with minimum formality.

4.32. Complaints are assessed by an adjudicator and a provisional decision is issued. The authorised firm (in this case Wills & Co) is able to make representations on the provisional decision and provide any further information in relation to the complaint. The provisional decision and any additional information are considered by an Ombudsman who will then issue a Final Decision. A Final Decision made by an Ombudsman is binding on the authorised firm (in this case Wills & Co) and the complainant where the complainant has accepted the determination. If a determination is rejected by a complainant, or not accepted by a complainant in the time specified by the Ombudsman, the Final Decision is not binding and the complainant may still pursue legal remedies he would otherwise have against the Firm.

4.33. During the period 1 January to 31 December 2009, the FOS closed[2] 88 complaints made against Wills & Co, of these, 73 were upheld in favour of the complainant. Most of these complaints related to transactions undertaken prior to the 2007 Final Notice. The uphold rate for complaints determined by the FOS during the relevant period was 83%. This uphold rate is significantly higher than the average uphold rates of 42% for complaints referred to the FOS relating to stockbroking and portfolio management in the period 30 March 2008 to 31 March 2009.

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[2] The outcomes of the complaints that were closed include: rejected by the FOS because the complaint was outside of its jurisdiction, withdrawn by the complainant, settlement prior to assessment by an adjudicator, upheld in favour of Wills & Co and upheld in favour of the complainant.

Interaction with the FOS

4.34. Written correspondence sent by Wills & Co to the FOS by a member of Ms Pritchard's staff was often inappropriate, for example, questioning the qualifications and independence of the adjudicators and Ombudsmen who determined complaints against Wills & Co and the FOS twice expressed its concerns about this to the Firm in 2009.

4.35. In response to provisional decisions by adjudicators, Wills & Co often posed a list of rhetorical questions or stated that it disagreed with the decision rather than providing additional information that was relevant to the determination of the complaint and would affect the Final Decision, as made by the Ombudsman. This approach resulted in a further delay in the resolution of the complaint and where the complaint was upheld, payment of redress to the customer (although this was ultimately paid).

4.36. In some cases reviewed by the FSA, Wills & Co referred to a rule in the FSA's Conduct of Business Sourcebook which it claimed recommended that customers should hold up to 10% of their investment portfolio in high risk securities. In June 2009, the FOS asked Wills & Co to identify the location of this purported FSA rule however, Wills & Co was unable to do so. There is no such rule within the FSA Handbook. On 26 June 2009 the FOS informed Wills & Co that it considered that the Firm had attempted to mislead the customer at the point of sale and throughout the complaints process by referring to a FSA rule which did not exist. Despite this, Wills & Co continued to refer to this purported FSA rule after June 2009 in correspondence with the FOS.

Failure to take sufficient account of previous FOS Final Decisions on complaints against Wills & Co

4.37. Wills & Co failed to take sufficient account of Final Decisions made by the FOS when responding to subsequent provisional decisions issued by the FOS and in the sales practices employed by its advisers during the Relevant Period.

(1) Final Decisions were issued by the FOS in January and February 2009 in respect of complaints that related to sales of high risk securities that took place prior to the 2007 Final Notice. The FOS concluded that in some cases, insufficient risk warnings were given and the recommendation was unbalanced and referred to potential upsides of the transaction without explaining the downsides. These failings were also identified in the 19 transactions that were reviewed by the FSA which took place between 17 January and 17 March 2009; and

(2) Final Decisions were issued in June 2009 in respect of cases where the customers' Attitude to Risk had been amended from medium to high, which enabled advisers to recommend that customers undertake the Relevant Business. In both cases, the FOS concluded that there was no recorded information to demonstrate why this change in Attitude to Risk was appropriate or that the customer had given their express consent. Wills & Co failed to take account of these Final Decisions and apply the outcomes to its ongoing sales practices.

4.38. Ms Prichard, as CF10, failed to establish an adequate complaints handling procedure which ensured that customer complaints were dealt with efficiently, fairly and professionally. Ms Prichard failed to undertake or establish a process to ensure that its senior management could undertake a root cause analysis to mitigate the risk of customer detriment in the future.

5. ANALYSIS OF BREACHES

5.1. The failings summarised above represent a failure by Ms Prichard to comply with Principles 6 and 7 while she performed controlled functions of significant influence at Wills & Co (CF10 Compliance and Oversight).

Principle 6

5.2. Principle 6 states that *"An approved person performing a significant influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his controlled function"*. By reason of the facts and matters set out above in section 4 above, the FSA considers that Ms Prichard has breached Principle 6. Ms Prichard failed to:

(1) review the failings identified in the 2007 Final Notice when considering what remedial steps were adequate for the Firm to take during the Relevant Period;

(2) ensure that she undertook a comprehensive review of the Firm's systems and controls, compliance with the relevant regulatory standards or the Firm's Relevant Business to ensure that the failings identified in the 2007 Final Notice had been addressed prior to reaching the view that the conditions of the settlement agreement had been satisfied;

(3) ensure that the Firm's sales practices and compliance monitoring procedures were in compliance with the relevant regulatory standards despite being aware of the Firm's failings from the 2007 Final Notice; and

(4) ensure that the Firm's complaints handling procedure was adequate despite being aware of the concerns of the FOS and the high level of complaints which were being referred to, and upheld by the FOS in favour of the customer.

Principle 7

5.3. Principle 7 states 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"*. By reason of the facts and matters set out above in section 4, the FSA considers that Ms Prichard has breached Principle 7. As CF10, failed to take reasonable steps to establish and maintain systems and controls to ensure that the Firm's sales practices were compliant with the relevant regulatory standards. This failing meant that there was a risk that non-compliant or unsuitable sales to customers were not being identified and remedied by Wills & Co. Ms Prichard's failings in this regard are particularly serious given that she was aware from the 2007 Final Notice of specific compliance failings which could pose a risk to the customer.

5.4. The ongoing deficiencies in the Firm's sales practices and compliance monitoring procedures were demonstrated by the FSA's review of 19 transactions which showed that in relation to the Relevant Business, the Firm:

(1) failed to treat customers fairly;

(2) failed to communicate information to customers in a way which was clear, fair and not misleading;

(3) failed to ensure that the Firm's sales practices complied with the relevant regulatory rules in the Conduct of Business Sourcebook;

(4) failed to take reasonable care to ensure the suitability of advice;

(5) failed to identify non-compliant or unsuitable sales through its compliance monitoring procedures; and

(6) failed to implement a complaints handling procedure which ensured that customer complaints were dealt with fairly.

5.5. Ms Prichard failed to take reasonable steps to establish and maintain systems and controls to ensure that the Firm's complaints handling procedure was compliant with the relevant regulatory standards. The deficiencies in the Firm's complaints handling procedures are demonstrated by:

(1) the high volume of complaints referred to and upheld by the FOS in favour of the complainant;

(2) the Firm's failure to take account of previous FOS Final Decisions against the Firm, including reviewing its sales practices and systems and controls to mitigate the risk of ongoing consumer detriment; and

(3) the Firm's unprofessional and aggressive conduct in respect of the FOS, including attempting to mislead the FOS.

5.6. Ms Prichard was aware of the failings identified by the FSA and set out in the 2007 Final Notice, and failed to properly rectify these failings and ensure that the Firm complied with the relevant requirements of the regulatory system in breach of Principle 7.

6. ANALYSIS OF SANCTION

6.1. In concluding that Ms Prichard failed to comply with Principles 6 and 7, the FSA considers that her conduct falls below the standard expected of approved persons performing significant influence functions.

6.2. For the reasons set out above, Ms Prichard did not demonstrate the degree of competence expected under the regulatory system in carrying out her controlled function. Such failings seriously undermined the protection and fair treatment of Wills & Co's customers and confidence in the financial services industry.

6.3. As such the FSA considers it appropriate to publish a statement of misconduct against Ms Prichard. Ms Prichard has also been required to provide the FSA with an undertaking that from the date of this notice:

(1) she will not seek to hold any significant influence functions for 5 years;

(2) she will resign all controlled functions held; and

(3) she will resign her directorship at Wills & Co and Wills & Co Financial Group plc (the unregulated holding company of Wills & Co).

7. CONCLUSION

7.1. Having regard to the matters summarised above, the guidance set out in the Enforcement Guide and to the FSA's statutory objectives of the protection of consumers and public awareness, the FSA considers it proportionate and appropriate in all the circumstances to issue a statement of misconduct.

8. DECISION MAKER

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

9. IMPORTANT

9.1. This Final Notice is given to you under section 390 of FSMA

Publicity

9.2. Sections 391(4), 391(6) and 391(7) of FSMA 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.

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

FSA Contacts

9.4. For more information concerning this matter more generally, you should contact Suzanne Burt of the Enforcement and Financial Crime Division of the FSA (direct line: 0207 066 1062 / fax: 0207 066 1063).

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William Amos

Head of Department

FSA Enforcement and Financial Crime Division