



Financial Services Authority

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## FINAL NOTICE

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**To: Kings**  
**Of: 11 Albion Place**  
**Maidstone**  
**Kent**  
**ME14 5DY**  
**Date: 8 November 2005**

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

### **1. THE PENALTY**

- 1.1 The FSA gave Kings ("Kings/the Firm") a Decision Notice dated 3 November 2005 which notified Kings that it had decided, pursuant to section 206 of the Financial Services and Markets Act 2000 ("the Act") to impose a financial penalty of £60,000 ('the Penalty') on Kings in respect of breaches of: rules 3.6.3R, 3.8.4R and 3.8.8R in the part of the FSA's Handbook entitled the Conduct of Business Sourcebook ("COB"); rule 3.2.6R in the part of the FSA's Handbook entitled Senior Management Arrangements Sourcebook, Systems and Controls ("SYSC"); and principles 2, 3 and 7 of the FSA's Principles for Businesses ("FSA Principles").
- 1.2 Kings has confirmed that it will not be referring this matter to the Financial Services and Markets Tribunal.
- 1.3 Accordingly, for the reasons set out below and having agreed with the Firm the facts and matters relied on, the FSA imposes on Kings the Penalty.

## **2. REASONS FOR THE PENALTY**

### **Conduct in Issue - Summary**

- 2.1. The FSA has decided to impose the Penalty on Kings in respect of breaches by Kings of the FSA's rules and principles referred to in paragraph 1.1. These breaches, which occurred in the period from 1 December 2001 to the end of February 2004 ('the relevant period'), relate to Kings' conduct in connection with its approval of non-real time financial promotions for pension unlocking that were issued by Regal Partners Limited ("Regal Partners"). Regal Partners is not authorised by the FSA.
- 2.2. These breaches, which are described at section 5 below, relate to Kings':
  - approval of financial promotions for pension unlocking which failed to be clear, fair and not misleading;
  - failure to withdraw its approval for financial promotions for pension unlocking as soon as was reasonably practicable or at all after it became aware that they failed to comply with the requirements set out in Chapter 3 of COB ("COB 3"), and repetition of past mistakes in subsequent promotions; and
  - failure to maintain effective systems and controls for ensuring compliance with the FSA's rules relating to the communication of financial promotions.
- 2.3. Pension unlocking is the early realisation of benefits from pension arrangements (in the form of a tax free lump sum and/or an annuity) before the normal retirement date.
- 2.4. A key risk of raising cash or an income by pension unlocking is that retirement income could be significantly lower than if the pension was maintained and may be insufficient for the customers' needs in retirement. Other potential drawbacks include loss of guarantees/benefits from final salary occupational schemes, the imposition of early withdrawal penalties and the charging of additional fees for unlocking a pension/arranging the transaction. As a result, the FSA considers that pension unlocking is likely to be suitable for a very limited number of people and circumstances only.
- 2.5. Kings' failings are particularly serious for the following reasons:
  - The financial promotions potentially affected the pension assets of customers who were approaching retirement. As such, it was essential that the financial promotions were clear, fair and not misleading and disclosed adequately the significant risks and drawbacks associated with raising funds through pension unlocking. However, together with other deficiencies, the financial promotions which form the subject matter of this notice contained either no risk warning or a warning which was not fair and adequate.
  - The financial promotions had the potential to be viewed by a large number of retail customers as they were distributed through a wide range of media which included terrestrial and satellite television, direct mail, brochures and the Internet.

- The Firm's failures persisted for over two years and arose from systemic weaknesses in Kings' procedures for the approval of financial promotions. For example, during the relevant period Kings became aware, or was made aware by the FSA, of specific deficiencies in its financial promotions. Despite this, Kings failed to review proactively all its existing financial promotions to ensure their compliance with FSA rules and, where any incidences of non-compliance existed, to withdraw its approval for those non-compliant promotions as soon as was reasonably practicable. Kings also failed to ensure that past mistakes were not repeated in subsequent financial promotions.

2.6. The failings in this case merit the imposition on Kings of a financial penalty. In fixing the amount of the Penalty, the FSA has recognised the actual and potential impact of the failings:

- During the period 1 December 2001 to 16 June 2004, 2518 customers that were referred to Kings unlocked their pensions with a combined fund value of £82,761,012. Information provided by Kings indicates that of these customers, at least 1237 initially contacted Regal Partners as a result of the non-compliant television advertisements which are referred to in this notice.
- It is noted, however, that the process leading up to the actual pension unlocking by the customer involved an advisory stage. For the avoidance of doubt, Kings' conduct in connection with the advisory stage of the process has not been investigated by the FSA and accordingly does not form part of the subject matter of this notice.
- Neither the FSA nor Kings has received complaints from customers who contacted Regal Partners as a result of the financial promotions referred to in this notice.

2.7. Kings has been open and co-operative with the FSA during its investigation. The Firm has now appointed a full-time compliance officer and, in addition, has agreed to appoint an independent third party to review the Firm's procedures for approving and monitoring financial promotions and to carry out any remedial action arising out of that review. Were it not for these matters, the Penalty would have been higher.

### **3. RELEVANT STATUTORY PROVISIONS AND REGULATORY REQUIREMENTS**

3.1. Section 206 of the Act provides:

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

#### **Conduct of Business Rules relating to Financial Promotions**

##### ***Withdrawal of approval***

3.2. FSA Rule COB 3.6.3R provides that:

*“If, at any time after it has completed a confirmation exercise in COB 3.6.1R(1), a firm becomes aware that a financial promotion no longer complies with the rules in this chapter, it must ensure that the financial promotion is withdrawn as soon as is reasonably practicable by:*

- (1) ceasing to communicate it;*
- (2) withdrawing its approval (if applicable); and*
- (3) notifying any person that the firm knows to be relying on its approval (if applicable) or confirmation (under COB 3.6.5R).”*

3.3. FSA Rule COB 3.6.4 G (2) provides the following guidance:

*"For compliance with COB 3.6.3 R, the FSA will expect a firm to monitor its relevant financial promotions as part of the firm's routine compliance monitoring procedures. A firm may find it helpful to designate a relevant financial promotion with a 'review date', a date at which the financial promotion should be checked once more against the rules of this chapter. If it is found no longer to meet these requirements it should be withdrawn as soon as is reasonably practicable."*

***Reasonable steps to ensure clear, fair and not misleading***

3.4. FSA Rule COB 3.8.4R(1) provides:

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

3.5. Evidential provision COB 3.8.5E provides further detail as to how firms can comply with COB 3.8.4R including that:

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

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

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

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

***Fair and adequate description of nature of investment and risks***

3.6. FSA Rule COB 3.8.8R(1)(a) to (c) provides:

*"A specific non-real time financial promotion must:*

- (1) include a fair and adequate description of:*
  - (a) the nature of the investment or service;*

(b) *the commitment required;*

(c) *the risks involved; "*

- 3.7. COB 3.8.9 G (1) provides: *"A specific non-real time financial promotion should give a fair and balanced indication of the requirements in COB 3.8.8 R (1) (a) to (c) to meet COB.3.8.4 (1)."*

### **Systems and Controls Rules**

- 3.8. FSA Rule SYSC 3.2.6R provides:

*"A firm must take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system and for countering the risk that the firm might be used to further financial crime."*

### **FSA Principles for Businesses**

- 3.9. FSA Principle for Businesses 2 *"Skill, care and diligence"* provides that:

*"A firm must conduct its business with due skill, care and diligence."*

- 3.10. FSA Principle for Businesses 3 *"Management and Control"* provides:

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

- 3.11. FSA Principle for Businesses 7 *"Communication 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."*

## **4. REGULATORY CONTEXT**

### **Overview of Pension unlocking**

- 4.1. Pension unlocking is a generic term that is applied to the early realisation of pension benefits prior to the selected or normal retirement date and covers both transfers from Defined Benefit schemes and switches from Money Purchase arrangements. Pension unlocking generally allows customers to:

- (1) take a tax-free lump sum out of their pension fund;
- (2) buy an annuity with the rest of their fund to provide a pension income for life; and
- (3) to leave any 'protected rights' invested until at least the age of 60.

- 4.2. As pension unlocking sometimes involves transfers from Occupational Pension Schemes, the risks inherent with pension transfers also apply to pension unlocking. These risks occur by the moving of benefits from schemes where benefits are clearly defined in terms of the final pension that would be paid at normal retirement to a

money purchase scheme where benefits are unknown until they are actually taken. Generally, the risks involved with the transfer or switching of retirement benefits include:

- (1) benefits may be actuarially reduced as the assets of the fund do not reflect the accrued benefits (e.g. its transfer value) to which the customer may be entitled;
- (2) investment funds that are not taken as cash or used to purchase an annuity may not grow sufficiently to provide the benefits that would be expected at normal pension age;
- (3) loss of guarantees/benefits from final salary occupational schemes e.g. ill-health benefits or death benefits;
- (4) loss of any discretionary increases that may be decided upon by the trustees of final salary occupational schemes;
- (5) the imposition of early withdrawal penalties; and
- (6) the imposition of any additional adviser fees or commissions for unlocking the pension or arranging the transaction.

4.3. Pension unlocking also gives rise to a number of additional risks. The key additional risk is that retirement income will generally be significantly lower than if the pension arrangements remained untouched until a customer's normal retirement age. Because pension contributions are not maintained until normal retirement age, the potential for further investment growth is lost and the level of pension or annuity purchased in the context of a pension unlocking will usually have to provide a pension for a period that will include the time between the actual date of releasing benefits and the customer's normal retirement date, as well as the period after that date. The amount of income paid under the annuity that could be purchased in these circumstances is likely to be significantly lower than under one purchased only for the period after the normal retirement date. It may not, therefore, be sufficient for customers' needs in retirement.

4.4. As a result, the FSA considers that pension unlocking is likely to be suitable for a very limited number of people and circumstances only. Pension unlocking should only be considered as an avenue of last resort.

4.5. On 28 January 2003, the FSA published a consumer alert on its website (which was also made available in hard copy) to warn customers about the potential pitfalls of cashing in their pension fund before they retire. This consumer alert was also accompanied by an FSA press release which specifically warned that pension unlocking *"is rarely in anyone's long-term financial interests"* and that should it be considered *"only in exceptional circumstances, where you have immediate needs and no other option"*. The press release also added:

*"The FSA is looking at firms that are engaged in this activity and will take relevant action to protect consumers where necessary. This may include enforcement action if the regulator finds that customers have been exposed to misleading financial promotions or inappropriate advice".*

- 4.6. On 24 November 2003 the FSA sent Kings and all the other firms operating in the pension unlocking market a 'Dear CEO' letter to inform them about the FSA's concerns in this area and to remind them of their regulatory obligations.

### **The FSA's regulatory approach to financial promotions - April 2002**

- 4.7. In April 2002, the FSA issued a publication entitled "*The FSA's regulatory approach to financial promotions*" which explained the FSA's approach to financial promotions after 1 December 2001. While the publication does not constitute and is not treated by the FSA as having the effect of formal guidance it does contain detailed statements about the FSA's expectations in this area.
- 4.8. The publication warned that where serious or persistent rule breaches are identified, firms could find themselves subject to enforcement action. It also warned against the following deficiencies:
- A lack of balance, with headline benefits emphasised without clear and fair indication of material risks or drawbacks;
  - Misleading claims, and the creation of unrealistic expectations; and
  - Key information hidden in the small print.

## **5. FACTS & MATTERS RELIED ON**

### **The Firm - background**

- 5.1. The Firm is an independent financial adviser. It was authorised by the Personal Investment Authority from 23 October 2001 to 30 November 2001, and became an Authorised Person under the Act from 1 December 2001. The Firm specialises in providing pensions advice.

### **Regal Partners**

- 5.2. Regal Partners is an unregulated firm which operates from the same offices as Kings. Regal Partners carries out all the administrative functions in connection with the pension unlocking service that is provided by Kings and acts as an introducer to the Firm. Regal Partners issues financial promotions that are approved by Kings and deals with any resulting enquiries. This includes obtaining relevant information from the customer and details from the customer's pension provider. Once this information has been obtained, the customer is introduced to Kings for the advisory stage of the process. Following the advisory stage of the process, the customer file is handed back to Regal Partners which carries out any further administrative work.

### **The Promotions**

- 5.3. This notice relates to nine financial promotions that were approved by Kings during the relevant period and communicated by Regal Partners through a variety of media. Details of these promotions are set out below. The promotions are all 'specific non-real time financial promotions' for the purposes of the COB rules 3 that have been breached by Kings as they 'induced' the reader to engage in investment activity.

### ***Television advertisements***

- 5.4. During the relevant period, Kings approved a series of television adverts, of which three – Vault Advert 1, Vault Advert 2 and Vault Advert 3 – form part of the subject matter of this notice.
- 5.5. The Vault Advert shows a man entering a vault on the door of which is a sign stating 'no access until you retire'. Having tried, but been unable to unlock a number of other safe deposit boxes, the man turns a key which opens a safe deposit box labelled 'Your tax free lump sum and/or pension now'. The box is filled with cash and the man pulls out a wad of cash which he places in the inside pocket of his jacket. The first version of the Vault Advert ('Vault Advert 1') was approved by Kings on 4 December 2001 and broadcast 2646 times on a range of terrestrial and digital television channels during the period from 1 December 2001 to 31 October 2002. The advert was also transmitted 32 times on a terrestrial channel during October 2003, though the Firm says this resulted from an error that had arisen between Regal and another party.
- 5.6. Kings approved a further version of the Vault Advert ('Vault Advert 2') on 8 October 2002 which was broadcast 479 times during the period 1 November 2002 to 30 April 2003 and a further 142 occasions during October and November 2003. On 7 November 2003, Kings approved Vault Advert 3, which was broadcast 99 times during the period 7 to 30 November 2003.

### ***Direct Mails***

- 5.7. In addition to television advertisements, during the relevant period, Kings approved for Regal Partners a series of A4/A5 fliers that were mailed to prospective customers. Of these, the following fliers form part of the subject matter of this notice:
- Direct Mail (A5 flier) - approved by Kings on 21 December 2001
  - Direct Mail (A4 flier) - approved by Kings on 30 May 2002

These fliers are appended to this notice.

### ***Internet***

- 5.8. Among other internet based financial promotions, on 26 June 2003, Kings approved for Regal Partners a one page pension unlocking promotion for appearance on a website of another firm.

### ***Brochures***

- 5.9. As part of the marketing strategy to promote the pension unlocking services of Kings/Regal Partners, Regal Partners would invariably send to prospective customers who responded to a television advertisement, direct mail or other financial promotion, a brochure which purported to provide further information about the pension unlocking service that was on offer. Of the seven versions of the brochures that Kings approved for Regal Partners during the relevant period, three form part of the subject matter of this notice as follows:



- Brochure entitled "*Helping you make the most of your money*" - approved by Kings on 21 December 2001
- Brochure entitled "*Your guide to pension release*" - approved by Kings on 30 August 2002
- Brochure entitled "*Your guide to pension release*" - approved by Kings on 16 February 2003

#### **Discovery of the issue by the FSA**

- 5.10. Deficiencies in financial promotions approved by Kings were first identified by the FSA during 2003. On 19 May 2003, representatives of Kings and Regal Partners attended a meeting with the FSA, at which the FSA, amongst other matters, drew attention to the lack of risk warnings in Kings' brochures and stressed that customers needed to be made aware of the relationship between Kings and Regal Partners. When Vault Advert 1 was re-broadcast during October 2003, the FSA's Financial Promotions Department ("FPMT") identified during the course of its routine monitoring of television advertising that Vault Advert 1 did not contain any risk warnings. FPMT subsequently identified further deficiencies in Kings' financial promotions resulting in a series of communications with the Firm, particularly during the course of November 2003 to February 2004. Details of some of these communications are set out below. Following various apparent repeat breaches, Enforcement investigators were appointed in April 2004.

#### **Breaches of Rules**

- 5.11. As is explained at paragraphs 4.2 and 4.3 above, pension unlocking is a process that involves a number of serious risks and drawbacks for consumers.

#### ***Failure to ensure that promotions were clear, fair and not misleading***

##### Inadequate risk warnings

- 5.12. As is noted above, there are a number of risks to consumers associated with pension unlocking, a key one being that retirement income could be significantly lower than if the pension was maintained. However, the financial promotions which are the subject of this notice failed to describe fairly and adequately, or at all, any of these risks.
- 5.13. In particular, the following financial promotions failed to include any risk warning:
- Vault Advert 1;
  - the direct mail fliers approved by Kings on 21 December 2001 and 30 May 2002 respectively; and
  - the brochures approved by Kings on 21 December 2001, 30 August 2002 and 16 February 2003 respectively.
- 5.14. Vault Advert 2 included the following written risk warning "*Taking benefits early will reduce what you will receive in retirement. Pension release may not be suitable*

*for everyone*". However, this warning appeared in small print at the bottom of the screen and was displayed for a limited period of time only at the beginning of the advert. Further, the advertisement did not include a verbal risk warning. The FSA considers that the warning was not prominent enough to amount to an adequate warning of the risks involved in pension unlocking and that its timing at the beginning of the advertisement further diminished its significance. Vault Advert 3 contained a similar risk warning, though the warning was even more deficient than the one in Vault Advert 2 in that it appeared for a shorter period of time.

- 5.15. As a result of the matters set out in paragraphs 5.12 to 5.14, and in relation to the promotions identified in these paragraphs, Kings breached COB 3.8.8R(1)(c).

Misleading statements/claims

- 5.16. Each of the three brochures referred to in paragraph 5.10 included the following statements/claims *"Helping you make the most of your money"* and *"Your pension fund is likely to be one of your biggest financial assets...Now, due to changes in legislation, a door has been opened to allow you a flexible and controlled route to make the most of these assets"*.
- 5.17. The A5 flier approved by Kings on 21 December 2001 contained the following statement/claim: *"Your pension fund is likely to be one of your biggest financial assets...Now, due to changes in legislation, a door has been opened to allow you to follow a flexible and controlled route to making the most of these assets"*. Further, the web-site promotion approved on 26 June 2003 included the statement/claim: *'Now, due to changes in legislation, a door has been opened to allow you to follow a flexible and controlled route to make the most of these assets'*.
- 5.18. The FSA considers that any statement claiming that pension unlocking amounts to making the most of a customer's money and assets, particularly in the absence of clear information about the risks, is wholly misleading and inaccurate.
- 5.19. Accordingly, the deficiencies referred to in paragraphs 5.16 and 5.18 amounted to breaches by Kings of COB 3.8.4R(1) in relation to the promotions identified in these paragraphs.

Inadequate description of the nature of the transaction/service and of the commitment required

- 5.20. The three brochures referred to in paragraph 5.10, each of which was at least eight pages long, failed to include a fair and adequate description of the nature of the service and commitment required and lacked balance generally in that they unduly accentuated the benefits of pension unlocking. In particular, under the header 'How much could I receive', the brochures indicated that Regal Partners could in some circumstances help a customer obtain 100% of their fund value, and under the header 'How much does it cost', the brochures indicated that there would be no charge for Regal Partners to investigate a pension plan and that there would be no charges if a customer decided not to use Regal Partners' services. However, the brochures failed to make reference under these headers or otherwise to any of the matters referred to earlier at paragraphs 4.2 and 4.3.

- 5.21. The deficiencies referred to in paragraph 5.20 amounted to breaches by Kings of COB 3.8.8R(1)(a) and (b) in that the brochures did not contain a fair description of the nature of pension unlocking or an adequate description of the commitment required.

Failure to identify the role/involvement of Kings

- 5.22. As is explained above, Regal Partners carries out the administrative functions in connection with the pension unlocking services that are provided by Kings and Regal Partners. Regal Partners acts exclusively as an introducer to Kings who advises the customer on whether pension unlocking is a suitable product for them, taking into account their personal and financial circumstances.
- 5.23. However, Vault Advert 1 and the direct mails referred to in paragraph 5.8 included either the statement 'Regal Partners Limited acts as an introducer to Independent Financial Advisers' or a statement in nearly identical terms. These statements may reasonably be read as suggesting that Regal Partners dealt with a number of independent financial intermediaries. However, at all material times, Regal Partners acted only as an introducer to Kings. Accordingly, in breach of COB 3.8.4R(1) in respect of these promotions, the statement was unclear and, in the sense that it suggested customers could be referred to a range of advisers, misleading.
- 5.24. None of the brochures referred to in paragraph 5.10 specifically named Kings and although reference was made to an independent financial adviser, the nature and role of the adviser was not made clear. This amounted to a further breach of COB 3.8.8R(1)(a).

Failure to take reasonable steps to ensure that financial promotions are clear, fair and not misleading

- 5.25. As detailed in paragraphs 5.12 to 5.15, 5.20 to 5.21 and 5.24, Kings breached COB 3.8.8 R (1)(a), (b) and (c) in the course of approving financial promotions for Regal Partners. Applying the guidance in COB 3.8.9 G (1) Kings has, therefore, also breached COB 3.8.4R(1) as a consequence of the breach of COB 3.8.8 R (1)(a), (b), and (c) as it did not take reasonable steps to ensure that the financial promotions it approved for Regal Partners were clear, fair and not misleading. This is in addition to the breaches of COB 3.8.4R(1) described in paragraphs 5.16 to 5.19 and 5.22 to 5.23.

***Failure to withdraw approval for non-compliant financial promotions***

- 5.26. During the course of the relevant period, Kings became aware of deficiencies in promotions it had approved for Regal Partners which meant that the promotions were non-compliant, either as a result of its own realisation of such deficiencies or as a result of communications with the FSA which brought deficiencies to the Firm's attention.

Matters identified by Kings

- 5.27. On 15 July 2002, Kings wrote to Regal Partners and requested that it amend Vault Advert 1 so as to include the following risk warning: *"Taking benefits early will reduce what you will receive in retirement. Pension release may not be suitable for*

*everyone*". This resulted in the approval in October 2002 of Vault Advert 2. Despite instructing Regal Partners to amend Vault Advert 1 so as to include a risk warning, Kings failed at that time to withdraw its approval for Vault Advert 1. Indeed, as noted above, Vault Advert 1 continued to be broadcast until the end of October 2002 and was re-broadcast in October 2003. It was only after FPMT wrote to Kings on 24 October 2003 expressing concerns about Vault Advert 1 and advising the Firm that it should immediately withdraw approval for the promotion that Kings finally issued a withdrawal letter to Regal Partners in this regard.

- 5.28. Despite its knowledge of this deficiency, evidenced by its letter of 15 July 2002, Kings did not withdraw its approval in accordance with COB 3.6.3R for any of the other financial promotions that it had approved before 15 July 2002 that failed fairly and adequately, or at all, to describe the risks of pension unlocking. This includes the following financial promotions: Direct mail (A5 flier) - approved on 21 December 2001; Direct mail (A4 flier) - approved on 30 May 2002; and Brochure "*Helping you make the most of your money*" - approved by Kings on 21 December 2001. As is noted later, it also subsequently approved the following brochures that did not contain any risk warning: Brochure "*Your guide to pension release*" - approved on 30 August 2002; and Brochure "*Your guide to pension release*" - approved on 16 February 2003.

#### Matters identified by the FSA

- 5.29. On 19 May 2003, the FSA drew Kings' attention to the lack of risk warnings in the Regal Partners brochure and stressed that customers needed to be made aware of the relationship between Kings and Regal Partners. Despite receiving notice of these deficiencies, Kings failed to withdraw its approval in accordance with COB 3.6.3R for any of the financial promotions it had approved before 19 May 2003 that failed to make clear the risks and/or the relationship between Kings and Regal Partners. This includes the following financial promotions: Vault Adverts 1 and 2, the direct mail fliers approved on 21 December 2001 and 30 May 2002 respectively, and the brochures approved on 21 December 2001, 30 August 2002 and 16 February 2003. Following Kings' failure to withdraw approval, Vault Adverts 1 and 2 were both screened during October 2003 with Vault Advert 2 also being screened following FPMT's letter of 24 October 2003 to Kings, which again highlighted this deficiency.
- 5.30. As noted at paragraph 5.9 above, on 26 June 2003 Kings approved for Regal Partners a one page pension unlocking financial promotion for appearance on the website of another firm ('the web-site promotion'). In addition to highlighting the benefits of pension unlocking, this promotion included the following risk warning: "*Taking benefits early will reduce what you will receive in retirement. Pension release may not be suitable for everyone*". On 24 November 2003, the FSA sent Kings a 'Dear CEO' letter which included the following warning "*A key risk with pension "unlocking" is that the consumer's pension will be reduced over the longer term and may be insufficient for the consumer's needs in retirement....Given the importance of pension income, pension unlocking is likely to be suitable only for a limited range of consumers and circumstances*". The FSA sent Kings a follow-up letter on 13 January 2004 reminding it about the concerns set out in the 'Dear CEO' letter and advising the Firm to ensure that its promotional material addressed those concerns.

- 5.31. Following these communications, Regal Partners amended certain of its then current financial promotions, which consisted of television Vault Advert scripts, direct mail, the Regal Partners website and an A5 corporate brochure, to include the following risk warnings: *'Pension release is likely to be suitable only for a limited range of consumers and circumstances'*. Kings approved these revised financial promotions on 16 January 2004. The web-site promotion was not, however, amended to include a risk warning in these terms. It therefore failed fairly and adequately to warn of the risks identified by the 'Dear CEO' letter and was consequently non-compliant. Nevertheless, the web-site promotion was still in use in its original format as at 6 September 2004.
- 5.32. As a result of the matters above, Kings failed to withdraw its approval for any of the financial promotions referred to in paragraphs 5.27 to 5.31 as soon as was reasonably practicable, or at all, after it became aware that they failed to comply with the requirements of COB 3. This was in breach of COB 3.6.3R in respect of these promotions.

***Inadequate systems and controls for the approval of financial promotions***

- 5.33. Kings failed to exercise reasonable care, and did not establish and maintain effective systems and controls to ensure compliance with FSA Rules on financial promotions. These deficiencies are evidenced by the matters specified below and, in particular, by the fact, as described above, that during the relevant period Kings approved financial promotions that contained serious breaches of FSA rules.

Failure to withdraw approval for non-compliant promotions/repeating past mistakes

(a) Withdrawal of existing non-compliant financial promotions

- 5.34. As detailed in paragraphs 5.26 to 5.32, during the relevant period Kings became aware, or was made aware by the FSA, of particular deficiencies in its financial promotions. Nevertheless, Kings failed to review proactively all its existing financial promotions to ensure their compliance with FSA rules and, where any incidences of non-compliance existed, withdraw its approval for those non-compliant promotions.

(b) Repeating past mistakes when approving promotions

- 5.35. As described in paragraph 5.28, Kings failed to ensure that past mistakes were not repeated in subsequent financial promotions. In particular, despite the fact it clearly appreciated by July 2002 the need for risk warnings in the financial promotions it was approving for Regal Partners, Kings approved brochures for Regal Partners in August 2002 and February 2003 which contained no risk warnings.

Monitoring

- 5.36. During the relevant period, Kings had no or no effective, arrangements in place for routinely monitoring the compliance of the financial promotions it had approved for Regal Partners with FSA rules. As a result, for example, the Firm failed to identify that a non-compliant financial promotion that it had approved, Vault Advert 1, was still being broadcast on national television during October 2003. Kings became aware of the matter only as a result of FPMT's notification. Further, as explained in

paragraph 5.31, Kings was unaware that the web-site promotion it had approved on 26 June 2003 was still accessible on the relevant website in its original form as at 6 September 2004.

- 5.37. During the relevant period the standard of the financial promotions approved by Kings gradually improved. However, these improvements were made principally as a result of intervention by the FSA which identified deficiencies in the Firm's financial promotions and brought these matters to its attention. Kings has therefore demonstrated a reactive rather than a proactive approach towards compliance and ensuring that its financial promotions complied with the requirements in COB 3.
- 5.38. As a result of the matters above, Kings failed to exercise reasonable care to establish and maintain effective systems and controls to ensure its compliance with FSA Rules on financial promotions. This was in breach of SYSC 3.2.6R.

#### **Breaches of FSA's Principles**

- 5.39. Kings has breached Principle 2 and Principle 3 of the FSA's Principles by reason of the facts and matters described in paragraphs 5.12 to 5.38, as these indicate that Kings took neither adequate care to conduct its business with due skill, care and diligence (Principle 2) nor reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems (Principle 3).
- 5.40. Kings has also breached principle 7 of the FSA Principles as a result of the facts and matters detailed in paragraphs 5.12 to 5.38, as these indicate that Kings did not 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.

#### **Number of customers affected**

- 5.41. During the period from 1 December 2001 to 16 June 2004, 2,518 customers that were referred to Kings by Regal Partners unlocked their pensions with a combined pension fund value of £82,761,012. Information provided by Kings indicates that of these customers, at least 1237 had initially responded to Vault Advert 1, 2 or 3.

### **6. RELEVANT GUIDANCE ON SANCTION**

- 6.1. The principal purpose of a financial penalty is to promote high standards of regulatory conduct by deterring firms who have breached regulatory requirements from committing further contraventions, helping to deter other firms from committing contraventions and demonstrating generally to firms the benefits of compliant behaviour.
- 6.2. The FSA's policy on the imposition of financial penalties is set out at Chapter 13 of the FSA Enforcement Manual ("Manual"), which forms part of the FSA Handbook. Paragraph 13.3 of the Manual sets out the factors that may be of particular relevance in determining the appropriate level of financial penalty. However, as stated at paragraph 13.3.4 of the Manual, the criteria listed at paragraph 13.3 of the Manual are not exhaustive and all relevant circumstances of the case will be taken into consideration.

- 6.3. In determining whether a financial penalty is appropriate the FSA considers all the relevant circumstances of the case. The FSA considers the following factors to be particularly relevant in this case.

**The seriousness of the misconduct or contravention**

- 6.4. The financial promotions in question were for pension unlocking – a service that the FSA considers will rarely be in the long-term interests of investors as almost certainly it will mean that they will have less income in retirement.
- 6.5. The financial promotions which are the subject of this notice had the potential to be viewed by a large number of retail customers as they were distributed through a wide range of media which included terrestrial and satellite television, direct mails, brochures and the Internet. For example, a total of 9287 people responded to Vault Adverts 1, 2 and 3, of whom at least 1237 ultimately unlocked their pension. It is noted, however, that the process leading up to the unlocking involved an advisory stage.
- 6.6. Kings' failures persisted for over two years and arose from systemic weaknesses in the Firm's procedures for the approval of financial promotions. For example, as detailed in this notice, having become aware of deficiencies, Kings repeated past mistakes and failed to review proactively all the financial promotions it had already approved to ensure their compliance with FSA rules. This is a serious aggravating factor.

**The extent to which the contravention or misconduct was deliberate or reckless**

- 6.7. There is no evidence that the Firm deliberately or recklessly contravened FSA rules and principles.

**The size, financial resources and other circumstances of the Firm**

- 6.8. There is no reason to believe that the Firm will not be able to pay the Penalty.

**The amount of profit accrued or loss avoided**

- 6.9. There is no evidence that the Firm deliberately set out to accrue additional profits as a result of its failings.

**Conduct following the contravention**

- 6.10. As noted above, despite the fact that it had been notified by the FSA of deficiencies in its financial promotions, the Firm failed to ensure that those deficiencies were not repeated in subsequent financial promotions.
- 6.11. Kings has appointed a full-time compliance officer and, additionally, has agreed to appoint an independent third party to review the Firm's procedures for approving and monitoring financial promotions and to carry out any remedial action arising from that review.

**Disciplinary record and compliance history**

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

**Previous action by the FSA and other regulatory authorities in relation to similar failings**

- 6.13. The FSA has in the past taken action against firms for advertising failings. This action has included the imposition of financial penalties. The FSA has taken these penalties into account.

**7. DECISION MAKER**

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

**8. IMPORTANT**

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

**Manner of payment**

- 8.2. The Penalty must be paid to the FSA by instalments as set out below.

**Time for payment**

- 8.3. The first instalment of the Penalty in the sum of £5,000 must be paid to the FSA by no later than 23 November 2005 being not less than 14 days beginning with the date on which this Final Notice is deemed served on you, followed by 11 monthly instalments each in the sum of £5,000 to be paid on the 21<sup>st</sup> day of each month thereafter ("the due date").

**If the penalty is not paid**

- 8.4. Each instalment must be paid on the due date as specified above and in any event, no later than 14 days after each due date ("the payment period"). If any instalment is not paid within the payment period, and remains outstanding on the 15<sup>th</sup> day after the due date, the whole of the outstanding amount of the Penalty will become due and the FSA may recover the same as a debt owed by you and due to the FSA.

**Third Party rights**

- 8.5. The FSA gave a copy of the Decision Notice to Regal Partners. Accordingly, the FSA must give a copy of this Final Notice to Regal Partners.
- 8.6. Regal Partners has confirmed that it will not be referring this matter to the Financial Services and Markets Tribunal.

**Publicity**

- 8.7. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Final Notice relates. Under those provisions, the FSA must publish such information about the matter to which this Final 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 Kings or prejudicial to the interests of consumers.



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

**FSA Contacts**

- 8.9. For more information concerning this matter generally, you should contact Richard Brady at the FSA (direct line: 020 7066 1242/fax: 020 7066 1243).

Alison Wheeler  
Project Sponsor  
FSA Enforcement Division