Financial Services Authority

FINAL NOTICE

To: **Martin Currie Investment Management Limited ("MCIML") and Martin Currie Inc ("MCI")**

FSA Reference Numbers: 119289 (MCIML) and 122023 (MCI)

Date: 2 May 2012

1. ACTION

1.1. For the reasons given in this Notice, the Financial Services Authority ("the FSA") hereby imposes a financial penalty of £3.5 million on MCIML and MCI (together, "Martin Currie") in respect of breaches of Principles 2, 3 and 8 of the FSA's Principles for Businesses and breaches of rules contained in the part of the FSA's Handbook relating to Senior Management Arrangements, Systems and Controls ("SYSC") Sourcebook and the Conduct of Business ("COB") Sourcebook between January 2007 and November 2010 (the "Relevant Period").

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

2. SUMMARY OF REASONS

2.1. During the Relevant Period, Martin Currie breached Principles 2, 3 and 8 in relation to its discretionary investment management of unlisted investments made on behalf of two client funds ("Fund A" and "Fund B"). Fund A and Fund B both focused on the China market, and were managed by the same fund managers based in Martin Currie's Shanghai office.

2.2. In particular, Martin Currie:

(1) failed to put in place effective systems and controls to manage the risks of managing unlisted investments;

(2) failed to conduct sufficient due diligence and credit risk analysis when investing in three unlisted bond investments on behalf of Fund A and B;

(3) incorrectly classified an unlisted bond investment (which was made in 2007) as "cash" in: (a) its portfolio risk management system; and (b) as a consequence, the majority of its monthly updates to Fund A's investors. This gave an inaccurate impression to investors about the Fund's market exposure and the liquidity and risk of its investments;

(4) failed to put in place effective systems and controls for unlisted investments to recognise promptly when a proposed unlisted investment might breach a client's investment restrictions;

(5) entered into a transaction on behalf of Fund A in 2007 which breached the fund's investment restriction for unlisted investments and failed properly to disclose that matter to its client; and

(6) in relation to an unlisted bond investment completed in 2009, failed to manage fairly a conflict of interest between Fund A and Fund B, and failed to disclose that conflict to Fund B.

2.3. The FSA acknowledges that some of the failings detailed in this Notice resulted from actions of fund managers with full discretionary authority to manage Fund A and Fund

B. However, the FSA considers that the primary responsibility for ensuring compliance with a firm's regulatory obligations rests with the firm itself. Martin Currie failed to put in place effective controls and supervision over the activities of these fund managers in relation to unlisted investments. In particular, the unlisted bond investment transactions as structured were not appropriately challenged by Martin Currie and Martin Currie failed to act effectively when the fund manager recommendations risked putting Martin Currie in breach of its regulatory obligations. This lack of effective oversight contributed to many of the failings listed above.

2.4. The FSA considers Martin Currie's failings to be serious because:

(1) they exposed Fund A to a potential financial loss, and exposed Fund B to an actual financial loss of HK$64.3 million (equivalent to approximately £5.1 million)[1], which was compensated by Martin Currie;

(2) they revealed serious weaknesses in Martin Currie's systems and controls in respect of unlisted investments;

(3) Martin Currie gave the fund managers responsible for Fund A and Fund B broad powers to make unlisted investments without putting in place appropriate checks and controls over their actions;

(4) after discovering that a particular transaction might give rise to a conflict of interest between Fund A and Fund B, Martin Currie failed to take appropriate steps to manage that conflict fairly; and

(5) Martin Currie failed to identify certain of the failings outlined in this Notice, even though some were in breach of Martin Currie's own policies.

2.5. In mitigation of the seriousness of Martin Currie's failings, the FSA recognises that Martin Currie:

[1] (applying an exchange rate of 1 HK$ = 0.079 GBP).

(1) promptly agreed to indemnify Fund B and subsequently paid approximately HK$64.3 million (around £5.1 million)[2] to compensate Fund B in full for the investment loss it suffered;

(2) took steps to improve its processes for unlisted investments during the latter part of the Relevant Period, and no longer permits unlisted bond investments;

(3) spent considerable time and money investigating these issues (and has shared its findings with the FSA) and took disciplinary action against certain individuals and reallocated fund management responsibilities in its Shanghai office; and

(4) made improvements to its governance structure and risk control processes, and in particular: (a) created a new Board level position of General Counsel with management responsibility for the Legal, Risk and Compliance teams; and (b) ensured enhanced oversight and supervision of its Shanghai office.

2.6. When exercising its powers, the FSA seeks to act in a way it considers most appropriate for the purpose of meeting its statutory objectives, which are set out in section 2(2) of the Act. Having considered the nature of the breaches outlined above, the FSA considers that imposing a financial penalty of £3.5 million meets the statutory objectives of market confidence and consumer protection.

3. DEFINITIONS

3.1. The definitions below are used in this Final Notice.

"**2007 Bond**" means the unlisted bond entered into by Fund A in 2007;

"**2008 Bond**" means the unlisted bond entered into by Fund A in 2008;

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

"**COB Rules**" means the rules in the Conduct of Business Sourcebook;

"**Company Y**" means a wholly owned subsidiary of Company X;

[2] (applying an exchange rate of 1 HK$ = 0.079 GBP).

"**Company Y Transaction**" means the investment made by Fund B in Company Y in April 2009;

"**Edinburgh Office**" means the office in Edinburgh where Martin Currie Investment Management Limited and Martin Currie Inc's Scottish branch are based;

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

"**Fund A**" means the investment fund managed by MCIML and referred to in this Notice;

"**Fund B**" means the investment fund managed by MCI and referred to in this Notice;

"**Martin Currie**" means Martin Currie Inc and Martin Currie Investment Management Limited;

"**MCI**" means Martin Currie Inc;

"**MCIML**" means Martin Currie Investment Management Limited;

"**Principles**" means the FSA's Principles for Businesses;

"**Relevant Period**" means the period from January 2007 to November 2010; and

"**SYSC Rules**" means the rules set out in the Senior Management Arrangements, Systems and Controls Sourcebook.

4. FACTS AND MATTERS

Background

4.1. Both MCIML and MCI's UK branch are investment management firms authorised by the FSA and operate from the Edinburgh Office. All employees in that office are employed by MCIML but some are also seconded to MCI under a "double hatting arrangement" and so, in practice, the seconded individuals work for both MCI and MCIML.

4.2. MCI and MCIML are both wholly owned subsidiaries of Martin Currie Limited and form part of the Martin Currie Group. The Martin Currie Group is a specialist investment management business and, between 2007 and 2010, managed between £11.3 billion and £15.7 billion in assets for clients including financial institutions, charities, pension funds, government agencies and investment funds.

4.3 As at September 2010, around 35% of the Martin Currie Group's assets under

management (by value) were made in the China market. The majority of these investments were researched and managed by a specialist China-focussed team, led by senior and experienced fund managers who worked for MCI and MCIML and were based in Martin Currie's Shanghai office.

4.4 Unlisted bonds and other forms of private equity investment were a small part of Martin Currie's business. As at September 2010, such investments accounted for approximately 0.7% of the assets by value under Martin Currie's management.

Fund A and Fund B

4.5 The facts giving rise to this Notice relate to Martin Currie's management of three unlisted bond investments which affected two funds, Fund A and Fund B, both of which focused on investing in the China market.

4.6 MCIML was appointed to manage Fund A in 2002. Fund A focused on listed equity investments but permitted investments in unlisted debt and equity securities up to a maximum amount of 5% of the Fund's Net Asset Value. Under the terms of Fund A's investment management agreement, MCIML was responsible for seeking out and evaluating investment opportunities for Fund A, and determining which investments should be acquired or disposed of. As at 30 September 2010 the total value of Fund A's investment portfolio was around US$122.3 million.

4.7 MCI was appointed to manage Fund B's portfolio of unlisted investments in 2007 (MCI had been managing the fund's portfolio of listed investments since 2001). During the Relevant Period, Fund B's investment objective was long-term capital appreciation which it sought to achieve by investing primarily in equity securities of China companies. Fund B also permitted up to 25% of its assets to be invested in unlisted securities and, under the terms of Fund B's unlisted investment management agreement, MCI had discretion, subject to fund and regulatory investment restrictions, to enter into and manage investments in unlisted securities on Fund B's behalf. As at 30 September 2010 the value of Fund B's assets under management was around US$799.8 million.

4.8 Although Fund A and Fund B were managed by separate Martin Currie Group

companies (MCIML and MCI) as noted above, both funds were managed by the same fund managers who worked for MCI and MCIML and were based in Martin Currie's Shanghai office. All investment decisions in respect of Fund A and Fund B were implemented by MCI and MCIML (the Funds' appointed investment managers) from the Edinburgh Office based on the research and recommendations of the fund managers. Considerable reliance was placed on the experience and expertise in the China market of the fund managers and there was a culture within Martin Currie to seek to support the fund managers in what they wanted to do.

Systems and controls around unlisted investments

4.9 Martin Currie had very limited experience of unlisted bond investments and had only begun managing such unlisted investments in China in 2006. Martin Currie's operations, processes, systems and controls were configured towards a listed equity environment and Martin Currie was slow to amend its listed equity systems and controls to cater for unlisted investments. During the Relevant Period, Martin Currie allowed the fund managers largely unchallenged authority to select, negotiate the terms of, and commit to, unlisted investments on behalf of certain clients but failed to put in place an appropriate framework (such as an oversight committee) to provide central oversight of this unlisted investment activity.

4.10 In June 2007 and October 2008, on behalf of Fund A, MCIML entered into two unlisted bond investments in a Chinese company, referred to in this Notice as Company X (the "2007 Bond" and the "2008 Bond"). Fund A invested HK$78 million (around £5 million)[3] in respect of the 2007 Bond, and HK$31.2 million (around £2.37 million)[4] in respect of the 2008 Bond. Fund A had invested in the listed equity of Company X since late January 2003.

[3] (applying an exchange rate of 1 HK$ = 0.064 GBP).
[4] (applying an exchange rate of 1 HK$ = 0.076 GBP).

4.11 In April 2009, on behalf of Fund B, MCI entered into a transaction under which Fund B invested in an unlisted bond issued by Company Y, a wholly owned subsidiary of Company X. Fund B invested HK$177 million (around £15 million)[5].

4.12 The deficiencies in Martin Currie's systems and controls around unlisted investments contributed to the following specific issues in relation to the 2007 Bond, the 2008 Bond and the Company Y Transaction:

(1) Prior to entering into the 2007 Bond and the 2008 Bond, Martin Currie did not ensure that sufficient detailed due diligence and assessment of the credit risk associated with those investments were conducted.

(2) After providing investors with an accurate report about the transaction in its first monthly update to investors in June 2007, Martin Currie subsequently incorrectly classified the 2007 Bond as "*cash*" in its own portfolio risk management system and, in consequence, in monthly updates sent to investors in the period from September 2007 to November 2008. The classification as "*cash*" understated to investors Fund A's exposure to Company X and so its market exposure and overstated its liquidity. Furthermore, the misclassification understated the risk of the 2007 Bond to investors. Martin Currie did not rectify this misclassification for over a year, and this reduced the visibility of the liquidity issues in Fund A which arose towards the end of 2008 as a result of the global financial crisis (see paragraph 4.13 below).

(3) Martin Currie entered into the 2007 Bond transaction on behalf of Fund A even though the size of the proposed investment exceeded the Fund's limit for unlisted investments. Fund A's investment restrictions only allowed for up to 5% of the Fund's net asset value to be invested in "*unlisted debt and equity securities*", but at the time of investment, the unlisted 2007 Bond represented 8.8% of the fund's net asset value. The Edinburgh Office only became aware of this issue after the 2007 Bond transaction had been substantially concluded.

[5] (applying an exchange rate of 1 HK$ = 0.086 GBP).

Even once the Edinburgh Office was aware of this issue, Martin Currie did not halt the transaction or disclose the potential breach to Fund A's Board. Instead, Martin Currie suggested to Fund A's Board that the investment restriction was ambiguous (which it was not), and sought approval for the deal on the basis that the restriction be amended at the next Board meeting. Furthermore, Martin Currie gave Fund A's Board the impression that the deal was at an earlier stage than it was. On the same day, one of the individuals involved in Edinburgh raised serious concerns about this approach within Martin Currie.

(4) At the time the Company Y Transaction was entered into, Martin Currie had not: (a) ensured that the investment rationale behind the Company Y Transaction had been scrutinised sufficiently; or crucially (b) sufficiently challenged the fund manager decision not to revisit the valuation of the Company Y Transaction made around nine months before the Company Y Transaction was completed, despite Company Y's deteriorating financial performance and the ongoing global financial crisis.

Management of conflicts of interest

Fund A's liquidity issues

4.13 Against the backdrop of the global financial crisis, towards the end of 2008, Fund A experienced a significant volume of requests by investors to redeem their holdings. In order to meet these redemption requests, Fund A needed to sell down the liquid portion of its portfolio, which did not include the 2007 Bond or the 2008 Bond. It was expected that once the redemptions had been processed, Fund A's relative exposure to Company X would increase to over 20% of Fund A's net asset value. Such a high level of exposure to a single entity was a matter of concern for Fund A's Board and for Martin Currie.

4.14 Fund A's Board accordingly instructed Martin Currie to reduce the fund's exposure to Company X. In December 2008 Martin Currie set up a working group to consider potential solutions to the liquidity and concentration issues. When considering these issues, a number of individuals in the Edinburgh Office also raised concerns about the

investment rationale behind the 2007 Bond and the 2008 Bond and the suitability of these investments for Fund A.

Fund B and the Company Y Transaction

4.15 In October 2008, Martin Currie reported to Fund B's Board that it was working on a transaction for Fund B to invest in Company Y. The papers for the Board stated that the proceeds of the Company Y Transaction, which totalled HK$177 million (around £15 million)[6], would be used by Company Y for working capital purposes. It did not explain to Fund B's Board that an inherent component of the Company Y Transaction was that 44% of the proceeds would be used by Company Y's parent company, Company X, to redeem the 2007 Bond held by Fund A. A consequence of the structure of the Company Y Transaction was that it mitigated Fund A's concentration and liquidity issues thereby also mitigating any potential reputational damage to Martin Currie that might arise if Fund A were to be unable to meet redemption notices.

4.16 Fund A therefore had a clear and material interest in the Company Y Transaction, which was potentially in conflict with Fund B's interests. Fund B bore the investment risk of the Company Y Transaction, and in particular risked making a financial loss given Martin Currie's failings regarding its scrutiny and valuation of the Company Y Transaction. Martin Currie failed to manage fairly the conflict of interest between Fund A and Fund B, and failed to disclose appropriately that conflict to its client. The potential disadvantage to Fund B was borne out as Martin Currie, on behalf of Fund B, subsequently sold the investment for approximately HK$92 million, around half of the amount originally invested. Martin Currie had earlier agreed to indemnify Fund B for any loss on the investment and subsequently paid approximately HK$64.3 million (around £5.1 million)[7] to compensate Fund B in full for the investment loss it suffered.

4.17 Martin Currie only identified the conflict of interest and raised questions after the Company Y Transaction had been in development for several months in Shanghai, and had been discussed with Fund B's Board. This is particularly concerning given that two

[6] (applying an exchange rate of 1 HK$ = 0.086 GBP).
[7] (applying an exchange rate of 1 HK$ = 0.079 GBP).

Martin Currie clients (Fund A and Fund B) were involved; a fact which should have alerted Martin Currie to the potential conflict at a much earlier stage. This delay resulted partly from the absence of a formal control framework (such as an investment committee) around the fund manager development of the Company Y Transaction which meant that there was no early "checkpoint" at which the transaction could be examined for potential conflicts by the Edinburgh Office.

4.18 Once Martin Currie identified that the Company Y Transaction raised conflict issues, it did not properly assess that conflict and did not consider with sufficient care whether the Company Y Transaction should be abandoned. When Martin Currie reported its intention to enter into the Company Y Transaction on behalf of Fund B, it did not ensure that the conflict of interest was disclosed to Fund B's Board. In particular, Martin Currie did not ensure that the Fund B Board understood that 44% of the proceeds of the Company Y Transaction would be used to redeem the 2007 Bond held by Fund A. As a consequence, the conflict of interest between Fund A and Fund B was not disclosed to Fund B's Board, and Martin Currie did not obtain the Board's informed consent to continue with the Company Y Transaction.

4.19 These actions amounted to breaches of Martin Currie's own conflict management policies in force during the Relevant Period. Martin Currie's conflict management policies themselves recognised that the management of conflicts "*is a key regulatory principle and is of significant importance*" and required that disclosure of conflicts include "*sufficient detail*" and be made to clients in "*a durable medium*".

Taking steps to remedy the issues

4.20 Although Martin Currie did take steps to address some of the problems around unlisted investments identified in this Notice during the Relevant Period, it did not take sufficient steps to analyse or address certain of the failings detailed in Section 5 below until late 2010, over a year after entering into the Company Y Transaction, and, in respect of the conflict of interest, only because Fund B had brought these issues to Martin Currie's attention.

4.21 Martin Currie has since conducted its own detailed investigation into the facts outlined

above and taken substantive steps to analyse and mitigate these failings. In December 2010 Martin Currie agreed to indemnify Fund B for any investment loss suffered by Fund B on the Company Y Transaction and subsequently paid approximately HK$64.3 million (£5.1 million) in compensation. Martin Currie also: (a) created a new Board level position of General Counsel with management responsibility for the Legal, Risk and Compliance teams; (b) ceased to undertake unlisted bond and other forms of private equity investment in unlisted securities; and (c) has taken disciplinary action against certain individuals and reallocated fund management responsibilities in its Shanghai office.

5. FAILINGS

5.1. The regulatory provisions relevant to this Final Notice are referred to in the Annex.

Breach of the FSA's Principles

5.2. By reason of the facts and matters set out above, Martin Currie breached:

(1) Principle 2 by failing to conduct its business with due skill, care and diligence. In particular, Martin Currie failed:

(a) to identify for over a year that the unlisted 2007 Bond had been misclassified as "cash" in Martin Currie's portfolio risk system and, in consequence, in certain monthly updates to investors (see paragraph 4.12(2) above); and

(b) to halt the 2007 Bond transaction or properly disclose to Fund A's Board that the transaction would breach the Fund's investment restrictions (see paragraph 4.12(3) above).

(2) Principle 3 by failing to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. In particular, Martin Currie failed to:

(a) put in place adequate controls or supervision over the actions of the fund managers responsible for Fund A and Fund B. As a consequence, Martin

Currie failed properly to scrutinise or challenge the fund manager recommendations for the three unlisted investments for Fund A and Fund B detailed in this Notice (see paragraphs 4.8 and 4.12(4) above) and failed to act appropriately when they risked putting Martin Currie in breach of its regulatory obligations;

(b) put in place adequate risk management systems in its role as investment manager of unlisted investments for both Fund A and Fund B with the result that it failed to analyse or address certain of the issues identified in this Notice until late 2010, despite the fact that: (a) some of these issues amounted to breaches of Martin Currie's own internal policies; and (b) some individuals in the Edinburgh Office had expressed concerns about certain actions at the time (see paragraphs 4.9, 4.12(3) and 4.19 above);

(c) recognise the additional risks associated with unlisted bond investments and adapt its listed equity systems and controls to manage fully these risks (see paragraphs 4.9 to 4.12 above);

(d) put in place effective systems and controls to ensure that sufficient due diligence and credit risk analysis were performed in respect of three unlisted bond investments (see paragraphs 4.9 to 4.12 above); and

(e) put in place effective systems and controls for unlisted investments to identify promptly when a proposed unlisted investment could breach client's investment restrictions (see paragraph 4.12(3) above).

(3) Principle 8 by failing to take reasonable steps to manage the conflict of interest arising in relation to the Company Y Transaction. Martin Currie failed to prevent that conflict from giving rise to a risk of damage to its clients, and failed to ensure that Fund B was treated fairly. Martin Currie's conflict management policies did not give any team or individual clear overall responsibility for ensuring that conflicts were managed fairly. Furthermore, Martin Currie breached its own conflicts policy in its handling of the conflict of interest which arose in relationto the Company Y Transaction (see paragraphs 4.13 to 4.19

above).

Breach of the FSA's Rules

5.3. Martin Currie's failings detailed above also amount to specific breaches of the FSA's SYSC and COB Rules. In particular:

(1) MCI's failure to take reasonable steps to ensure that Fund B was fairly treated when entering into the Company Y Transaction amounted to a breach of COB 7.1.3R; and

(2) Martin Currie's failure to put in place effective systems and controls in respect of actions of its fund managers in relation to unlisted investments, its management of unlisted investments and its management of conflicts of interest in relation to the Company Y Transaction amounted to a breach of SYSC 3.1.1R and SYSC 3.2.6R, and, in relation to MCIML from 1 November 2007, SYSC 6.1.1R and SYSC 6.1.2R.

6. SANCTION

6.1. Having regard to the issues above, the FSA considers it appropriate and proportionate in all the circumstances to take disciplinary action against Martin Currie for these breaches.

6.2. The FSA's policy on the imposition of financial penalties and public censures is set out in Chapter 7 of the Enforcement Guide ("EG") and Chapter 6 of the Decision Procedures and Penalties Manual ("DEPP"), which forms part of the FSA Handbook and came into force on 28 August 2007. With regard to DEPP, since the majority of Martin Currie's failings occurred before the change in the regulatory provisions governing the determination of financial penalties on 6 March 2010, the FSA has applied the penalty regime set out in DEPP that was in place before 6 March 2010.

6.3. All references to DEPP below are references to the version in place prior to 6 March 2010. The relevant sections of DEPP are set out in more detail in the Annex.

6.4. In determining whether a financial penalty is appropriate, and if so its level, the FSA is

required to consider all the relevant circumstances of a case. Applying the criteria set out in DEPP 6.2.1 and 6.4.2, the FSA has determined that a financial penalty in the amount of £3.5 million is an appropriate and proportionate sanction in this case.

6.5. DEPP 6.5.2G sets out a non-exhaustive list of criteria that may be of particular relevance in this regard. The FSA considers the following factors to be particularly relevant in this case.

Deterrence (DEPP 6.5.2(1))

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

6.7. Without detracting from the regulatory and other responsibilities of individual fund managers themselves, the FSA considers there to be a need to send a strong message to the industry that investment management firms must put in place effective controls and supervision over their fund managers, and ensure that any conflicts of interests are managed fairly and, where appropriate, are properly disclosed to clients.

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

6.8. In determining the appropriate sanction, the FSA has had regard to the seriousness of Martin Currie's breaches, including the nature, number and duration of the breaches. The FSA views Martin Currie's failings as serious because they revealed serious failings in Martin Currie's unlisted investment systems and controls, exposed Fund A to a potential financial loss, and exposed Fund B to an actual financial loss (albeit that Martin Currie compensated Fund B for its loss).

The size, financial resources and other circumstances of the firm (DEPP 6.5.2(5))

6.9. In determining the level of the penalty the FSA has considered Martin Currie's size and financial resources. There is no evidence to suggest that Martin Currie cannot pay the financial penalty.

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

6.10. As a result of the breaches identified in this Notice, Martin Currie may have gained a benefit from the management fees totalling US$376,167 in respect of the 2007 Bond and the 2008 Bond. Martin Currie refunded management fees of US$723,000 paid by Fund B in respect of the Company Y Transaction. Martin Currie also avoided any reputational loss (and potential consequent financial loss) which may have arisen if Fund A had not been able to meet its redemption notices.

Conduct following the breach (DEPP 6.5.2(8))

6.11. The FSA has taken the following issues into consideration when assessing the level of penalty to impose upon Martin Currie:

(1) Martin Currie promptly brought the breaches to the FSA's attention once it became aware of them in November 2010 and has since co-operated fully in relation to all aspects of this matter;

(2) Martin Currie promptly agreed to indemnify Fund B and subsequently paid approximately HK$64.3 million (around £5.1 million) to compensate Fund B in full for the investment loss it suffered and refunded management fees received from Fund B in connection with the Company Y investment.

(3) during the Relevant Period Martin Currie took significant steps to improve its processes concerning unlisted investments including establishing a 'Pre-IPO Investment Committee' and an 'Unlisted Valuation Committee', and on becoming aware of the issues in late 2010 Martin Currie promptly suspended any further unlisted bond and other forms of private equity investment in unlisted securities (and has subsequently ceased making such investments altogether);

(4) Martin Currie has spent considerable time and money: (a) investigating these issues (and has shared its detailed findings with the FSA); and (b) reviewing its other unlisted investments to ensure there were no other similar issues;

(5) Martin Currie has taken disciplinary action against certain individuals and reallocated fund management responsibilities in its Shanghai office, incurring significant costs to the firm; and

(6) Martin Currie has made improvements to its governance structure and risk control processes including creating a new Board level position of General Counsel with management responsibility for the Legal, Risk and Compliance teams.

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

6.12. Martin Currie has not previously been the subject of disciplinary action by the FSA.

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

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

Conclusion

6.14. Taking into account the seriousness of the breaches and the risks they posed to the FSA's statutory objectives of market confidence and the protection of consumers, the FSA proposes to impose a financial penalty of £3.5 million on Martin Currie.

7. PROCEDURAL MATTERS

Decision maker

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

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

Manner of and time for Payment

7.3. The financial penalty must be paid in full by Martin Currie to the FSA by no later than 16 May 2012, 14 days from the date of the Final Notice.

If the financial penalty is not paid

7.4. If all or any of the financial penalty is outstanding on 17 May 2012, the FSA may recover the outstanding amount as a debt owed by Martin Currie and due to the FSA.

Publicity

7.5. 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.

FSA contacts

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

Georgina Philippou

Project Sponsor
FSA Enforcement and Financial Crime Division

ANNEX

STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY

1. STATUTORY PROVISIONS

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

1.2. Section 206 of FSMA states:

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

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

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

2. REGULATORY PROVISIONS

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

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

Principles

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

2.4. The Principles relevant to this case are:

(1) Principle 2 (Skill, care and diligence) which states that:
"*A firm must conduct its business with due skill, care and diligence*";

(2) Principle 3 (Management and control) which states that:
"*A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems*"; and

(3) Principle 8 (Conflicts of interest) which states that:
"*A firm must manage conflicts of interest fairly, both between itself and its customers*

and between a customer and another client".

Associated FSA Rules

2.5. The applicable Rules during the Relevant Period are:

(1) COB 7.1.3R which provides that if a firm has or may have:
   (1) a material interest in a transaction to be entered into with or for a customer; or
   (2) a relationship that gives or may give rise to a conflict of interest in relation to a transaction in (1); or
   (3) an interest in a transaction that is, or may be, in conflict with the interest of any of the firm's customers; or
   (4) customers with conflicting interests in relation to a transaction;

   the firm must not knowingly advise, or deal in the exercise of discretion, in relation to that transaction unless it takes reasonable steps to ensure fair treatment for the customer;

(2) SYSC 3.1.1R which provides that a firm must take reasonable care to establish and maintain such systems and controls as are appropriate to its business;

(3) SYSC 3.2.6R which states that 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;

(4) SYSC 6.1.1R which provides that a common platform firm must establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the firm including its managers, employees and appointed representatives (or where applicable, tied agents) with its obligations under the regulatory system and for countering the risk that the firm might be used to further financial crime; and

(5) SYSC 6.1.2R which states that a common platform firm must, taking in to account the nature, scale and complexity of its business, and the nature and range of investment services and activities undertaken in the course of that business, establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the firm to comply with its obligations under the regulatory system, as well as associated risks, and put in place adequate measures and procedures designed to minimise such risks and to enable the FSA to exercise its powers effectively under the regulatory system and to enable any other competent authority to exercise its powers effectively under MiFID.

3. Decision Procedure and Penalties Manual ("DEPP")

3.1. The FSA's policy in relation the imposition and amount of penalties that applied during the majority of the Relevant Period was set out in Chapter 6 of DEPP and was in force

between 28 August 2007 and 5 March 2010.

Decision Procedure

3.2. DEPP 6.1.2G provides that the principal purpose of imposing a financial penalty is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches, and demonstrating generally the benefits of compliant behaviour. Financial penalties are therefore tools that the FSA may employ to help it to achieve its regulatory objectives.

3.3. DEPP 6.5.1G(1) provides that the FSA will consider all the relevant circumstances of a case when it determines the level of financial penalty (if any) that is appropriate and in proportion to the breach concerned.

3.4. DEPP 6.5.2G sets out a non-exhaustive list of factors that may be relevant to determining the appropriate level of financial penalty to be imposed on a person under the Act. The following factors are relevant to this case:

Deterrence: DEPP 6.5.2G(1)

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

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

3.6. The FSA will consider the seriousness of the breach in relation to the nature of the rule, requirement or provision breached, which can include considerations such as the duration and frequency of the breach, whether the breach revealed serious or systemic weaknesses in the person's procedures or of the management systems or internal controls relating to all or part of a person's business and the loss or risk of loss caused to consumers, investors or other market users.

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

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

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

used to resolve a problem.

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

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

Conduct following the breach: DEPP 6.5.2G(8)

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

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

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

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

3.12 The FSA may consider action that it has taken in relation to similar breaches by other persons when deciding on the level of penalty. The FSA does not operate a tariff system, however the FSA will seek to apply a consistent approach to determining the appropriate level of penalty.