Financial Services Authority

FINAL NOTICE

To: **Moneywise IFA Limited**

FRN: **185778**

Date: **1 September 2010**

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

1. PENALTY

1.1. The FSA gave Moneywise IFA Limited ("Moneywise") a Decision Notice ("the Decision Notice") which stated that it had decided to impose a financial penalty of £19,600 on Moneywise in respect of breaches of Principle 3 (Management and Control) and Principle 7 (Communications with clients) of the FSA's Principles for Businesses ("the Principles").

1.2. Moneywise agreed to settle at an early stage of the proceedings and therefore qualified for a 30% reduction in penalty pursuant to the FSA's executive settlement procedures. But for this reduction, the FSA would have imposed a financial penalty of £28,000 on Moneywise.

2. REASONS FOR THE PENALTY

2.1. The FSA's industry review of investment advice and platforms looked at whether firms which advised clients to invest through platforms gave suitable advice and had adequate systems and controls to support that advice. This review built on earlier work on platforms including the FSA's 2008 Feedback Statement (FS08/1 Platforms and more principles-based regulation – Feedback on DP07/2). Following a desk-

based analysis of 33 firms, 12 firms were chosen for detailed assessments by the FSA. The FSA found evidence of poor practice in all key risk areas.

2.2. Moneywise was referred to the FSA's Enforcement and Financial Crime Division as a result of this thematic review.

2.3. In summary, during the period from 1 March 2008 to 26 February 2010 ("the relevant period"), the compliance arrangements at Moneywise were not sufficiently robust to ensure that it complied with regulatory requirements in respect of investment advice given to its customers, including managing customers' investments on a platform and investing in its discretionary portfolios.

2.4. The directors of Moneywise accepted collective responsibility for the shortcomings and recognised that, as Moneywise's business model evolved to include the use of a wrap platform and discretionary portfolios, the compliance function did not evolve to be sufficiently robust and integrated into the governance arrangements to:

(1) identify key risks and issues around the adequacy of training of advisers;

(2) ensure that Moneywise understood fully and could demonstrate compliance with the relevant statutory and regulatory provisions; and

(3) ensure Moneywise took reasonable steps to use suitability reports which were clear, fair and not misleading.

2.5. More specifically, Moneywise did not take reasonable steps in the relevant period to ensure that:

(1) before including unregulated collective investment schemes ("UCIS") in its portfolios it understood and considered whether it would be subject to the statutory restriction on the promotion of UCIS to retail customers in section 238 of the Financial Services and Markets Act 2000;

(2) within its sales process it established and documented each customer's knowledge and experience of UCIS, so that it could have regard to each customer's specific information needs when communicating with them about the recommended portfolios and the underlying investments;

(3) suitability reports and other communications sent to its customers were explicit about the fact that some of the underlying investments included in the portfolios were UCIS which were not in themselves covered by the Financial Ombudsman Service ("FOS") or the Financial Services Compensation Scheme ("FSCS");

(4) it took a structured approach to reviewing advisers' customer files, giving feedback to advisers, and identifying and correcting deficiencies in fact finds and suitability reports;

(5) advisers understood and explained to customers in a way which was clear, fair and not misleading the reasons for moving to or placing new investment business in a wrap platform; and

(6) put in place a formal conflict of interests policy so that it could demonstrate that conflict management was being undertaken and monitored in a structured manner.

2.6. The FSA considered these failings to be serious as they put 519 customers at risk of investing via platforms and in products which may not have been suitable for each customer's circumstances. Further, each customer may not have understood the relevant risks of these products and platforms at the time of investing.

2.7. In determining the appropriate level of financial penalty, the FSA had regard to the following mitigating factors:

(1) the FSA found no particular evidence of consumer detriment;

(2) Moneywise appointed an external compliance consultant and took immediate steps to implement recommendations, having accepted that there were shortcomings during the relevant period; and

(3) Moneywise appointed a new compliance officer at board level.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

3.1. The relevant statutory provisions and regulatory requirements are set out at Annex A.

4. FACTS AND MATTERS RELIED UPON

Background

4.1. Moneywise has been trading as a firm of independent financial advisers in south west England since 1997, providing wealth management services to its customers. Moneywise is a limited company and was authorised by the FSA on 1 December 2001 to carry on the following regulated activities in relation to regulated investment advice:

(1) advising on pension transfers and pension opt outs;

(2) advising on investments (except on pension transfers and pension opt outs);

(3) agreeing to carry on a regulated activity;

(4) arranging (bringing about) deals in investments;

(5) making arrangements with a view to transactions in investments;

(6) managing investments;

(7) advising on regulated mortgage contracts;

(8) arranging (bringing about) regulated mortgage contracts; and

(9) making arrangements with a view to regulated mortgage contracts.

4.2. Moneywise's five directors are based in offices in Bath but its advisers are also based in Bournemouth, Cambridge and London.

4.3. Moneywise advises many of its customers to make use of a wrap platform so that access to information about their investments is consolidated in one place and because Moneywise's view is that the cost to the customer of investing can be reduced using such a platform when compared with more traditional portfolio management based on investing in funds on an individual basis. During the relevant period, Moneywise placed 519 customers on one specific platform, of whom 377 invested, based on advice from Moneywise, in portfolios which contained UCIS.

4.4. Throughout the relevant period Moneywise employed, and continues to employ, two staff whose remit is to research, create and monitor investment portfolios designed to cater for customers with different risk profiles and investment objectives.

4.5. Moneywise included UCIS in its range of portfolios from 2008, although more recently in decreasing amounts, to manage the risk of volatility within the portfolios at a time when equity, fixed interest and property markets were highly volatile. From May 2009, Moneywise also started to provide a discretionary wealth management service.

4.6. Product information about the underlying investments was provided to the customer in a detailed template-based annex to a more concise suitability report which, in principle, appeared to be an example of a good working practice.

Management and control

4.7. When Moneywise decided to include UCIS in its portfolios it undertook no due diligence on the statutory and regulatory restrictions on the promotion of UCIS to retail customers. Moneywise was not therefore aware of the:

(1) statutory restriction in section 238 of the Act;

(2) exemptions on the promotion of UCIS provided in the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001;

(3) guidance in paragraph 8.20G of the FSA's Regulatory Guide entitled The Perimeter Guidance Manual ("PERG"); and

(4) exemptions to section 238 of the Act provided in rule 4.12R of the FSA's Conduct of Business Sourcebook ("COBS"), which forms part of the FSA's Handbook.

4.8. At the very least, Moneywise took no steps to assess whether it ran the risk of acting in breach of the relevant regulatory requirements in the way that it presented information to its customers about the UCIS that it included in its portfolios. Subsequently, but only after the FSA's intervention, Moneywise sought advice on this matter.

4.9. One of the consequences of this lack of due diligence was that Moneywise did not make any explicit reference in communications with customers to the fact that these underlying investments included UCIS and that the schemes were not in themselves covered by the FOS and the FSCS.

4.10. Another consequence was that Moneywise's advisers were not given adequate training about the nature of these underlying investments and there was no provision within the sales process to assess and record customers' knowledge and experience of investing in UCIS.

4.11. Whether or not a customer of the discretionary service wished to understand the nature of the underlying investments in the portfolio, the lack of due diligence meant that Moneywise's advisers were not prompted to tailor their communications and discussions with customers in a way which met each customer's information needs and ensured a fully effective discussion of the customers' attitude to investment risk.

4.12. By way of example, Customer A was advised to invest in a portfolio aimed at customers with a cautious attitude to investment risk. The portfolio included some investment in an underlying fund which itself invested in Brazilian timber (teak) farming. The suitability report sent to the customer stipulated that the portfolio represented a low risk investment and while it included a brief template summary of the underlying fund, it appeared that the customer had no knowledge or experience of such an investment and that Moneywise had taken no steps to tailor the communication to her specific needs.

4.13. Moneywise's client file reviewing procedures were not sufficiently robust, as demonstrated by the number of errors, omissions and inconsistencies on fact finds and suitability reports. Moneywise could not demonstrate to the satisfaction of the FSA or to its external compliance consultant that it had taken appropriate steps to supervise and monitor advisers and follow up the outcome of reviews with one to one sessions or other formal feedback.

4.14. Moneywise failed to demonstrate to the FSA's satisfaction, or to its external compliance consultant, that it maintained and reviewed a formal conflict of interest register. A director of Moneywise was also a non-executive director of the wrap platform from 6 April 2004 until 24 February 2010. This platform was recommended by Moneywise to its customers throughout the relevant period. The FSA found Moneywise had taken appropriate steps to disclose this conflict of interest and to make customers aware of the connection, but no evidence that the conflict was being managed and reviewed by the compliance function or that the compliance officer at the time had sufficient seniority in the business to manage such potential conflicts.

4.15. Moneywise could not demonstrate to the FSA's satisfaction, or to its external compliance consultant, that its regular reporting of management information, in relation to the business transacted through the platform, was capable of being used or was used to identify risks and remedial action.

Communications with clients

4.16. Moneywise's systems required each of its advisers to send a suitability report to each customer detailing the recommendation being made by its adviser. In each of these suitability reports, Moneywise failed to:

(1) set out in detail the reasons why Moneywise considered it more suitable for each customer's investments to be managed on a wrap platform rather than remain in their current location or being placed in alternative investment funds;

(2) disclose to customers that Moneywise's managing director's statutory duty on the board of the platform provider was to represent the shareholders of the provider, and was potentially misleading its customers by stating that his role was to represent the interests of investors;

(3) tailor its contents to each client and remove parts which were not relevant because of the template-driven nature of the detailed suitability reports it provided;

(4) state explicitly that some of the underlying funds in the portfolios were UCIS;

(5) differentiate between the template descriptions of risks associated with investments according to the levels of each customer's risk appetite;

(6) clearly state in one place what the actual overall cost to the customer would be, although the fees and charges associated with each underlying investment were disclosed individually; and

(7) break down the amounts or percentages invested in the various funds accurately.

4.17. These failings led to the potential risk that Moneywise's customers were not able to understand the risks or costs of the investments being recommended to them.

5. ANALYSIS OF BREACHES

Breach of Principle 3 (Management and Control)

5.1. By reason of the facts and matters referred to in paragraphs 4.7 to 4.15 the FSA considers that Moneywise failed to take reasonable care to organise and control its affairs responsibly and effectively with proper risk management systems, in breach of Principle 3 (Management and control).

5.2. Moneywise did not have in place a sufficiently structured approach to reviewing client files and identifying learning and development issues for advisers as the business model evolved, which resulted in the failings in the suitability reports issued by its advisers. Consequently, its suitability reports and fact find documents contained errors and omissions which were not routinely identified and corrected.

5.3. Moneywise failed to ensure that its compliance function developed in line with the changes and developments in its business model, in particular, moving to platform-based investments and changing the composition of underlying investments in its range of portfolios. Consequently, Moneywise did not make effective changes and enhancements to its sales process, compliance monitoring and Training and Competence regime to help manage risks relating to due diligence, demonstrating the suitability of its advice, and disclosure of information to its customers.

5.4. Moneywise did not have in place a formal conflict of interests register. Nor did Moneywise otherwise demonstrate that conflict management was being undertaken and monitored in a structured manner.

Breach of Principle 7 (Communication with clients)

5.5. By reason of the facts and matters referred to in paragraphs 4.16 to 4.17 the FSA considers that Moneywise failed to take reasonable steps to ensure its client suitability reports and other communications sent to its customers were clear, fair and not misleading in breach of Principle 7 (Communications with clients).

6. ANALYSIS OF SANCTION

6.1. The FSA's policy on the imposition of financial penalties relevant to the misconduct as detailed in this Notice is set out in Chapter 6 of the version of the Decision Procedure and Penalties Manual ("DEPP") in force prior to 6 March 2010, which formed part of the FSA Handbook. All references to DEPP in this section are references to that version of DEPP. In addition the FSA has had regard to the guidance published in the Enforcement Guide ("EG").

6.2. The principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring firms 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 (DEPP 6.1.2G).

6.3. In determining whether a financial penalty is appropriate the FSA is required to consider all relevant circumstances of a case. Applying the criteria set out in DEPP 6.2.1G (regarding whether or not to take action for a financial penalty or public censure) and 6.4.2G (regarding whether to impose a financial penalty or a public censure), the FSA considers that a financial penalty is an appropriate sanction, given the nature of the breaches and the fact that there were inherent compliance failures which exposed a large number of customers to a risk of financial loss. The penalty will also serve to deter others in the industry from similar misconduct.

6.4. DEPP 6.5.2G sets out a non-exhaustive list of factors that may be of relevance in determining the level of a financial penalty. The FSA considered the following factors to be particularly relevant in this case.

Deterrence (DEPP 6.5.2(1))

6.5. In determining the appropriate level of penalty the FSA has had regard to the principal purpose for which it imposes sanctions, that is to promote high standards of regulatory conduct. The FSA considered that the financial penalty will deter both Moneywise and others from committing similar breaches.

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

6.6. In determining the appropriate sanction, the FSA has had regard to the seriousness of the breaches, including the nature of the requirements breached, the duration and frequency of the breaches, whether the breaches revealed serious failings in Moneywise' systems and controls and the number of customers who were affected and/or placed at risk of loss.

6.7. The FSA has considered Moneywise's failings to be serious as they put 519 customers at risk of investing via platforms and in products which may not have been suitable for each customer's circumstances. Further, each customer may not have understood the relevant risks of these products and platforms at the time of investing due to Moneywise's failure to clearly set out the risks relevant to each customer.

6.8. It appears that no customers suffered actual detriment but Moneywise did not go far enough to establish customers' knowledge and experience of underlying investments in Moneywise's portfolios before advising to invest in particular portfolios. Taken together the issues summarised in this Notice represented serious failures in terms of nature and degree. The FSA would have expected a more robust and flexible approach to compliance monitoring, risk management and due diligence from a firm operating complex and sophisticated investment and wealth management services, and which operates from several locations.

6.9. In determining the appropriate level of financial penalty, the FSA has had regard to the following mitigating factors:

(1) The FSA found no particular evidence of consumer detriment;

(2) despite the weak compliance function, the reasons Moneywise gave to the FSA for making use of the wrap platform and for increasing the exposure of its customers to UCIS in 2008 and 2009 appeared to be based upon an intention by Moneywise to act in the best interests of its customers;

(3) Moneywise obtained legal advice, after the FSA raised concerns with it, about the relevance of the statutory restriction on the promotion of UCIS and it was arguable that in the specific circumstances the restriction did not apply;

(4) Moneywise appointed an external compliance consultant and took immediate steps to implement recommendations, having accepted that there were shortcomings during the relevant period;

(5) Moneywise appointed a new compliance officer at board level; and

(6) Moneywise was open and cooperative throughout the FSA's investigation.

The extent to which the breach was deliberate or reckless (DEPP 6.5.2(3))

6.10. The FSA found no evidence to show that Moneywise acted in a deliberate or reckless manner.

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

6.11. The FSA had no evidence to suggest that Moneywise will be unable to pay this penalty.

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

6.12. Moneywise has not previously been the subject of disciplinary action.

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

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

6.14. Having considered all the circumstances set out above, the FSA determined that £28,000 (before any discount for early settlement) was the appropriate financial penalty to impose on Moneywise.

7. DECISION MAKER

7.1. 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 for the purpose of the FSA's Decision Procedure and Penalties Manual.

8. IMPORTANT

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

Manner of and time for payment

8.2. The financial penalty must be paid in full by Moneywise to the FSA by no later than 15 September 2010, 14 days after date of this Final Notice.

If the financial penalty is not paid

8.3. If all or any of the financial penalty is outstanding on 20 September 2010 the FSA may recover the outstanding amount as a debt owed by Moneywise and due to the FSA.

Publicity

8.4. 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 Notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.

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

FSA contacts

8.6. For more information concerning this matter generally, Moneywise should contact Chris Walmsley at the FSA (direct line: 020 7066 5894) of the Enforcement and Financial Crime Division of the FSA.

Tom Spender
Head of Department
Financial Services Authority

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ANNEX A

1. RELEVANT STAUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE

Statutory provisions

1.1. The FSA's statutory objectives, set out in Section 2(2) of the Act, include the reduction of financial crime, maintaining confidence in the financial system and the protection of consumers.

1.2. The FSA has the power, pursuant to section 206 of the Act, to impose a financial penalty of such amount as it considers appropriate where the FSA considers an authorised person has contravened a requirement by or under the Act.

Principles for Businesses

1.3. The Principles are a general statement of the fundamental obligations of firms under the regulatory system. They derive their authority from the FSA's rule-making powers as set out in the Act and reflect the FSA's regulatory objectives. The relevant Principles breached are as follows:

(1) Principle 3 (Management and control): A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems; and

(2) Principle 7 (Communications with clients): 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.

Financial Penalties

1.4. The FSA's approach to taking disciplinary action is set out in Chapter 2 of EG. Imposing financial penalties and public censures shows that the FSA is upholding regulatory standards and helps to maintain market confidence, promote public awareness of regulatory standards and deter financial crime. An increased public awareness of regulatory standards also contributes to the protection of consumers.

1.5. The FSA's policy on the imposition of financial penalties is set out in chapter 6 of DEPP which is a module of the FSA's Handbook of rules and guidance. The principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour (DEPP 6.1.2G).

1.6. The FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty. DEPP 6.2.1G sets out guidance on a non-exhaustive list of factors that may be of relevance in determining whether to take action for a financial penalty, which include the following:

(a) DEPP 6.2.1G (1): The nature, seriousness and impact of the suspected breach;

(b) DEPP 6.2.1G (2): The conduct of the person after the breach;

(c) DEPP 6.2.1G (3): The previous disciplinary record and compliance history of the person;

(d) DEPP 6.2.1G (4): FSA guidance and other published materials; and

(e) DEPP 6.2.1G (5): Action taken by the FSA in previous similar cases.

1.7. The FSA will consider all the relevant circumstances of a case when it determines the level of financial penalty. DEPP 6.5.2G sets out guidance on a non-exhaustive list of factors that may be of relevance when determining the amount of a financial penalty, which include:

(a) DEPP 6.5.2G (1): Deterrence;

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

(c) DEPP 6.5.2G (4): Whether the person on whom the penalty is to be imposed is an individual;

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

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

(f) DEPP 6.5.2G (8): Conduct following the breach;

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

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

(i) DEPP 6.5.2G (12): FSA guidance and other published materials; and

(j) DEPP 6.5.2G (13): The timing of any agreement as to the amount of the penalty.