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**FINAL NOTICE**

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**To:** **Norwich and Peterborough Building Society (N&P or the firm)**

**Of:** **Peterborough Business Park  
Lynch Wood  
Peterborough PE2 6W2**

**Date:** **15 April 2011**

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

**1. THE PENALTY**

- 1.1 The FSA gave N&P a Decision Notice on 15 April 2011 which notified the Firm that it had decided to impose a financial penalty of £1.4 million on N&P pursuant to section 206 of the Financial Services and Markets Act 2000 (“the Act”).
- 1.2 The penalty is for failings by N&P in relation to its sales of structured investment products provided by Keydata Investment Services Limited (“Keydata”). N&P did not take reasonable care to ensure the suitability of its advice for all customers entitled to rely upon its judgement.

- 1.3 N&P breached Principle 9 (Customers – relationship of trust) of the FSA’s Principles for Businesses (“the Principles”) and applicable rules set out in the Conduct of Business (“COB”) and the Conduct of Business Sourcebook (“COBS”) parts of the FSA Handbook. The penalty relates to the period 7 November 2005 to 26 March 2009 (“the Relevant Period”).
- 1.4 N&P has confirmed that it will not be referring the matter to the Upper Tribunal (Tax and Chancery Chamber).
- 1.5 Accordingly, for the reasons set out below and having agreed with N&P the facts and matters relied on, the FSA imposes a financial penalty on N&P in the amount of £1.4 million.
- 1.6 N&P agreed to settle at an early stage of the FSA’s investigation and 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 £2 million.
- 1.7 This notice relates solely to N&P’s conduct and does not make any criticism of Keydata or any person other than N&P.

## **2. REASONS FOR THE ACTION**

- 2.1 N&P advised a total of approximately 3,200 customers to invest in products offered by Keydata (the “Keydata Products”) during the Relevant Period. These products involved investments in corporate bonds, which used the funds raised to purchase and hold life insurance policies. The Keydata Products were sold to customers through N&P’s former Independent Financial Advice Service (“FAS”).
- 2.2 N&P breached Principle 9 in that it failed to take reasonable care to ensure the suitability of its advice for customers entitled to rely upon its judgement. In particular, N&P’s advisers failed to assess properly the personal circumstances and needs of many of the customers to whom they sold Keydata Products, assessing them as having a higher tolerance of risk than was appropriate given the customers’ personal circumstances, limited investment experience and indication as to risks they were willing and able to take. This resulted in N&P’s

advisers recommending these products to many customers for whom they were not suitable, not least because the Keydata Products had a number of distinctive features which meant that they were not appropriate for many customers.

2.3 An independent third party found that 65% of a sample of N&P's sales of the Keydata Products were based on unsuitable advice. The FSA considers, based on its more limited file review, that the level of unsuitable sales is likely to be significantly higher.

2.4 The following types of failings were identified with certain of N&P's sales:

(A) N&P emphasised that the Keydata Products were not linked to movements in stocks and shares but failed to make it clear that these products were at least as risky as many stocks and shares. Many customers made it clear that they did not want the risks associated with stock market exposure. It was inappropriate to offer an alternative investment product which was at least as risky.

(B) Certain customers sought guaranteed income or guaranteed capital growth. While the Keydata Products aimed to provide either regular income or capital growth, this was not guaranteed.

(C) Certain customers were advised to move out of lower risk products (such as deposit accounts) into Keydata Products, although they had not indicated a willingness to expose themselves to the risk of potentially losing all their capital. Some of these customers sought capital protection or guarantees. While the Keydata Products aimed to provide return of capital, this was not guaranteed.

2.5 The FSA considers N&P's failings to be particularly serious for the following reasons:

(A) As many as 3,200 investors purchased the investment products and the total amount invested in the Keydata Products through N&P was approximately £53 million during the Relevant Period.

- (B) The potential risk to customers was increased by the fact that many customers were advised to invest a significant proportion of their available funds into the Keydata Products. Over half the customers sampled were advised to place 20% or more of their total available funds into these products, and over 10% were advised to invest more than 50% of their total available funds.
- (C) The potential risk to many of these customers was also increased by their age. The average age of the customers (62) shows that many were in or near retirement, and so may have been particularly vulnerable in the event of loss of capital or income.
- (D) The misconduct spanned a period of more than 3 years.
- (E) N&P failed to remedy the failings after important concerns were raised by an internal compliance review in June 2007.

2.6 The FSA has also taken into account the following factors which mitigate the seriousness of the Firm's failings:

- (A) Following discussions with the regulatory community, including the FSA, N&P has agreed voluntarily to make ex gratia payments to all customers who purchased a Keydata Product through N&P. Those payments will reimburse customers their initial investment plus interest (but any income or other payments already received by the customer in respect of his or her Keydata Product will be deducted as appropriate from the calculation as described in paragraph 6.9 below). In return, N&P will take an assignment of customers' rights in and relating to the Keydata Products. The method for calculating these payments has been agreed with the FSA and is based on a formula used by the Financial Ombudsman Service (but without the £100,000 cap applicable to FOS awards). These payments will cost N&P a total of approximately £51m.
- (B) By agreeing to make these payments, N&P has avoided the uncertainty and delay for its Keydata customers of a past business review.

(C) N&P made available interest free loans to customers facing a shortfall in income as a result of their investment in the Keydata Products, and made available a total of £1.24m in such customer loans.

(D) N&P has been open with the FSA and has fully co-operated with the FSA's investigation which has assisted in ensuring early resolution of the matter.

2.7 The FSA has also investigated N&P's advice in connection with sales of investment products other than Keydata Products. The FSA has reviewed a sample of 30 such files. Given the findings of that review, a further review is required to assess whether the problems at FAS have been limited to its sale of Keydata Products.

2.8 In consultation with the FSA, N&P has agreed to take action to ensure that no customers lose out as a result of unsuitable sales by N&P of investment products other than Keydata Products. In particular, N&P has agreed to commission a review by an external third party of advised sales by N&P's FAS sales force. N&P has also agreed that where an unsuitable sale is established it will be addressed in accordance with its regulatory obligations using a mechanism to be agreed with the FSA, and this will include payments to customers where appropriate.

### **3. RELEVANT STATUTORY PROVISIONS AND GUIDANCE**

#### **Provisions of the Act**

3.1 The FSA's regulatory objectives set out in section 2(2) of the Act include the protection of consumers.

3.2 Section 206(1) of the Act provides:

*"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 an amount as it considers appropriate."*

- 3.3 N&P 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, which 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.

### **Principles for Businesses**

- 3.4 The FSA's Principles are a general statement of the fundamental obligations of firms under the regulatory system and reflect the FSA's regulatory objectives. The FSA's Principles constitute requirements imposed on authorised persons under the Act.

- 3.5 Principle 9 states:

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

### **FSA Rules and Guidance**

- 3.6 The FSA has issued Rules under section 138 of the Act relating to the conduct of investment business, including relating to advising customers to purchase investment products such as structured products. These are set out in the part of the FSA Handbook called Conduct of Business (“COB”) for products sold before 1 November 2007 and Conduct of Business Sourcebook (“COBS”) for products sold from 1 November 2007. The relevant FSA rules are set out in full in Annex 1 to this notice.
- 3.7 In deciding to take the action set out above, the FSA has had regard to the guidance published in the FSA Handbook, in particular Chapter 12 of the Enforcement Guide (“EG”) and Chapter 6 of the Decision Procedure and Penalties Manual (“DEPP”). Prior to 28 August 2007 guidance was set out in Chapter 13 of the Enforcement Manual (“ENF”). The FSA has had regard to both DEPP and ENF as both manuals applied at separate times during the Relevant Period. The Manuals set out a non-exhaustive list of criteria that may

be of particular relevance in determining the appropriate level of financial penalty for an approved person.

#### **4. FACTS AND MATTERS RELIED ON**

4.1 N&P is a building society based in East Anglia. It operates as a mutual society, owned by its customers and operated for their benefit. Between 2003 and 2010 N&P offered financial advice to retail customers through FAS advisers based in each of its approximately 50 branches.

4.2 Throughout the Relevant Period, N&P held permission under Part IV of the Act to carry on, amongst other regulated activities, the following:

- (1) advising on investments; and
- (2) arranging (bringing about) deals in investments.

4.3 During the Relevant Period, N&P sold the Keydata Products to approximately 3,200 customers. These customers invested a total of £53.11m in the Keydata Products. A total of 5,051 policies were purchased (with some customers purchasing more than one policy). All of these sales were made on an advised basis, so that N&P undertook to consider the customer's financial circumstances and provide advice on the suitability of the product for the customer.

4.4 N&P was responsible for approximately 14% of the total number of sales of Keydata Products in the UK and 11% of the total amount of funds invested.

4.5 Between November 2005 and June 2009, N&P generated approximately £2.7 million in gross commission from the sale of Keydata Products.

#### **The Keydata Products**

4.6 Keydata was an FSA-authorized product provider which designed and distributed structured investment products via an extensive network of independent financial advisers. The Keydata Products offered investors an income or growth investment, by way of ISA, PEP or direct investment. The income option paid a specified percentage income (payable monthly, quarterly or annually) and aimed to ensure the full return of capital to the investor at the

end of a five or seven year term. The growth option rolled up and reinvested the income payments to provide compound growth over the life of the product and similarly aimed to provide full return of capital at the end of the term.

- 4.7 The Keydata Products were based on investments in corporate bonds. On behalf of investors, Keydata purchased bonds which were issued by special purpose vehicles incorporated in Luxembourg. The first Keydata Product offered by N&P was the Secure Income Bond (“SIB”) Issue 3, for an investment in a bond issued by SLS Capital SA (“SLS”). N&P offered a further 22 Keydata Products which were investments in bonds issued by Lifemark SA (“Lifemark”). A full list of all the Keydata Products sold by N&P is set out in Annex 2 to this notice. The funds raised through the issue of the bonds (i.e. the amount invested by retail customers in the products through Keydata) were then invested in a portfolio of US life insurance policies and cash. The Keydata product materials stated that the investment mix was intended to be 60% policies/40% cash for the bonds issued by SLS, and 70% policies/30% cash for the bonds issued by Lifemark. SLS and Lifemark each purchased life insurance policies from elderly US citizens, paid the premiums due on those policies, and collected the maturity payment due under the policy when the individual died.
- 4.8 During the period from 7 November 2005 until 23 December 2005, approximately 150 customers invested £1.84m into the SIB 3 through N&P and in the period from 9 January 2006 to 26 March 2009, approximately 3,030 customers invested £51.26m into products backed by bonds issued by Lifemark.

#### **N&P’s assessment of the Keydata Products**

- 4.9 N&P signed an Intermediary Agreement with Keydata on 16 November 2005. Prior to signing this agreement and launching its first Keydata Product, N&P reviewed product material provided by Keydata and allocated a risk profile rating to the product. It used a scale of 1 to 10, where ‘1’ represented very low risk products (e.g. bank deposit accounts), and ‘10’ represented high risk products (e.g. derivatives). N&P decided to allocate a risk rating of ‘4’ (which it described as “balanced”) to the Keydata Products.



- 4.10 On 17 September 2008, responding to announcements of major financial difficulties at AIG, America's largest insurance company, N&P changed the risk rating for its then current Keydata Product, the DIP Special Edition Issue 5, to risk rating '6' (which it also described as "balanced"), reflecting N&P's concern that the life insurance policies underlying the Keydata Products had become more risky.
- 4.11 On 13 October 2008, due to its continuing concerns about the US traded life policy market, N&P told its advisers to limit recommendations of the Keydata Products to a maximum of 15% of a customer's portfolio.

#### **Distinctive features of the Keydata Products**

- 4.12 Product material provided to N&P by Keydata revealed that there were a number of significant distinctive features of the Keydata Products compared to other products assessed by N&P as having a similar "balanced" risk profile. These included the following:
- (A) Although the Keydata Products were intended to return capital in full at the end of the investment period, they offered no capital guarantee, and put all capital invested at potential risk.
  - (B) The successful performance of the Keydata Products depended on the accuracy of actuarial models used by Keydata. There was a risk that significant technological or pharmaceutical development could impact on the accuracy of the models and when insurance policies were likely to mature.
  - (C) The bonds had a fixed term of 5 or 7 years. This meant that Keydata undertook to return funds to investors on the date when the bond matured, even if, at that point in time, it had insufficient funds because the insured individuals were living longer than anticipated.
  - (D) The underlying insurance policy assets were not traded on an exchange in the way that stocks and shares are. The resale market for these assets also created a risk that, if it became necessary to sell an insurance policy to make funds available, this might take longer than anticipated, and

might only be possible at a reduced value, reducing the value of the portfolio.

- (E) The Keydata Products involved investment in a single specialist asset class (US senior life insurance policies) through a single issuer (at first SLS, then Lifemark). Although a percentage of the investment was to be held in cash, this was not held as a separate investment, but was intended to be used to pay the insurance premiums, income payments and operational costs associated with the investment.
- (F) The Keydata Products had a significant international dimension: the underlying assets were US life insurance policies, and the issuers of the bonds were based in Luxembourg.

4.13 N&P's advisers should have given careful consideration to these particular features and the extent to which it was apparent from the products' features that they had been mitigated, in order to consider whether the Keydata Products were suitable for the customers they were advising, in light of the customers' personal circumstances and investment objectives.

#### **N&P's failure correctly to assess customers' risk profiles**

4.14 N&P had an obligation to ensure that any recommendation to a customer to buy an investment product was based on advice that was suitable for the customer. In order to do so, N&P needed to ensure that it obtained information regarding the risks the customer was willing and able to take.

4.15 In a significant number of cases, N&P failed correctly to assess the risk that a customer was willing and able to take. In April 2010, after discussions with the FSA, N&P commissioned an independent third party to conduct a review of a sample of its files for customers who had been sold Keydata Products. The third party assessed 542 cases (approximately 15% of the total population of sales). The third party considered that: "*in a significant number of cases [we] question [N&P's attitude to risk ("ATR") rating of 4] where [the] customer had no previous experience and [was] investing for the first time.*"

- 4.16 The third party review concluded that the personal circumstances of many of the customers sampled were generally more consistent with a lower tolerance of risk or a lower capacity for loss:
- (A) The average age of those who invested in the Keydata Products through N&P was found by the third party to be 62. Accordingly, a significant number of customers were approaching or in retirement. A high exposure to a product with a risk of capital loss may be less suitable for customers in or near retirement, given that they may have difficulty in replacing lost capital. Such customers may also be particularly vulnerable to a loss of income from an investment product.
  - (B) Many customers had little investment experience, and such experience as they had was often limited to low risk products. The third party concluded that, based on the profiles of the customers included in its sample, there were few experienced investors and most had previously only held cash on deposit. Investors with experience of asset backed investments had only held lower risk asset backed investments (e.g. with-profit bonds or guaranteed growth bonds).
- 4.17 N&P should have been aware that the enhanced income objective of the Keydata Products (offering a return of 7-8%) would make them attractive to certain types of customers (among them N&P's more vulnerable customers such as the elderly) who were seeking to generate greater income than that available from deposits. Many of these customers had limited or no experience of complex structured investment products and their inherent risks, and were also less able to cope with any losses in the event that they occurred. The Keydata Products were complex and may not have been easily understood by such inexperienced retail investors. N&P failed properly to take these factors into consideration and accordingly advised some customers to buy Keydata Products in circumstances where those customers had expressed a desire not to be exposed to that degree of risk, or where they were unlikely to be capable of understanding such risks.
- 4.18 A significant number of these customers expressed a desire to avoid the levels of risk they associated with investments in stocks and shares. In June 2007, N&P's

Compliance Assurance Team undertook a review of 30 sales of Keydata Products to 22 customers (this is discussed further at paragraph 4.25). This review found that for 14 of these sales (46%), the documentation confirmed that the customer did not want any stock market exposure. In many of these 30 cases, N&P's Compliance Assurance Team concluded this should have led to an assessment that the customer had a low risk tolerance and the recommendation of a low risk product, not just the avoidance of stocks and shares. The review concluded that a customer who requires no stock market exposure or security of capital is unlikely to have a "balanced" attitude to risk, as defined by N&P.

#### **N&P's unsuitable recommendations to invest in Keydata Products**

- 4.19 The independent third party commissioned by N&P to review 542 sales of Keydata Products found that 65% of those sales were based on unsuitable advice. The FSA considers, based on the results of its more limited file review, that the level of unsuitable advice in the full population of sales during the Relevant Period is likely to be significantly higher.
- 4.20 In particular, the following types of failings were identified with N&P's sales:
- (A) Certain customers were advised to move out of lower risk products (such as deposit accounts) into Keydata Products, although they had not indicated a desire to expose themselves to increased risk of capital loss. Some customers described themselves as "cautious" investors, willing to bear a certain amount of risk in order to obtain higher returns (for instance more than a deposit based account could provide), but were not necessarily prepared to take on a significantly higher risk of capital loss. The Keydata Products exposed customers to the potential for total capital loss, and so were not suitable for these types of customers.
  - (B) Certain customers sought to invest in a product which guaranteed a return of the capital invested, or "*some element of capital protection*", or indicated that they could not afford to lose their money. The Keydata Products placed all of a customer's invested capital at some risk, and so were not suitable for such customers.

- (C) Certain customers sought to invest in a product with a guaranteed income. Some of the suitability letters provided to customers incorrectly stated that income was guaranteed. The Keydata Products aimed to provide regular income, but this was not guaranteed. Other customers desired guaranteed capital growth, but while the Keydata Products aimed to provide capital growth, this was not guaranteed.
- (D) N&P emphasised the fact that the Keydata Products were not linked to movements in stocks and shares, but failed to make it clear that these products were at least as risky as many stocks and shares. Some customers made it clear that they did not want the risks associated with stock market exposure. It was inappropriate to offer them an alternative investment product which was at least as risky.

4.21 Many of the customers could have been recommended products more appropriate for their circumstances. For example, for periods in 2007 and 2008, there were alternative products available to N&P's advisers to recommend which offered interest rates within a couple of percentage points of those of the Keydata Products with an element of capital protection. N&P advisers did not consider other income generating products, for example annuities, which are particularly relevant where the customer is retired and needs income for the rest of their life (albeit they do not provide for a return of capital).

### **Serious nature of the failings**

#### *Impact on Customers*

- 4.22 The failings identified above were particularly serious because many customers were advised to invest a substantial proportion of their available funds into Keydata Products. As a result, the impact of any unsuitable advice on customers was likely to be particularly significant.
- 4.23 The third party review found that over half the sampled customers who invested in Keydata Products were advised to place 20% or more of their available funds into these investments. The average amount invested was £18,871, out of an

average portfolio size of £113,760. The average concentration level was 24.27%.

- 4.24 N&P's own internal review also showed relatively high levels of concentration. Of the 22 customers it reviewed, 8 (36.4%) had 10-30% of their total portfolio invested in Keydata Products, 5 (22.7%) had 30-50% and 6 (27.3%) had over 50% invested. Two customers had over 80% of their total portfolio invested.

*Failure to respond to compliance concerns*

- 4.25 N&P's internal compliance team regularly reviewed a sample of customer files relating to investment advice. In June 2007, prompted by the realisation that Keydata Products formed 30% of all investment products sold during the first three months of 2007, N&P's Compliance Assurance Team undertook a review of a sample of 30 sales – two sales from each of 15 advisers, relating to 22 customers. They produced a report which indicated a range of concerns as to the suitability of advice given to these customers.

- 4.26 The report raised important concerns about the process for assessing a customer's attitude to risk, whether appropriate risk warnings were given, whether alternative products were considered, and whether diversification was taken into account. In particular, the report raised similar concerns to those already summarised in this notice, such as the following:

- (A) Some customers had wanted no stock market exposure (which suggested an underlying desire to minimise risk) or described themselves as cautious investors. As stated above, the Keydata Products were not consistent with such a risk appetite.
- (B) There was insufficient evidence that customers were prepared to accept risk to their capital. Further, reference to capital protection was found in a number of cases.
- (C) It was not clear whether advisers had properly considered alternative products, especially when, for periods in 2007 and 2008, alternatives were available which could have provided customers with interest rates within a couple of percentage points of those of the Keydata Products

with an element of capital protection (e.g. N&P's fixed rate term deposits offered interest close to or at 6% gross during these periods).

- (D) In many cases, a significant proportion of customers' total assets were invested in the Keydata Products, and advisers had given insufficient consideration to diversification.
- (E) Over 50% of all policies sold by some advisers during the period of the review (the first quarter of 2007) involved Keydata Products.

4.27 No effective action was taken in response to this report. The level of Keydata sales remained consistently high throughout the Relevant Period, even after June 2007, and nothing effective was done to address the continuing unsuitable nature of the majority of sales.

4.28 Accordingly, N&P had the opportunity to address the failings identified in the June 2007 report, which could have avoided a large volume of unsuitable sales and resultant customer detriment. N&P failed to do this and, in the FSA's view, this significantly increases the seriousness of N&P's failings.

## **5. ANALYSIS OF BREACHES**

5.1 For the reasons set out above, N&P breached Principle 9 as it did not take reasonable care to ensure the suitability of its advice and discretionary decisions for customers entitled to rely upon its judgement. In addition, N&P breached COB 5.2.5R and 5.3.5R and COBS 9.2.1R, 9.2.2R and 9.2.3R during the periods referred to in Annex 1.

5.2 In order to comply with Principle 9, a firm offering financial advice needs to ensure that:

- (A) it has a good understanding of the investment products it recommends, and is aware of distinctive features and risks of specialist products, such as those noted at 4.12 above. It must ensure that advisers dealing with customers have the requisite knowledge and understanding;

- (B) it forms a proper assessment of the risks a customer is willing and able to take. As set out at paragraphs 4.14 to 4.18 above, N&P assessed the great majority of the customers to whom it sold Keydata Products as having a “balanced” attitude to risk, but this was inconsistent with the personal circumstances, limited investment experience and expressed attitude to risk of many of the customers; and
- (C) the products it recommends to customers are suitable. As noted at paragraphs 4.19 to 4.21 above, the FSA considers that the majority of N&P’s customers who were sold Keydata Products received unsuitable advice to invest in those products.

## **6. SANCTION**

### **Sanction**

- 6.1 The FSA regards the decision to impose a financial penalty as a serious one. In determining whether a financial penalty is appropriate and, if so, its level, the FSA is required to consider all the relevant circumstances of the case. The FSA considers that the following factors set out in the Decision Procedure and Penalties Manual (“DEPP”) are particularly relevant in this case.

### **Deterrence**

- 6.2 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.

### **The nature, seriousness and impact of the breach in question**

- 6.3 In determining the appropriate sanction, the FSA has had regard to the seriousness of the contraventions by N&P, including the nature of the requirements breached and the duration of breaches. For the reasons set out above, the FSA considers that the breaches are of a serious nature.

### **The amount of benefit gained or loss avoided**



- 6.4 As noted above, N&P generated approximately £2.7 million between November 2005 and June 2009 in gross commission from the sale of Keydata Products.

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

- 6.5 The FSA has taken into account N&P's size and financial resources. N&P is a major regional building society with approximately 423,000 current members as at the end of 2010. There is no evidence to suggest that N&P is unable to pay the penalty.

**Conduct following the breach**

- 6.6 N&P and its senior management have worked in an open and cooperative way with the FSA before and during its investigation.
- 6.7 On 3 June 2010 N&P announced that it was making available interest-free loans to approximately 1,600 of its customers who had bought Keydata Products to cover shortfalls in income payments.
- 6.8 N&P has worked extensively for many months with the FSA and the Financial Services Compensation Scheme ("FSCS") to reach a suitable resolution of this matter.
- 6.9 N&P has agreed voluntarily to make ex gratia payments to all customers who purchased a Keydata Product through N&P. Those payments will reimburse customers their initial investment plus interest calculated on a daily basis on the balance from time to time of the amount originally invested plus interest, as subsequently reduced by income as and when received, and then reduced by the amount of any other payments already received by the customer in respect of his or her investments. In return, N&P will take an assignment of customers' rights in and relating to the Keydata Products. Where a customer has already received compensation from the FSCS, N&P will reimburse the FSCS and pay any remaining balance of the ex gratia payment to the customer. These payments, the calculation of which has been agreed with the FSA and is based on a formula used by the Financial Ombudsman Service ("FOS") (but without the £100,000 cap applicable to FOS awards), will cost N&P a total of approximately £51m.

- 6.10 In addition, in consultation with the FSA, N&P has agreed to commission a review by an external third party of advised sales of non-Keydata Products by N&P's FAS sales force and has also agreed that where an unsuitable sale is established it will be addressed in accordance with its regulatory obligations using a mechanism to be agreed with the FSA, including making payment to customers where appropriate.

#### **Disciplinary record and compliance history**

- 6.11 N&P has not been the subject of previous disciplinary action by the FSA.

#### **Other action taken by the FSA**

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

### **7. CONCLUSION**

- 7.1 Having regard to the seriousness of the breaches and the risks they posed to the FSA's statutory objective of securing the appropriate degree of protection for consumers, the FSA has imposed a financial penalty of £1.4 million.

### **8. DECISION MAKER**

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

### **9. IMPORTANT**

- 9.1 This Final Notice is given to N&P in accordance with section 390 of the Act.

#### **Manner of and time for payment**

- 9.2 The financial penalty must be paid in full by N&P to the FSA by no later than 29 April 2011, 14 days from the date of the Final Notice.

#### **If the financial penalty is not paid**

9.3 If all or any of the financial penalty is outstanding on 30 April 2011, the FSA may recover the outstanding amount as a debt owed by N&P and due to the FSA.

**Publicity**

9.4 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 N&P or prejudicial to the interests of consumers.

**FSA contacts**

9.5 For more information concerning this matter generally, N&P should contact Greg Sachrajda at the FSA (direct line: 020 7066 3746/fax: 020 7066 3747).

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**Georgina Philippou**  
**Head of Department**  
**FSA Enforcement and Financial Crime Division**

**ANNEX 1 – RELEVANT FSA HANDBOOK RULES**

**For sales on or after 1 November 2007**

The following rules in COBS as to suitability:

**COBS 9.2.1 R**

(1) A firm must take reasonable steps to ensure that a personal recommendation, or a decision to trade, is suitable for its client.

(2) When making the personal recommendation or managing his investments, the firm must obtain the necessary information regarding the client's:

- (a) knowledge and experience in the investment field relevant to the specific type of designated investment or service;
- (b) financial situation; and
- (c) investment objectives;

so as to enable the firm to make the recommendation, or take the decision, which is suitable for him.

#### COBS 9.2.2 R

(1) A firm must obtain from the client such information as is necessary for the firm to understand the essential facts about him and have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of managing:

- (a) meets his investment objectives;
- (b) is such that he is able financially to bear any related investment risks consistent with his investment objectives; and
- (c) is such that he has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.

(2) The information regarding the investment objectives of a client must include, where relevant, information on the length of time for which he wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.

(3) The information regarding the financial situation of a client must include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments.

#### COBS 9.2.3 R

The information regarding a client's knowledge and experience in the investment field includes, to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved, information on:

(1) the types of service, transaction and designated investment with which the client is familiar;

- (2) the nature, volume, frequency of the client's transactions in designated investments and the period over which they have been carried out;
- (3) the level of education, profession or relevant former profession of the client.

**For sales before 1 November 2007**

The following rules in COB as to suitability and “know your customer”:

**COB 5.2.5 R**

Before a firm gives a personal recommendation concerning a designated investment to a private customer, or acts as an investment manager for a private customer, it must take reasonable steps to ensure that it is in possession of sufficient personal and financial information about that customer relevant to the services that the firm has agreed to provide.

**COB 5.3.5 R**

(1) A firm must take reasonable steps to ensure that, if in the course of designated investment business:

(a) it makes any personal recommendation to a private customer to:

(i) buy, sell, subscribe for or underwrite a designated investment (or to exercise any right conferred by such an investment to do so);

...

the advice on investments or transaction is suitable for the client.

....

(3) In making the recommendation or effecting the transaction in (1), the firm must have regard to:

(a) the facts disclosed by the client; and

(b) other relevant facts about the client of which the firm is, or reasonably should be, aware.

**ANNEX 2: LIST OF KEYDATA PRODUCTS SOLD BY N&P**

Secure Income Bond 3	7/11/05-23/12/05
Secure Income Bond 4	9/1/06-24/2/06
Secure Income Plan Issue 1	27/2/06-13/4/06
The Income Plan	24/4/06-16/6/06
The Income Plan Issue 2	19/6/06-11/8/06
The Income Plan Issue 3	14/8/06-6/10/06
The Income Plan Issue 4	9/10/06-1/12/06

The Income Plan Issue 5	4/12/06-28/2/07
The Income Plan Issue 6	1/3/07-13/4/07
The Income Plan Issue 7	14/4/07-25/5/07
The Income Plan Issue 8	29/5/07-16/7/07
The Income Plan Issue 9	17/7/07-7/9/07
The Income Plan Issue 10	10/9/07-26/10/07
The Income Plan Issue 11	5/11/07-2/1/08
The Income Plan Issue 12	7/1/08-22/2/08
The Income Plan Issue 14	25/2/08-11/4/08
Defined Income Plan – Five year Special Edition Issue 2	21/4/08-6/6/08
Defined Income Plan – Five year Special Edition Issue 3	9/6/08-18/7/08
Defined Income Plan – Five year Special Edition Issue 4	21/7/08-29/8/08
Defined Income Plan – Five year Special Edition Issue 5	1/9/08-17/10/08
Defined Income Plan – Five year Special Edition Issue 6	20/10/08-28/11/08
Defined Income Plan – Five year Special Edition Issue 7	1/12/08-30/1/09
Defined Income Plan – Five year Special Edition Issue 8	2/2/09-26/3/09