Financial Services Authority

FINAL NOTICE

To:	**Paul Lawrence Banfield**
Of:	**77 Grosvenor Road** **Epsom** **Surrey** **KT18 6JF**
Individual ref:	**PLB00009**
Date:	**20 July 2011**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives Paul Lawrence Banfield final notice of the following action:

1. THE ACTION

1.1. The FSA gave Paul Lawrence Banfield ("Mr Banfield") a Decision Notice on 20 July 2011 which notified him that the FSA had decided to take the following action against him:

(1) pursuant to section 66 of the Financial Services and Markets Act 2000 (the "Act"), to impose on Mr Banfield a financial penalty of £10,500 for breaches of Statements of Principle 2 and 7 of the FSA's Statements of Principle and Code of Practice for Approved Persons (the "Statements of Principle") for failings at Best Advice Financial Planning Limited ("Best Advice") where Mr Banfield was approved

to perform controlled functions between 1 January 2007 and 9 July 2009 ("the relevant period"); and

(2) pursuant to section 56 of the Act, to make an order prohibiting Mr Banfield from performing any controlled function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm because he is not currently a fit and proper person for such a role in terms of his competence and capability ("the prohibition order"). The FSA would be minded to revoke the prohibition order, on Mr Banfield's application, in the event that Mr Banfield is able to demonstrate to the satisfaction of the FSA that he has taken adequate steps to remedy his lack of competence and capability.

1.2. Mr Banfield agreed to settle this matter at an early stage of the FSA's investigation and therefore qualified for a 30 per cent (Stage 1) discount under the FSA's executive settlement procedures. Without this discount, the FSA would have sought to impose a financial penalty of £15,000 on him.

1.3. Mr Banfield agreed that he would not be referring the matter to the Upper Tribunal (Tax and Chancery Chamber).

1.4. Accordingly, and for the reasons set out below, the FSA takes the action set out above. The prohibition order takes effect from 20 July 2011.

2. REASONS FOR THE ACTION

2.1. On the basis of the facts and matters described below, the FSA sanctions Mr Banfield for breaches of Statements of Principle 2 and 7 in performing the controlled functions of CF1 (Director), CF21 (Investment Adviser) and CF30 (Customer), at Best Advice during the relevant period.

2.2. In summary, the FSA concluded that while performing his controlled functions, Mr Banfield failed to:

(1) act with due skill, care and diligence in carrying out his controlled functions, in breach of Statement of Principle 2, by failing to:

(a) record sufficient information on customer files to demonstrate why his advice was suitable;

(b) demonstrate:

(i) that he had provided customers with the investment review they requested;

(ii) that he had given due consideration as to whether customers' existing investments satisfied their objectives; and

(iii) why alternative investments had been recommended to customers and that they were consistent with customers' objectives;

(c) ensure that advice given to customers in their personal capacity did not relate to funds which those customers were holding in trust for other entities;

(d) issue suitability letters that were clear, fair and not misleading; and

(e) inform himself about, and demonstrate an understanding of, the products he was recommending, as well as the restrictions on those products and the exemptions to those restrictions. Mr Banfield failed to establish that an appropriate exemption to was applicable before promoting certain restricted products to customers.

(2) take reasonable steps to ensure that the business of Best Advice, for which Mr Banfield was responsible in his significant influence function CF1 (Director), complied with the relevant requirements and standards

of the regulatory system, in breach of Statement of Principle 7 by failing to:

(a) ensure that Best Advice took reasonable care to give its customers suitable advice, including, but not limited to, when recommending investment in Unregulated Collective Investment Scheme ("UCIS") products;

(b) ensure that the suitability of the advice given by Best Advice was adequately demonstrated in customer files;

(c) ensure that suitability letters sent by Best Advice were clear, fair and not misleading;

(d) ensure that advice given to customers of Best Advice in their personal capacity did not relate to funds which those customers were holding in trust for other entities;

(e) implement internal compliance procedures which adequately ensured that UCIS products were properly identified and promoted in accordance with the relevant regulations;

(f) inform himself about, and demonstrate an understanding of, the regulatory requirements relating to the promotion of UCIS' and, in particular, the statutory restriction on the promotion of UCIS' in section 238 of the Act ("the section 238 restriction") and the exemptions to that restriction; and

(g) ensure that Best Advice had regard to the section 238 restriction and any relevant exemptions to it before promoting UCIS' to its customers.

2.3. The FSA considers that Mr Banfield's misconduct is serious because Best Advice promoted or advised at least 22 customers to invest a significant proportion of their investment in UCIS', through a number of investment bonds, without proper regard to the section 238 restriction or the suitability of

that advice generally. Mr Banfield's failings therefore exposed customers to a risk of receiving unsuitable advice.

2.4. The FSA has taken into account the following circumstances which have served to mitigate the seriousness of Mr Banfield's misconduct:

(1) the FSA does not consider that Mr Banfield deliberately ignored or sought to circumvent the statutory restriction on the promotion of UCIS set out in section 238 of the Act;

(2) the sale of regulated investment products represented a small proportion of the total business of the firm during the relevant period; and

(3) Mr Banfield has co-operated with the FSA's investigation and accepted the failings set out in this Final Notice.

2.5. The FSA has concluded that the nature and seriousness of the breaches outlined above warrants the imposition of a financial penalty. The FSA therefore imposes a financial penalty of £10,500 on Mr Banfield.

2.6. By virtue of the failings described above, the FSA has also concluded that Mr Banfield has failed to meet the minimum regulatory standards in terms of competence and capability and that Mr Banfield is not fit and proper to perform any controlled function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. Accordingly, the FSA imposes the prohibition order on Mr Banfield.

2.7. This action supports the FSA's regulatory objectives of maintaining confidence in the financial system and the protection of consumers. All customers who may have been put at risk of receiving unsuitable advice have been contacted and encouraged to seek independent advice. As a result of Best Advice's liquidation, any complaints that may arise against Best Advice will be assessed by the Financial Services Compensation Scheme.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

3.1. The relevant statutory provisions and regulatory requirements are set out at Annex A and B to this Final Notice.

4. FACTS AND MATTERS RELIED ON

Background

4.1. While at Best Advice, Mr Banfield was approved by the FSA to perform the controlled function of CF1 (Director) from 12 January 2005. Mr Banfield was also approved to perform the controlled functions of CF21 (Investment Adviser) from 12 January 2005 until 31 October 2007, and CF30 (Customer) from 1 November 2007.

4.2. Best Advice was an independent financial advisory firm based in Surrey. With effect from 12 January 2005, Best Advice was authorised by the FSA to carry on the following regulated activities:

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

(2) advising on regulated mortgage contracts;

(3) agreeing to carry on a regulated activity;

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

(5) arranging (bringing about) regulated mortgage contracts;

(6) making arrangements with a view to regulated mortgage contracts; and

(7) making arrangements with a view to transactions in investments.

4.3. On 12 August 2009, Best Advice entered into liquidation.

4.4. The FSA visited Best Advice in February and March 2009. During these visits, and as a result of correspondence with Best Advice, it became apparent that Best Advice might have breached a number of the FSA's Principles for Businesses ("the Principles") and that Mr Banfield might have breached a number of the Statements of Principle. As a result of these concerns, the FSA appointed investigators on 9 July 2009 to conduct an investigation into Mr Banfield's conduct.

4.5. Following the investigation, the FSA has concluded that Mr Banfield's conduct fell below the standards expected of an approved individual, for the reasons set out below.

4.6. Mr Banfield failed to implement and maintain adequate systems and controls to ensure the suitability of advice given to customers by either Mr Banfield and/or Best Advice. Mr Banfield was the adviser in 13 of the 22 cases reviewed, and he failed in each of those 13 cases to exercise due skill, care and diligence to ensure that the advice he gave was suitable.

4.7. In all of the 22 cases reviewed, the Confidential Financial Review stated that the customer had requested an investment review. However, Mr Banfield and/or Best Advice failed to demonstrate in each case that such a review was conducted and recommended alternative investments without giving due consideration to whether the customer's existing investments actually already achieved their objectives.

4.8. In all of the 22 cases reviewed, the investment recommended by Mr Banfield and/or Best Advice for the customer was an extremely expensive one, with no apparent added value. Mr Banfield's and/or Best Advice's recommendations resulted in a double layer of commission being charged on a significant proportion of the investments made. There was an insufficient analysis of the costs and charges incurred on the recommended investments to allow customers to compare these to their existing investments. Given the advanced age of several of the customers, and their stated investment needs, it would

have taken some considerable time for upfront costs to be recovered, if indeed they could have been, and Mr Banfield and/or Best Advice failed in each case to communicate this adequately to customers.

4.9. In all of the 22 cases reviewed, the suitability letters followed standard wording in each case and were not sufficiently detailed, bearing in mind the complex nature of the advice given. In addition, there was insufficient information on the customer file to establish why the advice was given.

4.10. In two of the cases reviewed, Mr Banfield failed to identify that he was advising customers in relation to funds which were not owned by those customers, but instead held in trust by them for other individuals or by companies which they controlled. Where money is held by individuals as trustees, any investment decision must be made on behalf of the beneficiaries of that trust as opposed to being made on behalf of the trustees in their own personal capacity.

4.11. The FSA identified other serious failings in relation to advice given, including making statements without providing justification. For example, throughout the reviewed files, tax efficiency was mentioned without a sufficient explanation as to why a particular course of action is tax efficient. In addition, the files reviewed do not provide sufficient detail to explain why products that are often cheaper than those recommended have been ignored.

Promotion of UCIS

4.12. UCIS is defined in the glossary to the FSA Handbook of rules and guidance (the "FSA Handbook") as "a collective investment scheme which is not a regulated collective investment scheme." Unless a collective investment scheme ("CIS") falls within the narrow definition of a recognised CIS, an authorised unit trust or a scheme constituted by an open ended investment company, it will be a UCIS. A UCIS does not carry the same level of regulatory oversight as a CIS but it is still subject to regulation, most notably around the extent to which and the persons to whom it may be marketed.

4.13. The relevant regulatory provisions relating to UCIS' are set out in Annex B to this Final Notice. In summary, section 238 of the Act precludes the promotion of UCIS' by an authorised person, except in certain circumstances. There are a number of exemptions to the section 238 restriction which an authorised firm could rely on to promote UCIS' to its retail customers.

4.14. Specifically, in order to promote UCIS' to retail customers, the customers must be categorised in accordance with either the Financial Services and Markets Act 2000 (Promotion of collective investment schemes) (Exemptions) Order 2001 ("the PCIS Order"), or COBS 4.12 in the FSA Handbook, which was preceded by COB 3.11.2.

4.15. UCIS' are often characterised by high levels of volatility and illiquidity which can in turn import a higher degree of risk for customers. Further, as UCIS' fall outside the regulatory regime, customers who invest in a UCIS may have limited recourse to the Financial Ombudsman Service and the Financial Services Compensation Scheme.

4.16. For these reasons there is a restriction on the categories of investor to which UCIS' can be promoted and a failure to adhere to the regulatory provisions in relation to the promotion of UCIS' leads to a risk that investors could receive unsuitable advice.

4.17. In all of the cases reviewed, the customer was advised to invest in UCIS' without any documentation on file to demonstrate that the section 238 restriction had been considered and that an appropriate exemption had been applied.

4.18. The FSA considers that the failings identified above are demonstrated by the following three cases, in which Mr Banfield provided the advice in question.

Mrs A

4.19. Mrs A requested that Best Advice conduct a review of her investment portfolio and it was agreed that Best Advice would also assess her needs in relation to inheritance tax. Mrs A was aged 87 at the time the advice was

given. Best Advice recommended encashment of a number of her existing investments, and reinvestment in several UCIS' through an offshore investment bond. Mrs A's inheritance tax requirements were intended to be met by a discounted gift trust ("DGT") in which the investment bond was to be placed. The FSA considers that Mr Banfield failed in the following respects when giving this advice to Mrs A:

(1) there is no evidence on file that Mr Banfield conducted an assessment of Mrs A's existing investments before making his recommendation, despite her specific request that Best Advice review her investment portfolio;

(2) Mrs A's attitude to risk was inadequately assessed by Mr Banfield, with insufficient information on file to establish conclusively Mrs A's attitude to risk and why her attitude to risk had changed from being relatively cautious to more adventurous as she got older. In addition, there is no evidence on file that Mr Banfield had sought clarification or elaboration regarding Mrs A's expressed preference for certain types of investment, or considered whether those investment types were actually suitable for her;

(3) Mr Banfield recommended that Mrs A encash her existing investments with a view to reinvestment using a DGT to meet her inheritance tax planning requirements, before a decision had been made by the product provider to underwrite Mrs A in relation to that DGT. In making this recommendation, the information recorded by Mr Banfield as to Mrs A's health was contradictory. Mrs A's medical problems were detailed in one section of the Confidential Financial Review, even though another section recorded that she was in good health;

(4) the provider eventually decided that it would not underwrite Mrs A and the application for the DGT was rejected. Mr Banfield therefore recommended that Mrs A encash eight of her existing investments to reinvest in another product without having ensured that the

recommended product would be able to meet Mrs A's requirements for inheritance tax planning;

(5) even if the DGT had been underwritten, the commission payable to Best Advice in respect of the investment would have been sufficiently high as to negate the inheritance tax benefit which Mr Banfield had stated on file was the basis for his recommendation to Mrs A;

(6) Mr Banfield recommended investment in a number of UCIS' to Mrs A and when the recommended transactions had been undertaken, more than 80% of Mrs A's funds were invested in UCIS'. There is no evidence on file to demonstrate that the section 238 restriction on the promotion of UCIS' was considered by Mr Banfield. There is also no evidence of any explanation of the nature of these investments or the risks associated with them;

(7) Mr Banfield recorded conflicting information on Mrs A's customer file. Income and net worth figures recorded by Mr Banfield on the Confidential Financial Review for Mrs A were inconsistent with figures recorded by him on the disclosure mandate. For example, Mrs A's net worth was recorded as £895,000 on the Confidential Financial Review dated 9 April 2008, but as £2,185,000 on the Disclosure Mandate dated 27 June 2008, a discrepancy of £1,290,000;

(8) the suitability letter was sent to Mrs A after her existing investments had been encashed and before a decision as to underwriting in relation to the DGT had been made by the provider; and

(9) the costs and charges of the recommended transactions were in excess of £65,000. Taking into account Mrs A's age at the time the investments were made, it is unlikely that this cost would ever be recouped.

Mr and Mrs B

4.20. In January 2007, Mr and Mrs B were advised to encash five existing

investments and to reinvest the proceeds into a Collective Redemption Bond ("CRB") with a company in the Isle of Man. The FSA considers that Mr Banfield failed in the following respects when giving this advice to Mr and Mrs B:

(1) Mr and Mrs B requested that Best Advice conduct a review of their investment portfolio prior to the advice. There is no evidence on file that Mr Banfield conducted an assessment of Mr and Mrs B's existing investments before making his recommendation, despite their specific request that he do so. It is therefore not clear from Mr and Mrs B's customer file how Mr Banfield concluded that Mr and Mrs B's existing investments were unsuitable;

(2) Mr Banfield failed to explain adequately in the suitability letter, and there is insufficient information on the customer file to assess, whether the series of recommended transactions were necessary and offered any benefit to Mr and Mrs B;

(3) Mr Banfield failed to make clear to Mr and Mrs B the costs involved in switching from their existing investments into a new one. The table of costs and charges provided to Mr and Mrs B within the suitability letter omitted to include certain costs. Further, no analysis was set out in the suitability letter to demonstrate to Mr and Mrs B the performance required of the new investment in order to achieve the same level of return as their existing investments;

(4) Mr Banfield recommended UCIS funds to Mr and Mrs B, and when the recommended transactions had been undertaken, 70% of the amount invested in the CRB was invested in UCIS'. There is no evidence on file to demonstrate that the section 238 restriction on the promotion of UCIS' was considered by Mr Banfield; and

(5) there was no evidence on file to demonstrate that Mr and Mrs B possessed sufficient knowledge or experience to understand the nature of the UCIS' recommended to them, and the associated risks.

Mrs C

4.21. In October 2007, Mrs C was advised to encash an existing investment and invest the proceeds in an offshore bond. The FSA considers that Best Advice failed in the following respects when giving this advice to Mrs C:

(1) Mrs C requested that Best Advice conduct a review of her investment portfolio in September 2007. There is no evidence on file that Mr Banfield conducted an adequate assessment of her previous investments before making its recommendation, despite her specific request that he do so. Consequently, Mr Banfield recommended that Mrs C encash her existing investments to reinvest in another product without being able to demonstrate that her existing investments were actually unsuitable for her.

(2) Mr Banfield assessed Mrs C's attitude to risk as significantly higher in October 2007, when Mrs C was 75, than it had been in 2004. Insufficient information was recorded on Mrs C's file to demonstrate the reason for this increase in her attitude to risk.

(3) Mr Banfield recommended that Mrs C invest in UCIS funds, and once the recommended transactions had been undertaken, 80% of the funds invested were invested in UCIS'. There is no evidence on file to demonstrate that the section 238 restriction on the promotion of UCIS' was considered by Mr Banfield. In addition, there was no evidence on file to demonstrate that Mrs C possessed sufficient knowledge or experience to understand the complexity of the product recommended to her; and

(4) the suitability letter sent to Mrs C was dated after her existing investments had been encashed. Furthermore, the letter failed to set out adequately the costs and charges involved in the recommended investment.

Conduct in issue

4.22. A description of Mr Banfield's and Best Advice's conduct which fell short of the required regulatory standards is set out in paragraph 4.6 to 4.21.

4.23. The FSA considers that there were serious weaknesses in the systems and controls in place at Best Advice which should have ensured that customers were not exposed to the risk of receiving unsuitable advice. Additionally, the FSA has identified at least 22 customers who were advised by Best Advice to invest in one UCIS or more, but found no evidence to demonstrate that Mr Banfield and/or Best Advice had correctly applied the relevant exemptions before promoting UCIS' to its customers, in contravention of the section 238 restriction. Mr Banfield was the adviser on 13 of those 22 cases.

4.24. During the course of the investigation, Mr Banfield admitted that he did not have sufficient knowledge of the statutory and regulatory restrictions relating to UCIS'. Specifically, Mr Banfield acknowledged that he did not have an adequate understanding of the general prohibition imposed by section 238 and the applicable exemptions required when customers were advised to invest in UCIS'.

4.25. Mr Banfield did not, in his CF30 (Customer) function, record sufficient and accurate information on customer files and provide sufficient and accurate information in suitability letters to customers, so as to ensure that the advice he was giving was suitable. Additionally, Mr Banfield failed to identify that the products he was recommending to customers were in fact UCIS', and was thereby unable to assess whether UCIS products were suitable for each customer, and whether an appropriate exemption to the section 238 restrictions had been applied.

4.26. Additionally, Mr Banfield, in his function as CF1 (Director) did not identify the serious weaknesses in Best Advice's systems and controls for ensuring that suitable advice was provided, including the monitoring of customer files. Internal compliance reviews conducted at Best Advice failed to identify that

customers were invested in UCIS', with the result that no consideration was given to whether an appropriate exemption to the section 238 restriction had been applied.

4.27. As a result of Mr Banfield's failure to take steps to ensure that the advice he gave was suitable, his failure to identify weaknesses in the systems and controls at Best Advice, and his lack of knowledge of the statutory and regulatory restrictions on the promotion of UCIS', Mr Banfield and/or Best Advice may have exposed Best Advice's customers to the risk of receiving unsuitable investment advice.

5. ANALYSIS OF THE BREACHES

5.1. As a result of the facts and matters set out in paragraphs 4.6 to 4.21 above, the FSA considers that Mr Banfield has breached Statement of Principle 2 by failing to exercise due skill, care and diligence when giving advice to customers of Best Advice, and has breached Statement of Principle 7 by failing to take reasonable steps to ensure that Mr Banfield and/or Best Advice complied with the relevant requirements and standards of the regulatory system.

5.2. Advice was given by Mr Banfield to Best Advice customers without due consideration having been given to the age and attitude to risk of those customers, such that they were at risk of receiving unsuitable advice. Where customers had invested in a UCIS, the UCIS investment represented a significant proportion of their overall portfolio. As such, the FSA considers that Mr Banfield is not a fit and proper person to carry out any controlled function in relation to any regulated activity carried on by any authorised or exempt person, or exempt professional firm.

6. ANALYSIS OF THE SANCTIONS

Imposition of financial penalty

6.1. The FSA's policy on the imposition of financial penalties that applied during the majority of the relevant period was set out in Chapter 6 of the Decision Procedures and Penalties Manual ("DEPP"). DEPP forms part of the FSA Handbook. The relevant sections of DEPP are set out in more detail in Annex A to this Final Notice. In addition, the FSA has had regard to the corresponding provisions of Chapter 13 of the Enforcement Manual in force during part of the relevant period.

6.2. 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. A financial penalty is a tool that the FSA may employ to help it achieve its regulatory objectives.

6.3. In determining whether a financial penalty is appropriate, the FSA is required to consider all the 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 serious nature of the breaches.

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 considers that the following factors are particularly relevant in this case.

Deterrence (DEPP 6.5.2G(1))

6.5. In determining whether to impose the financial penalty, the FSA has had regard to the need to ensure those who are approved persons must act with the appropriate levels of competence and capability and in accordance with regulatory requirements and standards. The FSA considers that a financial

penalty should be imposed to demonstrate to Mr Banfield and others the seriousness with which the FSA regards his behaviour.

The nature, seriousness and impact of the breach in question (DEPP 6.5.2G(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 and the duration of the breach.

6.7. The purpose of the section 238 restriction is to protect customers from the risks associated with potentially high risk, speculative and sophisticated investments which they may not properly understand. As a result of Mr Banfield's failings, Best Advice exposed customers to a risk of investing in UCIS for which they may not have adequate knowledge or experience.

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

6.8. The FSA has concluded that Mr Banfield's contraventions were not deliberate or reckless.

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

6.9. The FSA has had regard to the fact that Mr Banfield is an individual and that Enforcement action may therefore have a greater impact on him than on a corporate entity. The FSA has also had regard to the seriousness of his misconduct given his position as an approved person performing a significant influence function at Best Advice.

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

6.10. The FSA has taken into account Mr Banfield's financial resources and considers that the penalty imposed upon him is proportionate and necessary to be effective as a deterrent. Mr Banfield has not raised any arguments to

suggest that he would suffer serious financial hardship or financial difficulties if he were to pay the penalty.

Conduct following the breach (DEPP 6.5.2G(8))

6.11. The FSA has taken into account Mr Banfield's co-operation with the FSA's investigation.

Previous action taken by the FSA (DEPP 6.5.2G(10))

6.12. In determining the appropriate sanction, the FSA has taken into account sanctions imposed by the FSA on other approved persons for similar behaviour. This was considered alongside the deterrent purpose for which the FSA imposes sanctions.

Prohibition

6.13. The FSA has had regard to the guidance in Chapter 9 of EG in proposing that Mr Banfield be prohibited from performing any controlled function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm because he is not currently a fit and proper person for such a role in terms of his competence and capability. The FSA would be minded to revoke the prohibition order, on Mr Banfield's application, in the event that Mr Banfield is able to demonstrate satisfactorily that his shortcomings have been remedied. The relevant provisions of EG are set out in Annex A to this Final Notice.

6.14. Given the nature and seriousness of the failures outlined above, the FSA has concluded that Mr Banfield is not fit and proper to perform any controlled function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

6.15. In particular, Mr Banfield has demonstrated a fundamental lack of understanding of the restrictions and risks associated with promoting UCIS to retail customers, failed to ensure that adequate systems and controls were in place such that customers were exposed to the risk of receiving unsuitable

advice generally and failed to ensure that the advice he gave was suitable. In the interests of consumer protection, the FSA deems it appropriate to impose a prohibition order on Mr Banfield in the terms set out above.

7. CONCLUSION

7.1. On the basis of the facts and matters described above, the FSA concludes that Mr Banfield's conduct fell short of the minimum regulatory standards required of an approved person and that he has breached Statements of Principle 2 and 7.

7.2. The FSA, having regard to all the circumstances, therefore considers that it is appropriate and proportionate to impose a financial penalty of £10,500 on Mr Banfield and to make the prohibition order against him.

DECISION MAKERS

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

IMPORTANT

7.4. This Final Notice is given to Mr Banfield in accordance with section 390 of the Act.

Manner of and time of payment

7.5. The financial penalty must be paid in full by Mr Banfield to the FSA by no later than 3 August 2011, 14 days from the date of the Final Notice.

If the financial penalty is not paid

7.6. If all or any part of the financial penalty is outstanding on 4 August 2011, the FSA may recover the outstanding amount as a debt owed by Mr Banfield and due to the FSA.

Publicity

7.7. 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 Mr Banfield or prejudicial to the interests of consumers.

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

FSA contact

7.9. For more information concerning this matter generally, Mr Banfield should contact Rachel West of the Enforcement and Financial Crime Division at the FSA (direct line: 020 7066 0142/ fax: 020 7066 0143).

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Tom Spender
Head of Department
FSA Enforcement and Financial Crime Division

ANNEX A

STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY

1. STATUTORY PROVISIONS

1.1. The FSA's regulatory objectives are set out in section 2(2) of the Act and include maintaining confidence in the financial system and the protection of consumers.

1.2. Section 56 of the Act provides that the FSA may make a prohibition order if it appears to the FSA that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person. Such an order may relate to a specific regulated activity, an activity falling within a specified description or all regulated activities.

1.3. Section 66 of the Act provides that the FSA may take action to impose a penalty on an individual of such amount as it considers appropriate where it appears to the FSA that the individual is guilty of misconduct and it is satisfied that it is appropriate in all the circumstances to take action. Misconduct includes failure, while an approved person, to comply with a statement of principle issued under section 64 of the Act or to have been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under the Act.

2. REGULATORY PROVISIONS

2.1. In exercising its power to impose a financial penalty, the FSA must have regard to relevant provisions in the FSA Handbook of rules and guidance ("the FSA Handbook").

2.2. The FSA's Enforcement Guide ("EG") and Decision Procedure and Penalties Manual ("DEPP") came into effect on 28 August 2007. Although the references in this Final Notice are to DEPP and EG, the FSA has also had

regard to the appropriate provisions of the FSA's Enforcement Manual, which preceded DEPP and EG and applied during part of the relevant period.

2.3. The guidance and policy that the FSA considers relevant to this case is set out below.

Statements of Principle and the Code of Practice for Approved Persons ("APER")

2.4. APER sets out the Statements of Principle as they relate to approved persons and descriptions of conduct which, in the opinion of the FSA, do not comply with a Statement of Principle. It further describes factors which, in the opinion of the FSA, are to be taken into account in determining whether or not an approved person's conduct complies with a Statement of Principle.

2.5. APER 3.1.3G states that when establishing compliance with or a breach of a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, including the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour to be expected in that function.

2.6. APER 3.1.4G provides that an approved person will only be in breach of a Statement of Principle where he is personally culpable, that is in a situation where his conduct was deliberate or where his standard of conduct was below that which would be reasonable in all the circumstances.

2.7. APER 3.1.6G provides that APER (and in particular the specific examples of behaviour which may be in breach of a generic description of conduct in the code) is not exhaustive of the kind of conduct that may contravene the Statements of Principle.

2.8. The Statements of Principle relevant to this matter are:

(1) Statement of Principle 2 which provides that an approved person must

act with due skill, care and diligence in carrying out his controlled function; and

(2) Statement of Principle 7 which provides that an approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system.

2.9. APER 4.2 lists types of conduct which, in the opinion of the FSA, do not comply with Statement of Principle 2.

2.10. APER 4.2.3E(1) states that failing to inform a customer of material information in circumstances where he was aware, or ought to have been aware, of such information, and of the fact that he should provide it is conduct that does not comply with Statement of Principle 2. APER 4.2.4E states that such conduct includes, but is not limited to:

(1) failing to explain the risks of an investment to a customer (APER 4.2.4E(1); and

(2) failing to disclose to a customer details of the charges of investment products (APER 4.2.4E(2)).

2.11. APER 4.2.6E states that undertaking, recommending or providing advice on transactions without a reasonable understanding of the risk exposure of the transaction to a customer is conduct that does not comply with Statement of Principle 2.

2.12. APER 3.1.8G states that in applying Statements of Principle 5 to 7, the nature, scale and complexity of the business under management and the role and responsibility of the individual performing a significant influence function within the firm will be relevant in assessing whether an approved person's conduct was reasonable.

2.13. APER 3.3.1E states that in determining whether or not the conduct of an approved person performing a significant influence function complies with Statements of Principle 5 to 7, the following are factors which, in the opinion of the FSA, are to be taken into account:

(1) whether he exercised reasonable care when considering the information available to him;

(2) whether he reached a reasonable conclusion which he acted on;

(3) the nature, scale and complexity of the firm's business;

(4) his role and responsibility as an approved person performing a significant influence function; and

(5) the knowledge he had, or should have had, of regulatory concerns, if any, arising in the business under his control.

2.14. APER 4.7 lists types of conduct which, in the opinion of the FSA, do not comply with Statement of Principle 7.

2.15. APER 4.7.3E states that failing to take reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems of control to comply with the relevant requirements and standards of the regulatory system in respect of its regulated activities is conduct that does not comply with Statement of Principle 7.

2.16. APER 4.7.4E states that failing to take reasonable steps to monitor (either personally or through a compliance department or other departments) compliance with the relevant requirements and standards of the regulated system in respect of its regulated activities is conduct that does not comply with Statement of Principle 7.

2.17. APER 4.7.7E provides that failing to take steps to ensure that procedures and systems of control are reviewed and, if appropriate, improved, following the identification of significant breaches (whether suspected or actual) of the relevant requirements and standards of the regulatory system relating to its

regulated activities is conduct that does not comply with Statement of Principle 7.

Enforcement Guide ("EG")

2.18. The FSA's approach to exercising its power to make a prohibition order under section 56 of the Act is set out in Chapter 9 of EG.

2.19. EG 9.1 states that the FSA's power under section 56 of the Act to prohibit individuals who are not fit and proper from carrying out controlled functions in relation to regulated activities helps the FSA to work towards achieving its regulatory objectives. The FSA may exercise this power to make a prohibition order where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities, or to restrict the functions which he may perform.

2.20. EG 9.4 sets out the general scope of the FSA's power in this respect. The FSA has the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant.

2.21. EG 9.5 provides that the scope of the prohibition order will depend on the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk which he poses to consumers or the market generally.

2.22. In circumstances where the FSA has concerns about the fitness and propriety of an approved person, EG 9.8 to 9.14 provides guidance. In particular, EG 9.8 states that the FSA may consider whether it should prohibit that person from performing functions in relation to regulated activities, withdraw that person's approval or both. In deciding whether to withdraw approval and/or make a prohibition order, the FSA will consider whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions.

2.23. EG 9.9 provides that when deciding whether to make a prohibition order against an approved person and/or withdraw approval, the FSA will consider all the relevant circumstances of the case. These may include, but are not limited to, the following:

(1) whether the individual is fit and proper to perform the functions in relation to regulated activities. The criteria for assessing the fitness and propriety of approved persons in terms of competence and capability is set out in FIT 2.2;

(2) whether, and to what extent, the approved person has failed to comply with the Statements of Principle issued by the FSA with respect to the conduct of approved persons, or been knowingly involved in a contravention by the relevant firm of a requirement imposed on the firm by or under the Act (including the Principles and other rules (EG 9.9(3)(a) and (b));

(3) the relevance and materiality of any matters indicating unfitness (EG 9.9(5));

(4) the length of time since the occurrence of any matters indicating unfitness (EG 9.9(6));

(5) the particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates (EG 9.9(7)); and

(6) the severity of the risk which the individual poses to consumers and to confidence in the financial system (EG 9.9(8)).

2.24. EG 9.12 provides a number of examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order or withdraw the approval of an approved person. The examples include serious lack of competence.

2.25. EG 9.23 provides that in appropriate cases the FSA may take other action against an individual in addition to making a prohibition order and/or withdrawing its approval, including the use of its power to impose a financial penalty.

Decision Procedure and Penalties Manual ("DEPP")

2.26. Guidance on the imposition and amount of penalties is set out in Chapter 6 of DEPP. Changes to DEPP 6 were introduced on 6 March 2010. The FSA has had regard to the appropriate provisions of DEPP that applied during the relevant period.

2.27. 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.

2.28. 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.

2.29. 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)

2.30. 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)

2.31. 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 extent to which the breach was deliberate or reckless: DEPP 6.5.2G(3)

2.32. The FSA will regard as more serious a breach which is deliberately or recklessly committed, giving consideration to factors such as whether the breach was intentional, in that the person intended or foresaw the potential or actual consequences of its actions. If the FSA decides that the breach was deliberate or reckless, it is more likely to impose a higher penalty on a person than would otherwise be the case.

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

2.33. When determining the amount of penalty to be imposed on an individual, the FSA will take into account that individuals will not always have the resources of a body corporate, that enforcement action may have a greater impact on an individual, and further, that it may be possible to achieve effective deterrence by imposing a smaller penalty on an individual than on a body corporate. The FSA will also consider whether the status, position and/or responsibilities of the individual are such as to make a breach committed by the individual more serious and whether the penalty should therefore be set at a higher level.

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

2.34. The purpose of a penalty is not to render a person insolvent or to threaten a person's solvency. Where this would be a material consideration, the FSA will consider, having regard to all other factors, whether a lower penalty would be appropriate.

Conduct following the breach: DEPP 6.5.2G(8)

2.35. The FSA may take into account the degree of co-operation the person showed during the investigation of the breach by the FSA.

Other action taken by the FSA (or a previous regulator): DEPP 6.5.2G(10)

2.36. The FSA seeks to apply a consistent approach to determining the appropriate level of penalty. The FSA may take into account previous decisions made in relation to similar misconduct.

ANNEX B

CONDUCT OF BUSINESS PROVISIONS

2.37. Section 238(1) of the Act provides that an authorised person must not communicate an invitation or inducement to participate in a collective investment scheme. Section 238(4) provides that certain authorised schemes are exempted from this prohibition.

2.38. UCIS is defined in the glossary to the FSA Handbook of Rules and Guidance as *"a collective investment scheme which is not a regulated collective investment scheme"*. Unless a collective investment scheme ("CIS") falls within the narrow definition of a regulated CIS[1] , it will be a UCIS.

2.39. The PCIS Order and COBS 4.12 provide for circumstances when UCIS may be promoted to customers without advisers falling foul of section 238 of the Act. There are a number of exemptions that may be applied to the section 238 restriction. For example, under the PCIS Order, UCIS' may be promoted to persons defined as "certified high net worth investors" and "sophisticated investors".

2.40. Section 4.12 of COBS defines eight categories of persons to whom an authorised person may promote UCIS'. These include:

(1) Category 2: a person for whom a firm has taken reasonable steps to ensure that investment in a collective investment scheme is suitable and who is an "established" or "newly accepted" client of the firm; and

(2) Category 8: a person to whom the firm has undertaken an adequate assessment of expertise, experience and knowledge and to whom the firm has provided certain written warnings.

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[1] A CIS is defined in the Handbook Glossary as follows: (a) an investment company with variable capital; or (b) an authorised unit trust scheme: or (c) a recognised scheme, (ie a CIS constituted overseas and formally recognised under sections 264, 270 or 272 of the Financial Services and Markets Act 2000); whether or not the units are held within an ISA or personal pension scheme.

2.41. An authorised firm must take reasonable steps to ensure that its personal recommendations to customers are suitable in compliance with the rules in Chapter 9 of COBS and Principle 9.

2.42. The predecessor to COBS 4.12, COB 3.11.2, requires that a firm may only communicate an invitation or inducement to participate in an unregulated collective investment scheme if the communication falls within COB 3 Annex 5 R.

2.43. COB 3 Annex 5 R defines seven categories of persons to whom an authorised person may promote UCIS'.