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## FINAL NOTICE

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To: **Paul Andrew Armitage**

Individual ref: **PAA00008**

Of: **200 Ridgeway Road  
Sheffield  
S12 2TA**

Date: **18 March 2010**

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

### **1. THE PENALTY**

- 1.1 The FSA gave you, Paul Andrew Armitage (“Mr Armitage”), a Decision Notice on 4 March 2010 which notified you that, pursuant to section 66 of the Financial Services and Markets Act 2000 (“the Act”), the FSA had decided to impose a financial penalty of £17,500 on you for failing to comply with Statements of Principle 6 and 7 of the FSA’s Statements of Principle and Code of Practice for Approved Persons (“APER”) between 31 July 2003 to 28 December 2007 (“the relevant period”).
- 1.2 You agreed to settle at an early stage of the FSA's investigation. You therefore qualified for a 30% (stage 1) discount under the FSA's executive settlement procedures. Were it not for this discount, the FSA would have imposed a financial penalty of £25,000 on you.

- 1.3 You confirmed by written agreement on 16 February 2010 that you will not be referring the matter to the Financial Services and Markets Tribunal.

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

- 2.1 The FSA has decided to take this action as a result of your conduct as an approved person at the firm at which you are a partner (“the Firm”).

- 2.2 During the relevant period, your conduct fell short of the FSA’s prescribed regulatory standards for approved persons. In breach of Statement of Principle 6, as an approved person performing a significant influence function, you failed to exercise due skill, care and diligence in managing the business of the Firm for which you were responsible in your controlled functions. In particular you failed to:

- (a) take reasonable steps to maintain an appropriate level of understanding about the parts of the business delegated to the others partners of the Firm;
- (b) delegate appropriately the supervision of mortgage advisers; and
- (c) ensure that systems and controls that were in place with regards to file checking were applied appropriately to prevent the Firm from being used to facilitate mortgage fraud.

- 2.3 You further failed in breach of Statement of Principle 7, as an approved person performing a significant influence function and as the Firm’s designated Compliance officer, to take reasonable steps to ensure that the business of the Firm for which you were responsible in your controlled functions, complied with the relevant requirements and standards of the regulatory system. In particular you failed to ensure that:

- (a) the Firm had in place adequate systems and control to monitor and supervise effectively the other partners at the Firm to whom responsibility for dealing with certain issues had been delegated (including the recruitment and supervision of certain employees);
- (b) the Firm’s recruitment procedures were robust enough to ensure that persons suitable to work in the financial services sector were recruited; and

- (c) the Firm had in place adequate controls to ensure that an employee about whom concerns had been raised by the FSA was monitored and supervised appropriately.

2.4 The FSA considers that this matter is serious because your failings exposed the Firm's customers to an unacceptable risk of receiving recommendations for mortgage products which may have been unsuitable. Additionally, these failures exposed lenders to the risk of offering mortgages on the basis of false or misleading information passed through the Firm, further facilitating financial crime. In mitigation, the FSA accepts however that the fraud carried out at the Firm was sophisticated and organised and that you and the other partners of the Firm have taken substantial steps to rectify the systems and controls' failings since the fraud was discovered.

2.5 This action supports the FSA's statutory objectives of reducing financial crime, maintaining market confidence and protecting consumers.

### **3. RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND FSA GUIDANCE**

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

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

#### **Background**

4.1 The Firm is a partnership of independent financial advisers, insurance and mortgage brokers based in Sheffield. The FSA authorised the Firm to conduct regulated activities in relation to:

- (a) designated investment business;
- (b) regulated mortgage contracts; and
- (c) insurance mediation.

4.2 You are one of three partners at the Firm, and you currently hold controlled functions CF4 (Partner), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting), and CF30 (Customer) and you are responsible for Insurance Mediation.

- 4.3 During the relevant period, you held the controlled functions CF4 (Partner), CF8 (Apportionment and Oversight), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting), and CF21 (Investment Adviser) (which was converted to CF30 (Customer) on 1 November 2007).
- 4.4 During the relevant period, there were four partners at the Firm, of which you were one. Partners B, C and D all held controlled functions CF4 (Partner) and CF21 (Investment Adviser) (which was converted to CF30 (Customer) on 1 November 2007). In addition, the Firm employed a number of investment and mortgage advisers during this period.
- 4.5 Partner B was responsible for the recruitment and supervision of, amongst others, Adviser A, Adviser B, and Adviser C. Adviser A was employed as a mortgage adviser and did not hold a controlled function at the Firm at any point during the relevant period. Adviser B held controlled function CF21 (Investment adviser) at the Firm between 31 July 2003 and 15 May 2007. Adviser C was employed as an investment adviser and held controlled function CF21 (Investment adviser) during the relevant period.
- 4.6 In a report dated 24 April 2007, the Firm's compliance consultant ("the compliance consultant"), raised serious concerns over the suitability of two of Adviser B's recommendations. Adviser B recommended that two investments be actively managed by a particular investment manager despite the compliance consultant suggesting that the charges associated with investing with that investment manager made the product unsuitable for the customer. As a result of the compliance consultant's concerns, the Firm suspended Adviser B and he subsequently resigned.
- 4.7 On 10 November 2008 Adviser B was charged by South Yorkshire Police with 19 counts relating to financial crime during the time of his employment at the Firm. On 24 March 2009, Adviser B pleaded guilty to nine offences which included six counts of conspiracy to obtain a money transfer by deception and three counts of making false instruments. Seven of the counts to which Adviser B has pleaded guilty relate to the time when he was employed at the Firm.
- 4.8 Adviser B, as a member of the investments team at the Firm, reported directly to Partner B. Partner B was also arrested in March 2008 as part of the same police investigation and has subsequently been charged with a number of offences.

- 4.9 In May 2008, following the police investigation into the conduct of Adviser B, the FSA visited the Firm and found evidence to suggest Adviser B and Adviser C had put customers at risk of receiving unsuitable investment advice. The FSA also identified circumstances suggesting Partner B was primarily responsible for failing to prevent the regulatory breaches and mortgage fraud which occurred at the Firm during the relevant period.

**Delegation of roles within the partnership and autonomy of Partner B**

- 4.10 As a partner of the Firm and the holder of controlled functions relating to compliance oversight, money laundering reporting, and apportionment and oversight, you are specifically responsible for ensuring that there are adequate and appropriate systems and controls in place for the effective management of the Firm. This includes but is not limited to the management of apportionment and oversight, compliance, money laundering reporting, recruitment, and training and competence at the Firm. As you held the controlled function CF10 (Compliance Oversight), you had overall responsibility for compliance however you delegated the day-to-day responsibility partially to Partner C, due to the fact that you spent more time on sales and less time in the office.
- 4.11 Partner B was responsible for sales and the recruitment, training and supervision of certain advisers (including those detailed in paragraph 4.5 above) as well as the relationship with the Firm's preferred investment manager.
- 4.12 The FSA accepts that at times it is necessary to delegate the authority for dealing with an issue or a part of the business to an individual or individuals possessing the necessary capacity, competence, knowledge, seniority, and skill to deal with the issue. If an area of business is delegated however there remains with the delegator a responsibility to supervise and monitor the individual to whom the delegation has been made.
- 4.13 Partner B was allowed however to conduct his business separately and without sufficient questioning by you. You assumed that he was acting appropriately and in the interests of the partnership and there is no evidence of checks and balances by you and Partners C & D being in place to verify that. Partner C admits that Partner B would take action first and then notify the partners of it later. In addition, the FSA considers that Partner B's autonomy within the Firm led to compliance issues, on at

least one occasion, bypassing you and Partner C and instead being dealt with by Partner B.

4.14 The FSA considers that you failed in particular to supervise adequately the following areas of responsibility that were delegated to Partner B:

- (a) mortgage business carried out by him and the advisers that he was supervising, which led to significant fraud; and
- (b) the recruitment and supervision of certain advisers.

### **Mortgage fraud**

4.15 Adviser B carried out a substantial amount of mortgage fraud during his time at the Firm when he reported to Partner B. Partner B was also involved in the submission of a fraudulent mortgage application on behalf of Client A which contained false information pertaining to Client A's employment and income.

4.16 A system of file checking was in place prior to Adviser B's suspension in April 2007 however it was not adequate and was not followed or monitored appropriately. The formal procedure was that 10% of an adviser's files would be checked post-completion of the business with 100% of more complicated files being checked (e.g. pensions-switching business). In practice, a few files were checked on a weekly ad-hoc basis by an internal "file-checker" and the compliance consultant would also review a few files once a month. The internal file-checker should have raised any concerns that he found with you or Partner C, as those responsible for compliance. The file-checker however, on at least one occasion, raised concerns directly with Partner B, rather than you or Partner C. Furthermore when the compliance consultant raised concerns with you, in particular in relation to Adviser B's files, you chose simply to raise those concerns in a letter to Partner B.

4.17 There was:

- (a) no double-checking of the advisers' files within the Firm by the partners (e.g. no random sample review was completed by yourself or Partner C as compliance officers, nor did the line manager supervising the adviser ever check the files); and

- (b) no checking of the files or documents prior to completion of the business (the system that is in place now). You, as Compliance officer, have admitted that this was a failing.
- 4.18 There was no way of knowing therefore whether the right cases were being captured by the file-checker or the compliance consultant and whether they were being reported to the correct person.
- 4.19 Further, there was no systematic reporting of incidents that were raised by the file-checks. You or Partner C would have a one-to-one chat with the relevant adviser but there would be no Firm-wide notification or clarification of procedures to ensure consistency in light of incidents that were raised.
- 4.20 The FSA considers that you, as a partner of the Firm exercising a significant influence function, failed to ensure that systems and controls worked appropriately to prevent Partner B and Adviser B from carrying out mortgage fraud.

#### **Recruitment of advisers**

- 4.21 As a partner of the Firm you are responsible together with your fellow partners for the day-to-day running of the business of the Firm, including the recruitment of employees. When employing individuals to work in the financial services sector, the partners of the Firm hold a responsibility to ensure that they meet the standards that the FSA requires. As set out in the Firm's *Risk Assessment and Monitoring Plan 2005*, you had responsibility for ensuring that the recruitment process was adequate and such that it could assess the suitability of individuals and ensure that they were fit and proper.
- 4.22 Partner B was directly responsible for the recruitment of Adviser A as a mortgage adviser in January 2005. Adviser A and Partner B had previously worked with each other.
- 4.23 On 28 January 2005, the Firm was put on notice by the solicitors of Firm A, the previous employer of Adviser A. The Firm was informed of a dispute between Firm A and Adviser A, which had led to the termination of Adviser A's employment at Firm A, and the subsequent soliciting, by Adviser A, of Firm A's clients on behalf of the Firm.

- 4.24 Adviser A was recruited in January 2005 and, irrespective of the concerns raised by the letter from Firm A's solicitors, a reference from Firm A was not requested until September 2005, eight months after Adviser A commenced employment at the Firm. A reference was received from Firm A dated 14 September 2005 and addressed to the Firm, stating that Adviser A was dismissed for "gross misconduct" and subject to a criminal investigation and civil proceedings in relation to his conduct at Firm A. A further reference was sent by Firm A dated 27 April 2006 that again advised the Firm that Adviser A had been dismissed for gross misconduct and had been subject to a criminal investigation. Despite the first reference from Firm A raising serious concerns in September 2005 regarding the past conduct of Adviser A, a further reference was not requested from Firm B, a previous employer of Adviser A, until April 2006. The reference provided by Firm B to Partner B stated that Adviser A had been "dismissed summarily" with the dismissal "based upon alleged falsification of employer's signature and sales process irregularities".
- 4.25 Partner B did not seek to clarify the issues raised by the references until 23 May 2006 when the only action he took was to ask Adviser A to provide him with a report of the reasons for dismissal. Adviser A disputed the reasons for dismissal and stated that the police investigation resulted in no action being taken against him. Partner B appears to have relied on the written explanations provided by Adviser A, whose interest was furthered by the explanation he gave. There is no evidence to suggest that Partner B took any further steps to test the truth of Adviser A's explanations or investigate further.
- 4.26 Despite the significant concerns raised by the references, the Firm applied for Adviser A to be an approved person (CF21 Investment Adviser) in September 2006. The application was withdrawn on 21 November 2006 following the Firm reflecting on concerns raised by the FSA about the prior dismissals and the conduct of Adviser A.
- 4.27 In an interview with the FSA, you admitted that a single partner of the Firm could deal with the entire recruitment process of an individual, bypassing the partners and any recruitment procedures in place.
- 4.28 The recruitment of Adviser A was left completely to Partner B's discretion and there is no evidence of any independent supervision or monitoring by you and the other partners.



- 4.29 In an interview with the FSA, you admitted that you had knowledge of Adviser A's dismissal from Firm A but that neither you nor any of the other partners had looked at Adviser A's recruitment file prior to the police and FSA investigations. You admitted that Adviser A's recruitment was a "major lapse" on the part of the Firm.
- 4.30 The FSA considers that, according to the Firm's own internal procedures, you assumed responsibility to ensure that the recruitment process was adequate. Following the delegation of the recruitment process to Partner B and despite your knowledge of Adviser A's dismissal as set out above, you failed to:
- (a) satisfy yourself that Adviser A was a fit and proper person to be working within the financial services industry; and
  - (b) ensure the reasons for the dismissals were investigated properly and not simply explained away by Adviser A without independent verification.
- 4.31 You, and your fellow partners, failed to have checks and balances in place that would have led, prior to anyone being employed, to adequate disclosure of an individual's background and previous employment history. If an individual was recruited without these checks being carried out, and where issues were subsequently raised, this should have been a matter of concern for the whole partnership and should have led to questions being raised by you and the other partners. As a partner of the Firm responsible for ensuring that the recruitment process was adequate, you had an obligation, once an issue had been delegated to a fellow partner, to require adequate reports about the issue delegated.
- 4.32 The failings in the recruitment of Adviser A demonstrate that you failed to have in place a satisfactory recruitment process, which was one of your responsibilities as Compliance officer at the Firm, and failed to keep yourself adequately informed once delegated.

### **Supervision of advisers**

- 4.33 The Annual Report on Apportionment and Oversight Function for the period from 1 April 2006 to 30 April 2007 details the Firm's personnel and sets out which partner of the Firm is responsible for supervising each adviser employed by the Firm. Partner B is stated as being the supervisor for Adviser A and another adviser, both of whom are mortgage and general insurance advisers. Partner B stated however in interview to the FSA that he was not permitted to give advice on mortgage business as he did not

hold the required CeMAP qualification. He therefore did not possess the technical competence to supervise mortgage advisers.

- 4.34 As set out at paragraph 4.15 above, the FSA has found one instance of a fraudulent mortgage application being submitted by Partner B. Partner B was not qualified to submit that application in any event. Further, Partner B was delegated the responsibility of supervising a number of advisers whose primary role at the Firm was to give mortgage and general insurance advice despite the fact that Partner B was himself not qualified to give mortgage advice. The FSA considers that Partner B should not have been allowed to supervise advisers who were giving mortgage advice as he lacked the necessary technical competence to do so.
- 4.35 You failed to exercise due skill, care and diligence in managing the business of the Firm for which you were responsible in your controlled function by delegating the supervision of certain advisers to Partner B when you had no reasonable grounds for believing that Partner B had the necessary competence or knowledge to supervise mortgage advisers.
- 4.36 As a partner of the Firm holding CF8 (Apportionment and Oversight), you had the responsibility of ensuring that advisers did not advise outside of the scope of their permission. Adviser A was only permitted by the Firm to give mortgage advice however he also gave advice regarding pensions. Although this was discovered and reported to the FSA, there should have been procedures in place to ensure that Adviser A did not give advice which he was not permitted to give. Partner B was responsible for supervising Adviser A but failed to do so sufficiently and, as discussed in paragraph 4.35 above, Partner B should not have been supervising Adviser A as he was not competent to do so.
- 4.37 You, as a partner at the Firm, should have ensured that Adviser A, about whom you had notice of concerns regarding his fitness and propriety, was monitored appropriately and thoroughly. Leaving his supervision to Partner B, who himself was not qualified to supervise mortgage advisers, and in circumstances where the FSA had raised concerns, was not an adequate control.

## **5. ANALYSIS OF CONDUCT IN ISSUE**

- 5.1 By reason of the facts and matters referred to in paragraphs 4.1 to 4.37 above, the FSA considers that you, as an approved person performing significant influence

functions, failed to exercise due skill, care and diligence in managing the business of the Firm for which you were responsible in your controlled functions at the Firm, in breach of Statement of Principle 6. In particular you failed to:

- (a) take reasonable steps to maintain an appropriate level of understanding about the parts of the business delegated to the others partners of the Firm;
- (b) delegate appropriately the supervision of mortgage advisers; and
- (c) ensure that systems and controls that were in place with regards to file checking were applied appropriately to prevent the Firm from being used to facilitate mortgage fraud.

5.2 By reason of the facts and matters referred to in paragraphs 4.1 to 4.37, the FSA considers that you, as an approved person performing significant influence functions, failed to take reasonable steps to ensure that the business of the Firm for which you were responsible in your controlled function during the relevant period, complied with the relevant requirements and standards of the regulatory system, in breach of Statement of Principle 7. In particular you failed to:

- (a) the Firm had in place adequate systems and control to monitor and supervise effectively the other partners at the Firm to whom responsibility for dealing with certain issues had been delegated (including the recruitment and supervision of certain employees);
- (b) the Firm's recruitment procedures were robust enough to ensure that persons suitable to work in the financial services sector were recruited; and
- (c) the Firm had in place adequate controls to ensure that an employee about whom concerns had been raised by the FSA was monitored and supervised appropriately.

5.3 The FSA's policy on the imposition of financial penalties is set out in Chapter 6 of the Decisions Procedures and Penalties Manual ("DEPP") which forms part of the FSA Handbook. 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, deterring other persons from

committing similar breaches, and demonstrating generally the benefits of compliant behaviour (DEPP 6.1.2G).

- 5.4 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) and will also consider all the relevant circumstances of a case when it determines the level of financial penalty that is appropriate in proportion to the breach concerned (DEPP 6.5.1G(1)). A non-exhaustive list of factors to be taken into account (where relevant) when determining the level of financial penalty is included in DEPP 6.5.2G. These include:

- (a) DEPP 6.5.2G (1): Deterrence:
  - (i) in determining the appropriate level of penalty, the FSA has had regard to the need to promote high standards of regulatory conduct by deterring those who have committed breaches from committing further breaches and to help deter others from committing similar breaches;
- (b) DEPP 6.5.2G (2): The nature, seriousness and impact of the breach in question:
  - (i) the FSA has had regard to the fact that your failings at the Firm occurred over an extended period of time; and
  - (ii) the breaches set out above revealed serious and systemic weaknesses in, or a lack of, management systems and internal controls at the Firm and these breaches enabled financial crime to be committed at the Firm;
- (c) DEPP 6.5.2G (4): Whether the person on whom the penalty is to be imposed is an individual:
  - (i) the FSA considers that your status at the Firm, as a partner exercising significant influence functions, warrants the imposition of a higher penalty;
- (d) DEPP 6.5.2G (8): Conduct following the breach:

- (i) the FSA has had regard to the cooperation shown by you during the FSA's investigation; and
  - (ii) the FSA takes into account the substantial steps that you and the other partners of the Firm have taken to rectify the systems and controls' failings since the fraud was discovered;
- (e) DEPP 6.5.2G (10): Previous action taken in relation to similar failings:
- (i) in determining the appropriate sanction, the FSA has taken into account sanctions imposed by the FSA on other approved persons for similar behaviour.

5.5 The FSA, having regard to all the circumstances, considered the appropriate level of financial penalty to be £25,000 before any discount applicable for early settlement.

## **6. DECISION MAKER**

The decision which gave rise to the obligation to give this Final Notice was made on behalf of the FSA by Margaret Cole, Director of Enforcement and Financial Crime and Lesley Titcomb, Director of Small Firms and Contact Division and Sector Leader for Retail Intermediaries and Mortgages, being Settlement Decision Makers for the purposes of the FSA's Decision Procedure and Penalties manual (DEPP).

## **7. IMPORTANT**

7.1 This Final Notice is given to you in accordance with section 390 of the Act. The following statutory rights are important.

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

7.2 The financial penalty must be paid in full by you to the FSA by no later than 2 April 2010.

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

7.3 If all or any of the financial penalty is outstanding on 2 April 2010, the FSA may recover the outstanding amount as a debt owed by you and due to the FSA.

### **Publicity**

7.4 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 you or prejudicial to the interests of consumers.

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

**FSA contacts**

- 7.6 For more information concerning this matter generally you should contact Paul Howick (direct line: 020 7066 7954 or by fax: 020 7066 7955) of the FSA's Enforcement and Financial Crime Division.

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**Tom Spender**

Head of Department

FSA Enforcement and Financial Crime Division

## **Annex A**

### **1. STATUTORY PROVISIONS**

- 1.1. The FSA's statutory objectives, set out in section 2(2) of the Act, include the protection of consumers, the reduction of financial crime and the maintenance of market confidence.

#### **Financial Penalty**

- 1.2. Section 66 of the Act provides that the FSA may take action against a person if it appears to the FSA that the person is guilty of misconduct and the FSA is satisfied that it is appropriate in all the circumstances to take action against him. Misconduct includes failure by an approved person to comply with a statement of principle. The action that may be taken by the FSA includes the imposition of a penalty on the approved person of such amount as it considers appropriate.

### **2. Handbook Provisions**

#### **Statement of Principle and Code of Practice for Approved Persons ("APER")**

- 2.1. APER sets out the FSA's Statements of Principle ("Statements of Principle") in respect of approved persons and examples of conduct which, in the opinion of the FSA, does not comply with the relevant Statements of Principle. It further describes factors to be taken into account in determining whether an approved person's conduct complies with a Statement of Principle.
- 2.2. APER 3.1.3 G 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 expected in that function.
- 2.3. APER 3.1.4 G states that an approved person will only be in breach of a Statement of Principle if they are personally culpable. Personal culpability arises where the approved person's conduct was deliberate or where their standard of conduct was below that which would be reasonable in all the circumstances.
- 2.4. In this case, the FSA considers the most relevant Statements of Principle, set out at APER 2.1.2 P, to be:

- (a) Statement of Principle 6, which states that:

*“an approved person performing a significant influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his controlled function”;* and

- (b) Statement of Principle 7, which states 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.”*

2.5. APER 4.6 gives examples of conduct which does not comply with Principle 6. This includes:

- (a) failing to take reasonable steps to inform himself adequately about the affairs of the business for which he is responsible (APER 4.6.3 E);
- (b) delegating the authority for dealing with an issue or a part of the business to an individual or individuals (whether in-house or outside contractors) without reasonable grounds for believing that the delegate had the necessary capacity, competence, knowledge, seniority or skill to deal with the issue or to take authority for dealing with part of the business (APER 4.6.5 E);
- (c) disregarding an issue or part of the business once it has been delegated (APER 4.6.7 E (1));
- (d) failing to require adequate reports once the resolution of an issue or management of part of the business has been delegated (APER 4.6.7 E (2)); and
- (e) failing to supervise and monitor adequately the individual or individuals to whom responsibility for dealing with an issue or authority for dealing with a part of the business has been delegated (APER 4.6.8 E);

2.6. APER 4.7 gives examples of conduct which does not comply with Statement of Principle 7. This includes failing to take reasonable steps to:



- (a) implement adequate and appropriate systems of control to comply with the relevant requirements and standards of the regulatory system in respect of the Firm's regulated activities (APER 4.7.3 E); and
- (b) monitor compliance with the relevant requirements and standards of the regulatory system in respect of the Firm's regulated activities (APER 4.7.4 E).

### 3. **Relevant FSA Policy**

- 3.1. In determining whether to impose a financial penalty and the level of any such financial penalty the FSA has had regard to its guidance published in the FSA Handbook and its relevant published policies. The FSA's Decision Procedure and Penalties Manual ("DEPP") came into effect on 28 August 2007. Although the references in this Notice are to DEPP, the FSA has also had regard to the appropriate provisions of the FSA's Enforcement Manual ("ENF"), which preceded DEPP, and applied during the majority of the relevant period.

#### *Decision Procedure and Penalties Manual*

- 3.2. The FSA's policy on the imposition of financial penalties as at the date of this notice is set out in Chapter 6 of DEPP. The FSA will consider all the relevant circumstances of the case when deciding whether or not to impose a financial penalty and when deciding the level of any financial penalty. In determining the appropriate level of the financial penalty, the FSA considers the following factors to be particularly relevant in this case.
- 3.3. 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.
- 3.4. DEPP 6.5.2G sets out guidance and a non-exhaustive list of factors that may be relevant in determining the appropriate level of financial penalty to be imposed on a person under the Act. These 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 (8): Conduct following the breach; and
- (f) DEPP 6.5.2G (10): Previous action taken in relation to similar failings.