Financial Services Authority

FINAL NOTICE

To: **Ravi Shankar Sinha**

FSA Reference Number: **RSS01040**

Dated: **31 January 2012**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives you a final notice that it has taken the following action:

1. ACTION

1.1. For the reasons given in this notice, the FSA hereby:

(1) makes an order, with effect from the above date and pursuant to section 56 of the Financial Services and Markets Act 2000 ("the Act"), prohibiting Ravi Shankar Sinha ("Mr Sinha") from performing any function in relation to any

regulated activity carried on by any authorised or exempt person or exempt professional firm on the grounds that he is not a fit and proper person; and

(2) imposes a financial penalty of £2.867 million on Mr Sinha, pursuant to section 66 of the Act on the grounds that he has failed to act with integrity in breach of Statement of Principle 1.

1.2. The financial penalty consists of the following elements:

(1) a disgorgement of financial benefit arising from Mr Sinha's misconduct of £1.367 million; and

(2) an additional penalty element of £1.5 million.

2. REASONS FOR THE ACTION

Summary of the conduct in issue

2.1. Between 16 May 2005 and 11 November 2009, Mr Sinha was the Chief Executive Officer of JC Flowers & Co UK Limited ("JCFUK"). He was also a Managing Director of JC Flowers & Co LLC ("JCFUS"), a US based private equity firm. Together, JCFUK and JCFUS are referred to as "JCF".

2.2. JCFUK is an investment adviser to JCFUS, itself an investment adviser to private equity funds (the "JCF Funds"), recommending potential investments in Europe to JCFUS, as well as monitoring those investments, advising JCFUS on them and, where appropriate, advising the management of the companies that the JCF Funds invested in.

2.3. Between 17 February and 26 October 2009, Mr Sinha fraudulently obtained €1,548,396.67 (amounting to £1.367 million on the basis set out at paragraph 6.16(1) below) for himself from a company in which the JCF Funds had invested ("Company A") without the knowledge or involvement of anyone else within JCF. He did this by issuing invoices to Company A for fees, payable to himself, to which Mr Sinha knew that he was not entitled. In order to secure payment of the invoices, Mr Sinha deliberately misled the CEO of Company A by claiming that the payments had been authorised and approved by JCF when in fact no such authorisation or approval had been sought or given. In addition, Mr Sinha dishonestly concealed from JCF the fact that he had received the payments from Company A.

2.4. Mr Sinha engaged in this dishonest behaviour in order to obtain additional income to meet his pressing financial obligations.

2.5. The FSA considers that Mr Sinha failed to act with honesty and integrity in carrying out his controlled function of chief executive (CF 3), contrary to Statement of Principle 1.

2.6. The FSA regards Mr Sinha's behaviour as very serious because:

(1) Mr Sinha abused his position as CEO of JCFUK;

(2) he engaged in a dishonest, deliberate and sustained course of misconduct which lasted for several months;

(3) he obtained significant sums for his personal benefit as a result of his misconduct; and

(4) he held positions of trust in relation to JCFUK and JCFUS, the JCF Funds and their investors, and Company A and by his actions abused the trust that those persons and firms gave him.

2.7. The FSA therefore considers that Mr Sinha's conduct merits the imposition of a prohibition order, a substantial financial penalty and disgorgement of his financial benefit.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

3.1. The FSA has the power, pursuant to section 56 of the Act, to prohibit an individual from performing any function in relation to any regulated activity where it appears to the FSA that that individual is not a fit and proper person.

3.2. The purpose of the part of the FSA Handbook entitled Fit and Proper Test for Approved Persons ("FIT") is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function. In this instance, the criteria set out in FIT are relevant in considering whether the FSA will exercise its powers to make a prohibition order in respect of an individual in accordance with the EG 9.9. FIT 1.3.1G provides that the FSA will have regard to a number of factors when assessing the fitness and propriety of a person, including the person's honesty and integrity.

3.3. The FSA has the power, pursuant to section 66 of the Act, to impose a financial penalty on a person of such amount as it considers appropriate where it appears to the FSA that he is guilty of misconduct and it is satisfied that it is appropriate in all the circumstances to take action against him.

3.4. A person is guilty of misconduct if, while an approved person, he, among other things, fails to comply with a Statement of Principle issued under section 64 of the Act.

3.5. The Statements of Principle are set out in that part of the FSA's Handbook known as the Statements of Principle and Code of Practice for Approved Persons ("APER"). The Statements of Principles themselves are set out at APER 2.1.2P. Statement of Principle 1 states that:

> "An *approved person* must act with integrity in carrying out his *controlled function*."

3.6. APER 3.1 (Introduction) gives guidance on the Code of Practice for Approved Persons. APER 3.1.4G(1) states:

> "An *approved person* will only be in breach of a *Statement of Principle* where he is personally culpable. Personal culpability arises where an *approved person's* conduct was deliberate or where the *approved person's* standard of conduct was below that which would be reasonable in all the circumstances (see DEPP 6.2.4 G (Action against approved persons under section 66 of the Act))."

3.7. Although not an exhaustive list, APER 4.1 (Statement of Principle 1) provides specific examples of behaviour or conduct which may contravene Statement of Principle 1. In particular, APER 4.1.2E provides that APER 4.1.3E – 4.1.13E describe examples of conduct which, in the opinion of the FSA, do not comply with Statement of Principle 1.

3.8. APER 4.1.3E states:

> "Deliberately misleading (or attempting to mislead) by act or omission:
>
> (1) a *client*; or
>
> (2) his *firm* (or its auditors or an *actuary* appointed by his *firm* under SUP 4 (Actuaries)); or
>
> (3) the *FSA*;
>
> falls within *APER* 4.1.2E."

3.9. The relevant provision of APER 4.1.4E states:

> "Behaviour of the type referred to in *APER* 4.1.3 E includes, but is not limited to, deliberately:
>
> (1) falsifying *documents*;
>
> …
>
> (9) providing false or inaccurate documentation or information, …;"

3.10. APER 4.1.10E states:

> "Deliberately misusing the assets or confidential information of a *client* or of his *firm* falls within *APER* 4.1.2E."

3.11. The relevant provisions of APER 4.1.11E state:

> "Behaviour of the type referred to in *APER* 4.1.10 E includes, but is not limited to, deliberately:
>
> …
>
> (3) misappropriating a *client's* assets, including wrongly transferring to personal accounts cash or *securities* belonging to *clients*; …"

4. FACTS AND MATTERS RELIED ON

Background

4.1. JCF is a private equity group, which was founded in the United States of America in 2000. JCF consists of two companies, JCFUS and JCFUK. JCFUS acts as fund manager for private equity funds which focus on financial services investments, the JCF Funds. In 2005, JCFUK was established to act as an investment adviser to JCFUS. Under the terms of the agreement between JCFUK and JCFUS, JCFUK's role was to provide sub-advisory services in connection with investments made by the JCF Funds in Europe. These services included identifying investments (all within

Europe), advising with respect to the monitoring of those investments, analysing the performance of the same and reporting thereon to JCFUS and, where appropriate, providing advice to the management of the companies in the investment portfolio. Under the agreement, JCFUS was treated as a professional client as defined by the FSA's rules.

4.2. Mr Sinha was a Managing Director at JCF, he was the most senior person within the European arm of JCF's business and he was the CEO of JCFUK. As CEO of JCFUK, his specific duties included ensuring that JCFUK appropriately fulfilled and discharged its role as investment adviser to JCFUS and he had primary responsibility for ensuring that JCFUK complied with FSA rules and requirements. As Managing Director of JCFUS, his role was to source investment opportunities in Europe (excluding the UK) and elsewhere.

4.3. Whilst at JCFUK, Mr Sinha held the following Controlled Functions:

CONTROLLED FUNCTION	START DATE	END DATE
CF1 Director	16/05/2005	11/11/2009
CF3 Chief Executive	16/05/2005	11/11/2009
CF8 Apportionment and Oversight	16/05/2005	31/03/2009
CF10 Compliance Oversight	16/05/2005	11/11/2009
CF11 Money Laundering Reporting	16/05/2005	11/11/2009
CF13 Finance	16/05/2005	13/10/2007
CF23 Corporate Finance Adviser	16/05/2005	31/10/2007
CF28 Systems and Controls	01/11/2007	11/11/2009
CF30 Customer	01/11/2007	11/11/2009

4.4. Mr Sinha also invested his own capital in companies which the JCF Funds had invested in. In part the purpose of this appears to have been for him to demonstrate a personal commitment to the investments that were being made by the JCF Funds.

4.5. Mr Sinha borrowed large sums of money to make his personal investments. Between May - July 2008, Mr Sinha borrowed nearly €9 million for investment purposes.

4.6. From 2007 onwards, the financial crisis greatly affected the investments of the JCF Funds. Mr Sinha's own financial position deteriorated because it was closely tied to the performance of the JCF Funds and their underlying investments. The decline in JCF Funds' performance also affected Mr Sinha's cash flow. As the value of his investments declined and the income he received from his investments dried up, he had difficulty servicing his loans and meeting his financial obligations.

Invoicing Scheme

4.7. In order to address his pressing financial obligations and cash flow problems, including an overdue payment on a bank loan, Mr Sinha decided to abuse his position as CEO to procure payments from Company A (a European company in which the JCF Funds were invested) to which he knew he was not entitled.

4.8. In January 2009, Mr Sinha approached the CEO of Company A, whom he had had previous business dealings with, in order to obtain a loan of €248,396.67 (the "Company A Loan"). Mr Sinha lied to the CEO of Company A in that he told him that JCF had authorised Mr Sinha to take out the loan. The Company A Loan was

the exact amount of an instalment Mr Sinha owed on a bank loan. A loan agreement was established between Mr Sinha and Company A in respect of the Company A Loan. Mr Sinha had not obtained authorisation or approval from, or otherwise disclosed the Company A Loan to, any person within JCF.

4.9. In April 2009, Mr Sinha again approached the CEO of Company A, and informed him that JCF had authorised Mr Sinha to charge advisory fees to Company A. In fact, Mr Sinha had not sought or obtained authorisation or approval from JCF to charge advisory fees to Company A. Furthermore, no-one within JCF was aware that Mr Sinha intended to invoice Company A for advisory fees.

4.10. Subsequent to this Mr Sinha obtained three further payments:

(1) €400,000 on 21 May 2009;

(2) €400,000 on 29 June 2009; and

(3) €500,000 on 21 October 2009.

4.11. In respect of each payment, Mr Sinha submitted an invoice to Company A for fees payable to directly to him, which purported to set out the advisory services he had personally provided to Company A. In fact the invoices were fraudulent and Mr Sinha had not provided any advisory services to Company A in his personal capacity. Work that Mr Sinha had performed in relation to Company A included monitoring the investments made in Company A by the JCF Funds and exploring potential exit routes from that investment. For this work, Mr Sinha was already well remunerated earning a salary of $800,000 as CEO of JCFUK and $400,000 as Managing Director of JCFUS. In addition, Mr Sinha, as a partner in JCFUS, was also entitled to a share (known as "carry") in any gains over a hurdle return that JCFUS made on its investments, including its investment in Company A.

4.12. Mr Sinha also raised a further invoice, again purportedly for advisory fees, of €260,000. This amount was offset against the outstanding balance, including accrued interest, of the Company A Loan.

4.13. All of the payments referred to above were made to Mr Sinha's personal bank account from Company A (or from other companies within Company A's group). In total, Mr Sinha dishonestly obtained €1.548 million in payments from Company A over the course of 8 months.

4.14. When Mr Sinha obtained these payments he was acting without authorisation from JCF and in breach of his fiduciary duties as a director of JCFUK. Further, he was aware that he was removing value from Company A and therefore acting to the detriment of Company A and the JCF Funds' investors (which included JCFUS). JCF has since compensated Company A; therefore the JCF Funds' investors and Company A did not ultimately suffer any loss as a result of Mr Sinha's actions.

4.15. Mr Sinha's conduct was discovered by JCFUK on 26 October 2009 and was notified promptly to the FSA. He was suspended and his employment was subsequently terminated by JCFUK with effect from 11 November 2009. The FSA makes no criticism of JCFUK's systems and controls in connection with the payments obtained by Mr Sinha from Company A which are attributable to Mr Sinha acting dishonestly

and without integrity and by his deliberate breach of the terms of his service arrangement with JCFUK and JCF's Code of Ethics.

5. REPRESENTATIONS FINDINGS AND CONCLUSIONS

Representations

5.1. Mr Sinha made written and oral representations. Mr Sinha accepted that he had engaged in the misconduct described in this notice and thus his representations focussed upon matters relevant to the appropriate sanction. In particular Mr Sinha addressed issues which went to the level of the financial penalty to be imposed upon him.

The extent of Mr Sinha's admissions

5.2. Mr Sinha contended that when determining the appropriate financial penalty the FSA should take account of his admissions concerning his misconduct. He submitted that it was wrong to allege that he had not admitted his failings. He argued that he had in fact admitted to his wrong doing from a very early stage and that he had not subsequently sought to go back on this admission. Instead he stated that the FSA had misconstrued comments he had made when he had sought to explain his actions.

5.3. Mr Sinha also submitted that had he sought authorisation it would have been forthcoming from JCF. He therefore contended that his conduct was not as serious as it might otherwise have been and he argued that his early admissions about his misconduct should be viewed against this backdrop.

The relevance of the damage suffered by Mr Sinha

5.4. Mr Sinha submitted that the FSA should take account of the damage he had suffered as a result of his misconduct. Mr Sinha argued that it was a relevant factor for the FSA to take into account when assessing what financial penalty would be appropriate in this matter. In particular he argued that the FSA should take this into account when assessing the extent to which he had derived a benefit and also whether the penalty should be reduced to take account of the potential for a financial penalty to cause him serious financial hardship.

The benefit derived from his misconduct

5.5. Mr Sinha submitted that the FSA should follow the proper meaning of the words contained within DEPP 6.5.2(G)(6):

> "(a) the FSA will propose a penalty which is consistent with the principle that a person should not benefit from the breach."

5.6. Mr Sinha contended that when calculating any disgorgement figure to be applied to a financial penalty the FSA should decide, as a matter of fact, whether he had benefitted from the breach and if so the extent of that benefit. Mr Sinha argued that it was clear that he had not benefitted from his misconduct as the figure of £1.367 millions, which represents the monies he had obtained, was eclipsed by the as yet unrealised amount that would have accrued to him as his share of the "carry", which

he had forfeited when his misconduct had come to light. Mr Sinha submitted that the loss of "carry" meant that he had not, as a matter of fact, made any net benefit from his misconduct. Instead he stated that as a direct consequence of his misconduct he had suffered a significant loss. Mr Sinha therefore argued that on a proper interpretation of DEPP, and ignoring matters that he submitted were irrelevant to this calculation, the FSA should determine that he had in fact not derived any benefit from his misconduct and that as a result of the fact that he had suffered loss as a result of his misconduct there was no amount to be disgorged.

Co-operation with the investigation

5.7. Mr Sinha submitted that he had been co-operative throughout the investigation. Furthermore he submitted that he had admitted to the principle aspects of his wrongdoing. Therefore it was argued that notwithstanding the fact that he had denied certain assertions made about him he should still be given the credit which his significant degree of co-operation merited.

The appropriate level of financial penalty in the light of precedent cases

5.8. Mr Sinha submitted that the punitive element of the financial penalty was too high in the light of comparator cases. In particular Mr Sinha referred to a previous matter, involving market manipulation, which had been cited as a comparator case. Mr Sinha submitted that there were a number of aggravating factors in that matter which made it a far more serious case. Principally Mr Sinha was concerned that the FSA should not overlook the importance of the amount of loss caused in the comparator case compared with the significantly smaller amount of loss he had caused. However Mr Sinha also noted, amongst other things, that in his case the misconduct had only affected two parties whilst in the comparator case he noted that a large number of market participants had been affected.

Mr Sinha's current financial position

5.9. Mr Sinha explained that he had been discharged from bankruptcy on 23 August 2011. He submitted that notwithstanding the fact that he had been discharged from bankruptcy the imposition of the financial penalty would cause him serious financial hardship and in fact it would result in his having to be made bankrupt for a second time.

5.10. Mr Sinha stated that though he had been discharged from bankruptcy his estate was still being administered as there had been some difficulties in realising assets contained within a trust for which he was the beneficiary. He noted that these unrealised assets could, when realised, amount to a figure greater than that owed to his creditors. However he suggested that the most likely scenario would see his creditors paid back a portion of that which he owed them once these assets had been realised. Mr Sinha noted that one of his creditors was JCF who had made a claim for the monies he had fraudulently obtained.

5.11. Mr Sinha submitted that these issues surrounding his bankruptcy had a few potential consequences upon any financial penalty. Mr Sinha submitted that he was unfairly at risk of paying back £1.367 million, or a portion thereof, to JCF as well as paying £1.367 million to the FSA by way of disgorgement. Mr Sinha submitted that the

FSA should therefore not impose the disgorgement element of the financial penalty, which was calculated by reference to the figure of £1.367 million, to ensure that he did not pay this figure twice.

5.12. Mr Sinha also submitted that though there was the possibility that his estate might realise more than was owed to his creditors he should nonetheless be treated as having no assets. He therefore submitted that he would suffer serious financial hardship were the financial penalty to be imposed.

5.13. Mr Sinha thus contended that the FSA should take account of the serious financial hardship which he would suffer and reduce his penalty accordingly. He made this submission though he acknowledged that the Financial Services and Markets Tribunal (as it then was) had stated in the case of *Atlantic Law LLP and Andrew Greystoke v The Financial Services Authority* that:

> *"The fact that the purpose of imposing a financial penalty is not to bring about insolvency does not mean that the Tribunal cannot and should not fix a penalty which may have that unfortunate result."*

5.14. Mr Sinha submitted that this principle should not be applied in his case as his misconduct was not sufficiently serious to merit the imposition of a financial penalty which would result in his going bankrupt. Mr Sinha compared the seriousness of his wrongdoing and that seen in the case of *David John Bedford v The Financial Services Authority.* In addition to drawing parallels between the seriousness of his and Mr Bedford's misconduct Mr Sinha also highlighted other similarities between the cases. Having noted the comparability of the two cases Mr Sinha then urged the FSA to adopt the approach taken by the Upper Tribunal in Mr Bedford's case when it concluded that:

> *"…we cannot see any purpose to imposing on a person in Mr Bedford's position a penalty he is unable to pay. It is not, we think, an immaterial consideration that if the imposition of such a penalty should provoke his bankruptcy, that eventuality would quite possibly cause prejudice to his other creditors. Accordingly, though we recognise the force of what was said by the tribunal in Atlantic Law LLP and Andrew Greystoke, we think that course should be adopted only in a clear case, which we are not persuaded this is."*

The conduct of the FSA

5.15. Mr Sinha complained that the treatment he had received from the FSA had led him to conclude that the authority had prejudged his case and was determined to punish him severely for his misconduct. In support of this contention he highlighted three examples of what he considered to be evidence of inappropriate conduct by the FSA. Mr Sinha suggested that two articles which had appeared in national newspapers about his case included details which would only be known to those close to the case; he speculated that this information could have come from the FSA. He also complained about the disclosure of elements of his case to JCF in their capacity as a third party and he complained that the Warning Notice had been sent to him on the date when he was discharged from bankruptcy.

The personal impact upon Mr Sinha

5.16. Mr Sinha stated that he was apologetic for his actions and that he understood the gravity of his misconduct. Additionally he submitted that his misconduct had resulted in a number of dire consequences for him and for his family. He explained that not only had he gone bankrupt but his reputation and career had both been destroyed. He also stated that he was conscious of, and sorry for, the fact that he had let down all those whose trust he had abused.

Findings

5.17. Notwithstanding Mr Sinha's written and oral representations the FSA finds that it is appropriate to impose upon him the sanctions set out in paragraph 1.1 of this Notice. In particular the FSA finds that it is appropriate to impose a financial penalty of £2.867 million consisting of a disgorgement element totalling £1.367 million and an additional penalty of £1.5 million.

The extent of Mr Sinha's admissions

5.18. Whilst the FSA acknowledges that Mr Sinha had admitted much of the substance of his misconduct at an early stage the FSA notes that he had continued to dispute certain issues such as the length of time over which his misconduct had taken place. Therefore whilst the FSA takes account of the admissions he made the FSA does not consider that the extent of his admissions mitigates the seriousness of his misconduct.

5.19. The FSA notes that Mr Sinha submitted that had he sought authorisation for his actions from JCF then it would have been granted. The FSA also notes that this is an assertion which is denied by JCF. The FSA makes no findings on this issue as it does not consider that this matter is relevant to the level of Mr Sinha's culpability nor does the FSA consider that this would serve as any form of mitigation were his assertion to be correct.

The relevance of the damage suffered by Mr Sinha

5.20. Whilst the FSA has taken into account the impact Mr Sinha's misconduct has had upon him the FSA does not accept that as a consequence of the damage he has suffered, the element of the financial penalty comprising the disgorgement figure should be reduced. The FSA also does not accept that the additional element of the financial penalty should be reduced because the imposition of this penalty would probably cause Mr Sinha, who is only recently discharged from the bankruptcy which resulted from his misconduct, to suffer serious financial hardship.

The benefit derived from his misconduct

5.21. The FSA rejects Mr Sinha's submissions about the correct approach to calculating disgorgement. The FSA finds that the amount of Mr Sinha's benefit, for the purposes of calculating disgorgement, was equal to the £1.367 million which he fraudulently obtained. The FSA notes that when Mr Sinha's misconduct had come to light and his employment had been terminated, he had forfeited his entitlement to his share of the "carry". Furthermore the FSA notes that the amount which could have accrued to him from his entitlement to the "carry" may have significantly exceeded the £1.367 million which he obtained. However the FSA does not accept that the "carry" amount should be offset against the £1.367 million which he fraudulently

obtained. The FSA considers that where individuals engage in serious misconduct like Mr Sinha, those individuals will, when their wrongdoing is discovered, face the unpleasant but foreseeable consequences of this misconduct, and this will often include the loss of various benefits associated with their work. The FSA therefore does not consider that it should reduce the amount to be disgorged from Mr Sinha in the absence of any evidence to suggest that he did not actually obtain £1.367 million. The FSA finds that this approach is consistent with the principle set out in DEPP 6.5.2(G)(6) as it will ensure that Mr Sinha will not benefit from his breach.

Co-operation with the investigation

5.22. As is noted above the FSA acknowledges that Mr Sinha admitted much of the substance of his misconduct at an early stage. Furthermore the FSA does not dispute that Mr Sinha has co-operated with the investigation of his misconduct. The FSA has taken this into account in determining the amount of the financial penalty.

The appropriate level of financial penalty in the light of precedent cases

5.23. The FSA finds that the punitive element of the financial penalty is set at an appropriate and proportionate amount and therefore the FSA rejects Mr Sinha's submission that it should be reduced as it is inconsistent with the penalties imposed in previous cases. The FSA notes the various aggravating features which were present in the case to which Mr Sinha referred and which were absent in his case. The FSA also notes that the conduct in the case to which Mr Sinha referred resulted in a loss, to other market participants, that was approximately 7 times greater than the loss resulting from Mr Sinha's misconduct. Nonetheless the FSA considers that the penalty is merited because of Mr Sinha's level of seniority and the leading position of JCF in the financial services industry. The FSA notes that in the case to which Mr Sinha referred the individual concerned held a less prominent position in the industry.

Mr Sinha's current financial position

5.24. The FSA notes that Mr Sinha's bankruptcy was only discharged on 23 August 2011. Moreover the FSA accepts that the imposition of the financial penalty would probably result in Mr Sinha suffering serious financial hardship. Indeed the FSA accepts that it is probable that the imposition of the financial penalty would have the unfortunate result of him once again being made bankrupt. However the FSA considers that the seriousness of his misconduct means that it should not reduce the punitive element of the financial penalty notwithstanding the impact that this will probably have on Mr Sinha.

5.25. The FSA agrees that whilst it would not ordinarily reduce the disgorgement element of a financial penalty, and in this case the imposition of that portion of the financial penalty will still cause him serious financial hardship, it is still open to the FSA to reduce the punitive element of the financial penalty where it would result in serious financial hardship. The FSA also notes that the tribunal decided in the case of *David John Bedford v The Financial Services Authority* that despite the seriousness of Mr Bedford's misconduct the financial penalty should be reduced on the basis that otherwise it would result in Mr Bedford suffering serious financial hardship. However the FSA considers that Mr Sinha's case is distinguishable from that of Mr

Bedford due to Mr Sinha's seniority at JCF and the market position of JCF. The FSA also considers that the two cases are distinguishable because Mr Bedford's misconduct did not result in financial detriment to others unlike the loss caused by Mr Sinha. The FSA therefore considers that in the light of the seriousness of Mr Sinha's misconduct his is clearly a case, unlike that of Mr Bedford, where it is appropriate, in the light of the approach taken by the tribunal in *Atlantic Law LLP and Andrew Greystoke v The Financial Services Authority*, to impose a punitive financial penalty though this would probably result in serious financial hardship.

5.26. Therefore in the light of the following the FSA intends to impose the full amount of the financial penalty set out at paragraph 1.1(2) notwithstanding the impact upon Mr Sinha.

The conduct of the FSA

5.27. The FSA does not consider Mr Sinha's criticisms of the FSA to be relevant to the matters which are the subject of this notice. Moreover the FSA rejects the suggestion that it has treated him unfairly or that it has acted inappropriately and the FSA also rejects the conclusions which Mr Sinha seeks to draw from the matters to which he has referred.

The personal impact upon Mr Sinha

5.28. The FSA takes into account that Mr Sinha has expressed contrition for his misconduct and the FSA also takes into account the impact that his misconduct has had upon him. However the FSA does not consider that these mitigate the seriousness of his misconduct.

Conclusions

5.29. In the light of the foregoing the FSA concludes that as an approved person performing the chief executive controlled function, Mr Sinha breached Statement of Principle 1 because he failed to act with in integrity in his deliberate and dishonest misconduct in breach of his obligations as chief executive of JCFUK.

5.30. The FSA considers that as Chief Executive Officer of JCFUK, his duty as set out in his service agreement was to ensure that JCFUK appropriately fulfilled and discharged its role as investment adviser to JCFUS. The FSA concludes that Mr Sinha's actions in defrauding Company A caused him to breach his service agreement by failing to ensure that JCFUK appropriately fulfilled and discharged its role as investment adviser to JCFUS.

5.31. In particular, Mr Sinha's conduct, in dishonestly obtaining payments totalling €1.548 million from Company A, demonstrates that he is not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm.

5.32. Furthermore the FSA concludes that Mr Sinha's misconduct merits a very substantial financial penalty and a prohibition order. A further analysis of these sanctions is provided below.

6. ANALYSIS OF SANCTIONS

6.1. The FSA's policy on the imposition of financial penalties and public censures is set out in the FSA's Decision Procedure & Penalties manual ("DEPP") and Enforcement Guide ("EG"). In determining the financial penalty proposed, the FSA has had regard to this guidance as it applied at the time of the misconduct.

Financial penalty

6.2. The principal purpose of a financial penalty or issuing a public censure 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.

6.3. For the reasons set out above, the FSA considers that Mr Sinha's breach of Statement of Principle 1 is sufficiently serious to merit the imposition of a high financial penalty.

6.4. In determining the appropriate level of financial penalty, the FSA has considered all the relevant circumstances of the case and the factors set out below.

Deterrence (DEPP 6.5.2G(1))

6.5. The FSA considers that a significant penalty is required to strengthen the message to approved persons within the financial services industry that the FSA expects a high standard of honesty and integrity.

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

6.6. The FSA considers Mr Sinha's misconduct to be very serious.

6.7. Mr Sinha issued four separate fictitious invoices and his misconduct lasted several months. He was dishonest towards his employers and Company A. As a result of his misconduct, Mr Sinha fraudulently obtained €1.548 million.

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

6.8. The FSA has concluded that Mr Sinha's misconduct was deliberate.

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

6.9. In determining the level of financial penalty, the FSA takes into account that the penalty is to be imposed upon an individual, as opposed to a firm. Furthermore in determining the appropriate penalty, the FSA has considered Mr Sinha's status, position and responsibilities. Having taken this into consideration the FSA has concluded that as a result of his significant experience in the financial services industry, the senior position he held within JCF, and the fact that he performed a significant influence function, an appropriate financial penalty is one set at a high level.

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

6.10. In deciding on the level of penalty, the FSA has had regard to the size of the financial resources of the individual.

6.11. The FSA has learnt that Mr Sinha voluntarily declared himself bankrupt in August 2010 and that he was discharged on 23 August 2011 from this bankruptcy. Nevertheless, the FSA considers Mr Sinha's conduct to be exceptionally serious and so egregious that, in order to achieve deterrence, a substantial financial penalty must be imposed, notwithstanding Mr Sinha's current financial difficulties.

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

6.12. Through his invoicing scheme, Mr Sinha gained €1.548 million. The financial penalty imposed on Mr Sinha must include a disgorgement element, equal to the amount gained from the misconduct, which is consistent with the principle that a person should not benefit from the breach.

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

6.13. Mr Sinha has not previously been the subject of FSA enforcement action.

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

6.14. The FSA has had regard to previous cases involving a breach of Principle 1 of FSA's Statement of Principle for Approved Persons and cases concerning dishonesty and a serious lack of integrity.

Conclusions about the appropriate financial penalty

6.15. In determining the proposed financial penalty, the FSA has considered the need to send a clear message to the industry of the need to ensure that individuals act with honesty and integrity and that failure to do so will result in severe consequences. This applies particularly to individuals, such as Mr Sinha, who are approved and hold significant influence functions. The FSA must also have regard to confidence in the UK's financial industry. It is essential that confidence is maintained in the honesty and integrity of persons occupying senior positions within the management of UK authorised financial institutions.

6.16. In the light of all of the foregoing the FSA considers that a financial penalty of £2.867 million is appropriate. This figure has been arrived at by reference to all of the factors above, and comprises:

(1) disgorgement of £1.367 million;[1] and

(2) a financial penalty of £1.5 million.

Prohibition order

[1] The relevant €:£ exchange rates were as follows: 20/02/2009, 1.133; 21/05/2009, 1.1373; 29/06/2009, 1.1762; and 21/10/2009, 1.0966. The amount that Mr Sinha received in sterling was therefore approximately £1,367,000.

6.17. In deciding whether to issue a prohibition order in relation to Mr Sinha under section 56 of the Act, the FSA has regard to its policies published in Chapter 9 of the Enforcement Guide ("EG").

6.18. The FSA's effective use of the power to prohibit individuals who are not fit and proper from carrying out functions in relation to regulated activities helps the FSA to work towards its regulatory objectives of protecting consumers, promoting public awareness, maintaining confidence in the financial system, contributing to the UK's financial stability and reducing financial crime (EG 9.1).

6.19. The relevant matters set out in EG 9.9 for the FSA to consider in this case are as follows:

(1) the criteria for assessing the fitness and propriety of an individual to perform functions in relation to regulated activities (EG 9.9(2), particularly that relating to honesty, integrity and reputation);

(2) whether the approved person has failed to comply with the Statements of Principle issued by the FSA with respect to the conduct of approved persons (EG 9.9(3)(a)); and

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

6.20. Examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order and to withdraw the approval of an approved person are:

(1) severe acts of dishonesty (EG 9.12(3)); and

(2) serious breaches of the Statements of Principle for approved persons (EG 9.12(5)).

Mr Sinha's lack of fitness and propriety

6.21. The FSA has issued guidance on this issue in the Fit and Proper Test for Approved Persons ("FIT"). FIT 1.3.1G identifies three criteria as being the most important considerations when assessing the fitness and propriety of a candidate for a controlled function. The first of these ("honesty, integrity and reputation") is relevant in this case. FIT 2.1.3G states that "honesty, integrity and reputation" includes (but is not limited to) considering whether the person has been dismissed, or asked to resign and resigned from employment or from a position of trust, fiduciary appointment or similar, or has contravened any of the requirements and standards of the regulatory system.

6.22. The FSA considers that Mr Sinha's conduct in the matters described in this Warning Notice demonstrates that he has acted without honesty and integrity.

6.23. Mr Sinha dishonestly obtained €1.548 million from Company A. He misled Company A into believing that he had obtained the approval and authorisation of JCF. He concealed his payments and the Company A Loan from JCF. His conduct was deliberate and sustained. Mr Sinha understood and intended the consequences of his actions. Such conduct demonstrates a serious lack of honesty and integrity on his part.

6.24. In order to sustain confidence in the UK's financial system, it is essential that confidence is maintained in the honesty and integrity of persons occupying senior positions within the management of UK authorised financial institutions.

6.25. Mr Sinha was the CEO of JCFUK. He occupied a senior position within the financial services industry and, in particular, a position of trust towards Company A, his employers JCFUK and JCFUS, the JCF Funds and their investors. Mr Sinha deliberately and repeatedly engaged in a dishonest course of conduct, concealing his actions from his employers and lying to the CEO of Company A. As a result, Mr Sinha dishonestly obtained a very significant sum of money.

6.26. This conduct amounts to serious and sustained failings to satisfy the criteria of honesty, integrity and reputation such that Mr Sinha is not fit and proper to perform any controlled functions and thus the FSA considers that it is appropriate that a prohibition order be made against him.

7. PROCEDURAL MATTERS

Decision maker

7.1. The decision which gave rise to the obligation to give this Final Notice was made by the Regulatory Decisions Committee.

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

Manner of and time for Payment

7.3. The financial penalty must be paid in full by Mr Sinha to the FSA by no later than 14 February 2012, 14 days from the date of the Final Notice.

If the financial penalty is not paid

7.4. If all or any of the financial penalty is outstanding on 15 February 2012, the FSA may recover the outstanding amount as a debt owed by Mr Sinha and due to the FSA.

Publicity

7.5. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.

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

FSA contacts

7.7. For more information concerning this matter generally, you should contact Jagdev Kenth (direct line: 020 7066 1832) of the Enforcement and Financial Crime Division of the FSA.

Matthew Nunan
Acting Head of Department
Enforcement and Financial Crime Division
Financial Services Authority