



Financial Services Authority

FINAL NOTICE

To: **Richard Barclay**

Date of Birth: 21 October 1959

Date: 13 April 2010

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the FSA) gives Richard Barclay final notice about a requirement to pay a financial penalty and to be prohibited from performing any significant influence function.

1. THE PENALTY

1.1 The FSA gave Richard Barclay a Decision Notice dated 9 April 2010 which notified him that pursuant to sections 56 and 66 of the Financial Services and Markets Act 2000 (the Act) the FSA had decided to impose on him:

- (1) an order prohibiting him from performing any function involving the exercise of significant influence in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm (the Prohibition Order); and
- (2) a financial penalty in the sum of £140,000.

1.2 The level of the penalty reflects:

- (1) Mr Barclay's agreement to settle at an early stage of the FSA's investigation. He therefore qualified for a 30% (stage 1) reduction in penalty, pursuant to the FSA's executive settlement procedures; and
- (2) Mr Barclay's personal financial hardship.

But for these matters the FSA would have imposed a financial penalty of £300,000.

1.3 Under the terms of the Settlement Agreement dated 9 April 2010, Mr Barclay agreed to waive and not to exercise his rights to refer the matter to the Financial Services and Markets Tribunal once a Decision Notice had been issued.

1.4 Accordingly, for the reasons set out below, the FSA imposes a fine of £140,000 on Mr Barclay.

2. REASONS FOR THE ACTION

2.1. The FSA decided to take this action as a result of Mr Barclay's misconduct as an approved person, under section 59 of the Act, at Northern Rock Plc (NR/the Firm).

2.2. During the period January 2004 to March 2008 (the Relevant Period), Mr Barclay was approved to perform controlled functions 17 significant management (other business operations) and 19 significant management (financial resources) until 31 October 2007 and controlled function 29 significant management from 1 November 2007 to 18 November 2008. The controlled functions constituted significant influence functions at NR.

2.3. During the Relevant Period, as Managing Credit Director of the Debt Management Unit (the DMU) and the Credit Management Information Unit (the CMIU) Mr

Barclay's responsibilities included the oversight, management and recovery of loans made by the Firm and the provision of accurate management information to the Firm.

- 2.4. During significant parts of the Relevant Period, Mr Barclay's conduct fell short of the FSA's regulatory standards for approved persons. Mr Barclay's conduct demonstrated a lack of skill, care and diligence in establishing and overseeing effective systems and controls. The FSA have therefore concluded that Mr Barclay is not fit and proper to perform any function involving the exercise of significant influence in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.
- 2.5. Mr Barclay breached Principles 5 and 6 of the Statements of Principle for Approved Persons contained in the High Level Standards part of the FSA's Handbook. The particulars of these breaches are more fully set out in section 5 below, but are summarised as follows:
 - (1) in breach of Principle 5, Mr Barclay failed to implement adequate systems and controls within the DMU which resulted in a failure to prevent and/or detect a number of improper practices; and
 - (2) in breach of Principle 6, Mr Barclay failed to demonstrate due care, skill and diligence in managing the DMU in relation to the treatment of properties that should have been taken into possession and the treatment of mortgage arrears.
- 2.6. The consequence of Mr Barclay's conduct was that senior management was provided with management information concerning loan arrears and property possessions that was inaccurate in certain material respects. The provision of accurate data concerning loans in arrears and/or possession was of significance because it enabled recipients of that data (including analysts or other NR stakeholders) to form a view of NR's asset quality.
- 2.7. Mr Barclay's breaches of Principles 5 and 6 were serious because:
 - (1) Mr Barclay was Managing Credit Director at the Firm and directly responsible for the DMU and CMIU. He was therefore responsible for developing and implementing effective systems and controls to give effect to the Firm's loan

arrears and possessions policies and for providing accurate management information to senior management for the areas of your responsibility;

- (2) the weaknesses in systems and controls made the Firm's policies vulnerable to abuse and exploitation. Furthermore, the systems and control failings were abused by staff within the DMU resulting in materially inaccurate loan arrears figures being reported;
- (3) Mr Barclay was aware that the Firm's arrears position was being manually adjusted at the discretion of staff within the DMU and that there was no independent system properly to capture the extent of the use of that discretion. Mr Barclay took no steps however to ascertain the extent to which the arrears figures were being adjusted. Mr Barclay was also aware that the Firm's arrears position enabled people within NR, analysts, NR stakeholders and the FSA to form a view of NR's asset quality. The impact of this cannot be quantified, but the evidence suggested that arrears and possessions figures were relied upon by certain market analysts as an indicator of the Firm's asset quality; and
- (4) Mr Barclay and other members of senior management were aware that there was a category of loans in respect of which possession orders had been obtained but not yet enforced ("pending possessions") which did not appear in either the disclosed arrears or possessions figures. Mr Barclay and other senior members of the senior management were therefore aware that inaccurate information regarding the arrears figure was given to NR stakeholders, including market analysts. Had the pending possession loans been disclosed, the Firm's arrears figure would have increased by approximately 50%.

3. RELEVANT STATUTORY PROVISIONS

- 3.1. The FSA's regulatory objectives, set out in section 2(2) of the Act, include the maintenance of market confidence.
- 3.2. Under section 66(1) of the Act, the FSA may impose a financial penalty on an approved person if he is guilty of misconduct and if the FSA is satisfied that it is appropriate in the circumstances. Section 66(2)(a) provides that a person is guilty of

misconduct if, whilst an approved person, he has failed to comply with a statement of principle issued under section 64 of the Act.

- 3.3. Section 56 of the Act enables the FSA to make an order prohibiting an individual from performing a specified function or any function falling within a specified description or any function, if it appears to the FSA that the individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or exempt professional firm. The order may relate to a specified regulated activity, any regulated activity falling within a specified description or all regulated activities.

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

- 3.4. The FSA's Statements of Principle and Code of Practice for Approved Persons are issued by the FSA pursuant to section 64 of the Act. Statement of Principle 5 states that:

“An approved person must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function is organised so that it can be controlled effectively.”

- 3.5. APER 4.5 sets out descriptions of conduct which, in the opinion of the FSA, do not comply with Statement of Principle 5. This includes (but is not limited to) failing to take reasonable steps to apportion responsibility and implementing uncertain reporting and authorisation lines (APER 4.5.4E & 4.5.5E) plus failing to take reasonable steps to ensure that suitable individuals are responsible for those aspects of the business under the control of the individual performing a significant influence function.

- 3.6. Statement of Principle 6 states that:

“An approved person must exercise due skill, care and diligence in managing the business of the firm for which he is responsible.”

- 3.7. APER 4.6 sets out descriptions of conduct which, in the opinion of the FSA, do not comply with Statement of Principle 6. This includes (but is not limited to) failing to take reasonable steps to inform oneself about the affairs of the business for which a person is responsible (APER 4.6.3E) and accepting implausible or unsatisfactory explanations from subordinates without testing the veracity of those explanations (APER 4.6.4E).

Fit and Proper Test for Approved Persons

- 3.8. The purpose of the part of the FSA Handbook entitled the 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. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.

Enforcement policy

- 3.9. The FSA's policy in relation to the decision to make a prohibition order is set out in Chapter 9 of the Regulatory Guide entitled the Enforcement Guide (EG).
- 3.10. EG 9.1 explains the purpose of prohibition orders made under section 56 in relation to the FSA's regulatory objectives.
- 3.11. EG 9.4 sets out the general scope of the FSA's 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.
- 3.12. EG 9.5 states that the scope of a prohibition order will depend on the reasons why the person is not fit and proper and the severity of risk which he poses to consumers or the market generally.
- 3.13. EG 9.8 – 9.14 set out guidance on the FSA's approach to making prohibition orders against approved persons.
- 3.14. EG 9.8 provides that, in deciding whether to make a prohibition order, the FSA will consider whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions.
- 3.15. EG 9.9 provides that when the FSA decides whether to make a prohibition order against an approved person, it will consider all the relevant circumstances of the case. EG 9.9 refers to a non-exhaustive list of factors which include:
- (1) whether the individual is fit and proper to perform functions in relation to regulated activities by reference to the criteria for assessing fitness and propriety set out in FIT;

- (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;
 - (3) the relevance and materiality of any matters indicating unfitness;
 - (4) the length of time since the occurrence of any matters indicating unfitness; and
 - (5) the severity of the risk which the individual poses to consumers and to confidence in the financial system.
- 3.16. EG 9.12 provides 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 breaches of the Statements of Principle for approved persons.
- 3.17. EG 9.23 states that in appropriate cases the FSA may take other action against an individual in addition to making a prohibition order, including the use of its powers to impose a financial penalty.
- 3.18. The FSA's policy in relation to the imposition of financial penalties is set out in Chapter 6 of the part of the FSA Handbook entitled Decision Procedure and Penalties Manual (DEPP). In considering the financial penalty, the FSA has also had regard to the provisions of the FSA's Enforcement Manual (ENF) which applied during part of the period in which the misconduct occurred.

4. FACTS AND MATTERS RELIED ON

- 4.1. NR is a retail bank currently in public ownership. It de-mutualised in 1997 and entered the FTSE 100 in 2000. During the Relevant Period, NR experienced sustained growth and by the end of 2006 was the fifth largest UK mortgage lender with 8.3% of the residential mortgage market. Important to the Firm's rapid growth was the maintenance of its asset quality. The value of NR's securities was in part derived from a market perception of how its loan book was performing. Although the FSA has been unable to quantify what impact changes in market perception of how the loan book was performing would have had on the price of its securities at the date of the conduct referred to below, the provision of accurate data, internally and externally, concerning

the number of loans in arrears or possession was, nonetheless, important to permit an accurate assessment of the Firm's asset quality.

Impaired loans

Capitalisation of arrears

- 4.2. Arrears capitalisation was a tool used by NR to rehabilitate previously poorly performing customer loans. Capitalisation meant that the missed mortgage repayments or arrears were added to the loan, permitting the customer to repay the arrears over the remaining term of the loan. Where an account was capitalised, it was removed from the reported loan arrears figures.
- 4.3. NR effected capitalisation (in the majority of cases) automatically on accounts in arrears where three consecutive payments had been received. In addition, NR had implemented an operations policy entitled Trove. This permitted manual capitalisation of accounts in arrears in exceptional circumstances, namely where:
- (1) accounts were one to two months in arrears, one payment was made and a direct debit or other method of payment was set up;
 - (2) accounts were two to three months in arrears, one payment was made and a direct debit or other method of payment set up, provided in this case that authorisation was obtained from the management team; and
 - (3) management in its discretion so decided, taking into account the customer's circumstances.

This led to a greater number of capitalisations being effected than would have been the case if the firm's secured lending policy had been followed.

- 4.4. During the Relevant Period, the total number of manual capitalisations increased to levels substantially higher than the number of automatic capitalisations. This included manual capitalisations which were in line with Trove and those carried out for a number of "technical" reasons. These included, manual capitalisations of accounts conducted outside of the DMU (for example by the redemptions unit when mortgages were redeemed) and manual capitalisations in circumstances where three consecutive monthly payments had been received, but technical error meant that the capitalisation

had not occurred automatically. However, it also included manual capitalisations which occurred as a result of a series of actions which the DMU took outside of Firm policies to improperly reduce the number of reported arrears.

- 4.5. On average 6,870 manual capitalisations occurred each month during the Relevant Period. It is not possible accurately to ascertain what percentage of these manual capitalisations was being conducted either contrary to NR's secured lending policy or to its Trove policy but the evidence suggests that the proportions were significant. There was, further, no system in place to capture the level of non-compliance with either policy.
- 4.6. The deviation from the secured lending policy and the mis-use of Trove, was a result of perceived pressure on the staff in the DMU to retain NR's arrears position at half the Council of Mortgage Lenders (CML)/industry average. The performance of the Firm's loan book relative to the CML average was referred to in various documents issued by the Firm, and in briefings to market analysts, as an indicator of the quality of NR's loan book.
- 4.7. Throughout the Relevant Period, as Managing Credit Director, Mr Barclay was responsible for the effective implementation of Trove and for the development and oversight of systems and controls to ensure continuing adherence to Trove. Despite these responsibilities, Mr Barclay failed to ensure adequate systems and controls were implemented and maintained to ensure compliance with the day-to-day operation of the Trove policy. As a result, the Trove policy was vulnerable to abuse.
- 4.8. The weaknesses in the systems and controls in relation to the oversight and operation of the Trove policy were exploited. This gave rise to the practice of capitalising loans in arrears as previously described above at paragraph 4.4. Mr Barclay received informal management information from staff within the DMU and CMIU in relation to the implementation of Trove. Mr Barclay did not however verify nor establish a system that would enable you to verify its accuracy or determine if the discretion prescribed by Trove had been applied.
- 4.9. Mr Barclay should have been aware from information he received from late 2005, that the discretion permitted by Trove was being misapplied and that the manual capitalisation of loans in arrears was occurring on a large scale. Mr Barclay received

written and oral reports from staff that provided information on the level of manual capitalisations. Mr Barclay did not, however, take sufficient action to investigate the matter and he failed to put into place sufficiently robust systems and controls to ensure compliance with Trove. It is accepted by the FSA that there were considerable mitigating personal circumstances which contributed to Mr Barclay's negligence - see paragraph 5.5 for further detail.

- 4.10. In addition, a report produced and provided to Mr Barclay by a member of his team in June 2007 identified "target setting" in the DMU as a result of peer and market pressure. Mr Barclay took insufficient steps to follow this report up. Further, Internal Audit reported in July 2007 (in a section of the report headed "Moderate Risk") that there were inadequate controls over the manual capitalisation process. Internal Audit noted concerns that the process did not need management authorisation: there were no systems access controls and no system in place effectively to monitor capitalisation numbers and trends. This report recorded that senior management had been aware of this deficiency for some time, and that the implementation of a debt management system (delayed for some two to three years) would go some way to addressing the deficiency. In fact, the system was only fully operational by the spring of 2008, and in the meantime, Mr Barclay took no adequate steps to address the mis-use of Trove, which continued until March 2008. The FSA accepts, in mitigation of Mr Barclay's failings that in the lead up to "the run" on the Firm in September 2007 and subsequently up to the period of nationalisation, in addition to his usual duties he was asked to undertake significant further duties involving a substantial time commitment on his behalf. In the event, Mr Barclay felt that he was unable to properly discharge his day-to-day functions in relation to the DMU.
- 4.11. Had adequate systems and controls (to include a debt management system which would allow proper oversight and independent checks over manual capitalisation) been implemented at the start of the Relevant Period:
- (1) it is likely that Trove would have been complied with; or
 - (2) Mr Barclay would have been alerted at an earlier date to the mis-use of Trove; and
 - (3) he would have been able to take appropriate and timely remedial action.

Pending possessions

- 4.12. As a result of pressure that the DMU staff felt to achieve arrears targets, in late 2005 a practice developed to remove from the arrears figures accounts that were “pending possession”. These were accounts where a possession order had been obtained but not yet enforced. This practice meant pending possessions were not reported in the arrears or possession figures and were, therefore, excluded from all reported impaired accounts. Mr Barclay was aware that this was occurring, although he did not consider it significant at the time.
- 4.13. The number of pending possessions being removed from the reported arrears figures increased markedly in the second half of 2006, of which Mr Barclay was aware. This is because a practice had developed within the DMU to limit the number of properties being taken into possession, so that the reported possession figures did not deteriorate. Mr Barclay failed to appreciate the significance of this practice and was negligent in not investigating and rectifying this issue. Despite Mr Barclay’s responsibilities for oversight and control of the DMU and the CMIU (as well as his controlled function responsibilities) he was aware that inaccurate information was being provided to the Assets and Liabilities Committee (ALCO). Although Mr Barclay was aware that other members of senior management had received information that should have made them aware of the pending possessions issue, he did not ensure that senior management fully appreciated the significance of these matters until early January 2007. It is accepted, however, that there are a number of exceptional extenuating circumstances as to Mr Barclay’s conduct in the second half of 2006 (as set out at paragraph 5.5).

5. BREACHES

- 5.1. In performing his controlled functions, Mr Barclay’s conduct fell short of the FSA’s regulatory standards for Approved Persons.

Principle 5

5.2. Mr Barclay breached Statement of Principle 5 in that he failed to take reasonable steps to ensure that the business of the Firm for which he was responsible in his controlled functions was organised so that it could be controlled effectively because he did not implement an adequate system to control and capture:

- (1) the failure to report approximately 1,917 customer secured loan accounts in respect of which property possession orders had been obtained;
- (2) the decision to limit, and the practice of limiting the number of properties taken into actual possession by the Firm as a consequence of the customers' default on their mortgages;
- (3) the reduction of reported arrears outside of the Firm's lending policy, and in particular the extent of Trove's application. This included failing to implement adequate systems:
 - (a) to give any guidance as to the circumstances in which the exercise of discretion would be appropriate;
 - (b) to restrict the exercise of discretion only to management grades when manually capitalising loans (as prescribed by Trove);
 - (c) to record and report the exercise and extent of management discretion, when manually capitalising loans; and
 - (d) which accurately recorded the full extent of the activity within the DMU to reduce the reported arrears figures other than in circumstances where three consecutive monthly payments had been received.

5.3. As a result Mr Barclay incorrectly relied on informal management information, knowing that no systems or controls existed to verify the information and its accuracy. A debt management system implemented at the outset of the Relevant Period, which would have allowed proper oversight and independent checks over manual capitalisation, potentially may have addressed a number of these failures.

Principle 6

5.4. Mr Barclay breached Statement of Principle 6 in that he failed to exercise due skill, care and diligence in managing the business of the Firm for which he was responsible in his controlled functions because:

- (1) Mr Barclay should have been aware of the fact that a practice had developed within the DMU in 2005 whereby the number of properties being taken into possession was being capped, a consequence of which was that possessions figures were artificially reduced;
- (2) a practice developed in DMU from late 2005 of a number of secured loans in default, in respect of which possession orders had been obtained, not being reported in either the arrears figures or the possessions figures. Mr Barclay was aware that this was occurring, although he did not consider it significant at this time. Members of NR's senior management were also at this time in receipt of information that Mr Barclay assumed should have made them aware of the practice. The number of pending possessions being removed from the reported arrears figures increased markedly in the second half of 2006, something of which Mr Barclay was made aware. However, Mr Barclay did not ensure that senior management fully appreciated the significance of this increase until early January 2007, when the number of these cases reached a level that he deemed to be unacceptable;
- (3) Mr Barclay became aware by June 2007 at the latest, that staff within the DMU perceived that they were under pressure to maintain the Firm's reported arrears and property possession figures at half of the CML average. In order to maintain lower reported loan arrears and possessions figures, the DMU took a series of actions to remove impaired loans (by manual capitalisation) outside of Firm policies, which improperly reduced the number of reported impaired loans by a significant amount. This led to the mortgage arrears being mis-reported to be significantly less than they should have been. Although it is not possible to calculate the exact extent of this mis-reporting, if the correct figure had been reported the evidence suggests that the arrears figures would have been significantly worse and closer to the CML average than was reported.

Had the 1,917 loans remained in the Firm's reported arrears, the figure reported in the 2006 annual accounts would have been 0.68% of the loan book instead of 0.42% (at a time when the reported CML average was 0.89%);

- (4) after Mr Barclay was provided with relevant information, the significance of which he failed at the time to appreciate, he did not take adequate steps to investigate the improper activities within the DMU and the CMIU. Had Mr Barclay done so, he would have uncovered the extent of manual capitalisations outside of the secured lending policy and Trove and the practice of capping the number of properties being taken into possession; and
- (5) when Mr Barclay did become aware (to the extent that he did) of the extent of the failings within the DMU (and in particular in relation to the extent of the practice of manually capitalising loans in arrears), from September 2007 onwards, he did not take adequate steps to remedy it.

5.5. It is accepted by the FSA that Mr Barclay's conduct in breach of the relevant principles must be viewed in the context of both his workload and in the context of his personal circumstances at the time. In assessing Mr Barclay's conduct the FSA have taken into account the significant professional and personal pressures placed on him for much of the Relevant Period. We have considered a combination of evidence, including:

- (1) evidence (including Mr Barclay's annual appraisals) concerning the increasing size and scope of his role as the Firm experienced a period of rapid growth;
- (2) Mr Barclay's wife's very serious illness and his own extensive periods of ill health and hospitalisation which affected his ability properly to discharge his professional functions; and
- (3) the fact that, from August 2007 to February 2008, Mr Barclay (and other senior management within NR) were almost exclusively involved in the events leading up to and following "the run", and the upheaval at NR in advance of its nationalisation.

5.6. Nonetheless, by reason of Mr Barclay's misconduct as described above, the FSA considers that he is not a fit and proper person to perform any function involving the

exercise of significant influence in relation to any regulated activities carried on by any authorised person, exempt person or professional firm.

6. ANALYSIS OF THE SANCTION

Prohibition

- 6.1. The FSA has had regard to the guidance in Chapter 9 of EG in deciding that a Prohibition Order is appropriate in this case.

Financial penalty

- 6.2. The FSA considers it appropriate to impose a financial penalty as well as making a prohibition order against Mr Barclay, in accordance with EG 9.23.
- 6.3. The FSA has taken all of the circumstances of the case into account in deciding that the imposition of a financial penalty is appropriate and the level of the penalty imposed is proportionate. The FSA's policy in relation to the imposition of financial penalties is set out in Chapter 6 of the Decision Procedure and Penalties Manual (DEPP) which forms part of the FSA Handbook. It was previously set out in Chapter 13 of the Enforcement Manual (ENF).
- 6.4. These Manuals set out the factors that may be of particular relevance in determining the appropriate level of financial penalty for a firm or approved person. The criteria are not exhaustive and all relevant circumstances of the case will be taken into consideration.

Deterrence

- 6.5. The FSA considers that the imposition of a financial penalty will promote high standards of regulatory conduct by deterring approved persons from acting in this way.
- 6.6. In determining the appropriate level of penalty, the FSA has had regard to Mr Barclay's conduct in the performance of his controlled function. The FSA considers that a significant penalty should be imposed to demonstrate to Mr Barclay and others the seriousness with which the FSA regards this behaviour.

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

- 6.7. The FSA considers that Mr Barclay's breaches of Statement of Principle 5 and 6 are of a particularly serious nature. Mr Barclay's conduct caused materially inaccurate arrears data to be reported, which was highly significant because the data in question enabled recipients to form a view of NR's asset quality. Mr Barclay's conduct also occurred over a protracted period. The impact of the omission of the pending possessions and the manual capitalisations outside of policy cannot be accurately measured, but it is common ground that NR's reported arrears figures would have been significantly worse and closer to the CML average than was reported.

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

- 6.8. The FSA considers that Mr Barclay's failure to act appropriately and to appreciate and/or investigate the nature of the DMU activities in relation to the issue of manual capitalisations was negligent, and that, given his position within NR and his managerial responsibilities in respect of the DMU he should have become aware of the practices in question and addressed them in a robust manner. In relation to the pending possession issue, Mr Barclay was negligent in allowing the practice to develop, albeit that it is acknowledged this issue was belatedly escalated to senior management and account has been taken of that fact.

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

- 6.9. The FSA has taken into account the fact that as an individual, the imposition of a financial penalty is likely to have a significant impact on Mr Barclay. The FSA considers the imposition of a financial penalty to be proportionate and appropriate in relation to the seriousness of the misconduct, especially in view of the seniority of Mr Barclay's position at the Firm. Mr Barclay's role included managing the operation and credit risk of the Firm, and the delivery of effective business operations. Mr Barclay had an obligation to ensure that business areas for which he was responsible were conducted in accordance with the company's risk management processes and in full compliance with all applicable laws, regulations and codes of practice.

The financial resources and other circumstances of the person: DEPP 6.5.2G(5)

- 6.10. In setting the penalty the FSA has had regard to Mr Barclay's present personal circumstances.

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

- 6.11. The FSA accepts that Mr Barclay did not financially benefit from his conduct.

Conduct following the breach: DEPP 6.5.2G(8)

- 6.12. The FSA recognises that Mr Barclay co-operated with the FSA's investigation.

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

- 6.13. The FSA has not previously taken any disciplinary action against Mr Barclay.

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

- 6.14. The FSA seeks to ensure consistency when it determines the appropriate level of penalty and has taken into account previous decisions made in relation to similar misconduct by approved persons.

7. CONCLUSION

- 7.1. Having regard to the seriousness of the breaches and the risks they posed to the FSA's statutory objective of maintaining confidence in the financial system, the FSA has made a Prohibition Order against Mr Barclay and imposed on him a financial penalty of £140,000. It is necessary and proportionate to impose a financial penalty to promote high standards of conduct and to deter other approved persons from acting in this way.

8. DECISION MAKERS

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

9. IMPORTANT

- 9.1 This Final Notice is given to Mr Barclay in accordance with section 390 of the Act.

Manner of and time for Payment

- 9.2 The financial penalty must be paid in full by Mr Barclay to the FSA by no later than 27 April 2010, 14 days from the date of the Final Notice.

If the financial penalty is not paid

- 9.3 If all or any of the financial penalty is outstanding on 28 April 2010, the FSA may recover the outstanding amount as a debt owed by Mr Barclay and due to the FSA.

Publicity

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

FSA contacts

- 9.5 For more information concerning this matter generally, you should contact Bill Sillett (Tel: 020 7066 5880) of the Enforcement and Financial Crime Division of the FSA.

William Amos

FSA Enforcement and Financial Crime Division