Financial Services Authority

FINAL NOTICE

To:	**Mr Richard David Lindley**
Individual reference number:	**RDL01051**
Date	**8 July 2011**

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

1. THE ACTION

1.1. The FSA gave Mr Lindley a Decision Notice on 6 June 2011 which notified Mr Lindley 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 £14,000 on Mr Lindley.

1.2. Mr Lindley confirmed on 24 May 2011 that he will not be referring the matter to the Upper Tribunal (Tax and Chancery Chamber) and agreed to settle at an early stage of the FSA's inquiries and therefore qualified for a 30% (Stage 1) reduction of the financial penalty under the FSA's executive settlement procedures. The FSA would otherwise have sought to impose a financial penalty of £20,000 on Mr Lindley.

1.3. Accordingly, for the reasons set out below, the FSA imposes a financial penalty on Mr Lindley in the amount of £14,000.

2. REASONS FOR THE ACTION

2.1. The FSA decided to take this action as a result of Mr Lindley's conduct as a director of Alpha to Omega (UK) Ltd ("A2O" / "the Firm") between 1 January 2008 and 21 January 2010 ("the Relevant Period").

2.2. During the Relevant Period, Mr Lindley's conduct fell short of the FSA's regulatory standards required by the FSA's Statements of Principle for Approved Persons ("Statements of Principle").

2.3. Mr Lindley was approved to hold the CF 1 (Director) controlled function at A2O from 26 March 2003. This controlled function is a significant influence function. From 1 January 2008 Mr Lindley was appointed by the Board to the role of 'Managing Director' of the Firm and was one of two executive directors actively involved in the day-to-day running of the business from January 2008. As a senior executive director at the Firm, Mr Lindley had the capability and capacity to influence the culture and processes of A2O.

2.4. Mr Lindley had a responsibility, as a senior executive director of the Firm and significant influence function holder, to ensure that A2O, a network of independent financial advisers, met its regulatory responsibilities but he failed to discharge that responsibility effectively. Network principals are responsible for the sales their appointed representatives make, and they need to be satisfied that their appointed representatives ("ARs") are offering suitable advice and treating customers fairly. As a senior executive director and significant influence function holder, Mr Lindley was responsible for ensuring that A2O established and maintained a culture which would ensure that customers were treated fairly and that A2O had sufficiently robust systems and controls to lead to fair outcomes for customers.

2.5. Mr Lindley was primarily responsible for marketing and recruitment, and marketed A2O to prospective ARs on the basis of its culture and business model of taking on knowledgeable and innovative independent financial advisers ("IFAs") who wished to offer a wide range of products to their clients and would not want to be restricted to recommending basic investments.

2.6. Mr Lindley appreciated that compliance risk was a core risk to A2O's business and that A2O needed to exercise sufficient control and oversight of its ARs to mitigate this risk. However, Mr Lindley relied entirely on the knowledge and competence of the Firm's compliance director and compliance department to ensure that the Firm was complying with the FSA's regulatory requirements, even where he had notice of concerns about the effectiveness of the compliance function in monitoring certain ARs.

2.7. The FSA has found that Mr Lindley failed to take reasonable steps to ensure that A2O complied with the relevant requirements and standards of the regulatory system, in breach of Statement of Principle 7, in that Mr Lindley:

(1) failed to assess the effectiveness of A2O's efforts to manage compliance risk through any evaluation of A2O's compliance performance, either after his appointment as Managing Director or when put on notice of FSA concerns with the compliance function;

(2) failed to ensure that the Firm collected relevant and accurate management information to enable him to adequately identify, monitor and mitigate the compliance risks to which the business was exposed; and

(3) failed to take appropriate action to both correct and monitor the behaviour of AR firms when he became aware of potential compliance risks posed by them, or to ensure that the compliance function had resolved these issues.

2.8. From the Firm's "checked files" spreadsheet, 99% of the files reviewed by the Firm were passed as compliant. In contrast, 98% of the files reviewed by the skilled person were failed. This failure was particularly serious given the nature of A2O's network business and the significant amount of high risk business recommended to retail clients by certain advisers, particularly recommendations to invest in UCIS.

2.9. In reaching this conclusion, the FSA has considered the following mitigating factors:

(1) Mr Lindley did not wilfully or deliberately disregard the compliance risk at A2O;

(2) Mr Lindley believed that the compliance function was monitoring 100% of high risk business; and

(3) Mr Lindley was aware that the Compliance Director was seeking some external guidance with regards to certain high risk investment products.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

3.1. Relevant statutory provisions, regulatory guidance and policy are set out at Annex A to this Notice.

4. FACTS AND MATTERS RELIED ON

Background

4.1. A2O was an IFA network authorised by the FSA on 26 March 2003. The head office and administrative centre of the Firm was located in Winchester. When the Firm went into administration on 25 January 2010, the network had 47 ARs, employing around 101 advisers. A2O also had seven directly approved advisers holding the CF30 (Customer) controlled function.

4.2. From 26 March 2003, Mr Lindley held the Controlled Function 1 (Director). At this time, he was the Operations Director at the Firm. This role gradually increased to encompass finance and business development. Mr Lindley had principal responsibility at the Firm for the recruitment, retention and business development of ARs. In January 2008, he was appointed as the Managing Director of the Firm. From this time, the Firm had only two executive directors engaged in the day-to-day running of the Firm; Mr Lindley and the Compliance Director of the Firm. Mr Lindley's role as Managing Director of the Firm required him to have an overview of key AR relationships and assume overall commercial oversight and leadership responsibility at the Firm.

4.3. Mr Lindley had no direct role in carrying out the compliance function at A2O and relied entirely on the knowledge and expertise of the Firm's Compliance Director to oversee effectively the Firm's compliance function. While Mr Lindley and the

Compliance Director were in charge of discrete areas, both maintained a high level overview of the business and would seek to cover each other's role if necessary.

4.4. In April 2009, as a result of a review of client files of an AR of A2O, the FSA wrote to A2O setting out concerns about the suitability of recommendations provided by that AR, the effectiveness of A2O's controls over its ARs in general and the effectiveness of its compliance monitoring arrangements. As a result of these concerns, the Firm voluntarily varied its regulatory permissions to stop its ARs from recommending five high risk products, four of which were UCIS funds. A2O was also required to commission a skilled person to establish A2O's standards of compliance oversight and controls, sales monitoring processes and corporate governance and oversight.

4.5. The skilled person's report identified a number of concerns and issues in respect of the compliance systems and controls at A2O and the subsequent effect this had on the suitability of advice provided by some ARs of the Firm. The skilled person concluded that 98% of the 41 files reviewed were not compliant; A2O's compliance department had passed 99% of these files as compliant. The report also identified a lack of management information to provide effective oversight of the Firm's business.

4.6. A2O decided to focus the Firm's resources on rectifying the issues identified in the skilled person's report by undertaking a 'root and branch' review of the compliance systems in place at the Firm in accordance with the recommendations made by the skilled person. The FSA were not however satisfied with the scope and extent of the remedial action proposed by the Firm. Specifically, the FSA was concerned that client detriment was not being properly investigated by the Firm and that clients had not received any redress due to them.

4.7. As a result of the FSA's concerns stated at 4.6 above the Firm agreed to a voluntary variation of permission ("VVoP") with effect from 12 January 2010. Following a failure to comply with the requirements of the VVoP and as a result of continuing concerns, the FSA used its own initiative powers to vary A2O's Part IV permission. Under the terms of the Supervisory Notice dated 18 January 2010, A2O were required to cease, with immediate effect, conducting all regulated activities for which it had permission. A2O entered administration on 25 January 2010.

A2O's business model and culture

4.8. Mr Lindley was primarily responsible for the Firm's marketing strategy and the recruitment of new ARs. In April 2007, he formulated a new strategy to promote A2O as "*a 'value added' service provider*" and a "*flexible, customer-focussed network*". The customers in this case were the ARs of A2O.

4.9. Following that strategy, the culture and approach of A2O was to offer a personalised and 'bespoke' service which sought to offer experienced ARs flexibility and freedom to recommend higher risk products if they wished to do so. Mr Lindley marketed the network to potential AR firms with an emphasis on this flexibility. The Firm's marketing material stated that:

"Overall, the A2O commitment is to choice. We take the simple approach that independent advisers are our customers and we seek to give maximum choice and top quality service to each of our customers whilst working within the regulatory framework of the FSA."

4.10. A2O's business proposition as a network was designed to be attractive to experienced IFAs with an interest in targeting increases in sales, some of whom wished to advise on and new and innovative products. Mr Lindley told the FSA that the flexibility offered by A2O meant that ARs would have more freedom to recommend higher risk products if these were viewed as suitable by the Firm's Compliance Director. The network's model of accepting some IFAs with an interest in promoting higher risk products posed a higher compliance risk to A2O's business.

4.11. In his role as Managing Director of the Firm, Mr Lindley conducted business development meetings with ARs of A2O. He was aware, through these meetings, that a number of advisers recommended a large volume of high risk products, including UCIS funds. He was also aware that a number of A2O's AR firms were members of an informal marketing network. That network actively promoted UCIS and other funds to A2O's ARs.

4.12. As a senior executive director and significant influence function holder at the Firm, Mr Lindley had a responsibility to ensure that the flexibility offered by A2O's business model was underpinned by robust controls in order to ensure that the advisers recruited by A2O were in fact competent and provided their clients with suitable investment advice.

Failure to take action when notified of significant risks

4.13. Mr Lindley did not have any involvement in the day-to-day running of A2O's compliance systems and was therefore not directly culpable for the failure to identify and take remedial action in respect of unsuitable sales. He relied entirely on the competence of the Firm's Compliance Director and compliance department. He also believed that the compliance function was ensuring that 100% of high risk business was being monitored.

4.14. As one of two executive directors, Mr Lindley had a responsibility to ensure that A2O complied with the relevant requirements and standards of the regulatory system across all areas of the business, even where this area was not directly within his day-to-day remit and control.

4.15. A2O did not have a framework in place to check the adequacy of the Firm's compliance function other than reliance on the reports of the Compliance Director. Whilst Mr Lindley was generally supportive of the Compliance Director and any requests made by the Compliance Director for additional resources and/or additional staff, Mr Lindley failed to make any assessment after he took on the role of Managing Director as to whether it was reasonable to rely on the Firm's existing compliance staff and compliance processes.

4.16. The FSA has found that Mr Lindley was aware of specific compliance issues that were brought to his attention by A2O personnel and ARs. Mr Lindley was often

involved in discussions with the compliance department and the AR concerned when an issue was detected. Mr Lindley continued to rely on assurances from the Compliance Director that the compliance function was adequately addressing these issues, even in circumstances where certain compliance issues had been ongoing over a number of years. This indicated that A2O's compliance systems and controls were inadequate to resolve the ongoing compliance issues, but Mr Lindley failed to take any action, including a failure to question why these compliance issues continued to occur.

4.17. Mr Lindley was aware that a number of ARs were an ongoing concern to the compliance team as they failed to report business written or respond to compliance requests. Some of these advisers were so notorious within A2O that they were given nicknames such as "the famous five" and "the three amigos" due to their unwillingness to adhere to A2O's compliance rules. These individuals, amongst others, were recognized by A2O employees as posing an ongoing compliance concern and for recommending a significant amount of high risk products. A2O employees perceived that Mr Lindley was reluctant to reprimand or confront advisers who posed a compliance risk to the Firm.

4.18. Mr Lindley was therefore aware, or should have been aware, that these advisers potentially posed a significant risk to A2O. Despite this, he failed to take appropriate steps to ensure that these advisers were monitored effectively. The Firm's compliance records do not demonstrate that these advisers were subject to more effective compliance monitoring such as more rigorous file reviews or more challenging compliance visits.

4.19. In April 2009, the FSA specifically highlighted its concerns with A2O's compliance monitoring of higher risk UCIS business to A2O and the Firm took some action in an attempt to address those concerns. However the FSA considers that those actions were inadequate and despite the indication by the FSA that the compliance systems and controls were inadequate in certain areas, Mr Lindley continued to rely entirely on the Firm's Compliance Director to ensure the suitability of these systems. Mr Lindley told the FSA that it was not until October 2009, when the results of the skilled person's review into the Firm were made available, that Mr Lindley began to question the competency of the Firm's Compliance Director.

Failure to implement and make proper use of management information to understand the risks associated with business written by advisers

4.20. Prior to Mr Lindley's business development meetings with ARs he was provided with information regarding the types of business written by the AR firm. A number of these information printouts clearly indicated that some advisers were recommending a significant amount of UCIS funds. Despite this information, Mr Lindley told the FSA that he understood that A2O ARs did not advise on a lot of high risk investment products. The FSA considers this an unreasonable assumption for Mr Lindley to make as this could not be supported by the management information which was available and used by him.

4.21. The Business Plan of March 2008 states that one of Mr Lindley's responsibilities as Managing Director is to have an overview of key member relationships. A2O's sales

proposition suggested that all A2O directors would be familiar with the business written by its members and as Managing Director, Mr Lindley should have had a good knowledge of the types of business written by advisers. While the FSA accepts that that not all of A2O ARs recommended high risk investment products, there was a core group of advisers who did recommend such products and for whom such products formed a material part of their business.

4.22. Data obtained from one UCIS product provider shows that A2O sold the greatest volume of funds for that provider, amounting to investments of £6.9million. Data obtained from a structured product provider shows that A2O had the second largest volume of sales, equalling investments of £6.2 million.

4.23. Mr Lindley acknowledged that he only had a high level understanding of UCIS and the types of consumers to whom these could be promoted and therefore sold. Despite the risk that such products could pose to A2O's clients, he relied entirely on the compliance department of A2O to ensure that ARs were properly promoting and selling UCIS products, as Mr Lindley did not feel he had the knowledge and experience to inform himself about these products. The FSA accepts that the Firm obtained some external technical assistance on UCIS products but consider that the Firm failed to take sufficient steps to ensure the suitability of its ARs recommendations to customers to invest in UCIS.

4.24. The FSA have found that there was a lack of accurate and relevant management information available to the Board. Information obtained from file reviews and compliance visits to firms was not collated and analysed to produce management information that would have enable the directors to assess product or commission bias risks, or the risks and nature of products being sold. The Firm did not have sufficient management information to enable it to satisfy itself that the risk appetite of customers and associated risks of products being recommended by the Firm's advisers matched.

4.25. As a result of the lack of detail in A2O's management information, the Board reports contained insufficient information to enable the directors to properly understand the risks to which the business was exposed. In particular, compliance reports contained stock phrases such as *"The range and type of products being recommended by members remains within our tolerance limits.." and "We continue to actively review circa 10-15% of all business which amounts to 100% of "higher risk" business"* which were repeated on a monthly basis and failed to clearly identify any issues identified by the compliance function. As a senior executive director of the Firm, it was Mr Lindley's responsibility to ensure that he provided sufficient challenge to the information provided to him during Board meetings. He failed to do this and took at face value the information provided to him by the Firm's Compliance Director.

4.26. From January 2007, A2O utilised a back office system to process commission due to ARs and advisers. The Firm relied on this software to produce information about the type and volume of business written. The software system used by the Firm had a number of functions which could be used to automate and improve the Firm's compliance processing systems.

4.27. Mr Lindley was aware of this functionality from March 2007 but failed to ensure that it was implemented by the compliance team in a timely manner, which as Managing Director from January 2008 he could have done. A2O began to implement these functions as part of its action plan following the skilled person's report. They were never fully used by the Firm prior to it entering administration in January 2010.

4.28. The FSA has found that there were a number of risks posed by reliance on A2O's back office commission processing system for data about the type and volume of business written, namely:

(1) The way in which advisers defined product types on their new business submission sheets was not always consistent. As a result, a UCIS could be categorised interchangeably as offshore bonds, investment bonds and UCIS. This meant that Mr Lindley could not know with any degree of accuracy what types of business were being written by advisers and relied entirely on the Firm's ARs to accurately inform A2O of the business they had written.

(2) The commissions system did not record, in relation to investments held within a wrapper product, what were the underlying investments. As a result, there may have been an unknown number of cases where a UCIS recommendation was made as part of a wrapper product without A2O being able to identify that a UCIS product had been sold. It was not until late 2008 that the Firm appreciated this risk and began to contact platform providers in order to ascertain what funds or products were contained within the wrapper.

(3) Some advisers failed to report business written to A2O in a timely manner. Mr Lindley was aware who these advisers were, as they were routinely discussed at the management meetings which he attended, but despite the Firm issuing some general warnings to the network's ARs about this issue, Mr Lindley failed to take adequate action to ensure that advisers were monitored with sufficient robustness to remedy the issue. Given that A2O's compliance team relied on the accuracy of new business submissions to choose files for review, late reporting meant that there was a risk that files may not be reviewed in a timely fashion, to the potential detriment of the consumer.

(4) In some instances certain advisers failed to report business written to A2O at all, and liaised directly with product providers to obtain commission payments. Again, Mr Lindley was aware who these advisers were as they were regularly discussed at management meetings over the relevant period. This issue was a particular concern with advisers who recommended investments in UCIS or a significant amount of high risk business. As a result, there was an unquantifiable amount of business being written by ARs which the Firm were not aware of until it found out about such business on an ad hoc basis when issues with payment of commission arose.

4.29. Mr Lindley was aware of this problem over a two year period but failed to take appropriate action to mitigate the risk posed by these issues. There is no evidence to suggest that he took any specific action against advisers who continued to provide incomplete or inaccurate information or ensure that A2O had a system for collecting accurate and timely information about the business written by advisers. Instead, and in spite of the evidence that he was aware of these issues and the risks posed by them, Mr Lindley continued to rely only on regular reports from the Compliance Director indicating that any compliance issues were being adequately addressed.

5. ANALYSIS OF BREACHES AND SANCTION

5.1. Mr Lindley had a responsibility as a senior executive director and significant influence function holder to ensure that A2O met its regulatory responsibilities but he failed to discharge that responsibility effectively. The culture and business strategy of A2O's network offered advisers flexibility to recommend high risk and innovative investments products. This flexibility should only have been offered to ARs of the Firm if there were sufficiently stringent controls in place to ensure that advice given to customers was suitable.

5.2. In failing to ensure that he took reasonable steps to ensure that A2O complied with the relevant requirements and standards of the regulatory system, Mr Lindley breached Statement of Principle 7 as he:

(1) failed to take reasonable steps to ensure that the Firm collected relevant and accurate management information to enable him to identify, monitor and mitigate the compliance risks to which the business was exposed;

(2) failed to take reasonable steps to measure the effectiveness of A2O's efforts to manage compliance risk through any evaluation of A2O's compliance performance at any point after his appointment as Managing Director or after being given specific notice of FSA's concerns with the adequacy of the compliance function in monitoring higher risk products in April 2009; and

(3) failed to take appropriate action to correct and monitor the behaviour of AR firms when he became aware of potential compliance risks posed by them, or to track progress in correcting issues which did not appear to have been adequately addressed by the compliance function at the Firm.

5.3. The compliance function was not Mr Lindley's direct and primary responsibility and he was not therefore directly culpable for the widespread failings which the FSA identified in A2O's compliance systems and procedures. Mr Lindley relied on assurances from the Compliance Director that the compliance function was checking 100% of high risk business written by the Firm's ARs.

5.4. The board reports relating to compliance did not indicate that there were any systemic issues with the Firm's compliance function. However, these reports contained limited information from which that inference could be drawn independently and the lack of detail in the information was not challenged either.

5.5. However, Mr Lindley had a responsibility to ensure that A2O met its regulatory responsibilities, which included a responsibility for the control and monitoring of the activities of ARs. Mr Lindley needed to be satisfied that the Firm's ARs were offering suitable advice to retail customers. This was particularly important having regard to the nature of A2O's network business and the significant amount of higher risk investment products recommended by certain ARs of the Firm.

5.6. Mr Lindley's failure to exercise sufficient challenge of the compliance function when he was aware of specific compliance issues posed by ARs led him to assume, wrongly, that A2O's compliance function was operating effectively until the delivery of the skilled person's report. As a result, A2O's customers were exposed to the risk of receiving potentially unsuitable investment advice. In some cases, this risk has now crystallised, causing significant consumer detriment.

Imposition of a financial penalty

5.7. The FSA's policy on the imposition of financial penalties relevant to the misconduct as detailed in this Notice is set out in Chapter 6 of the version of the Decision Procedure and Penalties Manual ("DEPP") in force prior to 6 March 2010, which formed part of the FSA Handbook. All references to DEPP in this section are references to that version of DEPP.

5.8. In determining whether a financial penalty is appropriate the FSA is required to consider all the relevant circumstances of a case. DEPP 6.5.2G sets out a non-exhaustive list of factors that may be of relevance in determining the level of a financial penalty. The FSA considered that the following factors are particularly relevant in this case.

Deterrence (DEPP 6.5.2(1))

5.9. In determining the level of the financial penalty, the FSA had regard to the need to ensure those who are approved persons exercising management functions act in accordance with regulatory requirements and standards. The principal purpose of the imposition of this 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.

The nature, serious and impact of the breaches (DEPP 6.5.2(2))

5.10. The FSA has also had regard to the seriousness of the breaches. The FSA has concluded that Mr Lindley exercised inadequate management and control over the running of the business which resulted in his failure to comply with the regulatory requirements.

5.11. It is not clear the exact extent to which clients may have suffered actual loss as a result of the potential breaches given the lack of adequate management information at the Firm. However, the FSA has considered the significant amount of high risk business advice given by some of the Firm's ARs.

5.12. Of the 14 files reviewed by the skilled person in which the client had been sold a UCIS, seven files suggest that the client had been incorrectly classified as a high net worth or sophisticated investor where this conclusion could not have been supported by facts on the file. In all these cases, the skilled person concluded that this could lead to consumer detriment. Of the 39 files reviewed by the skilled person in total, 30 were deemed to have caused consumer detriment.

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

5.13. The FSA considers that Mr Lindley did not act in a deliberate or reckless manner.

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

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

5.15. The FSA recognises that the financial penalty imposed on Mr Lindley is likely to have a significant impact on him as an individual but is considered to be proportionate given his position as an approved person performing a significant influence function at A2O.

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

5.16. The FSA considers that a financial penalty of the level proposed is appropriate, having taken account of all relevant factors, including Mr Lindley's income from A2O during the relevant period. Mr Lindley earned £66,000 per annum over the relevant period.

Previous action taken by the FSA (DEPP 6.5.2G (9))

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

5.18. Mr Lindley has co-operated with the investigation, and the FSA has also taken into account the fact that the period between April 2009 and January 2010 was atypical for the Firm, as the Firm was working with the skilled person and had experienced a sharp increase in complaints.

5.19. This had an impact on the compliance department's ability to carry out "business as usual" compliance tasks that was further exacerbated when the compliance director was absent from September 2009, at which point Mr Lindley was the only remaining director with responsibility for the day to day running of the case.

5.20. However, the senior management of a firm should be aware that the activities of appointed representatives are an integral part of the business that they manage. As a result of the breaches set out above in paragraphs 5.1 and 5.2 above, Mr Lindley failed to demonstrate that he managed effectively the business for which he was responsible as Managing Director and a significant influence function holder so that A2O met its regulatory obligations under the FSA's Principles for Business. The FSA, having regard to all the circumstances, consider the appropriate level of financial penalty to be £20,000 before any settlement discount.

6. DECISION MAKERS

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

7. IMPORTANT

7.1. This Final Notice is given to Mr Lindley under section 67 of the Act in accordance with section 390 of the Act.

Manner and time for payment

7.2. The financial penalty must be paid in full by Mr Lindley to the FSA by no later than 14 days from the date of the Final Notice.

7.3. If all or any of the financial penalty is outstanding on 22 July 2011 the FSA may recover the outstanding amount as a debt owed by Mr Lindley 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 information would, in the opinion of the FSA, be unfair to Mr Lindley 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 contact Stephen Robinson of the Enforcement and Financial Crime Division of the FSA (direct line: 020 7066 1338 / fax: 020 7066 1339).

Georgina Philippou
FSA Enforcement and Financial Crime Division

Annex A

STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY

1. Statutory Provisions

1.1. The FSA's statutory objectives are set out in section 2(2) of FSMA, maintaining confidence in the financial system, the protection of consumers and the reduction of financial crime.

1.2. Under section 66 of the Act, the FSA has the power to impose a financial penalty of such an amount as it considers appropriate where the FSA considers an approved person has failed to comply with a Statement of Principle issued under section 64 of the Act.

2. Regulatory Requirements

APER

2.1. APER is issued pursuant to section 64 of the Act. It sets out Statements of Principle with which approved persons are required to comply when performing a controlled function for which approval has been sought and granted. They are general statements of the fundamental obligations of approved persons under the regulatory system. APER also contains descriptions of conduct which, in the opinion of the FSA, constitutes a failure to comply with a particular Statement of Principle and describes factors which the FSA will take into account in determining whether an approved person's conduct complies with it.

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

2.3. APER 3.1.4G states that an approved person will only be in breach of a Statement of Principle if they are personally culpable, that is, where their 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 that the most relevant Statements of Principle to Statement are Principle 7 ("APER 7") under which an approved person must take reasonable steps to ensure that the business of the firm for which he is responsible complies with the relevant requirements and standards of the regulatory system.

2.5. APER 4.7 gives examples of conduct which does not comply with Statement of Principle 7. This includes but is not limited to:

(1) failing to take reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems of control (APER 4.7.3E);

(2) failing to take steps to monitor (either personally or through a compliance department) compliance with the relevant requirements and standards of the regulatory system (4.7.4E); and

(3) failing to take reasonable steps to adequately inform himself about the reason why significant breaches (whether suspected or actual) of the relevant requirements and standards of the regulatory system may have arisen.

3. FSA's policy on exercising its power to impose a financial penalty

3.1. The FSA's statement of policy with respect to the imposition and amount of penalties under the Act, as required by sections 69(1), 93(1), 124(1) and 210(1) of the Act, and guidance on those matters is provided in Chapter 6 of the FSA's Decision Procedure and Penalties Manual ("DEPP"), entitled "Penalties", which is part of the FSA's Handbook. In summary, chapter 6 of DEPP states that the FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty, and sets out a non-exhaustive list of factors that may be relevant for this purpose.

3.2. The principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour.

3.3. The FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty. DEPP6.2.1G sets out guidance on a non-exhaustive list of factors that may be of relevance in determining whether to take action for a financial penalty, which include the following.

(1) DEPP 6.2.1G (1): The nature, seriousness and impact of the suspected breach.

(2) DEPP 6.2.1G (2): The conduct of the person after the breach.

(3) DEPP 6.2.1G (3): The previous disciplinary record and compliance history of the person.

(4) DEPP 6.2.1G (4): FSA guidance and other published materials.

(5) DEPP 6.2.1G (5): Action taken by the FSA in previous similar cases.

3.4. The FSA will consider all the relevant circumstances of a case when it determines the level of financial penalty. DEPP 6.5.2G sets out guidance on a non exhaustive list of factors that may be of relevance when determining the amount of a financial penalty.

3.5. Factors that may be relevant to determining the appropriate level of financial penalty include:

(1) whether the breach revealed serious or systematic weaknesses in the person's procedures or of the management systems or internal controls relating to all or part of a person's business (DEPP 6.5.2G (2) (b)); and

(2) the general compliance history of the person, including whether the FSA has previously brought to the person's attention, issues similar or related to the conduct that constitutes the breach in respect of which the penalty is imposed (DEPP 6.5.2(9)(d)).