FINAL NOTICE

To:	**Mr Robert Peter Yarr**
Individual ref:	**RPY00001**
Address:	**McClelland Yarr Financial Services Limited** **1a Castleview Road** **Belfast** **BT5 7AX**
Date:	**15 September 2010**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives you, Robert Peter Yarr, final notice about the imposition of a financial penalty on you:

1. ACTION

1.1. On 15 September 2010 the FSA gave you, Mr Robert Peter Yarr of McClelland Yarr Financial Services Limited ("the Firm"), a Decision Notice which stated that it had decided to impose a financial penalty of £28,000 on you, pursuant to section 66 of the Financial Services and Markets Act 2000 ("the Act"), for breaches of Statements of

Principle 2 and 7 of the FSA's Statements of Principle and Code of Practice for Approved Persons ("APER") between November 2007 and August 2008 ("the relevant period").

1.2. You agreed to settle this matter at an early stage of the FSA's investigation and you therefore qualified for a 30 % (Stage 1) discount under the FSA's executive settlement procedures. Without this discount, the financial penalty would have been £40,000.

2. REASONS FOR THE ACTION

2.1. The FSA decided to impose a financial penalty on you for failing to comply with APER Statement of Principle 2 in performing the FSA-approved controlled function CF30 (Customer) and APER Statement of Principle 7 in performing the controlled functions CF1 (Director) and CF10 (Compliance oversight) at the Firm during the relevant period.

2.2. As set out in more below:

(1) you failed to act with due skill, care and diligence in carrying out the CF30 (Customer) controlled function (in contravention of APER Statement of Principle 2) in that:

(i) you made unsuitable recommendations to a small number of the customers whom you personally advised to invest in structured products backed by Lehman Brothers ("Lehman"):

(a) you failed to establish an understanding of the counterparty risk associated with structured products with the result that two of those customers' investment portfolios were over-concentrated in structured products generally and/or to Lehman as a counterparty and therefore were exposed to unsuitable levels of risk; and

(b) one of the recommendations you made failed to reflect the

relevant customer's attitude to risk;

(ii) in respect of other customers, although your recommendations may not have been found to be unsuitable, the evidence showed that you did not consider suitability in sufficient detail and that your relevant communications to those customers were not clear and fair and/or were misleading:

(a) you failed to establish a full understanding of the counterparty risk arising from structured products and failed, as a result, to warn any customers adequately of that counterparty risk**;**

(b) your suitability reports were, in respect of many customers, insufficiently tailored to their specific circumstances, they failed to record adequately the reasons for recommendations and they failed to explain why structured products were suitable and/or were more suitable than other investment options; and

(c) the FSA's conclusion is that, in many cases, you did not in fact sufficiently consider those circumstances, reasons and comparative product-specific factors when preparing recommendations (even if the recommendations turned out not to be unsuitable);

(iii) in addition, you failed to keep records in respect of a number of customers' needs, circumstances and objectives, sufficiently substantiating the suitability of the personal recommendations you made to invest in Lehman-backed structured products. Consequently the suitability of those recommendations could only be verified after extensive further work by a skilled person.

(2) you failed to take reasonable steps to ensure that the business of the Firm for which you are, and were during the relevant period, responsible complied with the relevant requirements and standards of the regulatory system (in

contravention of APER Statement of Principle 7), in that you:

(i) failed to conduct sufficiently detailed file checks in your compliance oversight role without, especially, any suitability re-assessment, and failed to record findings resulting from those checks; and

(ii) failed to operate effective management information systems to adequately inform yourself and the other directors of the Firm of (and to enable any external compliance consultant, or the FSA when it came to visit, to easily identify) the trend towards recommending investment in structured products, especially those backed by Lehman, across the customer base and the occasionally high concentration of such investments by individual customers.

2.3. The FSA concluded that your failings were serious because:

(1) although only some of your customers received unsuitable recommendations, the failings relating to communication, suitability reports, record-keeping, compliance checks and management information were far more general and systemic;

(2) they put a larger number of customers at risk of receiving unsuitable advice or of being misled about relevant risks;

(3) they were identified by the FSA's thematic review of the Firm's structured product sales, rather than by the Firm itself, or by you as the approved person performing significant influence functions;

(4) as a result of the breaches identified, the Firm failed to treat many of its customers fairly; and

(5) a small number of its customers suffered crystallised financial losses.

2.4. However, in deciding the appropriate disciplinary sanction, the FSA recognised the following factors which mitigated the seriousness of its findings:

(1) your proactive approach to ensuring your customers were kept informed when

Lehman entered insolvency, which included face-to-face meetings with each relevant customer and issuing letters to update them on the matter;

(2) you informed the FSA that, to date, all of the affected customers continued to be customers of the Firm;

(3) you co-operated fully with the FSA's investigation and agreed the facts quickly, ensuring early resolution of the matter;

(4) following the FSA's intervention the Firm initiated wide-ranging changes to its systems and control, record-keeping and compliance arrangements to achieve high standards and to ensure that customers were treated fairly; and

(5) the Firm agreed to the appointment of a skilled person under section 166 of the Act to conduct a phased review of its Lehman-backed structured product sales to assess the suitability of recommendations made to customers and to make appropriate redress to any customers who received unsuitable advice.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

3.1. The relevant statutory provisions and regulatory requirements are attached at Annex A.

4. FACTS AND MATTERS RELIED ON

Background

4.1. The Firm is a small IFA based in Belfast that has been authorised and regulated by the FSA since 4 April 2005.

4.2. From 4 April 2005 the Firm was authorised by the FSA to carry on the following regulated activities:

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

(2) advising on regulated mortgage contracts;

(3) arranging regulated mortgage contracts;

(4) agreeing to carry on a regulated activity;

(5) arranging deals in investments; and

(6) making arrangements.

4.3. The Firm was originally set up as a partnership and was incorporated as a Limited Company on 24 August 2004. Since 4 April 2005 you have performed the controlled functions CF1 (Director), CF10 (Compliance oversight), CF11 (Money laundering reporting). These functions are designated as significant influence functions in the FSA Handbook. Between 4 January 2005 and 31 October 2007 you performed the controlled function CF21 (Investment adviser); this controlled function was converted to CF30 (Customer) on 1 November 2007.

4.4. The Firm currently has one other director, but you were the only director during the relevant period. You are (and were then) the person responsible for the day-to-day running of the Firm, the key decision maker and effectively the controlling mind of the Firm. The Firm has and had, during the relevant period, two investment advisers, including you. You have been the more senior of the two advisers, the other being your son.

File reviews

4.5. The FSA visited the Firm on 12 August 2009 as part of its thematic review of advice given in relation to structured products backed by Lehman between November 2007 and August 2008.

4.6. The FSA reviewed a sample of files and concluded that a number of the recommendations made in respect of Lehman-backed structured products were unsuitable. Inadequate records in further files meant that the FSA could not reach any definitive conclusion on them. The FSA also identified concerns about the Firm's systems and controls and monitoring of this area of its business.

4.7. The Firm advised on 72 Lehman-backed transactions during the relevant period. The

skilled person reviewed eight of these transactions and found all eight recommendations to be unsuitable. The skilled person reviewed a further 13 transactions and, due to record-keeping failures, he was unable to assess suitability by reference to the customer and transactions records. He had to request additional information from you or the other adviser before he could find the recommendations suitable.

Risks and responsibility

4.8. The risks relating to the Lehman-backed products that the Firm recommended included:

(1) investment risk – investment returns and, in some cases, the return of capital were dependent on the performance of market indices;

(2) credit risk – capital guarantees and investment returns were subject to counterparty risk;

(3) liquidity risk – there were restrictions on liquidating the investment during the investment term, to meet a need for capital or according to market sentiment; and

(4) inflation risk – the nature of structured investment products means that a significant portion of any investment return is dependent upon one, or a limited number, of market outcomes so that, if that outcome does not materialise, the customer may be exposed to the effective erosion of the real value of their capital.

4.9. Further, the nature of the products, and the risks stated above, highlighted the need for appropriate diversification of customer portfolios to mitigate concentration risk, i.e. the risk involved in the customer holding a significant percentage of their investments in one structured product, structured products backed by the same counterparty, or structured investment products as a product type, whether or not the relevant products were capital-protected. Specific features of different structured products also need to be considered to determine their suitability, by reference to customers' needs,

personal circumstances, investment objectives and risk profile. Customers' tax and income needs should also be taken into account.

4.10. The FSA determined that, as the controlling mind of the company and the relevant adviser in relation to all but four of the Lehman-backed structured products recommended by the Firm, you were personally culpable for the failings described above and below.

Conduct in issue

Suitability reports

4.11. You failed to act with due skill, care and diligence in relation to many of the suitability reports you personally produced. The reports did not explain, in a way which was clear, fair and not misleading, the reasons why the recommendations to invest in Lehman-backed structured products were considered to be suitable. You also failed, while performing your significant influence functions, to take reasonable steps to ensure that the suitability reports written by the Firm's other adviser were compliant.

4.12. Specifically, the Firm's suitability reports:

(1) were often not sufficiently tailored to its customers' circumstances and contained standard, generic phrases that were sometimes inappropriate to the customer in question or even simply inaccurate; and

(2) did not fully explain the risks of the products to customers, particularly counterparty risk (i.e. the impact on the customer's investment if the counterparty went into liquidation or defaulted).

4.13. The Firm also often failed to explain in suitability reports why it concluded that the recommended structured products, and the concentration of investment in them, compared with other investment options, were most suitable for the particular customer, having regard to the customer's personal and financial circumstances, risk profile and investment objectives.

Other failings in the sales process

4.14. A review of the Firm's structured product sales process also highlighted the following defects:

(1) Fact finds often contained insufficient information about customers' objectives and the Firm failed to obtain and/or record sufficient 'know your customer' information to establish its customers' needs and demonstrate that its advice was suitable**.**

(2) In a number of sample files reviewed by the FSA the recommended product did not match the customer's attitude to risk. Where the customers' attitude to risk did not meet the product's risk rating, there was no explanation as to why the recommendation was considered to be suitable.

(3) There were sometimes inconsistencies between customers' stated investment objectives (in terms of timescale and future cash flow) and the recommendations made by the Firm. It was not therefore always clear why structured products were considered to be suitable.

4.15. Consequently, as a result of the failings relating to both the suitability reports and other sales process identified above, many customers were put in a position where they would have made significant and potentially risky investment decisions based on incomplete and/or misleading information.

Insufficient regard to concentration/portfolio risk and counterparty risk

4.16. You sometimes recommended a high concentration of investment in structured products which exposed customers to an unsuitable risk of financial loss. For example, a customer was advised to invest 46% of his wealth in structured products, of which a single Lehman-backed product represented 39%. Also a couple described as cautious investors were advised to invest 28% of their wealth in a single structured product backed solely by Lehman.

4.17. In cases where the Firm recommended a structured product that offered 100% capital protection, its suitability letters recorded that the customer '*did not want to take any*

risk with their basic capital'. Insufficient consideration was given to the credit risk presented by the counterparty and, consequently, the Firm did not adequately communicate this risk to customers. For customers who wished to take no risk with their capital, a structured product of any sort, even if capital protected, was unsuitable.

Compliance management oversight

4.18. The Firm employed an external compliance consultant who reviewed 10% of files, which were selected at random. However, the compliance consultant did not review the Firm's management information or customer files that included advice about structured products.

4.19. You held a weekly compliance meeting at the Firm. During these meetings you selected one file at random, which was reviewed against a checklist and, according to you, any remedial action identified was taken. However, these finding were never recorded. Given the absence of records, no trend analysis could be undertaken to identify recurring or systemic issues and, consequently, any training or competency requirements.

4.20. The Firm's internal compliance oversight was at best informal. File checking was overly process-focussed and did not include an assessment of suitability of advice.

Management information

4.21. The Firm failed to collate sufficient management information about its recommendations to invest in structured products. The Firm's approach to management information included gathering information on key performance indicators and product data, which was reviewed once every six months. At the time of the FSA visit, the key performance indicators did not include any information on product or portfolio concentration.

4.22. Consequently you failed to identify that the Firm's recommendations resulted in an excessive concentration of some customers' overall savings and investments portfolio in Lehman-backed structured products.

5. ANALYSIS OF MISCONDUCT

5.1. In light of the misconduct summarised above, the FSA concluded that you have failed to comply with APER Statements of Principle 2 and 7, in that you failed to:

(1) act with due skill, care and diligence in carrying out your role as an approved CF30 (Customer) adviser; and

(2) take reasonable steps, in your significant influence function roles, to ensure that the Firm complied with the relevant requirements and standards of the regulatory system in respect of advising on structured products.

5.2. The FSA therefore imposes a financial penalty of £28,000 on you, after the settlement discount described above.

6. ANALYSIS OF SANCTION

6.1. The FSA's policy on the imposition of financial penalties is set out in Chapter 6 of its Decision Procedures and Penalties Manual ("DEPP") which forms part of the FSA Handbook. Chapter 6 of DEPP has recently changed. For the purposes of this Final Notice, there has only been regard to the version of DEPP in force during the relevant period. When determining the appropriate level of financial penalty the FSA has also had regard to Chapter 7 of its Enforcement Guide ("EG").

6.2. DEPP explains that the FSA's principal purpose, in 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.

6.3. The FSA considers the full circumstances of each case when determining whether or not to take action for a financial penalty. The guidance in DEPP sets out a non-exhaustive list of factors that may be of relevance in determining the level of financial penalty. The FSA considers that the following factors are particularly relevant in this case:

The nature, seriousness and impact of the breaches in question (DEPP 6.5.2(2))

6.4. A small number of your customers were given unsuitable advice and suffered loss and, in respect of many others, your failings were serious and systemic and exposed them to the risk of unsuitable advice. Further, these issues were identified by the FSA, not by you.

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

6.5. The FSA found no evidence that the misconduct was deliberate or reckless.

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

6.6. The FSA recognised that the financial penalty imposed on you is likely to have a significant impact on you as an individual.

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

6.7. The FSA had no evidence to suggest that you will be unable to pay a penalty of the level proposed.

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

6.8. The FSA did not determine that you deliberately set out to accrue additional profits or avoid a loss in the way that you gave advice and operated the systems, controls and processes at the Firm.

Conduct following the breach (DEPP 6.5.2(8))

6.9. The FSA took into consideration the mitigating factors referred to in paragraph 2.4 above.

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

6.10. The FSA took into account the fact that you had not been the subject of previous

disciplinary action by the FSA.

6.11. The FSA, having regard to all the circumstances, therefore considered the appropriate level of financial penalty to be £40,000 before any discount for early settlement.

7. DECISION MAKER

7.1. The decision which gave rise to the obligation to give this Notice was made on behalf of the FSA by Settlement Decision Makers for the purposes of DEPP.

8. IMPORTANT

8.1. This Final Notice is given to you in accordance with section 390(1) of the Act.

8.2. The financial penalty of £28,000 must be paid in full by you to the FSA, if all or any of the financial penalty is outstanding on the due date, the FSA may recover the outstanding amount as a debt owed by you and due to the FSA.

Publicity

8.3. Sections 391(4), 392(6) and 391(7) of the Act apply to the publication of information about the matter to which this Final 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.

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

FSA contacts

8.5. For more information concerning this matter generally, you should contact Chris Walmsley at the FSA (direct line: 020 7066 5894).

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Tom Spender

Head of Department
FSA Enforcement and Financial Crime Division

ANNEX A

RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE

Statutory provisions

1. The FSA's statutory objectives, set out in Section 2(2) of the Act, include the protection of consumers.

2. The FSA has the power, pursuant to section 66 of the Act, to impose a financial penalty of such 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.

APER

3. The Statements of Principle and Code of Practice for Approved Persons ("APER") set out the Statements of Principle in respect of approved persons and conduct which, in the opinion of the FSA, constitutes a failure to comply with them. They also describe the factors to be taken into account by the FSA in determining whether an approved person's conduct complies with a particular Statement of Principle.

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

5. APER 3.1.4G states, as guidance, that an approved person will only be in breach of a Statement of Principle if they are personally culpable, that is in a situation where their conduct was deliberate or where their standard of conduct was below that which would be reasonable in all the circumstances.

6. In this case, the FSA considers the most relevant Statements of Principle to be Statement of Principle 2 and Statement of Principle 7.

7. Statement of Principle 2 requires that an approved person must act with due skill, care and diligence in carrying out his controlled function.

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

9. APER 4.2.2E to 4.2.13E provide examples of the types of behaviour that, in the opinion of the FSA, do not comply with Statement of Principle 2. These include:

   (1) failing to inform a customer of material information in circumstance where the approved person ought to have been aware of such information and of the fact that he should provide it, including failing to explain the risks of an investment to a customer (APER 4.2.3E and 4.2.4E);

   (2) recommending an investment to a customer where the approved person does not have reasonable grounds to believe that it is suitable for that customer (APER 4.2.5E); and

   (3) recommending transactions without a reasonable understanding of the risk exposure of the transaction to a customer including where that recommendation is made without a reasonable understanding of the liability (either potential or actual) of the transaction (APER 4.2.6E and 4.2.7E)).

10. APER 4.7.2E to 4.7.10E provide examples of the types of behaviour that, in the opinion of the FSA, do not comply with Statement of Principle 7. These include:

   (1) failing to take reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems of control to comply with the relevant standards of the regulatory system in respect of the relevant firm's regulated activities (APER 4.7.3E);

   (2) failing to take reasonable steps to monitor (either personally or through a compliance department or other departments) compliance with the relevant requirements and standards of the regulatory system in respect of the relevant

firm's regulated activities (APER 4.7.4E); and

(3) in the case of an approved person performing a significant influence function responsible for compliance, failing to take reasonable steps to ensure that appropriate compliance systems and procedures are in place (APER 4.7.10E).

The Enforcement Guide

11. The FSA's approach to taking disciplinary action is set out in Chapter 2 of EG. Imposing financial penalties and public censures shows that the FSA is upholding regulatory standards and helps to maintain market confidence, promote public awareness of regulatory standards and deter financial crime. An increased public awareness of regulatory standards also contributes to the protection of consumers.