Financial Services Authority

FINAL NOTICE

To:	**Rockingham Independent Limited**
FRN:	**427234**
Address:	**52 Forder Way** **Peterborough** **Cambridgeshire** **PE7 8JB**
Date:	**15 August 2011**

1. ACTION

1.1. For the reasons given below, and pursuant to section 206 of the Financial Services and Markets Act 2000 ("the Act"), the FSA hereby imposes on Rockingham Independent Limited ("Rockingham") a financial penalty of £35,000. This penalty is in respect of contraventions of section 59 of the Act and Principle 3 (Management and control), Principle 7 (Communications with clients) and Principle 9 (Customers: relationships of trust) of the FSA's Principles for Businesses ("the Principles").

1.2. Rockingham agreed to settle at an early stage of the proceedings and therefore qualified for a 30% reduction in penalty pursuant to the FSA's executive settlement procedures. But for this reduction, the FSA would have imposed a financial penalty of £50,000.

2. SUMMARY OF REASONS

2.1. During the period from January 2008 to 29 September 2010 ("the relevant period"), Rockingham's failures exposed 426 customers to the risk of receiving unsuitable advice, 39 of whom were advised to invest in unregulated collective investment schemes ("UCIS"). To put those figures in context, Rockingham's direct offer business dealt with 14,000 customers in total.

2.2. Rockingham failed :

(1) to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems, in contravention of section 59 of the Act and Principle 3 in that it failed:

(a) to take reasonable care to ensure that Gary Forster did not perform the controlled function of CF3 (Chief Executive) without the prior approval of the FSA;

(b) to take sufficient steps to ensure that, as the advisory business expanded, it had in place sufficiently robust compliance monitoring and client file monitoring arrangements; and

(c) despite undertaking a significant amount of due diligence on the investments it promoted, to establish that an appropriate exemption from the statutory restriction on the promotion of collective investment schemes ("CIS") to retail customers in section 238 of the Act (the "section 238 restriction") was applicable before promoting and recommending unregulated collective investment schemes ("UCIS");

(2) to pay due regard to the information needs of its clients, and communicate information to clients in a way which was clear, fair and not misleading, in contravention of Principle 7 in respect of:

(a) the misleading description on its website of its pension draw down offering called the Retirement Income Tri-investment Account ("RITA") as relatively low risk;

(b) the misleading description in its suitability reports of the UCIS it recommended as low risk;

(c) the unbalanced presentation in its suitability reports of the features and risks of the investments that its advisers recommended;

(d) the failure to communicate reasons for its recommendations to customers (and therefore to take any potential customer responses into consideration) before instructions to divest were sent to the ceding schemes; and

(e) describing itself as independent and offering a "whole of market" service when in practice it tended to recommend the RITA packaged product in the majority of cases;

(3) to take reasonable care to ensure the suitability of its advice, in contravention of Principle 9 (and Conduct of Business ("COBS") rule 9.2.1R) in respect of the failure to:

(a) explain the disadvantages of the draw-down option so that customers could make fully informed decisions about whether to proceed (regardless of whether, in principle, Rockingham considered that the customer had already decided not to purchase a conventional annuity);

(b) adequately monitor and manage the crystallised risk of its advisers recommending a high concentration of investment in one fund/scheme;

(c) identify and act upon the inconsistent interpretation by advisers of attitude to risk scores and consequently potentially unsuitable investment strategies for customers;

(d) consider whether any exemptions to the section 238 restriction applied to customers before promoting and recommending UCIS to them; and

(e) record sufficient personal and financial information about its customers to determine their eligibility to receive UCIS promotions and to assess the suitability of UCIS recommendations to customers.

2.3. In determining the appropriate level of financial penalty, the FSA has had regard to the following mitigating factors.

(1) Rockingham's external compliance consultant failed to identify that some of the investments recommended to customers were UCIS and therefore that Rockingham was breaching section 238 of the Act.

(2) Following the FSA's intervention, Rockingham appointed a new external compliance consultant and also agreed to the appointment of a skilled person to conduct a past business review to determine whether any customer redress is required.

(3) Rockingham fully co-operated with the FSA's investigation and voluntarily varied its Part IV permission to cease giving investment advice pending the outcome of the FSA's investigation.

(4) The FSA acknowledged Rockingham's credible representations that its decision to introduce its draw down offering was made in response to the changing market conditions as regards annuities and that, in so doing, in their own minds the senior management were seeking to act in the best interest of customers. Nor did they seek deliberately to underestimate the investment risks associated with RITA and the underlying investments.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

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

4. FACTS AND MATTERS RELIED UPON

Background to Rockingham

4.1. Rockingham is based in Peterborough, Cambridgeshire. It was established by Mr Stephen Hunt ("Mr Hunt") as "Pensions4.com Limited" and traded as Annuity-advisor.co.uk. It became directly authorised by the FSA on 17 May 2005 to perform personal investment-related regulated activities (i.e. advising excluding pension transfers/opt outs).

4.2. Rockingham was authorised by the FSA to carry on the following regulated activities in relation to regulated investment advice:

(1) advising on investments (except on pension transfers and pension opt outs);

(2) agreeing to carry on a regulated activity;

(3) arranging deals in investments;

(4) arranging (bringing about) deals in investments; and

(5) making arrangements with a view to transactions in investments.

4.3. From 8 May 2009 it was authorised to carry out additional regulated activities in respect of designated investment business:

(1) advising on pension transfers and pension opt outs;

(2) dealing in investments as principal; and

(3) establishing/operating/winding up personal pensions.

4.4. The following individuals have performed the controlled function of CF1 (Director) at Rockingham:

(1) Mr Hunt (continuously from 17 May 2005) and

(2) Mr Jonathan Edwards ("Mr Edwards") (from 17 May 2005 to 16 August 2010).

4.5. Another individual, Gary Forster, ("Mr Forster") joined as an adviser when the firm became directly authorised. Mr Forster was described as CEO on Rockingham's web site and he presented himself as CEO on his business cards, but without Rockingham having first applied for approval for him to perform the controlled function of CF3 (Chief Executive). After the omission was pointed out to Rockingham by the FSA it submitted an individual approval application for Mr Forster.

4.6. Mr Edwards also performed the controlled function of CF10 (Compliance oversight) from 17 May 2005 to 16 August 2010.

4.7. Two years ago Rockingham expanded by also offering alternative investment and pension solutions on an advised basis which, by 2010, represented approximately 20% of its business. Rockingham has employed a total of 13 approved investment/trainee advisers (including Mr Hunt and Mr Edwards). In July 2010, it agreed on a voluntary basis to cease making advised sales pending the outcome of the FSA's enquiries. The advisory side of the business focussed mainly on its income draw down offering.

RITA

4.8. Rockingham described itself as independent, offering "whole of market" services. However in practice Rockingham tended to advise its customers to make use of RITA, a ten year annuity product wrapped within a Self Invested Pension Plan ("SIPP"). RITA was marketed to customers as an alternative to the purchase of a conventional annuity. In Rockingham's view, RITA was a low risk cost-effective product which provided customers with the flexibility of a drawdown product and matched the security of an annuity product. In 2010 sales of RITA represented 20 per cent of Rockingham's business

4.9. RITA offered customers a choice of three underlying investments: Prudential With-Profits Trustee Investment Plan ("TIP"), MetLife Guaranteed Investment Bond ("GIB") and the ARM Bond. The investment in Met Life GIB was placed in the Defensive Index Portfolio whereas the TIP would invest in wide range of assets including equities, property, shares, fixed interest and other investments.

4.10. Customers were required to make a minimum investment of £3,500 and it was available to customers who were aged 55 or over. The ARM Bond was intended to return capital in full at the end of the 10 year period, although it offered no capital guarantee.

4.11. Rockingham marketed RITA as a low risk investment with a risk rating of 3 out of 10. The same risk score of 3 out of 10 was given to the ARM Bond which was a 10 year structured capital at risk product investing in senior settlement policies which did not provide capital guarantee. Rockingham has accepted that the RITA risk rating was set too low and in February 2010 Rockingham increased the risk level of RITA to 5 out of 10.

4.12. Rockingham recommended the ARM Bond to cautious to moderately cautious customers. Rockingham did not have restrictions on the amount placed in each underlying investment held within RITA. The FSA found instances where all the customers' investment monies were invested in ARM Bond. Rockingham accepts with the benefit of hindsight that it did not identify or manage the concentration risk.

Restriction on the promotion of UCIS

4.13. UCIS is defined in the glossary to the FSA Handbook of Rules and Guidance as: "a collective investment scheme which is not a regulated collective investment scheme." Unless a CIS falls within the narrow definition of a recognised CIS, an authorised unit trust or a scheme constituted by an open ended investment company, it will be a UCIS. A UCIS does not carry the same level of regulatory oversight as a CIS but is still subject to regulation, notably around the extent to which it may be marketed and the persons to whom it may be marketed.

4.14. The section 238 restriction prohibits an authorised person from communicating an invitation or inducement to participate in a collective investment scheme. There are a number of exemptions to the section 238 restriction which an authorised firm could rely on to promote UCIS to its customers. These exemptions are contained in the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes (Exemptions) Order 2001 (the "PCIS Order") and listed in the tables at COB 3 Annex 5 (for the period up to 31 October 2007) and COBS 4.12.1R(4) (for the period from 1 November 2007). Relevant provisions relating to the promotion of UCIS are summarised in the Annex to this Notice.

4.15. UCIS are often characterised by high levels of volatility and illiquidity which can in turn entail a higher degree of risk for consumers. Further, as UCIS fall outside the regulatory regime, consumers who invest in UCIS may have limited recourse to the Financial Ombudsman Service (the "FOS") and the Financial Services Compensation Scheme (the "FSCS"). For these reasons, there is a restriction on the categories of investor to whom UCIS can be promoted.

4.16. Rockingham's advisers advised customers to make investments in "life settlements" UCIS such as the EEA Life Settlement Fund ("EEA Life"). Their rationale for choosing EEA Life was that they considered it prudent to choose a lower risk fund for customers showing an interest in life settlements. The risks typically associated with UCIS investments include many of those that exist with regulated mainstream investments. However, there are number of additional risks that are often inherent in a UCIS, for example, in respect of liquidity, currency, gearing, credit risk and geopolitical risk. In Rockingham's opinion, while EEA Life did not offer guarantees, it was performing well and was liquid, and they considered that the risk was spread because of the way the fund invested in many individual insured/impaired lives (mitigating the risk of any individual insurance policy failing to deliver a return on the death of the insured).

4.17. When Rockingham decided to recommend UCIS to its customers it delegated the responsibility of carrying out due diligence to a third party. The senior management provided the FSA with extensive material which Rockingham had collated on the UCIS to demonstrate that it had conducted extensive due diligence on the products in

question. However, Rockingham failed to understand the section 238 restriction or take into account the numerous references to the section 238 restriction in the documents obtained in the course of undertaking due diligence on the proposed investments.

4.18. Consequently, Rockingham promoted, and subsequently advised 39 customers to invest pension funds in UCIS without ensuring that those customers fell within the relevant exemptions to the section 238 restriction, exposing these customers to the risk of being recommended investments that may not have been suitable for their needs. Specifically, Rockingham failed to:

(1) take into account the customers' needs and circumstances when making recommendations; and

(2) obtain, record and retain sufficient information about its customers' needs and circumstances to support its assessment of suitability.

4.19. One of the consequences of this lack of due diligence was that Rockingham did not make any explicit reference in communications with customers to the fact that these underlying investments included UCIS and that for example the schemes were not in themselves covered by the FOS and the FSCS.

Sales of annuities process

4.20. In practice, 99 per cent of the enquiries received by Rockingham via its website were for quotations on annuities. Rockingham would then contact the customer and gather some initial personal and financial information. The customer would receive a quote containing details of the best (i) guaranteed lifetime annuity, (ii) guaranteed fixed term annuity, (iii) with-profits lifetime annuity, and (iv) details of Rockingham's drawdown offering (RITA). Suitability letters were usually drafted by paraplanners and reviewed by the advisers. Rockingham failed to assess the customer's attitude to risk before product information was sent out to the customer.

Suitability of advice

4.21. Rockingham's senior management said that annuity customers who expressed an interest in its advisory pension and investment service would have already made the decision to divest from their pension fund. Even if that is the case, Rockingham was obliged under COBS 9.4.7 R to explain why it had concluded that the recommendation was suitable and explain any possible disadvantages of transferring. Rockingham was obliged to establish the customers' investment knowledge and experience, financial situation and investment objectives and to establish how its recommended investments matched the customers' preferences regarding risk taking as well as whether the clients could bear any related investment risk consistent with their investment objectives in accordance with COBS 9.2.2 R(2).

4.22. The FSA reviewed 10 client files which included recommendations to invest in structured capital at risk products and UCIS and found the following matters of concern.

(1) There was no consistent application of customers' preferences regarding risk taking to the investments recommended, in breach of COBS 9.2.2R (2). For example, four customers assessed as Moderately Cautious, one customer assessed as Balanced and one customer assessed as Moderately Adventurous were all advised to invest all of their money in the same product ARM Bond where their capital was at risk. Also two customers assessed respectively as Moderately Cautious and Balanced were recommended to split their investments equally between two products.

(2) There was no evidence in the suitability reports (or elsewhere on the client files) that consideration had been given to diversification of investments or concentration risk when recommending particular investments, in breach of the requirement in COBS 9.2.2 R (1) (a) and (b), to ensure the recommended products meet the clients' objectives and that the client can bear the risks. Customers were routinely advised to invest most or all of their funds in one underlying RITA investment (the ARM Bond).

(3) It was not apparent how the advisers had identified, recorded and explained any possible disadvantages of the recommended draw down transaction for the client.

(4) There was no evidence in any file where UCIS were recommended that an assessment was made as to whether exemptions to the section 238 restriction applied and there was insufficient financial and personal information about its customers to determine their eligibility for UCIS promotions or to assess the suitability of its recommendations to customers to invest in UCIS.

(5) Suitability reports lacked balance because they highlighted the benefits of the recommended investments but directed the customers to product literature for them to read the associated risks. Also, the underlying investments were incorrectly and misleadingly described as relatively low risk when they were in fact high risk did not have FSCS protection, were concentrated, volatile and illiquid.

(6) Rockingham assessed its customers' attitude to risk using a risk profiler questionnaire which contained six questions. The six questions were not sufficiently detailed and the results of these risk assessments were not applied consistently. For example customers who were assessed as moderately cautious, balanced and moderately adventurous were all advised to make highly concentrated investments in the ARM Bond where return of capital was not guaranteed.

Communications with clients

4.23. The file reviews highlighted that Rockingham failed to communicate its recommendations to customers in a way which was clear, fair and not misleading. The suitability reports did not adequately explain the reasons for the recommendations as they were template driven and generic in nature and were not tailored specifically to each customer.

4.24. In its suitability reports Rockingham failed to:

(1) provide a balanced view of the products recommended: for example, it was common practice for the advisers to highlight the benefit of the recommended product and then refer the customer to the product literature for information relating to risk;

(2) state explicitly that some of the funds were UCIS and highlight adequately the risks associated with such investments;

(3) state explicitly why a structured capital at risk product was recommended or explain adequately the risks associated with such investments.

4.25. These reports did not meet the "clear, fair and not misleading" requirement and customers could not therefore rely on them to make informed decisions.

Compliance

4.26. In 2005 Rockingham's board consisted of Mr Hunt acting as the managing director and Mr Edwards acting as the compliance director. This remained the structure of the board until August 2010, after the FSA visited.

4.27. During the relevant period Mr Edwards performed the significant influence functions of CF1 (Director), CF10 (Compliance Oversight) and CF11 (Money Laundering Reporting). Mr Edwards also performed the role of CF30 at Rockingham. Mr Edwards reported directly to Mr Hunt.

4.28. As the director of Rockingham with responsibility for compliance oversight, Mr Edwards was responsible for ensuring that Rockingham complied with the

requirements and standard of the regulatory system. He was also responsible for putting in place robust compliance monitoring arrangements to mitigate against the risk of Rockingham giving potentially unsuitable advice.

4.29. However, in practice Mr Edwards failed to fulfil his responsibility as compliance officer. Mr Edwards devoted only 25 per cent of his time to dealing with compliance issues. He was not able to cope with the growing complexity and scale of compliance demands as Rockingham expanded rapidly and developed its business model.

4.30. Rockingham sought to provide Mr Edwards with support and to recruit a full time compliance officer but as the business grew and recommended alternative investments it did not put in place correspondingly robust compliance arrangements. The level of compliance support remained broadly the same between 2005 and 2010 and did not therefore increase in line with the expansion of the business, as shown in the table below.

Year	**Snr management**	**Sales advisors**	**Compliance**
2005	1 MD	1	1
2006	1 MD	2	1
2007	1 MD	2	1
2008	1 MD, 1 CEO	3	1
2009	1 MD, 1 CEO, 1 sales director	7	2
2010	1 MD, 1 CEO, 1 sales director	0	1

4.31. The FSA found no evidence of any systematic reviews of Rockingham's advisers' recommendations or risk-based analysis of trends in the investment advice (e.g. 100% investment exposure in the ARM Bond) and follow up action. These failures exposed Rockingham's customers to the risk of receiving unsuitable pension and investment advice.

4.32. In March 2009, Mr Edwards put Rockingham's board of directors including Mr Hunt on notice that he was not able to discharge the responsibilities of a compliance officer. Rockingham was aware of this issue, but continued to place reliance on him to perform this function.

4.33. In mitigation, Rockingham was able to demonstrate that it attempted to recruit a full time compliance officer in 2007, 2008 and 2009. One successful candidate took an opportunity elsewhere. Another individual was to be engaged on a consultancy basis in July 2010. In July 2010 Rockingham ceased to conduct investment-related regulated activities on a voluntary basis pending the outcome of the FSA's investigation. Rockingham also distributed some compliance tasks to other members of staff and external compliance consultants from time to time to reduce the burden on Mr Edwards.

Mr Stephen Hunt

4.34. Mr Hunt was not only the Director (CF1) but also the majority shareholder of Rockingham during the relevant period. He was the controlling mind of Rockingham and as such exercised significant influence over the business. Mr Hunt had the power to veto any decision he did not agree with.

4.35. Rockingham experienced rapid expansion between 2005 and 2010. Rockingham employed two advisers in 2005 and by 2009 Rockingham employed seven advisers. Throughout this time the level of compliance support remained the same. Mr Hunt failed to increase the number of compliance support staff commensurate with the increase in the number of advisers, scale and complexity of its advisory business.

4.36. The senior management informed the FSA that Rockingham's Training and Competency officer was also responsible for conducting periodic internal file review checks. However, in practice internal file review checks were not objective. They were undertaken on an ad hoc and informal basis. Senior management only became aware of this after the FSA's visit.

4.37. Mr Hunt allowed Mr Edwards perform the compliance director's role at Rockingham and continued to place reliance on someone who was not suitable and competent to undertake the role.

Permitting an employee to perform a controlled function without approval

4.38. Mr Forster was not a director of Rockingham but he was involved in its formation. He was also a 50 per cent shareholder of Rockingham during the relevant period. Despite not being formally appointed as a director, in practice Mr Forster held himself out to be the "CEO" of Rockingham. Since the authorisation of Rockingham, Mr Forster exercised significant influence over the affairs of Rockingham and was involved in making key decisions. In particular:

(1) Mr Forster was invited to, and attended, nearly all board meetings since Rockingham's authorisation and had significant involvement in the strategic planning at Rockingham;

(2) Mr Forster was on numerous occasions held out to be the CEO of Rockingham in correspondence from Rockingham to third parties; and

(3) Mr Forster was held out as CEO to the employees of Rockingham.

5. ANALYSIS OF BREACHES

5.1. Rockingham contravened section 59 of the Act in the relevant period by failing to take reasonable care to ensure that no person performed a controlled function unless the FSA had approved the person to perform a controlled function. For the following reasons, Rockingham also failed to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems, in contravention of Principle 3 (Management and control) of the FSA's Principles for Businesses:

(1) the failure to take reasonable care to ensure that Mr Forster did not perform the controlled function of CF3 (Chief Executive) without the prior approval of the FSA;

(2) the failure to ensure that, as the advisory business expanded, it had in place sufficiently robust compliance monitoring and client file monitoring arrangements; and

(3) the failure, despite undertaking due diligence, to identify and have regard to the section 238 restriction, or identify and apply any relevant exemptions before promoting and recommending UCIS (and the contravention of section 238 of the Act).

5.2. For the following reasons, Rockingham failed to pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading, in contravention of Principle 7 (Communications with clients):

(1) the misleading description on its web site of RITA as relatively low risk;

(2) the misleading description of UCIS in the suitability report as low risk;

(3) the unbalanced presentation in its suitability reports of the features and risks of the investments its advisers recommended; and

(4) describing itself as independent and offering a "whole of market" service when in practice it mainly offered access to its RITA product and a narrow range of investments.

5.3. For the following reasons, Rockingham failed to take reasonable care to ensure the suitability of its advice in contravention of Principle 9 (Customers: relationships of trust) and COBS 9.2.1 R:

(1) the failure to record and explain the possible disadvantages of draw down so that customers could make fully informed decisions about their options regardless of whether in principle Rockingham considered that the customer had already decided not to purchase an annuity. Even if they had, Rockingham was obliged under COBS

9.4.7 R to explain why it had concluded that the recommendation was suitable and explain any possible disadvantages of transferring.

(2) the failure to adequately monitor and manage the crystallised risk of its advisers recommending a high concentration of investment in one fund/scheme, and in particular investment into the ARM Bond;

(3) the failure to identify and act upon the inconsistent interpretation by advisers of appropriate investment strategies in relation to attitude to risk scores;

(4) the failure to consider whether any exemptions to the section 238 restriction applied to customers before promoting UCIS and recommending that they invest in UCIS and the failure to record sufficient financial and personal information about its customers to determine their eligibility for UCIS promotions or to assess the suitability of its recommendations to customers to invest in UCIS;

(5) the failure to ensure that its suitability reports were balanced by highlighting the benefits of the recommended investments but directing the customers to product literature for them to read the associated risks.

6. ANALYSIS OF SANCTION

6.1. 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. Rockingham's advisory service began in 2008 but ceased in July 2010 when Rockingham voluntarily ceased to make advised sales. In the circumstances, the pre-March 2010 version of DEPP applied for most of the period in question and the penalty is therefore calculated according to the pre 6 March 2010 guidance. In addition the FSA has had regard to the guidance published in the Enforcement Guide ("EG").

6.2. The principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring firms 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 (DEPP 6.1.2G).

6.3. In determining whether a financial penalty is appropriate the FSA is required to consider all relevant circumstances of a case. Applying the criteria set out in DEPP 6.2.1G (regarding whether or not to take action for a financial penalty or public censure) and 6.4.2G (regarding whether to issue a public censure rather than impose a financial penalty), the FSA considers that a financial penalty is an appropriate sanction, given the nature of the breaches and the fact that there were inherent compliance failures which exposed a large number of customers to a risk of financial loss. The penalty will also serve to deter others in the industry from similar misconduct.

6.4. 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 considers that the following factors are particularly relevant in this case.

Deterrence (DEPP 6.5.2(1))

6.5. In determining the appropriate level of penalty the FSA has had regard to the principal purpose for which it imposes sanctions, that is to promote high standards of regulatory conduct. The FSA considers the financial penalty it proposes will deter both Rockingham and others from committing similar breaches.

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

6.6. In determining the appropriate sanction, the FSA has had regard to the seriousness of the breaches, including the nature of the requirements breached, the duration and frequency of the breaches, whether the breaches revealed serious failings in Rockingham's systems and controls and the number of customers who were affected and/or placed at risk of loss.

6.7. The FSA considers Rockingham's failings to be serious as they included contraventions of statutory as well as regulatory provisions, and may have led

customers to make ill-informed pension and investment decisions. Between June 2008 and June 2010, 436 customers were exposed to the risk of loss arising from unsuitable advice.

6.8. In determining the appropriate level of financial penalty, the FSA has had regard to the following mitigating factors:

(1) Rockingham's agreement to voluntarily vary its permission at the request of the FSA;

(2) Rockingham's agreement to the appointment of the skilled person under section 166 of the Act to conduct a past business review with a view to determining what redress may be required;

(3) the failure by Rockingham's external compliance consultant to identify that some of the investments recommended by Rockingham were UCIS;

(4) Rockingham appointed a new external compliance consultant in 2010 after the FSA visit and took immediate steps to implement recommendations, having accepted that there were shortcomings during the relevant period; and

(5) Rockingham was open and cooperative throughout the FSA's investigation and it accepted that with the benefit of hindsight that it made incorrect assessments in respect of the investment risk it attributed to RITA and underlying investments and in not identifying the risk of recommending concentrated investments in one particular scheme or fund.

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

6.9. The FSA has found no evidence to show that Rockingham's misconduct was deliberate but it acted recklessly, notwithstanding the steps it took to enhance its compliance support, by allowing Mr Edwards to continue to perform nominally the

compliance oversight function when it was aware that the role was not being performed adequately by him.

The size, financial resources and other circumstances of Rockingham (DEPP 6.5.2(5))

6.10. The FSA has no evidence to suggest that Rockingham will be unable to pay this penalty.

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

6.11. Rockingham has not previously been the subject of disciplinary action.

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

6.12. In determining the level of financial penalty, the FSA has taken into account penalties imposed by the FSA on other authorised persons for similar behaviour.

6.13. Having considered all the circumstances set out above, the FSA has determined that £50,000 (before any discount for early settlement) is the appropriate financial penalty to impose on Rockingham.

7. DECISION MAKER

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

8. IMPORTANT

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

Publicity

8.2. 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.

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

FSA contacts

8.4. For more information concerning this matter generally, contact Chris Walmsley (direct line: 020 7066 5894) of the Enforcement and Financial Crime Division of the FSA.

……

Tom Spender
Head of Department
FSA Enforcement and Financial Crime Division

ANNEX A

1. RELEVANT STATUORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE

Statutory provisions

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

1.2. The FSA has the power, pursuant to section 206 of the Act, to impose a financial penalty of such amount as it considers appropriate where the FSA considers an authorised person has contravened a requirement by or under the Act.

1.3. Section 59(1) of the Act requires firms to ensure that controlled functions are not performed by persons without approval. Under section 59 (3) and 59 (4) a controlled function means a function of a kind specified in rules (the relevant rules being SUP 10.4.5 R and the table), including functions likely to enable the person responsible for them to exercise a significant influence on the conduct of the firm's affairs (section 59 (5)).

Principles for Businesses

1.4. The Principles are a general statement of the fundamental obligations of firms under the regulatory system. They derive their authority from the FSA's rule-making powers as set out in the Act and reflect the FSA's regulatory objectives. The relevant Principles breached are as follows:

(1) Principle 3 (Management and control): A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems;

(2) Principle 7 (Communications with clients): A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; and

(3) Principle 9 (Customers: Relationships of trust): A must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.

UCIS Financial Promotions

1.5. Section 238(1) of the Act provides that an authorised person must not communicate an invitation or inducement to participate in a collective investment scheme ("CIS"), and therefore also an UCIS. Section 21 of the Act imposes an equivalent restriction in relation to unauthorised persons.

1.6. Section 238 goes on expressly to carve out circumstances where this prohibition will not apply. These include:

(1) Where the CIS in question is an authorised unit trust/open ended investment company.

(2) The circumstances set out in the Financial Services and Markets Act 2000 (Promotion of collective investment schemes)(Exemptions) Order 2001 ("the PCIS Order").

(3) The exemptions listed in table 4.12.1R(4) of the Conduct of Business Sourcebook (COBS).

1.7. The PCIS Order provides for authorised firms to promote UCIS to individuals if they fall within a particular category of exemption set out in the order.

1.8. These exemptions pertain to certain categories of individuals, for example, those classed as certified high net worth individuals, certified sophisticated investors or self-certified sophisticated investors (articles 21, 23 and 23A of the PCIS Order).

2. The PCIS Order exemptions - Certified high net worth individuals

2.1. Article 21(2) defines a certified high net worth individual as being an individual who has signed a statement complying with Part I of the Schedule to the PCIS Order in the past 12 months. Essentially this requires that at least one of the following sets of circumstances apply:

(1) The person had, during the previous financial year, an annual income of £100,000 or more; and/or

(2) The person held, throughout the previous financial year, assets to the value of £250,000 or more, not including that person's primary residence/mortgage, life insurance or death in service benefits.

2.2. The statement also requires that the person signs a statement to indicate he accepts that he can lose his property and other assets from making investment decisions based on financial promotions and is aware it is open to him to seek specialist advice.

2.3. If the person making the communication believes on reasonable grounds that he is making it to a certified high net worth individual, then the section 238 restriction will not apply as long as the communication:

(1) is a non-real time communication or a solicited real time communication;

(2) relates only to units in a UCIS which invests wholly or predominantly in the shares in or debentures of one or more unlisted companies;

(3) does not invite or induce the recipient to enter into an agreement under the terms of which he can incur a liability or obligation to pay or contribute more than he commits by way of investment;

(4) a specified warning in the following terms is given both orally (in respect of a real-time communication) and in writing in the manner prescribed in Article 21:

"Reliance on this promotion for the purpose of buying the units to which the promotion relates may expose an individual to a significant risk of losing all of the property or other assets invested."; and

(5) is accompanied by an indication that the promotion is exempt from section 238 on the grounds that it is communicated to a certified high net worth individual, together with details of the requirements for certified high net

worth investors and a reminder that the individual should consult a specialist if in any doubt about participating in a UCIS.

2.4. There are similar provisions for high net worth companies and associations at Article 22.

3. The PCIS Order exemptions - Sophisticated investors

3.1. There are two sorts of sophisticated investors referred to in the PCIS Order – certified and self-certified.

Certified sophisticated investors

3.2. A certified sophisticated investor is defined in Article 23(1) as someone:

(1) Who has a current certificate (signed and dated in the past three years) in writing or other legible form signed by an authorised person to the effect that he is sufficiently knowledgeable to understand the risks associated with participating in a UCIS; and

(2) Who has signed, within the previous 12 months, a statement in the following terms:

"I make this statement so I can receive promotions which are exempt from the restriction on promotion of unregulated schemes in the Financial Services and Markets Act 2000. The exemption relates to certified sophisticated investors and I declare that I qualify as such. I accept that the schemes to which the promotions will relate are not authorised or recognised for the purposes of that Act. I am aware that it is open to me to seek advice from an authorised person who specialises in advising on this kind of investment."

3.3. The communication must be accompanied by an indication that section 238 does not apply, of the requirements to be a certified sophisticated investor, a prescribed risk warning and a reminder to seek independent advice.

3.4. Provided all this is met, and the communication is not to participate in a UCIS carried on by the person who certified the investor as sophisticated, then the section 238 restriction will not apply.

Self-certified sophisticated investors

3.5. Article 23A defines a self-certified sophisticated investor as an individual who has signed a statement complying with Part II of the Schedule to the PCIS Order in the past 12 months. Essentially this requires that at least one of the following sets of circumstances applies to the investor:

(1) he is a member of a network or syndicate of "business angels" and has been so for at least the last six months;

(2) he has made more than one investment in an unlisted company in the past two years;

(3) he is working, or has worked in the past two years, in a professional capacity in the private equity sector, or in the provision of finance for small and medium enterprises;

(4) he is currently, or has been in the two years before signing the statement, a director of a company with an annual turnover of at least £1 million.

3.6. As with high net worth individuals, the statement also requires the investor to sign a statement that he accepts he can lose his property and assets from making investment decisions based on financial promotions and that he is aware that it is open to him to seek specialist advice.

3.7. If the person making the communication believes on reasonable grounds that he is making it to a self-certified sophisticated investor, then the section 238 restriction will not apply as long as the communication:

(1) relates only to units in a UCIS which invests wholly or predominantly in the shares in or debentures of one or more unlisted companies;

(2) does not invite or induce the recipient to enter into an agreement under the terms of which he can incur a liability or obligation to pay or contribute more than he commits by way of investment;

(3) a specified warning in the following terms is given both orally (in respect of real time communications) and in writing in the manner prescribed in Article 23A:

"Reliance on this promotion for the purpose of buying the units to which the promotion relates may expose an individual to a significant risk of losing all of the property or other assets invested."; and

(4) is accompanied by an indication that the promotion is exempt from section 238 on the ground that it is made to a self-certified sophisticated investor, together with details of the requirements for self-certified sophisticated investors and a reminder that the individual should consult a specialist if in any doubt about participating in a UCIS.

4. The COBS exemptions

4.1. A firm may communicate an invitation or inducement to participate in a UCIS without breaching the section 238 restriction if the promotion falls within an exemption listed in the tables at:

(1) COB 3 Annex 5 of COB 3.11 for the period up to 31 October 2007; and

(2) COBS 4.12.1R(4) of COBS 4.12 for the period from 1 November 2007.

4.2. The inducement or invitation must be made only to recipients whom the firm has taken reasonable steps to establish are persons in that category or be directed at recipients in such a way as to reduce, as far as possible, the risk of participation in the CIS by persons not in that category. There is no provision for these steps to be taken retrospectively.

4.3. Category 1 covers people who are already participants in a UCIS or have been so in the last 30 months. An authorised person can promote to these persons the UCIS in which they are already participants (and any successor scheme) or one whose

underlying property and risk profile are both "substantially similar" to those of the UCIS in which they participate.

4.4. Category 2 deals with those persons for whom the firm has taken reasonable steps to ensure that investment in the UCIS is suitable and who is a client of the firm or a company in its group.

4.5. Category 7 provides that if a client is categorised as a professional client or eligible counterparty then an authorised person can promote to that client any UCIS in relation to which the client is so categorised.

4.6. Category 8 allows financial promotion of UCIS to a person:

(1) In relation to whom the firm has undertaken an adequate assessment of his expertise, experience and knowledge and that assessment gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the person is capable of making his own investment decisions and understanding the risks involved;

(2) To whom the firm has given a clear written warning that this will enable the firm to promote UCIS to the client; and

(3) Who has stated in writing, in a document separate from the contract, that he is aware of the fact the firm can promote certain UCIS to him.

5. Ensuring suitability of advice

5.1. The fact that a customer is eligible to receive a communication promoting a UCIS under one or more exemption does not mean that UCIS will be automatically suitable to that customer.

5.2. Principle 9 (Customers: relationships of trust) of the FSA's Principles for Businesses states that a firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.

5.3. Before making a personal recommendation, a firm is required to obtain and document information about a specific customer to assess the suitability of an investment for that customer. The relevant provisions that applied during the relevant period were set out at:

(1) COB 5.2 up to 31 October 2007; and

(2) COBS 9.2 from 1 November 2007.

5.4. COBS 9.2.1R(2) provides that when making the personal recommendation or managing his investments, the firm must obtain the necessary information regarding the customer's:

(1) knowledge and experience in the investment field relevant to the specific type of designated investment or service;

(2) financial situation; and

(3) investment objectives

so as to enable the firm to make the recommendation, or take the decision, which is suitable for him.

5.5. In addition, COBS 2.2.1R (1) provides that a firm must provide appropriate information to a client about the firm and its services and also about costs and associated charges, so that the client is reasonably able to understand the nature and risks offered so that the client is able to take investment decisions on an informed basis.

5.6. COBS 9.2.2 R requires that:

(1) a firm must obtain from the client such information as is necessary for the firm to understand the essential facts about him and have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of managing:

(a) meets his investment objectives;

(b) is such that he is able financially to bear any related investment risks consistent with his investment objectives; and

(c) is such that he has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.

(2) The information regarding the investment objectives of a client must include, where relevant, information on the length of time for which he wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.

(3) The information regarding the financial situation of a client must include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments.

5.7. COBS 9.2.3R clarifies that the information regarding a customer's knowledge and experience in the investment field includes the nature and extent of the service to be provided and the type of product or transaction envisaged, including its complexity and the risks involved. In addition consideration needs to be given to the:

(1) types of service, transaction and investments with which the customer is familiar;

(2) nature, volume and frequency of the customer's transactions in investments and the period over which they have been carried out; and

(3) level of education, profession or relevant former profession of the customer.

5.8. There is no direct equivalent COB rule to COBS 9.2.1R(2), COBS 9.2.2R(1) and COBS 9.2.3R but COB 5.2.11G(1)(a) provides that information collected from a customer should at a minimum provide an analysis of a customer's personal and

financial circumstances leading to a clear identification of his needs and priorities so that, combined with attitude to risk, a suitable investment can be recommended.

5.9. COBS 9.2.6R provides that if a firm does not obtain the necessary information to assess suitability, it must not make a personal recommendation to the customer or take a decision to trade for him. There is no direct equivalent COB rule but COB 5.2.7G provides that where a customer declines to provide sufficient information a firm should not proceed to make a personal recommendation without promptly advising the customer that the lack of such information may adversely affect the quality of the services which it can provide.

5.10. COBS 9.4.7 requires that suitability reports must, at least, specify the client's needs and demands, and explain why the firm has concluded that the recommended transaction is suitable for the client having regard to the information provided by the client. It must also explain any possible disadvantages of the transaction for the client.

Financial Penalties

5.11. The FSA 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.

5.12. The FSA's policy on the imposition of financial penalties is set out in chapter 6 of DEPP which is a module of the FSA's Handbook of rules and guidance. 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 (DEPP 6.1.2G).

5.13. FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty. DEPP 6.2.1G 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:

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

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

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

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

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

5.14. 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, which include:

(a) DEPP 6.5.2G (1): Deterrence;

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

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

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

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

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

(g) DEPP 6.5.2G (8): Conduct following the breach;

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

(i) DEPP 6.5.2.G (10): Other action taken by the FSA;

(j) DEPP 6.5.2G (12): FSA guidance and other published materials; and

(k) DEPP 6.5.2G (13): The timing of any agreement as to the amount of the penalty.