
FINAL NOTICE

To: **Mr Roger Murray Collins**

Of: **Trench Side Cottage
Ravensworth Park Estate
NE11 0HQ**

Individual Reference No: **RMC01111**

Dated: **15 January 2010**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you Roger Murray Collins, final notice about the withdrawal of the approval given to you to perform the controlled functions of CF1 (Director), CF8 (Apportionment and Oversight) and CF29 (Significant management):

1. ACTION

- 1.1. The FSA gave you, Roger Collins, director of Thoroughgood Harrison and Davies Limited (In Liquidation) (“the Firm”), a Decision Notice dated 15 January 2010 (the “Decision Notice”) which notified you that the FSA had decided, pursuant to section 63 of the Financial Services and Markets Act 2000 (“the Act”), to withdraw the approval given to you to perform the controlled functions of CF1 (Director), CF8 (Apportionment and Oversight) and CF29 (Significant management).
- 1.2. The FSA would also have imposed on you a financial penalty of £30,000 before any discount for early settlement in respect of your failure to comply with Statement of Principle 7 of the Statements of Principle and Code of Conduct for Approved Persons (“APER”) between 31 October 2004 and 26 June 2007, pursuant to section 66 of the Act, but you provided evidence that imposing such a financial penalty would cause you severe financial hardship and threaten your solvency.
- 1.3. Your approval to perform the controlled functions of CF1 (Director), CF8 (Apportionment and Oversight) and CF29 (Significant management) was withdrawn on 15 January 2010.

- 1.4. You agreed not to apply, for a period of two years from the date of this Notice, to perform any significant influence functions, that is, any of the controlled functions 1 to 12B and 28 and 29 in the table of Controlled Functions in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

2. REASONS FOR THE ACTION

- 2.1. Throughout the period from 31 October 2004 to 13 November 2008 (the “relevant period”), you were approved by the FSA to perform the controlled functions of CF1 CF8 and CF29 at the Firm (in liquidation since 13 November 2008). You were the Firm’s only director, approved person and senior manager.

- 2.2. The FSA concluded on the basis of the facts and matters summarised below and set out in more detail in section 4 of this Notice, that you were not a fit and proper person to perform these controlled functions because you lacked the competence and capability. In the period between 31 October 2004 and 26 June 2007, you personally failed to take reasonable steps to ensure that:

- (1) the Firm implemented adequate systems and controls to enable its regulated business to be controlled effectively, in terms of monitoring and supervising the ten mortgage advisers employed by the Firm, assessing the ongoing competence of these advisers, and complying with regulatory requirements aimed at ensuring that authorised firms treat their customers fairly;
- (2) the Firm obtained and recorded sufficient Know Your Customer (“KYC”) information adequately to assess the needs and circumstances of its customers, thereby exposing its customers to the risk of receiving unsuitable advice;
- (3) the Firm undertook and documented appropriate assessments of the affordability of regulated mortgage contracts, thereby exposing customers to the risk of being recommended a mortgage contract that they might not be able to afford;
- (4) the Firm took reasonable steps to make and retain appropriate records to demonstrate why mortgage recommendations were considered to be suitable;
- (5) the Firm’s communications with its customers, specifically with regard to fees and key product features, were accurate, clear, fair and not misleading; and
- (6) an unqualified adviser, who had not passed the regulatory module of an appropriate examination, did not provide advice to customers on regulated mortgage contracts (despite having provided a written undertaking to the FSA that you would do so).

- 2.3. These matters constituted a failure by you, in breach of Statement of Principle 7 of APER, to take reasonable steps to ensure that the business of the Firm for which you were responsible in your controlled functions complied with the relevant requirements and standards of the regulatory system.

- 2.4. The FSA viewed the nature and extent of your misconduct and breaches of Statement of Principle 7 of APER to be very serious because your actions might have exposed up to 300 customers of the Firm to the risk of being recommended mortgage contracts that might not have been suitable. As a result of your failures, the Firm failed to treat its customers fairly throughout its sales process. Given the FSA's policy on the imposition and amount of financial penalties under the Act, the FSA would have imposed on you a financial penalty of £30,000 before any discount for early settlement for your failure to comply with Statement of Principle 7 of APER, but for your financial circumstances.
- 2.5. Your management and oversight failures were serious and wide ranging in nature. In addition, even when requirements were explained to you (such as the need for your adviser to obtain relevant qualifications before giving unsupervised advice, and the inappropriateness of making general assumptions about customers' circumstances and product features), you failed to satisfy the FSA that you understood the relevant regulatory requirements or that you could be relied upon to make sound decisions and take reasonable steps to ensure compliance with those requirements.
- 2.6. However, you acknowledged that there were concerns over the Firm's systems and controls and compliance arrangements and, in June 2007, you employed the services of a compliance consultancy firm (the "compliance consultant") in order to improve the Firm's systems and controls and your own competence and capability.
- 2.7. Taking into account all the information available to the FSA including: its own findings; the findings dated 25 November 2008 of a skilled person appointed pursuant to section 166 of the Act (the "skilled person"); and information from the compliance consultant about the services that it provided to the Firm, the FSA concluded that, despite some improvements made during the period of the compliance consultant's involvement with the Firm, your conduct during the relevant period demonstrated that you lacked the competence and capability to perform significant influence functions and you posed a risk to consumers. The FSA therefore concluded that you were not a fit and proper person to perform significant influence functions and that it was therefore necessary and proportionate, in the interest of protecting consumers and achieving credible deterrence, to withdraw your individual approval to perform controlled functions CF1, CF8 and CF29. You agreed not to apply, for a period of two years from the date of this Notice, to perform significant influence functions in relation to regulated activities.
- 2.8. In deciding to take the action in this Notice, the FSA had regard to the following facts. The skilled person carried out and reported on a review of a sample of 50 of the Firm's client files. In that report, he identified four client files in particular where there were serious weaknesses in the files which suggested that unsuitable mortgage contracts had been recommended by the Firm. You were the adviser on three of the four cases.
- 2.9. In addition, the skilled person identified a further 22 cases where some elements of the advice given required further investigation before it could be established whether the advice given was suitable. As the Firm is now in liquidation, the full extent of any unsuitable advice given by the Firm and its consequences cannot now be established by the skilled person.

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 was a small mortgage broker and operated in the Durham area until 13 November 2008, when it was placed into creditors' voluntary liquidation. With effect from 31 October 2004, the Firm was granted permission by the FSA to carry on the following regulated activities in relation to regulated home finance:
- (1) advising on regulated mortgage contracts;
 - (2) agreeing to carry on a regulated activity;
 - (3) arranging regulated mortgage contracts; and
 - (4) making arrangements.
- 4.2. With effect from 14 January 2005, the Firm was granted permission by the FSA to carry on the following regulated activities in relation to insurance mediation:
- (1) advising (except on pension transfers and pension opt outs);
 - (2) arranging deals in investments;
 - (3) dealing in investments as agent; and
 - (4) making arrangements.
- 4.3. With effect from 6 April 2007, the Firm was granted permission by the FSA to carry on the following regulated activities in relation to regulated home finance:
- (1) advising on a home reversion plan;
 - (2) arranging (bringing about) a home reversion plan; and
 - (3) making arrangements for a home reversion plan.
- 4.4. The Firm's authorised business also included advising on and arranging insurance contracts. Between October 2004 and June 2007, the Firm recommended to its clients approximately 300 regulated mortgage contracts.
- 4.5. During the relevant period, you were the sole director, shareholder, senior manager and approved person at the Firm. You were the controlling mind of the Firm. You were solely responsible for taking reasonable steps to ensure that the business of the Firm was organised so that it complied with the regulatory requirements and standards of the regulatory system to which it was subject. In particular, you were responsible for adequately controlling and monitoring the business and affairs of the Firm;

overseeing the establishment and maintenance of systems and controls appropriate to the Firm's business; and exercising due care, skill and diligence in the execution of those responsibilities. In addition, all substantive decisions about the Firm's sales process, including communications with customers and supervision of the Firm's staff, were taken by you.

- 4.6. Through the Firm, you also personally provided mortgage advice during the relevant period. The Firm employed ten further advisers in total during the relevant period, but there was a maximum of seven further advisers working at the Firm at any one time.
- 4.7. On 1 August 2007, investigators were appointed to investigate you and the Firm. Their appointment followed the FSA's visit to the Firm on 26 June 2007, during which the FSA identified circumstances suggesting that the Firm might have breached Principles 1, 3, 7 and 11 of the FSA's Principles for Businesses and that you might have breached Principles 1, 4, 5 and 7 of APER.
- 4.8. The FSA's investigation included a review of 30 of the Firm's client files dated 6 January 2007 to 4 May 2007 (the "Review"), an interview with you dated 13 September 2007, and a review of the Firm's training and competency records, sales procedures and procedures for the handling of client money.

The period up to 26 June 2007

Suitability of advice

- 4.9. For the period before June 2007, the FSA found no evidence that you had taken reasonable steps to put in place adequate and appropriate systems of control in order to monitor the suitability of the Firm's advice.
- 4.10. The Firm did not have an effective system for monitoring its sales process and ensuring that it consistently and accurately obtained, recorded and assessed key information necessary to ensure that the Firm gave suitable mortgage advice and made suitable recommendations to its customers. For example, you failed to take reasonable steps to ensure that the Firm's advisers (yourself included) obtained and recorded sufficient 'Know Your Customer' ("KYC") information properly to establish and assess customers' needs and objectives.
- 4.11. In particular, of the 30 client files that the FSA reviewed:
 - (1) all 30 of the client files contained inconsistent information regarding the customer's financial position, risk appetite and mortgage needs and preferences (for example, there was conflicting information recorded on the mortgage application form and fact find);
 - (2) information on the customer's existing mortgage, including details of early repayment charges ("ERCs"), were not recorded on four files, and the FSA found no evidence that you had identified or recognised this as a risk that needed to be addressed; and

- (3) the customer's expected retirement age was not recorded on seventeen files, including three cases in which the customer's recommended mortgage contract extended beyond normal retirement age, and the FSA found no evidence that you had identified or recognised this as a risk that needed to be addressed.
- 4.12. In addition, the Review revealed that the Firm's advisers (yourself included) failed to undertake and document appropriate affordability assessments with customers. Specifically:
 - (1) all affordability assessments reviewed by the FSA were based solely on the offer rate, with no consideration of affordability following the end of the discount period of the recommended mortgage contract where this would have been appropriate;
 - (2) budget planners on 'fact finds' reviewed by the FSA were left incomplete on five files and were only partially completed on seven further files, in contravention of the Firm's own documented procedures;
 - (3) three customers were advised to take out regulated mortgage contracts into retirement, without any evidence that an assessment of affordability into retirement had been undertaken; and
 - (4) one customer was recommended a regulated mortgage contract with a monthly payment which was higher than their stated net monthly income.
- 4.13. Your failure to address the deficiencies in the Firm's KYC and affordability assessments before June 2007 exposed customers to the risk of receiving unsuitable advice and, based on that advice, entering into unsuitable mortgage contracts. You have accepted that there were failings in the Firm's procedures in this regard and that the Firm's failure to record ERCs on customers' existing mortgages may have resulted in at least two customers receiving unsuitable advice.
- 4.14. The FSA also found no evidence, for the period before June 2007, that you had taken reasonable steps to put in place adequate and appropriate systems of control to ensure that the Firm retained sufficient records to demonstrate why mortgage recommendations were considered to be suitable. In this regard, 22 of the 30 customer files reviewed by the FSA contained little or no evidence of product research to support recommendations, suitability letters contained information that contradicted other documents on the file in 16 cases, and four customers were recommended and entered into mortgages which appeared to conflict with their recorded needs. The serious record keeping failures at the Firm demonstrate a failure to implement appropriate systems of control to record, monitor and ensure the suitability of the Firm's mortgage recommendations. In some cases, these failures prevented the FSA and the skilled person from fully assessing whether the Firm's mortgage recommendations, including your own recommendations, were in fact suitable.

Communications with customers

- 4.15. For the period before June 2007, the FSA found no evidence that you had taken reasonable steps to put in place or had put in place adequate and appropriate systems and controls to ensure that the Firm's communications with its customers met its regulatory requirements in this regard. The FSA therefore concluded that, for this period, you failed to take reasonable steps to ensure that the Firm communicated with customers in a way that was clear, fair and not misleading.
- 4.16. In particular, the Firm's disclosure of fees in its Initial Disclosure Documents ("IDDs"), Key Features Illustrations ("KFIs") and Broker Fee Agreements was unclear and potentially misleading in 20 of the 30 files reviewed by the FSA. The following failings were identified in the Review:
- (1) no single communication contained an accurate breakdown of all relevant fees and the FSA saw no evidence, for the period before June 2007, of any steps taken by you to ensure accuracy and consistency;
 - (2) IDDs, KFIs and Broker Fee Agreements contained conflicting fee information and, for the period before June 2007, the FSA did not see any evidence of steps taken by you to ensure accuracy and consistency; and
 - (3) you decided to charge customers a 'Legal and Administration Fee' to cover customers' legal costs, retaining £160 of this as a 'Legal Administration Charge' - this charge was not disclosed to customers in a transparent manner, and you failed to ensure that the Firm informed customers that they may receive a more competitive service by contacting a solicitor directly.
- 4.17. Further, the disclosure of key features of recommended mortgages, in KFIs and suitability letters, was unclear and potentially misleading in 18 of the 30 files reviewed by the FSA. In particular, the following failings were identified:
- (1) in four of the 30 files, the KFIs and suitability letters contained inconsistent product information; and
 - (2) in 18 of the 30 files, the KFIs and/or suitability letters did not accurately reflect the key features of the recommended mortgage contract (key features include, for example, the mortgage lender, the interest rate, the type of contract, the monthly payment, the mortgage term, the procurement fee and the amount of loan).

Management and oversight

- 4.18. For the reasons set out below, the FSA concluded that, for the period before June 2007, you failed to take reasonable steps to ensure that the Firm had adequate and appropriate management systems and controls in place to enable its mortgage advisory business to be controlled effectively.
- 4.19. Until June 2007, the Firm appeared to operate without any formal compliance monitoring procedures. You told the FSA that the Firm's compliance monitoring had been informal, with between 2% and 4% of mortgage transactions being subject to an independent file review. The compliance consultant concluded that no mortgage

transactions had recently been subject to review. You have accepted that the level of compliance monitoring was insufficient to control the business effectively.

- 4.20. Until June 2007, the Firm operated without a formal training and competency scheme. In the absence of such a scheme, or any effective system of compliance monitoring or file reviews, the Firm was unable to monitor and ensure the ongoing competence of its mortgage advisers. Responsibility for that failure rested with you as the sole approved person at the Firm performing all significant influence and management functions.
- 4.21. In April 2007, a mortgage adviser at the Firm (“Adviser A”) alerted you to material concerns over the Firm’s fee structure and sourcing of products. It appears to the FSA that, at least in the period before June 2007, you failed to assess the seriousness of these concerns and took no action to address them.
- 4.22. Your failure to take reasonable steps to put in place adequate and effective systems and controls before June 2007 resulted in failings with regard to monitoring, training and ensuring the competence of advisers. As a result, 300 customers of the Firm were exposed to the risk of being given unsuitable advice and, based on that advice, entering into unsuitable mortgage contracts.
- 4.23. As a result the Firm fell below the standards expected by the FSA in terms of having appropriate systems and controls in place to enable it to determine that it was treating its customers fairly and meeting the FSA’s training and competency requirements.

Unqualified adviser

- 4.24. In August 2005, the FSA became aware that a trainee adviser at the Firm (“Trainee Adviser A”) had been advising customers, under supervision, without having passed the requisite regulatory module of an appropriate examination, in breach of the FSA’s training and competency requirements.
- 4.25. On 11 August 2005, the FSA wrote to you, outlining the examination and supervision requirements for trainee advisers. The FSA informed you that the Firm was failing to comply with the FSA’s training and competency requirements and told you that Trainee Adviser A should cease advising customers immediately.
- 4.26. You allowed Trainee Adviser A to resume advising customers in February 2006, having passed a module, but not the requisite regulatory module, of an appropriate examination. As a result of this, once again, you put the Firm in breach of the FSA’s training and competency requirements.
- 4.27. You told investigators that, despite the FSA’s letter to you of 11 August 2005, you had misunderstood the examination and supervision requirements of trainee advisers. You stated that this was a result of telephone guidance received from the FSA. It is clear that you did not have, and following the FSA’s intervention, failed to gain an understanding of the examination and supervision requirements for trainee advisers and utilise them to ensure that the Firm did not repeat its contravention of FSA requirements.

- 4.28. By allowing Trainee Adviser A to advise customers without the appropriate qualifications, you exposed customers to the risk of receiving unsuitable advice from an unqualified adviser.

Skilled person's report

- 4.29. On 25 November 2008, the skilled person reported on the outcome of his review of a sample of 50 of the Firm's client files dated 27 August 2005 to 18 May 2007, which included 10 of the 30 files reviewed by the FSA.
- 4.30. In 24 (48%) cases, he concluded that the Firm had recommended suitable mortgage contracts based on the information on the files (albeit that there were some weaknesses).
- 4.31. In 22 (44%) cases, he concluded that the Firm had probably recommended suitable mortgage contracts, but further information from the Firm and further investigation of some elements of the advice given would be necessary and, subject to this further investigation, remedial steps might be required.
- 4.32. In four (8%) cases, he found that there were serious weaknesses in the files which suggested that the Firm had recommended unsuitable mortgage contracts. You were the adviser in three of the four cases.
- 4.33. The skilled person also identified failures in compliance file checking, record keeping, disclosure and product research and some exposure to the risk of the Firm being used for financial crime purposes.
- 4.34. Based on the skilled person's report, a number of the Firm's customers may have received unsuitable advice. However, as the Firm is now in liquidation, any customers who wish to claim redress in respect of unsuitable advice received from the Firm will have to apply to the Financial Services and Compensation Scheme. As the Firm is no longer able to assist in the process of identifying any such customers and of providing redress for them, the FSA has included details about the skilled person's findings in this Notice.

The period between June 2007 and 13 November 2008

- 4.35. As noted above, in June 2007, you appointed a compliance consultant to work with you to improve the Firm's systems and controls and your competence and capability. The FSA investigation did not encompass the work that the compliance consultant did with the Firm. However, the FSA received some information from the compliance consultant about this work, including some contemporary documents. On the basis of this information, it appeared that there were some improvements in the Firm's systems and controls between June 2007 and 13 November 2008 (when the Firm was put into liquidation). However, file reviews carried out by the compliance consultant in that period also indicated concerns about advice that you gave in this period, which raise similar issues to those raised in paragraphs 4.11 and 4.12 above.
- 4.36. In addition: on 2 October 2008 you commented on the draft investigation report prepared by the FSA; on 17 February 2009 you made written representations to the FSA; and on 18 March 2009 you made oral representations in relation to the action

the FSA proposed to take against you. Your comments on each of these occasions gave rise to more concerns about your ability to understand and ensure compliance with regulatory requirements and therefore about your competence and capability. For example:-

- (1) In your comments on the draft investigation report, you repeatedly answered concerns that unsuitable advice might have been given by stating that the relevant fact was discussed with the client or otherwise known to the adviser. This demonstrates a failure to: fully appreciate the importance of record-keeping and; demonstrate the suitability of advice.
- (2) In your written representations, you stated that “*I am of course not happy that records were not retained but an independent review [by the skilled person] seems to have come to a similar conclusion to me that there was probably no customer detriment*”. In fact, as set out above, the skilled person considered that at least four clients appeared to have received unsuitable advice and that in 22 cases, further investigation was required to rule out this possibility.
- (3) In your oral representations, you were unable to recall any precise detail of the improvements that had been made to your systems and controls or an example of any specific results of any file checks carried out by the compliance consultant. While it does not necessarily follow from this that no improvements were in fact made, the FSA considered that this was an indication that you were not sufficiently aware of the systems and controls and compliance issues at the Firm.

5. ANALYSIS OF BREACHES AND SANCTIONS

Breaches

- 5.1. During the relevant period, you were the sole approved person performing the significant influence functions CF1, CF8 and CF29 at the Firm. For the reasons set out in section 4 above, it appears to the FSA that, for the period until June 2007, you failed to take reasonable steps to ensure that the business of the Firm for which you were responsible in your controlled functions complied with the relevant requirements and standards of the regulatory system in breach of Statement of Principle 7 of APER.
- 5.2. In summary, in breach of Statement of Principle 7, you failed to take reasonable steps to implement adequate and appropriate systems of control for (a) monitoring the Firm’s sales process and ensuring that it consistently and accurately obtained, recorded and assessed key information necessary to ensure that the Firm gave suitable mortgage advice and made suitable recommendations to its customers; (b) ensuring that the Firm retained sufficient records to demonstrate why mortgage recommendations were suitable; (c) ensuring that the Firm communicated with its customers in a way that was clear, fair and not misleading; (d) ensuring proper and effective compliance monitoring; and (e) ensuring compliance with the FSA’s training and competency requirements.
- 5.3. These failings also demonstrated a lack of competence and capability. The FSA took into consideration the fact that you instructed a compliance consultant to improve the

Firm's systems and controls and your competence and capability in June 2007. However, on the basis of information from the compliance consultant and comments that you made to the FSA (as detailed above) the FSA considered that, despite some improvements, you were not competent and capable, and therefore not a fit and proper person throughout the relevant period.

Financial penalty

- 5.4. The FSA considered that your breaches of Statement of Principle 7 in the period up to June 2007 merited the imposition of a financial penalty of £30,000. A penalty of this amount would have been imposed on you if it were not for the evidence you provided about your financial circumstances. In determining this level of financial penalty, the FSA had regard to all the relevant circumstances of the case, the factors set out in chapter 6 of DEPP and in chapter 13 of ENF (the part of the FSA's Handbook setting out the FSA's policy on the imposition of financial penalties which applied during part of the Relevant Period).
- 5.5. The FSA's published policy states that the principal purpose of the imposition of 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.
- 5.6. Against that backdrop, the FSA considered all the relevant facts and circumstances of this case in determining whether a financial penalty should be imposed on you and what represented an appropriate penalty.
- 5.7. Amongst other things, the FSA considered the extent to which your actions were reckless or deliberate. The FSA has concluded that your contraventions were not deliberate. However, the FSA considers that the nature of your actions (and inaction) as set out in section 4 of this Notice evidenced a reckless disregard for the regulatory requirements to which you and the Firm were subject and for the risk thereby posed to the Firm's customers.
- 5.8. The FSA also had regard to the seriousness of your regulatory misconduct, the nature of the requirements breached, the extent and duration of the breaches, the loss or risk of loss caused to consumers and the risks posed to the FSA's regulatory objectives of protecting consumers and maintaining confidence in the financial system. As noted above, your failures exposed customers to the risks of receiving unsuitable advice and, based on it, entering into unsuitable mortgage contracts. In addition, because of your failure to take reasonable steps to ensure that the Firm retained appropriate records to demonstrate whether you assessed and, if so, the basis on which you assessed, the suitability of the products you recommended, the FSA was unable to satisfy itself that customers were recommended suitable mortgage contracts.
- 5.9. The FSA also took into account that:
 - (1) to address any ongoing risk to customers, you reduced the scale of the Firm's business and engaged an independent consultant to review and assist in the

implementation of changes to the Firm's compliance arrangements, sales processes, fact finds, suitability letters and training and competence regime;

- (2) you co-operated fully with its investigation;
- (3) you had not previously been the subject of disciplinary action by the FSA; and
- (4) you agreed not to apply, for a period of two years from the date of this Notice, to perform significant influence functions in relation to regulated activities.

- 5.10. In conclusion, the FSA considered a financial penalty of £30,000 before any discount for early settlement would have been appropriate and proportionate in this case. However, you provided evidence that imposing such a financial penalty would cause you severe financial hardship and threaten your solvency.

Withdrawal of approval

- 5.11. You did not demonstrate to the FSA's satisfaction that you were competent and capable to perform the controlled functions for which you had permission. Your individual approval was therefore withdrawn on 15 January 2010. In addition, you agreed not to apply, for a period of two years from the date of this Notice, to perform any significant influence function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

6. DECISION MAKER

- 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 you in accordance with section 390 of the Act.

Publicity

- 7.2. Sections 391(4), 391(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.
- 7.3. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

- 7.4. For more information concerning this matter generally, you should contact Chris Walmsley of the Enforcement Division of the FSA (direct line: 020 7066 5894/fax 020 7066 5895).

Tom Spender
Head of Department
FSA Enforcement Division

Annex A: RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND FSA GUIDANCE

1. Statutory provisions

- 1.1. The FSA's statutory objectives, set out in section 2(2) of the Act, are: market confidence; public awareness; the protection of consumers and the reduction of financial crime.
- 1.2. The FSA has the power, by virtue of section 66 of the Act, to impose a financial penalty on you of such amount as it considers appropriate where it appears to the FSA that you are guilty of misconduct and it is satisfied that it is appropriate in all the circumstances to take action against you.
- 1.3. You are guilty of misconduct if, while an approved person, you fail to comply with a statement of principle issued under section 64 or have been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under the Act.
- 1.4. Pursuant to section 63 of the Act, the FSA has the power to withdraw the approval given to you under section 59 of the Act if it considers that you are not a fit and proper person to perform them.

2. Statements of Principle for Approved Persons

- 2.1. The Statements of Principle for Approved Persons ("APER") sets out 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 3.1.3 G states 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.
- 2.3. APER 3.1.4 G states that an approved person will only be in breach of a Statement of Principle when he is personally culpable. Personal culpability arises where an approved person's conduct was deliberate or where the approved person's standard of conduct was below that which would be reasonable in all the circumstances.
- 2.4. In this case, the FSA considers the most relevant Statement of Principle to be Statement of Principle 7, which provides 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.
- 2.5. APER 3.3 sets out factors relevant to an assessment of compliance with Statements of Principle 5 to 7.

- 2.6. APER 3.3.1 E provides that in determining whether or not the conduct of an approved person performing a significant influence function complies with Statements of Principle 5 to 7, the following are factors which, in the opinion of the FSA, are to be taken into account: (1) whether he exercised reasonable care when considering the information available to him; (2) whether he reached a reasonable conclusion which he acted on; (3) the nature, scale and complexity of the firm's business; (4) his role and responsibility as an approved person performing a significant influence function; (5) the knowledge he had, or should have had, of regulatory concerns, if any, arising in the business under his control.
- 2.7. APER 4.7.2 E to 4.7.10 E provides examples of the types of behaviour that, in the opinion of the FSA, do not comply with Statement of Principle 7. We consider the following provisions to be particularly relevant to the misconduct by you and your breaches of Statement of Principle 7:
- APER 4.7.3 E - 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 its regulated activities;
 - APER 4.7.4 E - 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 its regulated activities;
 - APER 4.7.5 E - failing to take reasonable steps adequately to inform himself about the reason why significant breaches (whether suspected or actual) of the relevant requirements and standards of the regulatory system in respect of its regulated activities may have arisen;
- 2.8. APER 4.7.11 G provides that the FSA expects an approved person performing a significant influence function to take reasonable steps both to ensure his firm's compliance with the relevant requirements and standards of the regulatory system and to ensure that all staff are aware of the need for compliance.

3. FSA's policy on financial penalties

- 3.1. The FSA's policy on the imposition and amount of penalties is set out in Chapter 6 of the FSA's Decision Procedure and Penalties Manual ("DEPP"), which is part of the FSA's Handbook. This 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. In determining the appropriate level of financial penalty in this case, the FSA has also had regard to Chapter 13 of the Enforcement Manual ("ENF"), the part of the FSA's Handbook setting out the FSA's policy on the imposition of financial penalties in force until 27 August 2007, and therefore during part of the relevant period.
- 3.3. 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.

- 3.4. 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) DEPP6.2.1G(1): The nature, seriousness and impact of the suspected breach.
 - (2) DEPP6.2.1G(2): The conduct of the person after the breach.
 - (3) DEPP6.2.1G(3): The previous disciplinary record and compliance history of the person.
 - (4) DEPP6.2.1G(4): FSA guidance and other published materials.
 - (5) DEPP6.2.1G(5): Action taken by the FSA in previous similar cases.
- 3.5. 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.
- 3.6. Factors that may be relevant to determining the appropriate level of financial penalty include:
 - (1) the nature, seriousness and impact of the breach in question, including the duration and frequency of the breach, whether the breach revealed serious or systemic weaknesses in the person's procedures or of the management systems or internal controls relating to all or part of a person's business, and the loss or risk of loss caused to consumers (DEPP 6.5.2 G (2));
 - (2) the extent to which the breach was deliberate or reckless (DEPP 6.5.2(3));
 - (3) the size, financial resources and other circumstances of the person on whom the penalty is to be imposed (DEPP 6.5.2(5)); and
 - (4) 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)).

4. Fit and Proper Test for Approved Persons

- 4.1. The part of the FSA Handbook entitled "FIT" sets out the Fit and Proper Test for Approved Persons. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.

- 4.2. FIT 1.3.1G provides that the FSA will have regard to a number of factors when assessing a person's fitness and propriety. One of the most important considerations will be the person's competence and capability.
- 4.3. FIT 2.2 provides that, in determining a person's competence and capability, the FSA will have regard to matters including but not limited to:
- (1) whether the person satisfies the relevant FSA training and competence requirements in relation to the controlled function the person performs or is intended to perform; and
 - (2) whether the person has demonstrated by experience and training that the person is able, or will be able if approved, to perform the controlled function.

5. FSA's policy for exercising its power to withdraw a person's approval

- 5.1. The FSA's approach to exercising its powers to withdraw individual approvals is set out in Chapter 9 of the Enforcement Guide ("EG").
- 5.2. EG 9.2 provides that the FSA's effective use of the power under section 63 of the Act to withdraw approval from an approved person will also help ensure high standards of regulatory conduct by preventing an approved person from continuing to perform the controlled function to which the approval relates if he is not a fit and proper person to perform that function. Where it considers this is appropriate, the FSA may prohibit an approved person, in addition to withdrawing their approval.
- 5.3. EG 9.8 to 9.14 set out additional guidance on the FSA's approach to withdrawing such approved persons' approvals. In deciding whether to withdraw an approval, the FSA will consider whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions.
- 5.4. EG 9.9 states that the FSA will consider all the relevant circumstances when deciding whether to withdraw that person's approval. Such circumstances may include, but are not limited to, the following factors:
- (1) whether the individual is fit and proper to perform functions in relation to regulated activities;
 - (2) whether, and to what extent, the approved person has failed to comply with the Statements of Principle;
 - (3) the relevance and materiality of any matters indicating unfitness;
 - (4) the length of time since the occurrence of any matters indicating unfitness;
 - (5) the particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates;
 - (6) the severity of the risk which the individual poses to consumers and to confidence in the financial system; and

- (7) the previous disciplinary record and general compliance history of the individual.
- 5.5. EG 9.12 provides a number of examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order or withdraw the approval of an approved person. The examples include serious lack of competence and serious breaches of the Statements of Principle, such as giving clients poor or inaccurate advice.