
FINAL NOTICE

To: Rowan Dartington & Co Limited

**Of: Colston Tower
Colston Street
Bristol
BS1 4RD**

Date: 4 June 2010

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

1. THE PENALTY

- 1.1. The FSA gave Rowan Dartington & Co Limited ("Rowan Dartington"/"the Firm") a Decision Notice on 27 May 2010 which notified the Firm that for the reasons listed below, the FSA has decided to impose a financial penalty of £511,000 on the Firm pursuant to section 206 of the Financial Services and Markets Act 2000 ("the Act"). This penalty is for breaches by Rowan Dartington of Principle 10 (Clients' assets) and Principle 2 (Skill, care and diligence) of the FSA's Principles for Business ("the Principles") and related FSA rules of the Client Assets sourcebook ("CASS") between 13 May 2007 and 16 September 2009 ("the Relevant Period").
- 1.2. The breaches related to the failure of Rowan Dartington to manage its client monies appropriately and in accordance with the relevant rules, including by failing to:
- (1) properly reconcile client money balances internally and adequately perform reconciliations of internal client money balances against external records;

- (2) have in place adequate procedures to segregate client money balances in relation to its margined products business; and
 - (3) secure an acknowledgement of trust from all of its banking service providers in relation to client bank accounts and from third party agents holding client money in relation to its contingent liability business.
- 1.3. Rowan Dartington also failed to take reasonable care to make and retain adequate records in relation to its settlement accounts, which resulted in unsupported differences between the Firm's financial reporting system and new trade settlement and reporting system (referred to below as "the Software") netting to approximately £1.4 million.
 - 1.4. The overall effect of these breaches was that clients' assets, and rights in relation to those assets, were put at risk of potential diminution or loss and the Firm was unable to readily demonstrate the recoverability of up to £1.4 million of its net assets. The adequate protection of client money was particularly important for Rowan Dartington given that market turmoil during the Relevant Period affected the stability of all firms holding client money.
 - 1.5. The Firm confirmed on 26 May 2010 that it will not be referring the matter to the Upper Tribunal (Tax and Chancery Chamber). Rowan Dartington agreed to settle this matter at an early stage of the FSA's investigation and received a 30% (Stage 1) reduction in penalty under the FSA's executive settlement procedures. Were it not for this discount, the FSA would have imposed a financial penalty of £730,000 on Rowan Dartington.
 - 1.6. Accordingly, the FSA imposes a financial penalty on Rowan Dartington in the amount of £511,000.

2. REASONS FOR THE ACTION

- 2.1. Firms that hold monies on behalf of their clients need to have adequate controls and processes to protect those monies. During the Relevant Period, Rowan Dartington's conduct fell below the requirements and standards of the regulatory system for the following reasons:

Principle 10

- 2.2. Rowan Dartington breached Principle 10 during the Relevant Period in that it failed to arrange adequate protection for client monies when it was responsible for doing so, thereby exposing its clients to a risk of financial loss in the event of failure of the Firm. The weaknesses in the Firm's approach to client monies included inaccuracies in the Firm's underlying accounting records, failure to obtain trust status letters from relevant third parties and failure to perform segregation calculations accurately. While the inaccuracies in the underlying accounting data were largely attributable to problems with the Software, the failure to obtain trust status letters and the use of an incorrect method of performing client money segregation calculations were not.

Principle 2

- 2.3. Rowan Dartington breached Principle 2 during the Relevant Period for the following reasons:
- (1) it did not exercise due skill, care and diligence to test and implement the Software. Ongoing problems with regard to the inaccuracy of information produced by the Software resulted in the Firm being unable to rely on the accuracy of its internal books and records in relation to client money. Consequently, Rowan Dartington could not ensure that it was adequately protecting its clients' monies by segregating the correct amounts in its client bank accounts;
 - (2) it failed to ensure that its training, working practices and support systems complemented the Software and Rowan Dartington's other information systems (including the "Reconciliation Programme" referred to below in section 4); and
 - (3) it failed to ensure that balances in its trade settlement and reporting system (the Software) were properly reconciled with the balances in its financial reporting system, with the result that the Firm could not readily demonstrate the recoverability of up to £1.4 million of net assets in its financial accounts.

CASS Rules

- 2.4. As a consequence of the above failings, Rowan Dartington also breached the following CASS rules: 7.4.1R, 7.6.1R, 7.6.2R, 7.6.9R, 7.6.13R, 7.6.14R, 7.8.1R and 7.8.2R.
- 2.5. The FSA considers Rowan Dartington's failings to be serious in view of the following considerations:
- (1) it placed considerable amounts of its clients' monies at risk (although actual losses were limited and have been reimbursed);
 - (2) the failings occurred over an extended period of time; and
 - (3) the Firm had a responsibility to properly manage and supervise the implementation of its information systems, which it failed to do.
- 2.6. The FSA recognises the following factors which mitigate the seriousness of Rowan Dartington's failings:
- (1) Rowan Dartington promptly alerted the FSA to several of its breaches of the CASS Rules;
 - (2) Rowan Dartington has worked in an open and cooperative way with the FSA during the investigation;

- (3) Rowan Dartington was proactive in commissioning an external review of its conduct in relation to the FSA's concerns and sharing its findings with the FSA;
 - (4) Rowan Dartington identified and reimbursed late payments of interest within approximately six weeks of the failure of the automated payments. The value of these payments was £1,821.07 in total;
 - (5) Rowan Dartington took action to resolve its ongoing client money issues, including moving to a pooled banking system and working with its software providers to ensure the reliability of its systems going forward; and
 - (6) Rowan Dartington has changed its management, enhanced its staffing, improved its banking arrangements and upgraded its training from March 2008 onwards.
- 2.7. Subsequent to the issue of a Decision Notice, the Firm informed the FSA that, following investigation, it is as yet unable to demonstrate the recoverability of £1.036 million of its net assets and has fully provided against this balance. This information does not affect the FSA's decision to impose a financial penalty of £511,000 on the Firm.

3. RELEVANT STATUTORY PROVISIONS AND GUIDANCE

- 3.1. The FSA's regulatory objectives, set out in section 2(2) of the Financial Services and Markets Act 2000 ("the Act") includes the protection of consumers.
- 3.2. Section 206 of the Act provides:

"If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act, it may impose on him a penalty, in respect of the contravention, of such an amount as it considers appropriate."
- 3.3. Rowan Dartington is an authorised person for the purposes of section 206 of the Act. The requirements imposed on authorised persons include those set out in the FSA's Principles and Rules made under section 138 of the Act.
- 3.4. The FSA's Principles are a general statement of the fundamental obligations of firms under the regulatory system and reflect the FSA's regulatory objectives. The FSA's Principles and Rules constitute requirements imposed on authorised persons under the Act; breaching a Principle and/or a Rule can make a firm liable to disciplinary sanctions.
- 3.5. The procedures to be followed in relation to the imposition of a financial penalty upon a firm are set out in sections 207 and 208 of the Act.
- 3.6. Principle 2 states:

"A firm must conduct its business with due skill, care and diligence."

3.7. Principle 10 states:

“A firm must arrange adequate protection for clients’ assets when it is responsible for them.”

3.8. The CASS Rules referred to in paragraph 2.4 are set out in full in Appendix 1.

4. FACTS AND MATTERS RELIED ON

Background

4.1. Rowan Dartington’s principal business activity is providing equity stock broking services, including trading services (on a discretionary, advisory or execution-only basis) for retail clients. In addition to these services, Rowan Dartington offers margined business services namely, options, contracts for differences (“CFDs”) and spread betting.

4.2. During the Relevant Period, Rowan Dartington held permission under Part IV of the Act to carry on the following regulated activities with respect to designated investment business and with respect to retail (investment) clients, professional clients and eligible counterparties:

- (1) advising on pension transfers and pension opt outs;
- (2) advising on investments (except on pension transfers and pension opt outs);
- (3) agreeing to carry on a regulated activity;
- (4) arranging (bringing about) deals in investments;
- (5) arranging safeguarding and administration of assets;
- (6) causing dematerialised instructions to be sent;
- (7) dealing in investments as agent;
- (8) dealing in investments as principal;
- (9) making arrangements with a view to transactions in investments;
- (10) managing investments;
- (11) safeguarding and administration of assets (without arranging); and
- (12) sending dematerialised instructions.

4.3. In the course of its business, Rowan Dartington received money on behalf of clients in accordance with agreements for the provision of its investment services. The money Rowan Dartington received on behalf of its clients was ‘client money’ for the purposes of the CASS rules and was subject to the relevant FSA rules and standards set out in Chapter 7 of the CASS rules. The amount Rowan Dartington held as client

money ranged between £62.6 million and £89.9 million during the Relevant Period and averaged £73.0 million.

Implementation of the Software

- 4.4. The implementation of a new software system by Rowan Dartington in 2007 significantly affected Rowan Dartington's ability to comply with its obligations under the CASS Rules. The following outlines the impact of the new software system on Rowan Dartington's business and its ability to comply with the CASS rules.
- 4.5. In the summer of 2006, Rowan Dartington began a project to source, purchase and implement a new back and front office software system ("the Software") to replace its previous system. The Software was intended to function alongside Rowan Dartington's existing automated transaction matching software ("the Reconciliation Programme"), which was used by the Firm for automated daily cash reconciliations between Rowan Dartington's internal client settlement account ledgers and bank records of cash flowing through the same account.
- 4.6. At the time of this project, Rowan Dartington was operating a designated banking model in relation to its handling of client money. Under this approach, the money of each client was held in a separate "designated" client bank account and was not co-mingled with the monies of the Firm's other clients. The alternative to a designated banking model is a "pooled" banking model, whereby the monies of several clients are placed in one or more external "pooled" bank accounts. Rowan Dartington moved to a pooled banking model in December 2008, which is discussed in more detail below.
- 4.7. Rowan Dartington undertook due diligence in selecting the Software. This included visiting another retail stockbroker who used the Software and having a project team from the Software supplier review Rowan Dartington's existing procedures, data and design requirements.
- 4.8. As a result of this due diligence, Rowan Dartington identified that the Software had been developed to operate alongside a pooled banking model and would need to be modified in order to operate within Rowan Dartington's designated banking model. Further, the Firm recognised that the Software would require changes to allow it to feed automatically into the Reconciliation Programme. The Firm relied upon assurances from the Software provider that the Software would be compatible with the designated banking model and the Reconciliation Programme.
- 4.9. On 11 May 2007, after some delay, the designated banking module of the Software was provided to Rowan Dartington and the Software was implemented at Rowan Dartington on 14 May 2007 ("the Implementation Date"). It was agreed between Rowan Dartington and the Software provider that the changes necessary to the Software to allow it to function automatically alongside the Reconciliation Programme would be introduced by the end of June 2007. In the meantime, Rowan Dartington would conduct the reconciliations by manually extracting the relevant data from the Software and uploading it into the Reconciliation Programme. A series of compatibility issues between the Software and the Reconciliation Programme and technical and functionality issues with the Software meant that a software fix to allow

the Reconciliation Programme to accept information automatically from the Software was not operational until February 2008, nine months after the Implementation Date.

- 4.10. Prior to the Implementation Date and for six weeks after that date, Rowan Dartington staff received training on the Software from the Software provider. Whilst Rowan Dartington did carry out some testing, training appeared in some cases to be substituted for testing (that is, issues were identified as a result of training rather than an organised programme of testing). Further, the quality of the training received by Rowan Dartington staff was at times inadequate. Irrespective of whether Rowan Dartington or a third party was responsible for carrying out the day-to-day training, the Firm was ultimately responsible for ensuring that training provided to staff was adequate prior to implementing the Software.
- 4.11. In addition, during the month prior to the Implementation Date, key personnel raised concerns regarding the timing of the implementation of the Software. These concerns centred around the adequacy of the training provided to staff and the likelihood of being able to resolve outstanding issues with the Software within the limited timeframe available. The Software provider allayed the Firm's concerns and the Firm decided to proceed on the Implementation Date. Rowan Dartington relied too heavily on assurances from the Software provider and should have conducted a more thorough internal enquiry into whether or not it was appropriate to implement the Software on the Implementation Date. The Firm needed to undertake a considered assessment of whether or not the Software was ready to be implemented. This was particularly important given that it had not yet been demonstrated that the Software would be effective when used in conjunction with a designated banking model.
- 4.12. Almost immediately after the Implementation Date, it became apparent to Rowan Dartington that there were significant technical and functionality issues with the Software. This affected the veracity of the information used by Rowan Dartington for reconciliations and client money calculations. For example, funds misposted automatically between client accounts and ledgers meant that the ledgers did not accurately reflect the correct movement of monies between the relevant accounts and the market. It would appear that the issues with the Software arose out of the incompatibility of the Software with Rowan Dartington's designated banking model and systems, as other organisations using the Software that operated a pooled banking model did not suffer the same difficulties. The ultimate result of the problems was that the daily cash reconciliation carried out using the Reconciliation Programme generated a number of exceptions which did not reflect actual cash movements and a large volume of unintelligible information.
- 4.13. Rowan Dartington attempted to clear the exceptions identified by the Reconciliation Programme manually. However, over time a growing number of exceptions arising due to the Reconciliation Programme receiving flawed data from the Software meant that they could not be cleared on a daily basis.
- 4.14. The version of the Reconciliation Programme that Rowan Dartington was running at the Implementation Date ceased to operate in July 2007. Rowan Dartington had chosen to self-support this programme, but was unable to do so adequately. In November 2007, when senior management became aware of the need for a new support contract Rowan Dartington contracted with the Reconciliation Programme

provider to install the latest version of the Reconciliation Programme and to support the programme going forward. The failure of the Reconciliation Programme in July 2007 contributed to Rowan Dartington's inability to undertake proper cash flow reconciliations during the period between May 2007 and November 2007 and to the delay in the Firm reaching a position whereby those reconciliations could be undertaken effectively.

- 4.15. Throughout the period from May 2007 to November 2008, Rowan Dartington continually attempted manually to clear the backlog of exceptions in the cash reconciliation generated by the Software. The Firm also worked with the providers of the Software and the Reconciliation Programme to resolve the ongoing problems with the Software. On 24 November 2008, the Software provider applied a software fix which allowed the Software to function effectively alongside the Reconciliation Programme. This software fix also allowed Rowan Dartington to ring-fence previously generated exceptions (that is, unreconciled items), so that work to clear the previous exceptions could proceed as a separate project. This allowed the reconciliation process to be carried out effectively going forward. By 24 November 2008, the total number of transaction exceptions on the external daily cash flow reconciliation was 113,972, which related to approximately 14,700 individually designated accounts. Work to clear the exceptions continued through 2009 and the Firm indicated that all exceptions were cleared completely by August 2009. However, as set out in paragraphs 4.24 to 4.26, this reconciliation process was flawed.
- 4.16. On 1 December 2008, Rowan Dartington began operating a "pooled" banking model. The motivation for the move from designated to pooled banking was to ensure that the Software would operate effectively with Rowan Dartington's systems going forward.
- 4.17. In addition to reconciling the transactions that flowed through its settlement and similar accounts, Rowan Dartington also sought to undertake daily reconciliations of its internal records of each individual client deposit ledger balance with its banks' records of client balances. Rowan Dartington termed this process 'verification' and sought to investigate and reconcile any differences between the two sources.

Reconciliations

- 4.18. From 14 May 2007 until 17 December 2008, the inaccuracy of the data generated by the Software impacted Rowan Dartington's cash reconciliations in two ways. Firstly, Rowan Dartington could not properly reconcile the cash flows on its internal ledgers arising from transactions going through the Firm's settlement and similar accounts. There were too many exceptions to investigate and reconcile on a daily basis and to determine which clients may be affected. Secondly, given that the Firm could not be confident that its internal records were correct, it was unable properly to reconcile the amounts shown on its internal accounts with the records held by its banks, during its "verification" process. By the end of August 2008, there were 3,683 outstanding differences on these verifications. As a result, Rowan Dartington could not definitively establish its clients' positions.
- 4.19. After the move to pooled banking in December 2008, the previously generated exceptions were ring-fenced. Rowan Dartington was then able to carry out cash reconciliations generally in accordance with the CASS Rules. However, due to the

backlog of exceptions, the Firm could not be confident that its internal accounts and records were correct. Accordingly, from 18 December 2008, Rowan Dartington could not be certain that client monies were appropriately segregated.

- 4.20. The majority of the problems that Rowan Dartington had in completing cash reconciliations between May 2007 and November 2008 arose from the operation of the Software. However, those problems were not solely attributable to the Software nor were adequate steps taken by Rowan Dartington to identify and rectify the issues as they arose. This included a failure to resolve incompatibilities between working practices and the Reconciliation Programme.

Calculation of the client money requirement

- 4.21. From 14 May 2007 until 17 December 2008, the Firm was unable to calculate with accuracy whether its client money resource was at least equal to its client money requirement, due to its inability to determine accurately its clients' positions. Rowan Dartington undertook a daily 'verification' which should have assisted it in determining whether it had sufficient funds in its clients' accounts. However, Rowan Dartington was unable to conduct proper verifications throughout this period, due to known inaccuracies in the data obtained from the Software.
- 4.22. From 18 December 2008, Rowan Dartington could not be confident that its individual client balance calculations were accurate due to the backlog of uncleared exceptions affecting the accuracy of its internal accounts and records.
- 4.23. Furthermore, even allowing for the backlog of uncleared exceptions, the verification process Rowan Dartington undertook did not incorporate the figures relating to clients with overdrawn accounts and was therefore only an approximation of the client money balances it was required to hold. It was not until January 2009 that the Firm started to adjust its calculations for clients with overdrawn accounts.

Accounting records

- 4.24. Rowan Dartington had separate systems for financial reporting and trade settlement and reporting, the latter being the Software referred to above. The balances in these systems should have been consistent. However, during the Relevant Period, Rowan Dartington posted items to its financial reporting system that were either not posted to the Software, or could not be clearly and easily traced in the Software. In total, Rowan Dartington identified unsupported differences between the two systems netting to approximately £1.4 million, £1.135 million of which related to unidentified debtors in its settlement account balances.
- 4.25. The Firm has been unable to justify the differences between the systems given a lack of adequate accounting records in relation to them. However, the existence of the differences arose, in part, from a failure of communications between the Firm's finance and operations areas and a failure by the Firm properly to investigate and resolve the exceptions identified in paragraph 4.15.
- 4.26. The Firm's accounting function adjusted the financial reporting balances without ensuring that the Software, which was controlled by the Firm's operations area, was also adjusted and the balances reconciled. Rowan Dartington's operations area also

failed properly to clear the unreconciled items in the settlement accounts on an individual basis. The result was that although the Firm's management believed it had properly resolved all its remaining exceptions by August 2009, this was not the case and up to £1.4 million of net assets could not be supported by balances provided by the Software.

Rowan Dartington's contingent liability business

- 4.27. During the Relevant Period, Rowan Dartington undertook its contingent liability business (that is derivatives such as options, futures and contracts for difference) through four third party agents.
- 4.28. Two of these third party agents were intermediate brokers for the purposes of CASS 7, one providing options services and the other providing spread betting services (the "Options Provider" and "Spread Betting Provider" respectively).
- 4.29. Under the Firm's agreement with the Options Provider, Rowan Dartington transferred client money to the Options Provider as cash and collateral for the options transactions undertaken by that firm on behalf of Rowan Dartington as principal.
- 4.30. Under Rowan Dartington's agreement with the Spread Betting Provider, Rowan Dartington transferred client money to that agent for initial payments and margin calls in relation to transactions undertaken by the Spread Betting Provider on behalf of Rowan Dartington as principal.
- 4.31. CASS 7.6.1R requires firms to keep such records and accounts as are necessary to enable them, at any time and without delay, to distinguish client money held for one client from client money held of any other client and from its own money. In order to achieve this, firms need to calculate their client money requirement, which further requires the calculation of a firm's total margined transaction requirement. The total margined transaction requirement is calculated by determining clients' equity balances for margined transactions, 'grossing up' the positive balances and deducting from that amount only the proportion of negative client equity balances which were secured by approved collateral.
- 4.32. In accordance with CASS 7.2.15R, the equity balances for margined transactions carried out by Rowan Dartington through the Options Provider and Spread Betting Provider remained "client money" for the purposes of CASS 7 as Rowan Dartington had not discharged its fiduciary duty to clients in relation to such monies in accordance with that rule. Accordingly, those balances should have been taken into account by the Firm when calculating its total margined transaction requirement.
- 4.33. Until May 2009 in relation to the services provided by the Spread Betting Provider and until June 2009 in relation to the services provided by Option Provider, Rowan Dartington did not take equity balances in respect of clients' contingent liability business into account in its client money requirement calculation, so as to ensure the accuracy of its records and accounts.

Acknowledgement of trust from banking service providers in relation to client bank accounts

4.34. During the Relevant Period, the client money received by Rowan Dartington pursuant to investment agreements with its clients was held in the following bank accounts:

- (1) until 30 November 2008, approximately 14,700 designated client free money accounts held with Bank A;
- (2) from 1 December 2008, six pooled client free money accounts held with Bank A;
- (3) nine settlement accounts, two deposit accounts, a client corporate actions account and client dividends account held with Bank A;
- (4) 24 currency accounts held with Bank B;
- (5) a settlement account held with Bank C; and
- (6) a settlement account held with Bank D.

4.35. For the following periods within the Relevant Period, Rowan Dartington did not obtain acknowledgements of trust required under CASS 7.8.1R as follows:

- (1) from 13 May 2007 to 30 November 2008, the designated client free money accounts held with Bank A;
- (2) from 1 December 2008 to 29 July 2009, the pooled client free money accounts, one of the settlement accounts, the client corporate actions account and client dividends accounts held with Bank A;
- (3) from 13 May 2007 to 29 July 2009, the remaining 8 settlement accounts and the two deposit accounts held with Bank A;
- (4) from 13 May 2007 to 2 September 2009, the Bank B accounts and Bank C account.

Acknowledgement in relation to contingent liability business

4.36. As set out in paragraph 4.28, the Options Provider and Spread Betting Provider received client money from Rowan Dartington. Accordingly, the Firm was required to obtain an appropriate acknowledgement of the trust status of such monies from those providers under CASS 7.8.2R. However, during the Relevant Period, Rowan Dartington did not obtain the relevant acknowledgement from the Options Provider.

Other CASS issues

4.37. Due to the issues with the Software, between 14 May 2007 and October 2007, Rowan Dartington was unable to automatically process foreign dividends. This resulted in the Firm failing to pay some client monies received abroad to the client or into a client account within five business days after notification of receipt. These late payments were subsequently investigated by Rowan Dartington and the Firm reimbursed all clients affected by the breaches.

5. ANALYSIS OF BREACHES AND SANCTION

Breach of Principle 10

- 5.1. For the reasons set out in paragraphs 4.18 to 4.36, Rowan Dartington breached Principle 10 during the Relevant Period by failing adequately to protect client money and exposing its clients to risk of financial loss in the event of failure of the Firm. The weaknesses in the Firm's approach to client monies covered inaccuracies in the Firm's underlying accounting records, the failure to obtain trust status letters from relevant third parties and failure to perform segregation calculations accurately. While the inaccuracies in the underlying accounting data were largely attributable to the problems with the Software, the failure to obtain trust status letters and the use of an incorrect method of performing client money segregation calculations were not.
- 5.2. Although the actual impact of the CASS Rule breaches on Rowan Dartington's clients was limited, the rule breaches exposed its clients to a risk of financial loss in the event of failure of the Firm.

Breach of Principle 2

- 5.3. On the basis of the facts and matters set out at paragraphs 4.10 to 4.14 and paragraphs 4.25 to 4.27 Rowan Dartington breached Principle 2 during the Relevant Period in that it did not exercise due skill, care and diligence to:
 - (1) properly test and implement the Software;
 - (2) ensure that its training, working practices and support systems adequately complemented the Software and other information systems; and
 - (3) ensure that the balances in the Software were properly reconciled with its financial reporting system and that it could therefore readily demonstrate the recoverability of £1.4 million of net assets.
- 5.4. These shortcomings contributed to the ongoing problems suffered by Rowan Dartington with regard to the inaccuracy of information produced by the Software and consequently, the Firm being unable to rely on its internal books and records in relation to client money and its inability to demonstrate the validity of up to £1.4 million of its net assets in its financial accounts. As a result, Rowan Dartington could not ensure that it was adequately protecting its clients' monies by segregating the correct amounts in its client bank accounts or ensure that it held sufficient regulatory capital. This exposed its clients to a risk of financial loss in the event of failure of the Firm.

Breach of CASS Rules

- 5.5. On the basis of the facts and matters set out in paragraph 4.35, Rowan Dartington breached CASS 7.4.1R (as clarified by CASS 7.4.27G) by failing to pay foreign dividends to clients or into a client account within five business days of notification of receipt in the period between May 2007 and October 2007.

- 5.6. On the basis of the facts and matters set out in paragraphs 4.18 to 4.31, during the Relevant Period Rowan Dartington breached a number of rules of CASS 7.6, including CASS 7.6.1R, 7.6.2R (as informed by CASS 7.6.6G), 7.6.9R (as informed by CASS 7.6.10G and 7.6.11FG), 7.6.13R and 7.6.14R as follows:
- (1) between May 2007 and June 2009, Rowan Dartington did not maintain such internal records and accounts as were necessary for it to ensure that the client money shown in those records as held by the Firm corresponded to the client money shown in the client bank accounts held for its clients;
 - (2) between May 2007 and December 2008, Rowan Dartington did not perform proper and accurate internal reconciliations as often as is necessary and as soon as reasonably practicable, using an appropriate method of reconciliation;
 - (3) between May 2007 and December 2008, Rowan Dartington did not perform on a regular basis, proper and accurate reconciliations between its internal accounts and records and those held by third parties by whom client money was held; and
 - (4) between May 2007 and December 2008, Rowan Dartington neither identified the reasons for any discrepancies shown by internal or external reconciliations nor corrected any shortfall between the client money requirement and the client money resource paid into a client account by the close of the business day on which the reconciliation was performed.
- 5.7. Rowan Dartington has also breached CASS 7.8.1R and 7.8.2R for various periods between May 2007 and September 2009 by failing to obtain an appropriate acknowledgement of trust from relevant third parties as set out in paragraphs 4.33 and 4.34.

Sanction

- 5.8. In deciding to take the action above, the FSA has had regard to the guidance published in the Decision Procedure and Penalties Manual (“DEPP”), which forms part of the FSA’s Handbook and which, together with the Enforcement Guide (“EG”), came into effect on 28 August 2007. In particular, the FSA has taken into account the general criteria for determining whether to take disciplinary action and the factors relevant to determining the appropriate level of financial penalty set out in DEPP 6.2 and 6.5 respectively.
- 5.9. The FSA has also had regard to the guidance published in the Enforcement Manual (“ENF”) and in particular, Chapters 11 and 13, which set out relevant guidance in force during the initial part of the Relevant Period. ENF was replaced by DEPP and EG on 28 August 2007.
- 5.10. The FSA regards the decision to impose a financial penalty as a serious one. In determining whether a financial penalty is appropriate and, if so, its level, the FSA is required to consider all the relevant circumstances of the case. The FSA considers that the following factors set out in the Decision Procedure and Penalties Manual are particularly relevant in this case.

Deterrence

- 5.11. The principal purpose of a financial penalty is to promote high standards of regulatory conduct by deterring firms who have breached regulatory requirements from committing further contraventions, helping to deter other firms from committing contraventions, and demonstrating generally to firms the benefits of compliant behaviour.

The nature, seriousness and impact of the breach in question

- 5.12. Rowan Dartington's breaches of the CASS Rules and Principles 2 and 10 are serious as they relate to the control of the monies of retail clients. The breaches were long in duration and exposed its clients to a risk of financial loss in the event of failure of the Firm. The breaches also highlight several weaknesses in Rowan Dartington's approach to protecting client monies, some of which were independent from issues with the Software.
- 5.13. Although some of the difficulties that Rowan Dartington experienced with properly completing cash reconciliations of client money over the Relevant Period were attributable to problems with the Software, the Firm had a responsibility to appropriately manage and supervise the implementation of the Software and to exercise due skill, care and diligence to ensure that such problems would not arise. The FSA considers that Rowan Dartington did not exercise sufficient skill, care and diligence in testing the Software prior to its implementation and in ensuring that its staff received appropriate and sufficient training on the use of the Software. Further, Rowan Dartington did not exercise sufficient skill, care and diligence in relation to the generation of its accounting records.
- 5.14. The amount Rowan Dartington held as client money ranged between £62.6 million and £89.9 million during the Relevant Period and averaged £73.0 million. The FSA has noted that Rowan Dartington's customers suffered only minimal actual detriment and all affected customers were reimbursed in 2007 when the late payments of interest were first identified. Furthermore, Rowan Dartington has undertaken that it will make good client money shortfalls, if any, when it completes its investigation of the £1.4 million shortfall.

The amount of benefit gained or loss avoided

- 5.15. The FSA does not consider that Rowan Dartington gained from the breaches and recognises that significant capital and other resources were applied to resolve the issues.

The extent to which the breach was deliberate or reckless

- 5.16. The breaches were neither deliberate nor reckless.

The size, financial resources and other circumstances of the firm

- 5.17. In determining the level and timing of the penalty, the FSA has considered the size and financial situation, including regulatory capital position, of the firm. As at 31 December 2009, Rowan Dartington held regulatory capital of £1.96 million and

there is no evidence to suggest that Rowan Dartington cannot pay the financial penalty.

Conduct following the breach

- 5.18. Rowan Dartington informed the FSA of the problems it was having with the Software and potential breaches of the CASS rules promptly after it became aware of their existence, although the extent of these issues was not apparent to the Firm at the outset. In broad terms, the FSA was kept abreast of the issues faced by Rowan Dartington over the Relevant Period and the efforts the Firm was making to remedy them.
- 5.19. Rowan Dartington has also cooperated fully with the FSA during the investigation of the breaches. From the outset of the investigation, Rowan Dartington has acknowledged its failures to comply with the CASS rules relating to reconciliations and client money calculations and proactively commissioned its own report into its conduct and agreed to share its findings with the FSA.
- 5.20. Rowan Dartington took steps to update and improve its client money processes during and after the Relevant Period. An independent review reported that the deficiencies in Rowan Dartington's dealings with client money were largely resolved by the end of the Relevant Period. The Firm is currently investigating the remaining unsupported net asset balances in its financial accounts with external support.

Disciplinary record and compliance history

- 5.21. Rowan Dartington has not been the subject of previous disciplinary action.

Other action taken by the FSA

- 5.22. 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. CONCLUSION

- 6.1. In the light of the matters above, the FSA has decided to impose a financial penalty of £511,000 on Rowan Dartington for the breaches of Principle 10 and Principle 2 and 7.4.1R, 7.6.1R, 7.6.2R, 7.6.9R, 7.6.13, 7.6.14, 7.8.1R and 7.8.2R of the CASS rules set out above. This penalty represents approximately 1% of the Firm's average holding of client monies in the Relevant Period, less a discount for early settlement.

7. DECISION MAKERS

- 7.1. 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.

8. IMPORTANT

- 8.1. This Final Notice is given to Rowan Dartington in accordance with section 390 of the Act.

Financial Penalty

- 8.2. The financial penalty must be paid in full by Rowan Dartington to the FSA by no later than 18 June 2010, 14 days from the date of the Final Notice.
- 8.3. If all or any of the financial penalty is outstanding on 19 June 2010, the FSA may recover the outstanding amount as a debt owed by the Firm and due to the FSA.

Publicity

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

FSA contacts

- 8.6. For more information concerning Rowan Dartington or this matter generally, you should contact Stephen Robinson at the FSA (direct line: 020 7066 1338 / fax: 020 7066 1339).

Georgina Philippou
FSA Enforcement and Financial Crime Division

1. APPENDIX 1 – CASS Rules

1.1. CASS 7.4.1R provides that:

“A firm, on receiving any client money, must promptly place this money into one or more accounts opened with any of the following:

- (1) a central bank;*
- (2) BCD credit institution;*
- (3) a bank authorised in a third country;*
- (4) a qualifying money market fund.”*

1.2. In relation to the requirements set out in CASS 7.4.1R regarding client money segregation, CASS 7.4.27G clarifies that:

“Pursuant to the client money segregation requirements, a firm operating the normal approach that receives outside the United Kingdom a client entitlement on behalf of a client should pay any part of it which is client money:

- (1) to, or in accordance with, the instructions of the client concerned; or*
- (2) into a client bank account promptly, and in any event, no later than five business days after the firm is notified of its receipt.”*

1.3. CASS 7.6.1R provides that:

“A firm must keep such records and accounts as are necessary to enable it, at any time and without delay, to distinguish client money held for one client from client money held for any other client, and from its own money.”

1.4. CASS 7.6.2R provides that:

“A firm must maintain its records and accounts in a way that ensures their accuracy, and in particular their correspondence to the client money held for clients.”

1.5. In relation to CASS 7.6.2R, CASS 7.6.6G provides that:

- (1) “Carrying out internal reconciliations of records and accounts of the entitlement of each client for whom the firm holds client money with the records and accounts of the client money the firm holds in client bank accounts and client transaction accounts should be one of the steps a firm takes to satisfy its obligations under CASS 7.6.2 R, and where relevant SYSC 4.1.1 R and SYSC 6.1.1 R.*
- (2) A firm should perform such internal reconciliations:*
 - (a) as often as is necessary; and*

(b) *as soon as reasonably practicable after the date to which the reconciliation relates,*

to ensure the accuracy of the firm's records and accounts.

(3) *The standard method of internal client money reconciliation sets out a method of reconciliation of client money balances that the FSA believes should be one of the steps that a firm takes when carrying out internal reconciliations of client money.”*

1.6. CASS 7.6.9R provides that:

“A firm must conduct, on a regular basis, reconciliations between its internal accounts and records and those of any third parties by whom client money is held.”

1.7. In relation to CASS 7.6.9R, CASS 7.6.10G provides that:

(1) *“A firm should perform the required reconciliation of client money balances with external records:*

(a) *as regularly as is necessary; and*

(b) *as soon as reasonably practicable after the date to which the reconciliation relates,*

to ensure the accuracy of its internal accounts and records against those of third parties by whom client money is held.

(2) *In determining whether the frequency is adequate, the firm should consider the risks which the business is exposed, such as the nature, volume and complexity of the business, and where and with whom the client money is held.”*

1.8. Also in relation to CASS 7.6.9R, CASS 7.6.11G provides that:

“A method of reconciliation of client money balances with external records that the FSA believes is adequate is when a firm compares:

(1) *the balance on each client bank account as recorded by the firm with the balance on that account as set out on the statement or other form of confirmation issued by the bank with which those accounts are held; and*

(2) *the balance, currency by currency, on each client transaction account as recorded by the firm, with the balance on that account as set out in the statement or other form of confirmation issued by the person with whom the account is held;*

and identifies any discrepancies between them.”

1.9. CASS 7.6.13R provides that:

“When any discrepancy arises as a result of a firm's internal reconciliations, the firm must identify the reason for the discrepancy and ensure that:

- (1) any shortfall is paid into a client bank account by the close of business on the day that the reconciliation is performed; or*
- (2) any excess is withdrawn within the same time period.”*

1.10. CASS 7.6.14R provides that:

“When any discrepancy arises as a result of the reconciliation between a firm's internal records and those of third parties that hold client money, the firm must identify the reason for the discrepancy and correct it as soon as possible, unless the discrepancy arises solely as a result of timing differences between the accounting systems of the party providing the statement or confirmation and that of the firm.”

1.11. CASS 7.8.1R provides that:

- (1) “When a firm opens a client bank account, the firm must give or have given written notice to the bank requesting the bank to acknowledge to it in writing that:*
 - (a) all money standing to the credit of the account is held by the firm as trustee (or if relevant, as agent) and that the bank is not entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against money in that account in respect of any sum owed to it on any other account of the firm; and*
 - (b) the title of the account sufficiently distinguishes that account from any account containing money that belongs to the firm, and is in the form requested by the firm.*
- (2) In the case of a client bank account in the United Kingdom, if the bank does not provide the required acknowledgement within 20 business days after the firm dispatched the notice, the firm must withdraw all money standing to the credit of the account and deposit it in a client bank account with another bank as soon as possible.”*

1.12. CASS 7.8.2R provides that:

- (1) “A firm which undertakes any contingent liability investment for clients through an exchange, clearing house, intermediate broker or OTC counterparty must, before the client transaction account is opened with the exchange, clearing house, intermediate broker or OTC counterparty:*
 - (a) notify the person with whom the account is to be opened that the firm is under an obligation to keep client money separate from the firm's own money, placing client money in a client bank account;*
 - (b) instruct the person with whom the account is to be opened that any money paid to it in respect of that transaction is to be credited to the firm's client transaction account; and*

- (c) *require the person with whom the account is to be opened to acknowledge in writing that the firm's client transaction account is not to be combined with any other account, nor is any right of set-off to be exercised by that person against money credited to the client transaction account in respect of any sum owed to that person on any other account.*
- (2) *If the exchange, clearing house, intermediate broker or OTC counterparty does not provide the required acknowledgement within 20 business days of the dispatch of the notice and instruction, the firm must cease using the client transaction account with that broker or counterparty and arrange as soon as possible for the transfer or liquidation of any open positions and the repayment of any money.”*