Financial Services Authority

# FINAL NOTICE

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| **To:** | **SANTANDER UK PLC ("Santander")** |
| **FSA Reference:** | **106054** |
| **Address:** | **2 Triton Square**<br>**Regent's Place**<br>**London**<br>**NW1 3AN** |
| **Dated:** | **16 February 2012** |

## 1. ACTION

**For the reasons given in this Notice, the FSA hereby imposes on Santander a financial penalty of £1.5 million.**

1.1 The FSA gave Santander a Decision Notice on 19 January 2012 which notified the firm that, pursuant to section 206 of the Act, the FSA has decided to impose a financial penalty of £1.5 million on Santander. This penalty is for breaches of Principle 2 (Skill, care and diligence) and Principle 7 (Communications with clients) and Rule 6.1.16 in COBS by Santander, relating to sales of Santander's structured products during the Relevant Period.

1.2 Santander confirmed on 8 February 2012 that it would not be referring the matter to the Upper Tribunal (Tax and Chancery Chamber).

## 2. SUMMARY OF REASONS

2.1 The FSA has decided to take this action because Santander breached:

2.1.1 Principle 2 during the Relevant Period by failing to deal appropriately with the issue of the scope of FSCS cover over Santander's structured products. Even after Santander identified that there were in fact limitations in the scope of FSCS cover for the GGP and GCP, it failed to take adequate, timely steps to clarify the issue and to ensure its advisers and/or investors were properly informed about these limitations.

2.1.2 Principle 7 during the Relevant Period in that Santander provided investors with unclear information regarding the scope of cover available from the FSCS in relation to Santander's structured products.

2.1.3 COBS 6.1.16R in relation to the facts described at paragraph 2.1.2 above.

2.2 As a result of these breaches, the FSA considers there is a risk that investors' decisions to invest in Santander's structured products may have been based on insufficiently clear information regarding the scope of cover offered by the FSCS.

2.3 Santander's breaches are serious for the following reasons:

(1) the failings persisted over a significant period of time, during which Santander did not provide investors with sufficiently clear information about the scope of FSCS cover for its structured products;

(2) investors in these structured products may have included some with no or low appetite for risk or no or little previous investment experience. As the investors were not given sufficiently clear information regarding FSCS cover they may have made a decision to invest in Santander's structured products without fully understanding the limitations of cover offered by the FSCS for those products;

(3) following the onset of the financial crisis in September 2008, Santander ought to have been on notice of the increased importance of the issue of FSCS cover to investors;

(4) Santander was on notice that the scope of FSCS coverage for its structured products was an issue investors were concerned about as a result of increased investor queries in the third quarter of 2008; despite this, Santander did not take sufficient steps to clarify the position with its sales advisers until December 2009 and did not begin communicating the position clearly to investors until January 2010; and

(5) it sold approximately 178,000 structured products, with investment in the region of £2.7 billion during the Relevant Period; significantly approximately £1.2 billion of Santander's structured products were sold after Santander concluded (in June 2009) that claims arising solely from ANGC's obligations in relation to the guarantee would not be covered by the FSCS.

2.4 Even after taking account of the mitigating factors set out in section 7, Santander's conduct merits the imposition of a substantial financial penalty.

## 3. DEFINITIONS

3.1 The following definitions are used in this Final Notice.

(1) "ANGC" means Abbey National Guarantee Company

(2) "ANPIM" means Abbey National PEP & ISA Managers Limited

(3) "ANTS" means Abbey National Treasury Services Limited

(4) "COBS" means the Conduct of Business Sourcebook

(5) "Decision Notice" means the notice issued by the FSA to Santander on 19 January 2012

(6) "DEPP" means the Decision Procedure and Penalties Manual

(7) "EG" means the Enforcement Guide

(8) "FSCS" means Financial Services Compensation Scheme

(9) "GCP" means Guaranteed Capital Plus

(10) "GGP" means Guaranteed Growth Plan

(11) "GIP" means Guaranteed Investment Products 1 PCC Limited

(12) "Santander" means Santander UK plc known as Abbey National plc throughout the Relevant Period

(13) "Santander's structured products" means the GCP and GGP as promoted by Santander during the Relevant Period

(14) "the Act" means the Financial Services and Markets Act 2000

(15) "the FSA" means the Financial Services Authority

(16) "the Key Features Documents" means the "Key Features of the Guaranteed Growth Plan" document produced by ANPIM and the "Keyfacts About Our Services" document produced by Santander

(17) "the Principles" means the FSA's Principles for Businesses

(18) "the Relevant Period" means the period between 1 October 2008 and 6 January 2010

(19) "the Upper Tribunal" means the Upper Tribunal (Tax and Chancery Chamber)

## 4. FACTS AND MATTERS

4.1 The statutory and regulatory provisions relevant to this Final Notice are set out in Annex A.

**Background**

4.2 During the Relevant Period, sales of Santander's structured products totalled £2.743 billion.

4.3 Money invested by Santander's customers in the GGP and GCP was used by the structured product plan provider/manager, ANPIM, to buy shares in a protected cell of a Guernsey company, GIP. GIP invested the net proceeds of the issue of these shares into financial instruments provided by ANTS which were designed to generate returns under the plans. Both ANPIM and ANTS were companies within the Santander corporate group.

4.4 Santander's structured products were covered by a guarantee provided by ANGC, a wholly owned subsidiary of Santander. Under the terms of the guarantee, at the end of the product term the customer would receive back the original capital sum invested plus a specified minimum capital return. Under the terms of an agreement between ANGC and Santander, ANGC could require Santander to subscribe for additional shares in ANGC, should this be necessary, in order to enable ANGC to make payments under the guarantee. This guarantee provided investors with protection in the event that the investment performance of the shares purchased under the structured product was not sufficient to meet the minimum return guaranteed to investors. The product literature provided by Santander to investors, including the Key Features Documents, made clear that the guarantee obligations depended on the continued solvency of Santander and its subsidiaries. However, it did not specifically state that the guarantee obligations were not covered by the FSCS.

4.5 During the Relevant Period, FSCS cover was available for Santander's structured products, as investment products, in only the following circumstances:

(1) if Santander, the structured product distributor and provider of advice in advised sales, was insolvent and investors had a claim against it for negligent advice or misselling; or

(2) if ANPIM, the structured product plan provider/manager, was insolvent and investors had a claim against it for maladministration, mismanagement, misrepresentation or misappropriation of funds.

4.6 However, FSCS cover was not available in the event that the guaranteed minimum payment was not made to investors (which could arise if (i) the investment performance of the GIP shares was not strong enough to pay the guaranteed minimum to investors; (ii) ANGC had insufficient resources to honour the guarantee; and (iii) Santander was unable to fulfil its obligations to fund ANGC because of its insolvency).

4.7 The cover offered by the FSCS for Santander's structured products was therefore more limited than FSCS cover for deposit accounts.

**Information provided to investors and advisers**

4.8 During the Relevant Period, the Key Features Documents provided by Santander to investors for its structured products contained information about the scope of cover offered by the FSCS. For example, the document titled "Key Features of the Guaranteed Growth Plan" stated:

*"...We are covered by the Financial Services Compensation Scheme.*

*Further information can be found in section 8 of the Keyfacts about our services document."*

4.9 On the first page, under the heading "Important Information", the document defined the terms "we", "us", "ANPIM" and "our" as referring to ANPIM.

4.10 Furthermore, during the Relevant Period, section 8 of Santander's "Keyfacts About Our Services" document, provided to GGP investors, stated:

*"We are covered by the Financial Services Compensation Scheme. You may be entitled to compensation from the scheme if we cannot meet our obligations. This depends on the type of business and the circumstances of the claim. Most types of investment business are covered for 100% of the first £30,000 and 90% of the next £20,000, so the maximum compensation is £48,000."*

4.11 The combined effect of these statements indicated that investors could have been covered by the FSCS, but the documents did not set out any further information about the limits of that cover.

4.12 Santander's structured products were sold through its branches. Sales were conducted by Santander's sales advisers who used the Key Features Documents to explain the products to its investors.

4.13 During the Relevant Period, Santander's sales adviser training material in relation to structured products did not explain the circumstances in which FSCS cover would or would not be available. Santander's training material stated:

*"Abbey and this investment plan are covered by the Financial Services Compensation Scheme. You may be entitled to compensation from the scheme if we cannot meet our obligations. You are covered for 100% of the first £30,000 and 90% of the next £20,000, so the maximum compensation for anyone would be £48,000. As your investment is below £30,000, you would be covered for the whole amount."*

4.14 If FSCS cover was discussed during the sales process, some sales advisers may therefore have made insufficiently clear statements to investors about the extent of FSCS cover.

**Timescale of clarification and corrective action taken by Santander**

4.15 The onset of the financial crisis in September 2008 ought to have put Santander on notice of the general importance of the issue of FSCS cover for its investors. At this time, Santander also experienced an increase in the number of customer queries relating to FSCS coverage. As a result, Santander identified concerns in October 2008 about the scope of FSCS cover for its structured products.

4.16 Santander's internal legal team considered FSCS cover in relation to structured products in October 2008, but did not provide a full analysis of the impact of the guarantee.

4.17 In January 2009, Santander's internal legal advice raised further questions about the scope of FSCS cover for its structured products and between February and April 2009, Santander sought clarification from the FSCS but the issue was not fully resolved with the FSCS at the time.

4.18 In April 2009, the FSA asked Santander to confirm the exact scope of FSCS cover for its structured products. Santander informed the FSA that this issue was being clarified.

4.19 In June 2009, Santander concluded that claims arising solely from ANGC's obligations in relation to the guarantee would not be covered by the FSCS.

4.20 In December 2009, Santander's sales advisers were notified of the changes to the sales literature in relation to FSCS cover and provided with additional training. The first tranche of the product issued thereafter (which used revised wording) was in January 2010.

4.21 From 6 January 2010, the Key Features Documents for the structured products were amended to provide new investors with clearer information regarding the scope of FSCS cover. For example, the document titled "Key Features of the Guaranteed Growth Plan" was amended to state, amongst other things, that:

*"In the unlikely event that Santander ISA Managers Limited, Santander UK plc or Alliance & Leicester plc becomes insolvent and unable to meet their liabilities, claims arising against them in respect of the sale or management of your investment in the Plan, may be eligible for compensation from the Financial Services Compensation Scheme.*

*Eligible claims for most types of investment business are covered up to a maximum limit of £50,000.*

*If you lose money solely because Abbey National Guarantee Company fails to meet its obligations under the guarantee, due to insolvency or for any other reason, you will not be able to claim against the FSCS for loss caused by such failure."*

4.22 Santander started contacting investors who had previously purchased Santander's structured products to notify them of its revised wording in relation to the scope of FSCS cover in November 2010.

## 5. REPRESENTATIONS

5.1 Santander made representations on the matters which are the subject of this Notice in writing on 2 November 2011 and orally on 14 December 2011.

5.2 Below is a summary of the key representations made by Santander in this matter and how they have been dealt with. In making the decision which gave rise to the obligation to give this notice, the FSA has taken into account all of Santander's representations, whether or not explicitly set out below.

5.3 Santander states that it takes its regulatory obligations extremely seriously. Santander asserts that all of its product literature undergoes a rigorous process of internal review and senior sign-off before being printed and used in its branches in order to ensure that it meets regulatory requirements and industry standards. Santander also asserts that it takes the training of its staff very seriously and has a rigorous process for approving material used in staff training.

5.4 Santander submits that its conduct over the Relevant Period did not breach Principle 2, Principle 7 and Rule 6.1.16 in COBS.

5.5 In the alternative, Santander submits that even if its conduct over the Relevant Period did breach Principle 2, Principle 7 and Rule 6.1.16 in COBS, the imposition of a public disciplinary/regulatory sanction, whether of the type proposed or at all, is disproportionate/unjustified in all the circumstances.

**Santander's conduct over the Relevant Period does not amount to a breach of Principle 2, Principle 7 and Rule 6.1.16 in COBS**

5.6 Santander submits that it did not breach Principle 2 and Principle 7 during the Relevant Period because its structured products' sales and marketing materials were clear, fair and not misleading. In support of this submission, Santander asserts that the:

5.6.1 language used in the Key Features Documents dealing with the scope of FSCS cover was entirely accurate, did not seek to suggest that FSCS cover was automatic and was a reasonable attempt to describe a complex and uncertain issue in a manner that was clear, fair and not misleading to customers;

5.6.2 Key Features Documents did not purport to set out in any detail the full picture in relation to FSCS coverage of structured products, rather the Key Features Documents specifically referred investors to the FSCS for further information;

5.6.3 Key Features Documents explain clearly that ANGC provided the guarantee and nowhere in its Key Features Documents does it state, or even imply, that ANGC was covered by the FSCS; and

5.6.4 key risks to customers were properly disclosed in the Key Features Documents, including the risk that ANGC may be unable to meet its obligations and that ultimately it relied on the solvency of Santander. The risk of loss was very low given that the circumstances in which FSCS coverage might not be available are very narrow and/or unlikely to arise.

5.7 Santander further submits that COBS 6.1.16R has not been breached (for the reasons stated above). Santander asserts that it did provide its customers with the necessary information regarding the amount and scope of FSCS cover for Santander's structured products. Santander submits that it did not go into detail regarding the precise nature of the claims which may or may not be covered by the FSCS because that level of detail would only need to be provided upon request pursuant to COBS 6.1.16(3) R.

5.8 Santander also asserts that during the Relevant Period, its conduct in relation to FSCS disclosure was in step with prevailing industry standards. Santander contends that the FSA is attempting retrospectively to apply standards of conduct which exceed those required during the Relevant Period and which are out of line with those which were (and arguably still are) followed by the industry as a whole. Santander submits that its conduct must be measured against the standards and expectations that were prevailing at the time, not against more detailed and prescriptive standards which the FSA now appears to be promoting.

5.9 In addition, Santander contends that the FSA has advanced no credible evidence that Santander's structured products' sales process was organised such that a breach of the Principles or COBS resulted. However, Santander accepts that if FSCS cover was discussed during Santander's sales process, some sales advisers may have made insufficiently clear statements to investors about the extent of that coverage.

5.10 Santander acknowledges that it would have been possible for changes to have been made to its product literature and training materials more quickly. Santander's decision to continue selling the structured products whilst revised wording was being agreed should be considered against the fact that it had to prioritise its remedial action against other matters, therefore in the circumstances, and using a risk based approach, Santander took reasonable and timely steps to clarify internally the position as regards FSCS cover and enhance its product literature.

**Imposition of a public sanction is not justified**

5.11 In the alternative, Santander submit that even if its conduct over the Relevant Period did breach Principle 2, Principle 7 and Rule 6.1.16 in COBS, the imposition of a public sanction, whether of the type proposed or at all, is disproportionate/unjustified in all the circumstances.

5.12 In support of this submission, Santander asserts that:

5.12.1 the FSCS wording in Santander's sales and marketing materials was not out of step with those of others in the industry;

5.12.2 no investor detriment has actually arisen and the risk of such detriment is extremely low, as it is predicated on the occurrence of each of the following events: the GIP underperforming such that it would not provide the minimum return; ANGC failing to honour the guarantee; and Santander's insolvency;

5.12.3 no misselling has taken place;

5.12.4 it has voluntarily written to all investors who purchased Santander's structured products during the Relevant Period to explain the limitations of FSCS cover for its structured products. Investors were offered the option of surrendering their structured product at no penalty and there has been very low take-up of this option; and

5.12.5 a public sanction would be significantly out of line with the FSA's approach in other comparable cases because Santander contends that those cases involved actual customer loss. Santander also asserted that its size relative to other firms should not be a determinative factor in the imposition of a significant financial penalty.

## 6. FINDINGS & CONCLUSIONS

### Findings

6.1 The FSA finds that Santander's structured products sales and marketing materials breached Principle 7 during the Relevant Period because Santander did not make clear to investors, the circumstances in which FSCS cover would be available and the circumstances in which it would not. In particular, the FSA finds that throughout the Relevant Period, investors in Santander's structured products received information stating that their investment would be covered by the FSCS, but were not clearly informed of the limits on the amount and scope of the cover.

6.2 In finding that Santander's conduct breached Principle 7, the FSA considers that the language used in the Key Features Documents must be viewed from the perspective of an average retail banking customer. As Santander's structured products were sold through Santander's branches, many of the investors may have been relatively unsophisticated.

Accordingly, the FSA rejects Santander's interpretation of the language used in its Key Features Documents dealing with the scope of FSCS cover on the basis that it is too narrow.

6.3 The FSA rejects Santander's submission that the scope of FSCS cover over its structured products is a complex and uncertain issue. The FSA considers that any complexity in applying the FSCS rules to Santander's structured products arises from the fact that the structure underpinning the products is relatively complex. As Santander decided to create a complex structure to sell its structured products to retail customers, Santander should have ensured that it properly understood the scope of FSCS cover and could explain it clearly to investors. The FSA considers that if investors had been made aware of the limitations of the scope of FSCS cover for Santander's structured products, it is possible that some may have decided not to invest because of the greater risk involved compared to deposit accounts in the event of a claim on the FSCS becoming necessary. For the aforementioned reasons, the FSA finds that it was insufficient for Santander to seek to rely on language in its Key Features Documents which specifically referred investors to the FSCS for further information.

6.4 The FSA does not accept Santander's submission that the key risks to customers were properly disclosed in the Key Features Documents, including the risk that ANGC may be unable to meet its obligations and that ultimately it relied on the solvency of Santander. The FSA notes that Santander's structured products sales and marketing materials did not disclose the risk that if ANGC failed and was not able to rely on the solvency of Santander, investors could lose money and have no recourse to the FSCS (except in certain limited circumstances). The FSA considers that it was important that investors were put on notice of this, notwithstanding that the risk of loss was low, given that FSCS cover would only have been an issue in the event of Santander's insolvency. The FSA finds that Santander's failings in this regard resulted in customers being unable to make fully informed decisions as to whether or not Santander's structured products were suitable for them.

6.5 In providing customers with unclear information about the scope of the FSCS cover over Santander's structured products, the FSA also finds that Santander breached COBS 6.1.16R. The FSA considers that information about the situations in which FSCS cover is available in the event of Santander's insolvency is clearly information relating to the "scope" of that cover which is of such importance that it should be specifically provided. Accordingly, the

FSA rejects Santander's assertion that it provided its customers with sufficiently detailed information regarding the amount and scope of FSCS cover for its structured products.

6.6 The FSA rejects Santander's submission that it is seeking to apply retrospective standards to Santander's conduct in relation to FSCS disclosure during the Relevant Period. The FSA:

6.6.1 notes that the Principles and COBS have been in place throughout the Relevant Period; and

6.6.2 finds that Santander was well aware of the issues relating to proper disclosure of FSCS cover in relation to its structured products well before the publication of the FSA report in October 2009. Specifically, following the collapse of Lehman Brothers (from October 2008), it was apparent to Santander that FSCS coverage was an important issue to investors. Further, from January 2009, Santander was aware that it did not have a complete understanding of the issues relating to proper disclosure of FSCS cover over Santander's structured products and sought assistance from the FSCS. Finally, in April 2009 the FSA raised concerns with Santander in relation to how the FSCS applied to Santander's structured products.

6.7 The FSA does not accept Santander's submission that its conduct in relation to FSCS disclosure was consistent with the prevailing industry standards during the Relevant Period and for the foregoing reasons, the FSA finds that the submission does not assist Santander.

6.8 The FSA does not take issue with the manner in which Santander's structured products sales process was organised. However, the FSA does find (and Santander accepts) that if FSCS cover was discussed during Santander's sales process, some sales advisers may have made insufficiently clear statements to investors about the extent of that coverage.

6.9 The FSA finds that Santander breached Principle 2 during the Relevant Period in that it failed to deal appropriately with the FSCS coverage of its structured products. In particular, the FSA finds that Santander failed in a timely manner to:

6.9.1 clarify properly and conduct a full analysis of the scope of FSCS coverage, even though it was aware (from October 2008) that it did not have a full understanding of the position; and

6.9.2 take adequate steps to ensure that its sales advisers were aware of the extent of FSCS coverage and properly communicated that information to investors.

6.10 The FSA does not accept that it was reasonable for Santander, applying a risk based approach, to prioritise other matters. Santander is a large firm with adequate resources to have dealt with the matter in a more timely fashion, either through use of its internal resources or through obtaining external advice.

6.11 As already noted (above), the FSA finds that Santander identified concerns about the extent of FSCS coverage of its structured products in October 2008. It continued to consider this issue during the first half of 2009, but it was not until June 2009 – eight months later – that it correctly concluded that claims arising solely from ANGC's obligations in relation to the guarantee would not be covered by the FSCS. This was despite the fact that Santander received an increasing number of queries from investors about the scope of FSCS cover in relation to its structured products in the third quarter of 2008. Santander then took until December 2009, a further six months, before it trained its sales advisers regarding the scope of FSCS coverage. It was not until January 2010, more than a year after Santander first considered this issue of FSCS coverage in relation to its structured products, that Santander updated its product literature and contacted customers who purchased its structured products to notify them of Santander's revised opinion in relation to the scope of FSCS cover. Accordingly, the FSA does not accept that Santander took reasonable and timely steps to internally clarify the position as regards FSCS cover and enhance its product literature.

**Conclusions**

6.12 The FSA finds that during the Relevant Period, Santander breached Principles 2 and 7 in relation to its disclosure of the extent of FSCS coverage for Santander's structured products. Further, the FSA finds that Santander failed to deal appropriately with the issue of the scope of cover offered by the FSCS in relation to these products. Between October 2008 and January 2010, Santander continued to sell a large volume of structured products using

the existing literature and training material which stated that investments were covered by the FSCS. This was despite the fact that it was still analysing the scope of FSCS coverage for these products, and was on notice, as a result of increased investor queries, that this was an issue investors were concerned about. Santander did not take steps to contact investors who had previously purchased these structured products to clarify the extent of the FSCS coverage until November 2010 (over two years after it first started analysing this issue).

6.13 The FSA considers Santander's breaches to be serious, particularly given that a total of £2.7bn was invested in these products during the Relevant Period and that 15 months elapsed from the date on which Santander first identified concerns about the scope of FSCS cover (in October 2008) to the date on which it amended its product literature (in January 2010). This was in spite of the increased importance of the existence and extent of FSCS cover following the onset of the financial crisis in September 2008.

6.14 For completeness, the FSA makes no criticisms of Santander's structured products and makes no finding that Santander's structured products were sold to investors for whom they were not suitable. The FSA accepts that, to date, there has been no crystallised loss to investors in Santander's structured products.

## 7. SANCTION

7.1 In light of the FSA's findings (above), the FSA considers that the imposition of a public sanction is both justified and proportionate in all the circumstances. In making this decision, the FSA has taken into account (below) all of Santander's representations regarding the appropriateness of a public sanction.

7.2 When exercising its powers, the FSA seeks to act in a way which it considers most appropriate for the purpose of meeting its regulatory objectives as set out in section 2(2) of the Act. The FSA considers that imposing a financial penalty on Santander meets the regulatory objectives of market confidence and protection of consumers.

7.3 The FSA has had regard to the guidance published in the FSA handbook, in particular as set out in Chapter 7 of the EG and Chapter 6 of the DEPP which form part of the FSA Handbook of Rules and Guidance. The financial penalty applied to Santander was

calculated using the FSA's penalty regime which applied to breaches in conduct prior to March 2010.

7.4 As stated above, in determining whether a financial penalty is appropriate, the FSA considered all the relevant circumstances of a case. Applying the criteria set out in DEPP 6.2.1G (regarding whether or not to take action for a financial penalty or a public censure), the FSA considers that a financial penalty is an appropriate sanction given the serious nature of the breach.

7.5 DEPP 6.5.2G sets out a non-exhaustive list of factors that may be of relevance in determining the level of financial penalty. The FSA considers that the following factors are particularly relevant in this case.

**Mitigating Factor(s)**

7.6 The FSA accepts that, to date, there has been no crystallised loss to investors in Santander's structured products.

7.7 Santander has voluntarily conducted a customer contact exercise (overseen by the FSA) relating to all its structured product sales during the Relevant Period. The purpose of this exercise is to clarify the position with regard to the scope of FSCS cover for these products. Investors have been offered the option of surrendering the structured products at no penalty.

**Deterrence**

7.8 The principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring firms who have breached regulatory requirements from committing further breaches, helping to deter other firms from committing similar breaches, and demonstrating generally the benefit of compliant behaviour. The FSA considers that a financial penalty should be imposed to demonstrate the seriousness with which the FSA regards this behaviour.

**The nature, seriousness and impact of the breach in question**

7.9 In determining the appropriate sanction, the FSA has had regard to the seriousness of the contraventions, including the nature of the requirements breached, the duration of the breaches and the number of investors involved.

7.10 The FSA considers Santander's conduct to be serious because:

(1) the failings persisted over a significant period of time, during which Santander did not provide investors with sufficiently clear information about the scope of FSCS cover for its structured products;

(2) investors in these structured products may have included some with no or low appetite for risk or no or little previous investment experience. As the investors were not given sufficiently clear information regarding FSCS cover they may have made a decision to invest in Santander's structured products without fully understanding the limitations of cover offered by the FSCS for those products;

(3) following the onset of the financial crisis in September 2008, Santander ought to have been on notice of the increased importance of the issue of FSCS cover to investors; and

(4) Santander was on notice that the scope of FSCS coverage for its structured products was an issue investors were concerned about as a result of increased investor queries in the third quarter of 2008; despite this, Santander did not take sufficient steps to clarify the position with its sales advisers until December 2009 and did not begin communicating the position clearly to investors until January 2010; and

(5) it sold approximately 178,000 structured products, with investment in the region of £2.7 billion during the Relevant Period; significantly approximately £1.2 billion of Santander's structured products were sold after Santander concluded (in June 2009) that claims arising solely from ANGC's obligations in relation to the guarantee would not be covered by the FSCS.

**The extent to which the breach was deliberate or reckless**

7.11 The FSA has seen no evidence that Santander deliberately or recklessly contravened regulatory requirements.

**The size, financial resources and other circumstances of the Firm**

7.12 There is no evidence to suggest that Santander is unable to pay the financial penalty.

**The amount of benefit gained or loss avoided as a result of the breaches**

7.13 The FSA has seen no evidence that Santander deliberately set out to accrue additional profits or avoid a loss through the way in which it dealt with the FSCS issue.

**Conduct following the breaches**

7.14 Santander has conducted a substantial customer contact exercise to ensure that investors receive a clear explanation of FSCS cover and are given the opportunity to exit the product at no cost. To date, there has been a very low take-up of this option from the investors contacted.

**Disciplinary record and compliance history**

7.15 In 2003, Abbey National plc was fined £2,000,000 for breaches relating to anti-money laundering policies and procedures. In 2005 Abbey National plc was fined £800,000 for mishandling investors' mortgage endowment complaints. These financial penalties related to matters which arose before Santander acquired Abbey National plc and are not connected to the issues raised in the current matter.

**Conclusion**

7.16 Taking into account the seriousness of the breaches and the risks they posed to the FSA's statutory objectives of market confidence and the protection of consumers as well as the

mitigating factors identified above, the FSA has decided to impose a financial penalty of £1.5 million on Santander.

7.17 The FSA considers the sanction to be proportionate and consistent with the FSA's approach in other comparable cases particularly when:

7.17.1 considered in light of the FSA's public statements that it will impose higher penalties where appropriate and consider more closely risks faced by consumers even in circumstances where actual customer loss may not yet have crystallised;

7.17.2 compared with the relevant penalties in those comparable cases prior to any discount applied for settlement; and

7.17.3 Santander is a firm of sufficient size and resource to have clarified properly and conducted a full analysis of the scope of FSCS coverage over its structured products in a timely manner but failed to do so.

## PROCEDURAL MATTERS

### Decision maker

7.18 The decision which gave rise to the obligation to give this Notice was made by the Regulatory Decisions Committee.

7.19 This Final Notice is given under, and in accordance with, section 390 of the Act.

### Manner of and time for Payment

7.20 The financial penalty must be paid in full by Santander to the FSA by no later than 1 March 2012, 14 days from the date of this Final Notice.

### If the financial penalty is not paid

7.21 If all or any of the financial penalty is outstanding on 2 March 2012 the FSA may recover the outstanding amount as a debt owed by Santander and due to the FSA.

**Publicity**

7.22 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 this 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 Santander or prejudicial to the interests of consumers.

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

**FSA contact**

7.24 For more information concerning this matter generally, contact Anna Hynes at the FSA (direct line: 020 7066 9464 /fax: 020 7066 9465).

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Georgina Philippou
Head of Department
FSA Enforcement and Financial Crime Division

**ANNEX A – RELEVANT STATUTORY PROVISIONS**

The FSA's statutory objectives are set out in section 2(2) of the Act. The relevant objectives for the purpose of this case are maintaining market confidence and the protection of consumers.

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 amount as it considers appropriate."*

Santander is an authorised person for the purposes of section 206 of the Act. A requirement imposed on a firm includes the Principles and Rules made under section 138 of the Act, which provides that the FSA may make such rules applying to authorised persons as appear to be necessary or expedient for the purposes of protecting the interests of consumers.

The FSA's Principles constitute requirements imposed on authorised persons under the Act; breaching a Principle and/or a Rule makes a firm liable to disciplinary sanctions.

Principle 2 provides that:

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

Principle 7 provides that:

> *"A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading".*

COBS 6.1.16R provides that:

> *(1) A firm carrying on MiFID business must make available to a client, who has used or intends to use those services, information necessary for the identification of the compensation scheme or any other investor-compensation scheme of which the firm is a*

*member (including, if relevant, membership through a branch) or any alternative arrangement provided for in accordance with the Investor Compensation Directive.*

*(2) The information under (1) must include the amount and scope of the cover offered by the compensation scheme and any rules laid down by the EEA State pursuant to article 2 (3) of the Investor Compensation Directive.*

*(3) A firm must provide, on the client's request, information concerning the conditions governing compensation and the formalities which must be completed to obtain compensation.*

*(4) The information provided for in this rule must be made available in a durable medium or via a website if the website conditions are satisfied in the official language or languages of the EEA State.*

The procedures to be followed in relation to the imposition of a financial penalty are set out in section 207 and 208 of the Act.

**Decision Procedure and Penalties Manual ("DEPP")**

Guidance on the imposition and amount of penalties that applied up to 5 March 2010 was set out in Chapter 6 of DEPP. The FSA has had regard to the appropriate provisions of DEPP that applied during the relevant period.

DEPP 6.1.2G provides that the principal purpose of imposing a financial penalty is to promote high standards of regulatory and/or market 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. Financial penalties are therefore tools that the FSA may employ to help it to achieve its regulatory objectives.

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

DEPP 6.5.1G(1) provides that the FSA will consider all the relevant circumstances of a case when it determines the level of financial penalty (if any) that is appropriate and in proportion to the breach concerned.

DEPP 6.5.2G sets out a non-exhaustive list of factors that may be relevant to determining the appropriate level of financial penalty to be imposed on a person under FSMA. The following factors are relevant to this case:

*Deterrence: DEPP 6.5.2G(1)*

When determining the appropriate level of financial penalty, the FSA will have regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business.

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

The FSA will consider the seriousness of the breach in relation to the nature of the rule, requirement or provision breached, which can include considerations such as 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, investors or other market users.

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

The FSA will regard as more serious a breach which is deliberately or recklessly committed, giving consideration to factors such as whether the breach was intentional, in that the person intended or foresaw the potential or actual consequences of its actions. If the FSA decides that the breach was deliberate or reckless, it is more likely to impose a higher penalty on a person than would otherwise be the case.

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

The degree of seriousness of a breach may be linked to the size of the firm. For example, a systemic failing in a large firm could damage or threaten to damage a much larger number of

consumers or investors than would be the case with a small firm: breaches in firms with a high volume of business over a protracted period may be more serious than breaches over similar periods in firms with a smaller volume of business.

In addition, the size and resources of a person may also be relevant in relation to mitigation, in particular what steps the person took after the breach had been identified; the FSA will take into account what it is reasonable to expect from a person in relation to its size and resources, and factors such as what proportion of a person's resources were used to resolve a problem.

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

The FSA may have regard to the amount of benefit gained or loss avoided as the result of the breach, for example the FSA will impose a penalty that is consistent with the principle that a person should not benefit from the breach, and the penalty should also act as an incentive to the person (and others) to comply with regulatory standards and required standards of market conduct.

*Conduct following the breach: DEPP 6.5.2G(8)*

The FSA may take into account the degree of co-operation the person showed during the investigation of the breach by the FSA, any remedial steps taken since the breach was identified, including whether these were taken on the person's own initiative or that of the FSA, for example, identifying whether consumers or investors or other market users suffered loss and compensating them where they have and taking steps to ensure that similar problems cannot arise in future.

*Other action taken by the FSA (or a previous regulator): DEPP 6.5.2G(10)*

The FSA seeks to apply a consistent approach to determining the appropriate level of penalty. The FSA may take into account previous decisions made in relation to similar misconduct.