Financial Services Authority

FINAL NOTICE

To: **Sesame Limited (formerly known as Kestrel Financial Management Limited)**

Of: **Oasis Park**
Stanton Harcourt Road
Eynsham
Witney
Oxon
OX29 4AE

Date: **1 October 2004**

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 you a Decision Notice dated 29 September 2004 which notified you that pursuant to Section 206 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to impose a financial penalty of £290,000 on Sesame Limited (previously known as Kestrel Financial Management Limited – "Sesame") in respect of breaches of the Personal Investment Authority ("PIA") Rules 7.1.2(1), 7.2.1(1), 5.1.1, Table 5.II.(c), Table 5.iii.1.(c), 2.6.9, and PIA Adopted FIMBRA (The Financial Intermediaries, Managers and Brokers Regulatory Association) Rules F29.4.1(1), F29.5.1(1), F29.8.5(1)(a), F28.3(1), F29.10.1(2)(b), and Principle 2 of the Statements of Principle of the Securities and Investments Board ("SIB Principles").

1.2. The aforementioned Rule breaches took place during the period between August 1999 to May 2001 ("the relevant period").

1.3. During the relevant period mentioned in paragraph 1.2 above, Sesame Limited was known as Kestrel Financial Management Limited. It was renamed Sesame Limited ("Sesame") on 1 August 2003.

1.4. In deciding the level of penalty to be imposed, the FSA has taken into account the fact that, despite serious failings on the part of Sesame, the firm has fully co-operated with the FSA in establishing the facts upon which this Notice is based. Further, Sesame has agreed to implement a satisfactory programme for the identification and redress of customer loss related to those facts. Sesame's co-operation has permitted the FSA to impose a significantly lower penalty than would have otherwise been appropriate.

1.5. Sesame has confirmed that it will not be referring this matter to the Financial Services and Markets Tribunal.

1.6. Accordingly, for reasons set out below, and having agreed with Sesame the facts and matters relied upon, the FSA imposes a finacial penalty of £290,000 (the "Penalty") on Sesame.

2. RELEVANT STATUTORY PROVISIONS AND REGULATORY RULES

2.1. 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."

2.2. The Financial Services and Markets Act 2000 (Transitional Provisions and Savings) (Civil Remedies, Discipline, Criminal Offences etc) (No2) Order 2001 provides, at Article 8(2), that the power conferred by Section 206 of the Act can be exercised by the FSA in respect of failures by a firm to comply with any of the provisions specified in Rule 1.3.1(6) of the PIA Rules as if the firm had contravened a requirement imposed by the Act.

2.3. PIA Rule 1.3.1(6) provided that a PIA Member which failed to comply with PIA Rule 1.3.1(2) or any of the Principles was liable to disciplinary action.

2.4. PIA Rule 1.3.1(2) provided that a PIA Member had to obey the PIA Rules, which included the Adopted FIMBRA Rules.

2.5. PIA Rule 1.3.9 provided that a PIA Member was responsible for the conduct of its Appointed Representatives.

2.6. PIA Rule 7.1.2(1) provided that a PIA Member must establish procedures with a view to ensuring that its investment staff and other employees and its appointed

representatives and their employees carry out their functions in such a way that the firm complies at all times with the Rules and Principles.

2.7. PIA Rule 7.2.1(1) provided that a PIA Member must monitor adequately, the conduct of its investment staff and other employees, and of its appointed representatives and their relevant employees, with a view to ensuring compliance with the procedures which it has established in accordance with Rule 7.1.2 and its own compliance with the Principles and Rules.

2.8. PIA Rule 5.1.1 provided that a PIA Member must keep records which are sufficient to show at any time that it has complied with the requirements of the Rule Book, and establish procedures and controls to ensure that those records were made promptly and accurately and, where appropriate, brought up-to-date at regular and frequent intervals. Further it provided that the firm must keep records of the matters specified in column 1 of Table 5 and include in them the details specified in Column 2 of that Table (these included matters such as, sufficient details of the information that the customer is willing to provide about his/her personal and financial circumstances, investments and other assets, investment objectives and attitude to risk to provide evidence that recommendations made to him/her or transactions the investor entered into as a result of investment advice given by the Firm were suitable).

2.9 PIA Rule 2.6.9 provided that where a PIA Member appoints one or more competent designated individuals who engage in a permitted activity marked ** in Schedule II (which includes Permitted Activity 13, Advising on and arranging pension transfers and opt-outs), the firm must ensure that at least one of the competent designated individuals has particular expertise in that permitted activity, or it employs at least one individual who has particular expertise to check the advice given on behalf of the firm in the course of that permitted activity. Further it provides that where a competent designated individual with only basic expertise engages in Permitted Activity 13, the firm must ensure that his advice is checked by one of the firm's pension transfer specialists.

2.10. Rule F29.4.1(1) of the PIA Adopted FIMBRA Rules provided that, before performing any service for a client, a firm must obtain and record the personal and financial information necessary to make appropriate recommendations.

2.11. Rule F29.5.1(1) of the PIA Adopted FIMBRA Rules provided that a firm may recommend a specific investment or investment agreement to a client only if it has good grounds for believing it to be suitable for him/her in the light of the information he/she has given to the firm and of any relevant facts about him/her of which the firm is, or ought to be aware.

2.12. Rule F29.8.5(1)(a) provided that, where a firm is recommending a client to buy a life policy, or in respect of all or part of an existing life policy, recommending to sell, convert, cancel or surrender it, or to elect to make pension fund withdrawals, the information provided under Rule F29.8.1(1) must include an explanation of the

reasons why the firm believes the transaction to be suitable for the client having regard to his/her financial and other circumstances.

2.13. Rule F28.3(1) provided that that a firm must ensure that anything it says or writes to another person in the course of its business, and any document that it gives or sends to him, is clear, fair and not misleading.

2.14. Rule F29.10.1(2)(b) provided that in connection with any transaction or contemplated transaction relating to a packaged product, a firm must disclose the value of the commission receivable in cash terms, indicating the timing of the payments.

2.15. The SIB Principles are universal statements of the standards expected of regulated firms that were issued by the SIB and applied to PIA Members. Principle 2 of the SIB Principles provided that a firm should act with due skill, care and diligence.

3. REASONS FOR THE PENALTY

3.1. Sesame acted in breach of the Rules of the PIA, the Adopted FIMBRA Rules, and the relevant SIB Principle before 30 November 2001. The breaches arose in respect of Sesame's:

- failure adequately to monitor the selling practices of an appointed representative, Regal Partners Financial Planning Limited ("Regal Partners") which specialised in the business of early vesting of pensions benefits for tax free cash ("early vesting" transactions);
- failure to keep sufficient records; and
- failure of compliance oversight.

3.2. Early vesting is the realisation of benefits from pension arrangements (in the form of tax-free cash and pension) prior to the normal retirement date. By maximising the amount of cash taken out any resultant pension is reduced, which, can have seriously detrimental effects on those who are over the age of 50 as their retirement income can be substantially reduced because the underlying investment funds have less time to grow and the resultant annuities may be materially lower than they could be at normal retirement.

3.3. Early vesting arrangements are complex, highly specialised, and they contain risks. Consequently, they require particular care in advising customers and in ensuring suitability. By failing to adequately monitor the selling practices of Regal Partners and failing to keep sufficient records, Sesame failed to ensure that the early vesting transactions were suitable for the customers.

3.4. Sesame's failings were therefore extremely serious as they affected the pension assets of customers who were approaching retirement. Such customers are vulnerable because they do not have sufficient time to make up shortfalls caused by any mis-selling of the early vesting products

3.5. Sesame's failings were made all the more serious by the following factors:

(1) Under the regimes operated by the PIA and latterly the FSA, Sesame was required to take responsibility for monitoring and controlling its appointed representatives so as to ensure their compliance with regulatory requirements. Sesame's failings represented a material breach of its fundamental obligation under the regulatory system. As the operator of a network of appointed representatives, Sesame undertakes compliance responsibility for all parts of their businesses, including ensuring that they comply with all relevant regulatory requirements. By failing to monitor its appointed representative adequately in relation to early vesting business, Sesame exposed a large number of vulnerable consumers to potentially significant risk of loss;

(2) The failings occurred after (and notwithstanding that) previous disciplinary action had been taken against Sesame in August 1998 in respect of issues which, although not directly concerned with early vesting transactions, did arise out of material failings in the monitoring and control of its appointed representatives, record keeping failures and failure to organise and control its internal affairs in a responsible manner;

(3) Sesame allowed the appointed representative to engage in early vesting business without there being a G60 qualified individual to check the transactions; and

(4) Sesame allowed the appointed representative to recommence early vesting business after a short period of cessation of business but before substantial improvements to the selling practices of the appointed representative had been effectively implemented. Sesame also permitted it to carry on transacting new business notwithstanding that the G60 qualified individual employed was clearly unable to properly check the volume of business that the appointed representative was generating, notwithstanding that Sesame had confirmed to the FSA that recommencement of new business would not occur until such improvements had been made to meet the required regulatory standards.

3.6. Sesame's failings therefore merit a significant penalty. In fixing the amount of the penalty, however, the FSA has taken into account the steps that Sesame has taken as follows:

(1) It implemented a series of changes to the management, systems and control processes which led to the detection of the serious problems with the early vesting pension business in March 2000; and

(2) It has agreed that within a reasonable timescale and on specific terms agreed with the FSA, to carry out a customer identification and compensation programme in respect of the relevant pension business transacted by its former appointed representative, Regal Partners.

4. FACTS AND MATTERS RELIED ON

4.1. Sesame is a limited liability company that operates a network of appointed representatives ("a network company"). Its ultimate parent**,** Misys Plc**,** is an unregulated quoted company and it had acquired a number of network companies ("the group").

4.2. Sesame was authorised by PIA to conduct investment business from 4 October 1995 until 30 November 2001 (prior to PIA authorisation, Sesame was authorised by FIMBRA from 30 September 1993), and became an Authorised Person under the Act from 1 December 2001.

4.3. Sesame was acquired by its current ultimate parent in August 1999 and the group of network companies has undergone a number of reorganisations since then. In 2003, a further reorganisation resulted in the merger of four network companies with Sesame.

Discovery of the issues

4.4. Serious problems with the early vesting business were identified around March/April 2000 by the group's Business Monitoring Unit who conducted an ad hoc assessment visit ("April 2000 Assessment Visit") as part of its network monitoring procedures.

4.5. The existence of these problems was confirmed by the subsequent FSA/PIA supervision visit that was carried out between 3 May 2000 and 2 June 2000 ("August 2000 Supervision Visit Report").

4.6. Further, an independent firm of actuaries was commissioned by Sesame's ultimate parent company between May/June 2000 and December 2000 to carry out an assessment on a sample of 60 cases from the business executed by one of its appointed representative, Regal Partners ("2000 Actuaries Report"). The conclusions of the report produced by the firm of actuaries following the assessment confirmed the existence of serious problems.

Remedial action

4.7. The Firm confirmed in May 2000 that further transacting of new early vesting business had been stopped and informed the FSA of the series of actions it proposed to take to resolve the issues identified, including:

- The cessation of new early vesting business to continue until substantial improvements had been implemented to resolve the serious problems surrounding the selling practices and record-keeping;
- The factfind to be improved and revised to enable customer needs to be explored in greater depth before recommending a pension transfer transaction;
- Reason Why Letter to be revised;
- Appointment of a G60 qualified individual;
- Recruitment of another G60 qualified individual to be responsible for overseeing the remedial work;
- Monitoring of the progress made to ensure that the revised processes have been fully adopted and adhered to.

Signs of continuing problems

4.8. The period of cessation of new early vesting business was relatively short, and the focused pension fund withdrawal supervision visit which took place in April 2001 ("April 2001 Pension Fund Withdrawal Supervision Visit Report") revealed that there were a number of "serious systemic failures" and the Firm's record keeping was of "poor standard".

4.9. These serious systemic failures included the following:

- A "processed"/formulaic approach to selling which failed to take account of all the aims and objectives of its customers was allowed to continue;
- Reason Why Letters which did not identify the rationale as to why the customer required Pension Fund Withdrawal income continued to be allowed to be used and they gave the impression that income taken from the Pension Fund Withdrawal could be reinvested back into the same contract (which was not the case);
- The preparation of the Reason Why Letters by non-designated staff was permitted to continue and the letters were issued in the name of one of the Principles or a designated individual;

- Appropriate risk warnings were not being sent out;
- No evidence to show that the trail commission had been disclosed to the customers in cash terms; and
- Failure to ensure that all pension transfers had been checked by a designated individual.

4.10. As for record keeping failures, concerns mentioned in the April 2001 Pension Fund Withdrawal Supervision Visit Report included the following:

- There were inadequate records to demonstrate the level and quality of monitoring that had been undertaken.
- Where some customers' attitude to risk had changed following telephone discussions, there were no detailed records of what was discussed, and nothing to explain the change of attitude to risk.

4.11. The April 2001 Pension Fund Withdrawal Supervision Report dated 14 May 2001 was sent to Sesame. On 15 May 2001, Sesame supended the appointed representative.

Sesame's Failure to adequately monitor the Selling Practices of Regal Partners

4.12. As the operator of a network of appointed representatives, it was Sesame's fundamental obligation under the regulatory system to establish procedures to ensure, inter alia, that its appointed representatives carry out their functions in a way such that Sesame complied at all times with the Rules and Principles.

4.13. Failure by the appointed representative to comply with Rules F29.4.1(1), F29.5.1(1), F29.8.5(1)(a), F28.3(1), and F29.10.1(2)(b) of the PIA Adopted FIMBRA Rules was ascertained as detailed below.

4.14. PIA Rule 7.2.1(1) required Sesame to monitor adequately the conduct of its appointed representatives. Sesame failed to comply with this Rule by allowing the transacting of new early vesting business to continue when adequate and effective processes had not been satisfactorily put in place to ensure that regulatory standards were met. This failure represents a material breach of Sesame's regulatory obligation as an operator of a network of appointed representatives.

4.15. As a result of the above, Sesame failed to act with due skill, care and diligence in breach of Principle 2 of the SIB Principles.

Factfind (Rule F29.4.1(1))

4.16. The various visit reports mentioned above stated that the factfind was not adequate to demonstrate that suitable advice had been given.

4.17. Information missing from the factfinds and other matters contributing to the inadequacy of the factfinds included the following:

- Information about financial circumstances was often omitted, incomplete or unclear. Further there was no evidence that the missing or disputed information was clarified prior to advice being given;
- Insufficient information was sought to ascertain customers' attitude to risk;
- Customers were asked to list their objectives in order of priority. However, there was no evidence that efforts had been made to clarify the meaning of the objectives and consequently the results were often confused or unclear as the customers were not aware of what options were available to them;
- Space was given for the customers to explain their objectives further, but was often used to do no more than list the items they would like to buy if they had more money;
- The factfind did not consistently search out full details of assets and liabilities, including mortgage repayment dates and methods of repayment, details of any maturing policies and details of existing pension plans (such as, the underlying investments, basis of the death benefits, ill health benefits, trust status, availability of a guaranteed annuity rate, existence of any penalties on transfers, an identified and quantified need for tax free cash or the level of income required).

4.18. Although there was evidence that an improved factfind had been approved and subsequently used from around the end of August 2000, the April 2001 Pension Fund Withdrawal Supervision Visit revealed that of the twenty cases reviewed, the factfinds of seventeen cases were identified as being problematic and continued to have missing client information. Further, there was no evidence that such missing information was clarified prior to advice being given.

Suitable Recommendations (Rule F29.5.1(1)) and Good Communication (Rule F28.3(1))

4.19. The findings contained in the 2000 Actuaries Report stated that the advice letters reviewed contained, inter alia, a clear bias towards the drawdown option with limited alternatives and that the reasons given for the recommendation of products were standardised and not client specific.

4.20. Facts that pointed to the lack of good communication and suitable recommendations included the following:

- Lack of alternative options mentioned in the advice letter;

- Inadequate risk warnings;
- Where Protected Rights and Guaranteed Minimum Pension ("GMP") benefits were involved, there was not always a clear explanation of what would happen to such benefits;
- The option not to transfer and to leave the benefits in place until retirement was never suggested;
- In many cases where a second smaller pension fund existed, and was not transferred, no reference was made to such policies in the advice letter.

4.21. The April 2001 Pension Fund Withdrawal Supervision Visit Report also stated that a "processed" approach to selling had been adopted which failed to take account of all the clients' aims and objectives. Recommendations provided were, therefore, not client specific and therefore potentially misleading.

4.22. In summary, the 2000 Actuaries Report concluded that the clients' attitude to risk was something that was not fully considered in the advice process, although some consideration was given when considering investment selection.

Reason Why Letter (Rule F29.8.5(1)(a))

4.23. The April 2000 Assessment Visit identified various shortfalls in the content of the Reason Why Letter, including that of the inadequacy of the risk warnings.

4.24. The shortfalls in the content of the Reason Why Letter included the following:

- The main features of the policy chosen for the customer were not reiterated;
- The reasons for recommending the provider and the contract were not stated separately;
- The letter did not explain how the transfer had achieved the customer's objectives;
- There was no clear statement that the customer's pension entitlements would be less than they would have been as a consequence of the transfer and that the customer should therefore consider making adequate provision to offset any reduced pension;
- The letter commonly included a misleading comparison of the benefits available from the customer's existing schemes and those available from the pension fund withdrawal arrangement.

4.25. These weaknesses were also highlighted in the 2000 Actuaries Report resulting in remedial action to be taken by 1 August 2000. However no real progress had been made on the revision of the Reason Why Letters by 15 February 2001 and the April 2001 Pension Fund Withdrawal Supervision Visit Report identified continuing problems with the Reason Why Letters.

4.26. Further, despite the fact that the Reason Why Letter issues/problems remained unresolved as late as April 2001, new early vesting business had been allowed to recommence from after 15 August 2000 following a short period of inactivity.

Disclosing Commission (Rule F29.10.1(2)(b))

4.27. The 2000 Actuaries Report stated that the commission disclosure requirements were not fully satisfied in all cases and it concluded that the customers were not being properly informed of how much money the adviser would receive.

4.28. The initial acknowledgement letter sent out to customers stated, "*you are under no obligation – our services are* ***free of charge***", however, a full initial commission of around 5.8% plus 0.5% per annum annual trail commission on drawdown funds in addition to a further arrangement fee deducted from the tax free cash was generally being taken.

4.29. The trail commission of 0.5% of the fund value was not referred to in the advice letter, Reason Why Letter or the commission disclosure form. The arrangement fee was disclosed on the commission disclosure and fee agreement form (which the customer signed to confirm agreement), but this was presented to the customer at a late stage.

4.30. Further, where there were percentages of sums paid as commission, the terms were not explained to the clients (examples of such terms include, "*5.8% of the Non-Protected Rights transfer values paid plus 0.5% of the Open Market Option value of (the) plan at the end of each year*") making it difficult for customers to fully appreciate in cash terms the level of commission payable.

Sesame's Failure to keep sufficient records

4.31. By virtue of PIA Rule 5.1.1, Sesame was required to keep sufficient records to demonstrate that it and Regal Partners complied with the rules and guidance of PIA, the Adopted FIMBRA Rules and guidance and the relevant SIB Principle. Sesame failed to do so.

4.32. In respect of product providers, it was stated that three providers only were being used on the basis of research but it was found that there was no adequately documented evidence of the approach taken in researching the market or updating analysis of competitive providers and products.

4.33. The April 2000 Assessment Visit Report stated that in respect of the pension transfers and drawdowns (pension fund withdrawals), many of the file records did not demonstrate that the requirements of FIMBRA Guidance Note 14 and Regulatory Update 55 had been complied with.

4.34. Ninety-seven files were reviewed by Sesame and checked by the independent firm of actuaries. All of them were deemed to be non-compliant.

4.35. The content and quality of the fact finds, Reason Why Letters, advice letters, key feature documents, commission disclosure letter and transfer value analysis were of poor quality and suitability could not be determined from the compliance checks of the documents contained in the files.

4.36. These failings occurred despite the fact that Sesame was reprimanded by PIA's Disciplinary Committee and fined in August 1998 for serious compliance failings which included poor record keeping.

Sesame's Failure of Compliance Oversight

4.37. Sesame was required to establish compliance procedures and monitor their implementation so as to ensure that its appointed representatives conducted their business in a way that complied at all times with the PIA Rules, Adopted FIMBRA Rules and the relevant SIB Principle. This requirement as mentioned above is Sesame's fundamental regulatory obligation as an operator of a network of appointed representative.

4.38. All of the aforementioned breaches confirm that Sesame failed to comply with the requirement and this failure represents a material breach of Sesame's fundamental regulatory obligation.

4.39. Further, by virtue of PIA Rule 2.6.9, Sesame was required to ensure that its appointed representatives complied with the requirement that all pension transfers (falling under permitted activity 13 in Schedule II at the end of Chapter 2 of the PIA Rule Book) were checked by a suitably qualified person (pension transfer specialist).

4.40. Sesame failed to do so.

4.41. Sesame informed the FSA that the transacting of any new early vesting business had been stopped and that "*This activity will not commence until we are happy that the processes in place have undergone substantial improvement in order to meet the regulatory standards.*"

4.42. However, transacting of the new early vesting business was allowed to carry on following a short period of inactivity despite the fact that the compliance and selling procedures had not been substantially improved and the problems surrounding the selling processes remained unresolved.

4.43. Only 10% of pension transfers were checked by the pension transfer specialist.

4.44. By the middle of October 2000, a large volume of new early vesting businesses was being transacted. Sesame failed to address the problem adequately or effectively when it became evident that the pension transfer specialist was not able to properly check this large volume of new business.

5. ANALYSIS OF SANCTION

5.1. The FSA's policy on the imposition of financial penalties is set out in Chapter 13 of the Enforcement Manual that forms part of the FSA Handbook ("ENF"). 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.

5.2. 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. ENF 13.3.3 sets out the factors that may be of particular relevance in determining the level of a financial penalty. They are not exhaustive (ENF 13.3.4).

5.3. Article 8(4) of the Pre-N2 Misconduct Order provides that, where the FSA is considering the imposition of a financial penalty, it must have regard to:

> ***"…*** *any statement made by the relevant recognised self-regulating organisation … which was in force when the conduct in question took place with respect to its policy on the taking of disciplinary action and the imposition of, and amount of, penalties (whether issued as guidance, contained in the rules of that organisation or otherwise)."*

5.4. Relevant PIA guidance is contained in Annex D of "PIA's Approach to Discipline – Statement of Policy" (issued in December 1995). In all material respects this guidance required consideration of the same factors as those identified in ENF 13. Further, this guidance made it clear that the criteria for determining the level of sanction are not to be applied rigidly. The FSA has taken this guidance into account in considering the appropriate sanction in this case.

5.5. The FSA considers that the following factors (which are expressed in terms of both the FSA and the equivalent PIA guidance) to be particularly relevant in this case:

ENF 13.3.3(1)G: The seriousness of the misconduct or contravention
PIA guidance: The seriousness of the breaches

5.6 The level of the financial penalty should be proportionate to the nature and seriousness of the contraventions. Those identified in this case were particularly serious for the reasons set out above.

5.7. Further, the breaches identified in this case were serious as they potentially affected 3,200 customers.

ENF 13.3.3(2)G: The extent to which the contravention was deliberate or reckless
PIA guidance: Whether the member deliberately or recklessly failed to meet PIA's requirements

5.8. There is no evidence that the Firm deliberately breached PIA and adopted FIMBRA Rules. Its failure to take appropriate actions in a timely fashion following the identification of the serious problems is an aggravating factor. It is also of concern that Sesame appeared not to have given adequate consideration to the consequences of its failure properly to monitor the activities of its appointed representatives.

ENF 13.3.3(3)G: The size, financial resources and other circumstances of the firm
PIA guidance: The extent to which the member's governing body or senior management was culpable. The member's ability to pay

5.9. The Firm was acquired by the current ultimate parent (which is an unregulated quoted company) in August 1999. Sesame's parent company is an international company listed in London and is a constituent of the FTSE 100.

5.10. Sesame appears to be able to pay the proposed penalty.

ENF 13.3.3(4)G: The amount of profit accrued or loss avoided
PIA guidance: The extent to which, as a result of the breaches, the member gained benefit or avoided loss.

5.11. When determining the level of a penalty, the FSA will propose a penalty which is consistent with the principle that a firm should not benefit from its misconduct. Such a penalty should also act as an incentive to the firm and others to comply with the regulatory standards.

In the period from 1 April 1999 to 31 December 2001 Sesame received £366,000 in commission from business submitted by Regal Partners.

Sesame is unable to provide details of the commission received from Regal Partners in the period from 1 August 1997 to 31 March 1999. An estimate based on Regal Partners' income suggests that Sesame possibly earned a futher £50,000 in this period.

ENF 13.3.3(5)G: Conduct following the contravention

PIA guidance: The firm's response once the breaches were identified

5.12. Sesame identified the weaknesses in its compliance structure and it took steps to implement a series of changes to the management, systems and control processes. However, the Board concluded that the early vesting business represented a low risk to investors despite being aware of the serious concerns expressed by the FSA about it, and the series of remedial actions taken were not robust enough to deal with the problems. This is an aggravating factor as it displays Sesame's inability to respond appropriately in a timely fashion.

5.13. Despite its initial assessment of the risk to investors posed by early vesting business. Sesame promptly re-considered its position following the receipt of detailed material from the FSA. Sesame has accepted that it is responsible for the compensation of customers who have suffered loss as a result of the misconduct of its appointed representative and has co-operated with the FSA in devising an appropriate programme for the identification and compensation of customer loss.

ENF 13.3.3(6)G: Disciplinary record and compliance history
PIA guidance: The firm's regulatory history

5.14. Sesame was reprimanded by the Disciplinary Committee of PIA in August 1998 and ordered to pay a fine of £85,000 for serious compliance failings and to pay PIA's costs of £16,000. The breaches had been identified during monitoring visits conducted by PIA in February and March 1997, and they included failure to adequately monitor its appointed representatives, failure to have an adequate training and competence scheme, record keeping failures and failure to organise and control its internal affairs in a responsible manner.

ENF 13.3.3(7)G: Previous action taken by the FSA in relation to similar behaviour by other firms
PIA guidance: The way in which PIA has dealt with similar cases in the past

5.15. The FSA and PIA have taken action against firms for mis-selling and breaches of the rules relating to suitability, financial promotions, systems and controls and record keeping and these cases have been taken into consideration insofar as they contain relevant similarities.

ENF 13.3.3(8)G: Action taken by other regulatory authorities

5.16. There has been no action taken by other regulatory bodies.

6. IMPORTANT NOTICES

6.1. This Final Notice is given to you in accordance with section 390 of the Act.

Manner of payment

6.2. The Penalty must be paid to the FSA in full.

Time for Payment

6.3. The Penalty must be paid to the FSA no later than 15 October 2004, being not less than 14 days from the date on which the notice is given to Sesame.

If Penalty is not paid

6.4. If all or any of the Penalty is outstanding on 15 October 2004, the FSA may recover the outstanding amount as a debt owed by you and due to the FSA.

Publicity

6.5. 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 these 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.

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

Third Party Rights

6.7. The FSA gave a copy of the Decision Notice to Regal Partners. Accordingly, the FSA must also give a copy of this notice to Regal Partners.

FSA Contacts

6.8. For more information concerning this matter generally, you should contact John Winfield at the FSA (direct line: 020 7066 1348/fax: 020 7066 1349).

Julia MR Dunn
Head of Retail Selling
FSA Enforcement Division