
FINAL NOTICE

To: Simon John Latham

To: Fastmoney.co.uk Limited

IRN: SJL01207

FRN: 424331

Both at

**Address: Fastmoney.co.uk Ltd
PO Box 3044
Newcastle-Under-Lyme
Staffordshire
ST55 9DY**

Date: 11 November 2011

1. ACTION

1.1 For the reasons given in this notice, the FSA hereby:

- (1) imposes on Mr Latham a financial penalty of £17,500;
- (2) withdraws the approval given to Mr Latham to perform the controlled function CF1 (Director) at Fastmoney; and

- (3) makes an order prohibiting Mr Latham from performing any significant influence function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm. This order takes effect from 11 November 2011.

1.2 Mr Latham agreed to settle at an early stage of the FSA's investigation. He therefore qualified for a 30% (stage 1) discount under the FSA's executive settlement procedures. Were it not for this discount, the FSA would have imposed a financial penalty of £25,000 on Mr Latham.

2. SUMMARY OF REASONS

2.1 Mr Latham is the ultimate owner of Fastmoney, a small mortgage broker based in Newcastle-under-Lyme in Staffordshire. He held the significant influence function CF1 (Director) throughout the relevant period of the investigation. He also held other significant influence functions at Fastmoney from time to time during the relevant period. He was required at all times to exercise due skill, care and diligence in managing Fastmoney's business and take reasonable steps to ensure that Fastmoney complied with regulatory requirements and standards.

2.2 As a significant influence function holder at Fastmoney during the relevant period, Mr Latham failed to act with due skill, care and diligence, in breach of Statement of Principle 6, by:

- (1) delegating senior management functions (including compliance) to another employee, Mr Mason, and others without having reasonable grounds to believe these individuals had the necessary capacity, competence, knowledge or skill to deal with these responsibilities or perform the controlled functions for which they were required to seek approval as a result of this delegation;
- (2) failing to train, supervise and monitor Mr Mason adequately;
- (3) failing to take reasonable steps to maintain an appropriate level of understanding about the parts of the business that he had delegated to Mr Mason and failing to retain the level of involvement and challenge which the FSA expects of a significant influence function holder; and
- (4) failing to identify and mitigate regulatory risks within the business of which he had actual knowledge, in particular, the selling of bridging loans to customers in circumstances where he knew, or should reasonably have known, the non-advised sales scripts did not contain sufficient detail to enable advisers to recommend them on a non-advised basis.

2.3 Mr Latham could delegate the resolution of an issue to others, but not responsibility for it. His lack of involvement in the business of Fastmoney during the relevant period was an abrogation of his responsibility to ensure the proper management of Fastmoney's business. During the period when he delegated these functions, Mr Latham increased the drawings he took from Fastmoney by way of management charges.

- 2.4 Mr Latham failed to take reasonable steps to ensure that Fastmoney complied with the relevant requirements and standards of the regulatory system, in breach of Statement of Principle 7. He took inadequate steps to ascertain whether Fastmoney was operating in compliance with regulatory requirements during this period, having delegated all responsibility for Fastmoney's compliance to Mr Mason and others.
- 2.5 As a result, Mr Latham is personally culpable for Fastmoney's failures, including its failures to:
- (1) establish and adhere to a non-advised sales process which consistently treated customers fairly;
 - (2) train its sales staff and senior management adequately;
 - (3) ensure that mortgages arranged for customers, particularly regulated bridging loans, were appropriate;
 - (4) disclose clearly fees to customers; and
 - (5) keep orderly records of its business.
- 2.6 Mr Latham is also personally culpable for Fastmoney's overreliance on customer complaints as the only mechanism by which it assessed whether it and its sales representatives were treating customers fairly.

Mr Latham's fitness and propriety

- 2.7 In addition to the breaches outlined above, Mr Latham's conduct since the breaches were identified demonstrates his lack of fitness and propriety to be approved as a significant influence function holder. In particular, Mr Latham's conduct in relation to the skilled person's report has caused difficulties and delays in the production of the report, the purpose of which was to identify customer detriment and arrange payment of redress where appropriate. The FSA views this conduct as an aggravating factor.
- 2.8 The FSA views Mr Latham's failings as particularly serious because Fastmoney's customers were typically financially unsophisticated people with an adverse credit history who were seeking to obtain a loan at short notice to enable them to meet financial liabilities and ongoing commitments. In some cases, customers needed to obtain a loan urgently to avoid having their homes repossessed. Because of their circumstances, the impact of poor financial decisions was magnified.
- 2.9 The FSA has taken into account the fact that Mr Latham organised for Fastmoney to cease transacting regulated bridging loans sales and improved its compliance arrangements after the FSA raised concerns. However, it has not taken into account, as a mitigating factor when assessing Mr Latham's conduct, Fastmoney's compliance to date with the skilled person requirement notice, for the reasons explained in paragraphs 5.13 to 5.16 below.
- 2.10 The FSA has concluded that the nature and seriousness of Mr Latham's breaches warrant a financial penalty and the withdrawal of Mr Latham's controlled function

CF1 (Director) and his prohibition from performing any significant influence function on the grounds of competence and capability.

- 2.11 This action supports the FSA’s statutory objectives of maintaining market confidence in the UK financial system and securing the appropriate degree of protection for consumers.

3. DEFINITIONS

- 3.1 The definitions below are used in this Final Notice:

“the Act” means the Financial Services and Markets Act 2000

“APER” means the Statements of Principle and the Code of Practice for Approved Persons as contained in the FSA Handbook

“DEPP” means the Decision Procedures and Penalties Manual

“MCOB” means the Mortgages and Home Finance: Conduct of Business sourcebook

“SYSC” means the Senior Management Arrangements, Systems and Controls

“DISP” means the Dispute Resolution: Complaints

“ENF” means the Enforcement Manual

“EG” mean the Enforcement Guide

“Fastmoney” means Fastmoney.co.uk Limited

“the FSA” means the Financial Services Authority

“Mr Latham” means Mr Simon John Latham

“Mr Mason” means Mr Stuart Mason

“the relevant period” means the period between August 2005 to March 2009;

“the skilled person requirement notice” means the Requirement Notice issued to Fastmoney on 17 December 2010 pursuant to section 166 of the Act

“Statement of Principle” means one of the FSA’s Statements of Principle for Approved Persons as set out in APER.

4. FACTS AND MATTERS

Background to Fastmoney

- 4.1 Fastmoney was authorised by the FSA on 26 August 2005 to arrange regulated mortgage contracts. It does not have permission to give mortgage advice. On 5 August 2011, Fastmoney at its own request voluntarily varied its permission to the effect that it has ceased conducting FSA regulated activities.

4.2 Fastmoney advertised its services on the internet and in national newspapers, targeting customers who were unlikely to be able to get prime mortgages. It sold mortgages nationally using the following non-advised sales process:

- (1) Fastmoney's telesales staff received telephone calls from new customers and asked questions from a script to gather basic information about the customers' circumstances.
- (2) This information was passed to Fastmoney's sales representatives, who telephoned and/or visited customers and ran through another sales script in order to establish the customers' mortgage preferences and needs, with the aim of producing quotations and a key facts illustration for an appropriate product.
- (3) With the customer's permission, a representative visited the customer at their home and provided the illustration, mortgage application and other declarations to sign, one being a declaration that Fastmoney had not provided advice, in order to submit the mortgage application.

4.3 Between August 2005 and March 2010, Fastmoney arranged 370 mainstream regulated mortgage contracts and 18 regulated bridging loans.

Mr Latham's involvement at Fastmoney

4.4 Mr Latham was approved by the FSA to perform the following controlled functions during the relevant period at Fastmoney:

- (1) CF1 (Director) from 12 October 2005 to present;
- (2) CF3 (Chief Executive) from 26 August 2005 to 12 February 2008; and
- (3) CF8 (Apportionment and Oversight) from 4 October 2006 to 31 October 2007.

4.5 Mr Latham was also responsible for insurance mediation from 4 October 2006 to 31 October 2007.

4.6 Between October 2006 and October 2007 Mr Latham was the only approved person at Fastmoney, performing CF1 (Director), CF3 (Chief Executive) and CF8 (Apportionment and Oversight).

4.7 Mr Latham owned between 95% and 100% of the shares in Fastmoney (through a holding company) during the relevant period. He transferred nominal shareholdings of up to 5% to other managers of the business from time to time, but he retained the controlling shareholding in Fastmoney at all times.

4.8 During the relevant period, Mr Latham delegated significant responsibilities at Fastmoney to individual employees and retained a minimal involvement in the running of the business. Mr Latham did, however, retain some involvement in the mortgage sales side of the business, and he was aware of the bridging loan sales.

Delegation to Manager A

- 4.9 Between 2005 and 2007, Mr Latham delegated responsibility for the day to day running of Fastmoney to an employee, Manager A. Mr Latham stated that this was because he “*did not want any involvement*” in Fastmoney and wished to concentrate his efforts his other business. Mr Latham said that Fastmoney “*was looking after itself*” with Manager A in charge, and that Mr Latham acted in a “*kind of consultancy role*”.
- 4.10 Mr Latham informed the FSA that he spent a “*very, very minimal*” amount of time dealing with Fastmoney’s business between August 2005 and March 2008. He also said that the level of his involvement at Fastmoney did not really change between August 2005 and November 2008.
- 4.11 There is no evidence that Mr Latham formally supervised Manager A, since Fastmoney:
- (1) provided a training and competence manual for the period January 2006 to August 2007 which related to a separate authorised firm (and to a number of individuals not employed by Fastmoney at that time);
 - (2) could not provide any evidence that the competence or performance of individual members of staff was assessed or tested; and
 - (3) could not provide any records relating to the monitoring of persons who had been given significant responsibilities between August 2005 and August 2008.

Delegation to Mr Mason

- 4.12 From 2 November 2007, Mr Latham delegated various senior management responsibilities to another individual employee, Mr Mason. From time to time during that period, Mr Mason held significant influence functions CF1 (Director), CF3 (Chief Executive) and CF8 (Apportionment and Oversight) and was responsible for the day to day running Fastmoney’s business.
- 4.13 Mr Latham wished Mr Mason to take over the day to day running of Fastmoney whilst he focussed on his other business.
- 4.14 Mr Mason’s responsibilities at Fastmoney included establishing and implementing controls, apportioning responsibilities among staff, quality control, risk assessments, financial compliance and acting as money laundering reporting officer.
- 4.15 Mr Latham identified Mr Mason as being suitable to take on these responsibilities based on his familiarity with Fastmoney’s sales processes, as he had worked for Mr Latham’s companies for five years. However, Mr Mason had no experience of running a financial services firm and had no financial services qualifications. Mr Mason confirmed during interview that he possessed neither the relevant qualifications nor sufficient experience to undertake significant influence functions at the Fastmoney. Moreover, Mr Mason did not understand or attempt to understand the relevant rules in the FSA Handbook and thus was unable to monitor Fastmoney’s business appropriately.

- 4.16 Mr Mason therefore required significant training to ensure he had the necessary knowledge to perform significant influence functions. The training provided by Mr Latham, however, was inadequate. It focussed on Fastmoney's sales processes and not the responsibilities of a significant influence function holder. Mr Latham and Mr Mason both stated that they held regular informal meetings, but could not provide any records demonstrating training given to Mr Mason, or any evidence that Mr Mason's understanding of his responsibilities at Fastmoney had been formally assessed.
- 4.17 Mr Latham did not formally monitor Mr Mason's performance of his functions. Because of this, he did not identify fundamental deficiencies in Mr Mason's understanding and performance of his controlled functions, including his:
- (1) lack of understanding of his senior management responsibilities and the FSA's handbook, including specific requirements relating to non-advised mortgage sales, complaints handling and treating customers fairly;
 - (2) failure to monitor the effectiveness of Fastmoney's systems and controls;
 - (3) failure to identify systemic record keeping deficiencies;
 - (4) failure to identify the risk that Fastmoney sold regulated bridging loans to customers when its non-advised sales scripts lacked sufficient questions and information about bridging loans. This was despite Mr Latham himself being involved with the sales of bridging loans
 - (5) failure to put in place adequate processes to ensure that Fastmoney treated customers fairly as its only mechanism to assess the quality of service being provided to customers was customer complaints; and
 - (6) failure to ensure that Fastmoney gave clear communications to its customers about broker fees.
- 4.18 Mr Latham, on behalf of Fastmoney, applied to the FSA to withdraw Mr Mason's approval to perform controlled functions. Mr Mason's approval was withdrawn on 26 May 2009.

The skilled person process

- 4.19 On 17 December 2010 the FSA issued the skilled person requirement notice requiring Fastmoney to appoint a skilled person to produce a report on:
- (1) whether Fastmoney followed a compliant non-advised sales process and treated customers fairly in selling regulated bridging loans; and
 - (2) whether (and to what extent) Fastmoney charged customers additional broker fees which were not disclosed to them clearly and fairly.
- 4.20 To date, neither part of the skilled person's report has been completed.
- 4.21 In relation to the sales process, the skilled person has at this stage concluded that in all cases it was unclear whether the bridging loan arranged by Fastmoney met the customer's needs and objectives or that sufficient information was provided to

customers before seeking their agreement to proceed with the bridging loan application.

- 4.22 In relation to broker fees, the skilled person has at this stage stated that a number of customers (in addition to 16 already identified by Fastmoney) had not been given clear information about the fees charged by Fastmoney
- 4.23 Mr Latham was (and remains) the FSA's primary point of contact for the skilled person process. The manner of Mr Latham's engagement with the skilled person process has resulted in delays, specifically in relation to questioning previously agreed processes and payment of the skilled person's invoices. Mr Latham delayed paying the invoices following legal advice. These delays held up the identification of any customer detriment by the skilled person and the payment of any redress that may be owed to them. In response to the skilled person's requirement to contact customers in order for redress to be assessed, he said that to do so would encourage customers "*to make complaints which may not be a true reflection*".
- 4.24 Mr Latham has agreed to complete the skilled person's report, but has stated that he is minded to challenge the findings as he believes that not all of the points he has raised have been properly considered.

5. FAILINGS

- 5.1 The statutory and regulatory provisions and policy relevant to this Final Notice are referred to in the Annex.

Statement of Principle 6

- 5.2 Mr Latham, through his position as owner and director of Fastmoney, retained the ability to delegate and apportion significant responsibilities within Fastmoney to other individuals and, in choosing to do so, remained responsible for their oversight. He delegated aspects of senior management (including compliance) to others but did not take adequate steps to assess their competence or monitor their performance.
- 5.3 Whilst an approved person performing a significant influence function will not always manage the business on a day to day basis himself, Mr Latham should have retained adequate oversight of Fastmoney's affairs. Although he could delegate authority for dealing with a part of the business, Mr Latham could not delegate responsibility for it. As an approved person performing a significant influence function, Mr Latham needed to have reasonable grounds for believing that those to whom he delegated aspects of the business, including Mr Mason, had the competence, knowledge, skill and time to deal with those aspects.
- 5.4 Mr Latham's conduct fell short of the standards expected of the holder of a significant influence function in the following ways:
- (1) Mr Latham delegated authority and the day to day running of Fastmoney to Mr Mason without reasonable grounds for believing Mr Mason had the necessary competence, knowledge and skill to take on such responsibility. In fact, Mr Latham knew that Mr Mason had not held such a position of responsibility

previously. The reason he delegated to Mr Mason was because Mr Latham wished to devote his time to his other business.

- (2) Mr Latham failed to supervise and monitor either Mr Mason or Manager A adequately after delegating the day to day running of the business to them.
- (3) Mr Latham failed to take reasonable steps to maintain an appropriate level of understanding about parts of the business that he had delegated to Mr Mason and failed to retain the level of involvement and challenge which the FSA expects of a significant influence function holder.
- (4) Mr Latham failed to deal with compliance issues within the business of which he had knowledge, for example, the selling of bridging loans to customers in circumstances where he knew, or should reasonably have known, the non-advised sales scripts did not contain sufficient detail to enable advisers to recommend them on a non-advised basis. He had this knowledge as he himself was involved with the bridging loan sales.

5.5 Accordingly, Mr Latham breached Statement of Principle 6 as he did not exercise due skill, care and diligence in managing the business for which he was responsible in his controlled function.

Statement of Principle 7

5.6 As a significant influence function holder at Fastmoney, and the *de facto* chief executive for the entire relevant period, Mr Latham was responsible for ensuring Fastmoney complied with the relevant requirements and standards of the regulatory system.

5.7 Mr Latham should have taken reasonable steps to ensure Fastmoney complied with the relevant requirements and standards of the regulatory system and that all staff were aware of the need for compliance. This should have included taking reasonable steps to ensure that Fastmoney had operating procedures and systems which included well defined steps for complying with the detail of relevant requirements and standards and for ensuring that the business was run prudently.

5.8 When he became aware of possible breaches of relevant requirements, Mr Latham should have taken reasonable steps to ensure that they were dealt with in a timely and appropriate manner.

5.9 Mr Latham took inadequate steps to ascertain whether Fastmoney was operating in compliance with regulatory requirements during this period, having delegated responsibility for Fastmoney's compliance to Mr Mason and others. Because of his failure to do this, no-one, including himself, ensured that:

- (1) sales representatives were complying with the non-advised sales process;
- (2) risks to customers posed by the business of Fastmoney were identified and appropriately mitigated;
- (3) incidences of overcharging of customers were identified and dealt with;

- (4) the arrangement of bridging loans for customers was monitored to ascertain whether they were appropriate; and
 - (5) there were other, more appropriate measures, than the number of customer complaints by which Fastmoney could assess the quality of service being provided to customers.
- 5.10 It was a significant failing that the only mechanism which Fastmoney used to assess the quality of service being provided to customers was customer complaints. Mr Latham failed to ensure that there were any other systems and controls in place to enable Fastmoney to monitor compliance with its regulatory responsibilities.
- 5.11 Also, once he had delegated responsibility to Mr Mason and others, Mr Latham failed to identify that they did not understand the relevant regulations governing Fastmoney's business. As such, Mr Latham was personally culpable for Fastmoney's failure to:
- (1) establish and maintain a non-advised sales process which consistently treated customers fairly;
 - (2) train and supervise its sales staff and senior management adequately;
 - (3) ensure the mortgages arranged for customers, particularly bridging loans, were appropriate;
 - (4) disclose clearly its fees to customers; and
 - (5) keep orderly records of its business.
- 5.12 These failings amount to a breach of Statement of Principle 7, in that Mr Latham failed to take reasonable steps to ensure that Fastmoney's business complied with the relevant requirements and standards of the regulatory system.

Fitness and propriety

- 5.13 In addition to the breaches outlined above, we consider that Mr Latham's conduct since the breaches were identified demonstrates his lack of fitness and propriety to be approved as a SIF holder. In particular, Mr Latham's conduct in relation to the skilled person's report has caused difficulties and delays in the production of the report, the purpose of which was to identify customer detriment and arrange payment of redress where appropriate.
- 5.14 Mr Latham has caused delays to the skilled person's report, specifically in relation to previously agreed processes and in paying the skilled person's invoices. Mr Latham delayed paying the invoices following legal advice. Also, on one occasion, Mr Latham, on advice from his solicitor, instructed the skilled person to cease work without notifying the FSA of this. This approach is inconsistent with a compliant attitude towards treating customers fairly and suggests he has been more concerned to keep the cost of the skilled person report to a minimum than to ensure that any customer detriment is identified and remedied.

- 5.15 Following discussions with the FSA, Mr Latham has agreed that the skilled person should complete his report, but has stated that he is minded to challenge the findings.
- 5.16 Accordingly, Mr Latham is not a fit and proper person to be approved to hold significant influence functions in terms of his competence and capability. Mr Latham's conduct has delayed the process by which customer detriment can be identified and remedied. His conduct since the breaches were identified aggravates the seriousness of those breaches and demonstrates his lack of understanding of the requirements placed upon him as a significant influence function holder, which relate not only to the profitable running of a business but also to the operation of a compliant regulatory firm.

6. SANCTION

Imposition of a financial penalty

- 6.1 The FSA's policy on the imposition of financial penalties relevant to the misconduct as detailed in this Notice is set out in Chapter 6 of the version of DEPP in force prior to 6 March 2010, which formed part of the FSA Handbook. All references to DEPP in this section are references to that version of DEPP. The relevant sections of DEPP are set out in more detail in the Annex to this Final Notice. In addition, the FSA has had regard to the corresponding provisions of Chapter 13 of ENF, in force during part of the relevant period until 27 August 2007, and Chapter 7 of EG, in use thereafter.
- 6.2 The principal purpose of a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour.
- 6.3 In determining whether a financial penalty is appropriate the FSA is required to consider all the relevant circumstances of a case. Applying the criteria set out in DEPP 6.2.1 (regarding whether or not to take action for a financial penalty or public censure) and 6.4.2 (regarding whether to impose a financial penalty or a public censure), the FSA considers that a financial penalty is an appropriate sanction, given the serious nature of the breaches, the risks created for customers and the need to send out a strong message of deterrence to others.
- 6.4 DEPP 6.5.2G sets out a non-exhaustive list of factors that may be of relevance in determining the level of a financial penalty. The FSA considers that the following factors are particularly relevant in this case.

Deterrence (DEPP 6.5.2(1))

- 6.5 The financial penalty will reinforce the message that the FSA expects approved persons performing significant influence functions to take reasonable steps to ensure that the businesses for which they are responsible comply with the relevant requirements and standards of the regulatory system.

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

6.6 In determining the appropriate sanction, the FSA has had regard to the seriousness of the breaches, including the nature of the requirements breached and the duration of the breaches, and whether the breaches revealed serious failings in Mr Latham's oversight of Fastmoney. Mr Latham's failings are considered to be particularly serious because:

- (1) the FSA places a great deal of emphasis on the responsibilities of senior management for the standards and conduct of the businesses they run; and
- (2) Fastmoney's customer base comprised individuals in difficult financial circumstances, some of whom were at risk of having their homes repossessed. Because of their circumstances, the impact of poor financial decisions was magnified.

6.7 The FSA has taken into account, as a mitigating factor, that Mr Latham organised for Fastmoney to cease transacting regulated bridging loans sales as soon as the FSA raised concerns about these transactions.

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

6.8 The FSA has found no evidence to show that Mr Latham acted in a deliberate or reckless manner.

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

6.9 The FSA has taken into account that the penalty is to be imposed on an individual and that the penalty may have a greater impact on the individual than it would do on a body corporate.

Mr Latham's financial resources (DEPP 6.5.2(5))

6.10 Mr Latham has not provided verifiable evidence that the payment of the penalty would cause serious financial hardship.

Conduct following the breach (DEPP 6.5.2(8))

6.11 Mr Latham's conduct in relation to the skilled person requirement has led to a significant delay in the skilled person finalising his findings, including identifying instances of customer detriment, and payment of redress to customers. Mr Latham has asked it to be noted that some of his conduct was following legal advice he had received.

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

6.12 Mr Latham has not been the subject of previous disciplinary action.

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

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

- 6.14 Having considered all the circumstances set out above, the FSA has determined that £25,000 (before any discount for early settlement) is an appropriate financial penalty to impose on Mr Latham.

Withdrawal of approval and prohibition from significant influence functions

- 6.15 The FSA considers it appropriate and proportionate in all the circumstances to withdraw the approval given to Mr Latham to perform the controlled function CF1 (Director) at Fastmoney because he is not competent or capable of performing this function, and to make an order prohibiting Mr Latham from performing any significant influence function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm because he is not a fit and proper person in terms of competence and capability.
- 6.16 The FSA has had regard to the guidance in Chapter 9 of EG in proposing that Mr Latham's approval be withdrawn and that he be prohibited from performing significant influence functions. The relevant provisions of EG are set out in the Annex of this Notice.
- 6.17 Given the nature and seriousness of the failures outlined above, the FSA has concluded that Mr Latham is not fit and proper to perform significant influence functions. In particular, Mr Latham demonstrated a lack of regard for the standards and requirements of the regulatory system. In the interests of consumer protection, the FSA deems it appropriate to impose a prohibition order on Mr Latham in the terms set out above.

7. PROCEDURAL MATTERS

Decision makers

- 7.1 The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.
- 7.2 This Final Notice is given under, and in accordance with, section 390 of the Act.

Manner and time for payment

- 7.3 The financial penalty must be paid by Mr Latham to the FSA in three monthly instalments, the first instalment being a payment of £1,550 within three months of the date of the Final Notice (being 11 February 2012), followed by eleven further payments of £1,450 at three monthly intervals thereafter, with the total amount of the financial penalty to be paid within three years of the Final Notice.

If the financial penalty is not paid

- 7.4 If all or any part of an instalment is outstanding on the day after it is due to be paid, the FSA may recover the outstanding amount as a debt owed by Mr Latham and due to the FSA.

Confidentiality and publicity

- 7.5 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 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 Mr Latham or prejudicial to the interests of consumers.
- 7.6 The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

- 7.7 For more information concerning this matter generally, Mr Latham should contact Rachel West (direct line: 020 7066 0142; fax: 020 7066 0143) of the Enforcement and Financial Crime Division of the FSA.

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Tom Spender
FSA Enforcement and Financial Crime Division

ANNEX

STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY

1. Statutory provisions

- 1.1 The FSA's regulatory objectives are set out in section 2(2) of the Act and include maintaining confidence in the financial system and the protection of consumers.
- 1.2 Section 56 of the Act provides that the FSA may make a prohibition order prohibiting and individual from performing a specified function.
- 1.3 Section 63 of the Act provides that the FSA may withdraw its approval to carry out a controlled function if it considers that the person in respect of whom it was given is not a fit and proper person to perform the function to which the approval relates.
- 1.4 Section 66 of the Act provides that the FSA may take action to impose a penalty on an individual of such amount as it considers appropriate where it appears to the FSA that the individual is guilty of misconduct and it is satisfied that it is appropriate in all the circumstances to take action. Misconduct includes failure, while an approved person, to comply with a statement of principle issued under section 64 of the Act or to have been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under the Act.

2. Handbook provisions

- 2.1 In exercising its power to impose a financial penalty, the FSA must have regard to relevant provisions in the FSA Handbook of rules and guidance ("the FSA Handbook"). The main provisions relevant to the action specified above are set out below.

APER

- 2.2 APER sets out the Statements of Principle as they relate to approved persons and descriptions of conduct which, in the opinion of the FSA, do not comply with a Statement of Principle. It further describes factors which, in the opinion of the FSA, are to be taken into account in determining whether or not an approved person's conduct complies with a Statement of Principle.
- 2.3 APER 3.1.3G states that when establishing compliance with or a breach of a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, including the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour to be expected in that function.
- 2.4 APER 3.1.4G provides that an approved person will only be in breach of a Statement of Principle where he is personally culpable, that is in a situation where his conduct was deliberate or where his standard of conduct was below that which would be reasonable in all the circumstances.

- 2.5 APER 3.1.6G provides that APER (and in particular the specific examples of behaviour which may be in breach of a generic description of conduct in the code) is not exhaustive of the kind of conduct that may contravene the Statements of Principle.
- 2.6 The Statements of Principle relevant to this matter are:
- (1) Statement of Principle 6, which provides that an approved person performing a significant influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his controlled function; and
 - (2) Statement of Principle 7, which provides that an approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system.
- 2.7 APER 3.1.8G provides, in relation to applying Statements of Principle 5 to 7, that the nature, scale and complexity of the business under management and the role and responsibility of the individual performing a significant influence function within the firm will be relevant in assessing whether an approved person's conduct was reasonable.
- 2.8 APER 3.3.1E states that in determining whether or not the conduct of an approved person performing a significant influence function complies with Statements of Principle 5 to 7, the following are factors which, in the opinion of the FSA, are to be taken into account:
- (1) whether he exercised reasonable care when considering the information available to him;
 - (2) whether he reached a reasonable conclusion which he acted on;
 - (3) the nature, scale and complexity of the firm's business;
 - (4) his role and responsibility as an approved person performing a significant influence function; and
 - (5) the knowledge he had, or should have had, of regulatory concerns, if any, arising in the business under his control.
- 2.9 APER 4.6 lists types of conduct which, in the opinion of the FSA, do not comply with Statement of Principle 6. These include:
- (1) failing to take reasonable steps to adequately inform himself about the affairs of the business for which he is responsible (APER 4.6.3E);
 - (2) delegating the authority for dealing with an issue or part of a business to an individual without reasonable grounds for believing that the delegate had the necessary capacity, competence, knowledge, seniority or skill to deal with the issue or to take authority for dealing with part of the business (APER 4.6.5E);

- (3) failing to take reasonable steps to maintain an appropriate level of understanding about an issue or part of the business that he has delegated to an individual or individuals (whether in-house or outside contractors) (APER 4.6.6E);
- (4) failing to supervise and monitor adequately the individual or individuals to whom responsibility for dealing with an issue or authority for dealing with part of a business has been delegated (APER 4.6.8E);
- (5) an approved person performing a significant influence function will not always manage the business on a day-to-day basis himself. The extent to which he does so will depend on a number of factors, including the nature, scale and complexity of the business and his position within it. The larger and more complex the business, the greater the need for clear and effective delegation and reporting lines. The FSA will look to the approved person performing a significant influence function to take reasonable steps to ensure that systems are in place which result in issues being addressed at the appropriate level. When issues come to his attention, he should deal with them in an appropriate way (APER 4.6.11G); and
- (6) although an approved person performing a significant influence function may delegate the resolution of an issue, or authority for dealing with a part of the business, he cannot delegate responsibility for it. It is his responsibility to ensure that he receives reports on progress and questions those reports where appropriate. For instance, if progress appears to be slow or if the issue is not being resolved satisfactorily, then the approved person performing a significant influence function may need to challenge the explanations he receives and take action himself to resolve the problem. This may include increasing the resource applied to it, reassigning the resolution internally or obtaining external advice or assistance. Where an issue raises significant concerns, an approved person performing a significant influence function should act clearly and decisively. If appropriate, this may be by suspending members of staff or relieving them of all or part of their responsibilities (APER 4.6.14G).

2.10 APER 4.7 lists types of conduct which, in the opinion of the FSA, do not comply with Statement of Principle 7. These include:

- (1) failing to take reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems of control to comply with the relevant requirements and standards of the regulatory system in respect of its regulated activities (APER 4.7.3E);
- (2) failing to take reasonable steps to monitor (either personally or through a compliance department or other departments) compliance with the relevant requirements and standards of the regulated system in respect of its regulated activities (APER 4.7.4E);
- (3) failing to take reasonable steps adequately to inform himself about the reason why significant breaches (whether suspected or actual) of the relevant requirements and standards of the regulatory system in respect of its regulated

activities have arisen (taking account of the systems and procedures in place) (APER 4.7.5E).

DEPP

- 2.11 Guidance on the imposition and amount of penalties is set out in Chapter 6 of DEPP. Changes to DEPP 6 were introduced on 6 March 2010. The FSA has had regard to the appropriate provisions of DEPP that applied during the relevant period.
- 2.12 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.
- 2.13 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.
- 2.14 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 the Act. The following factors are relevant to this case:

Deterrence: DEPP 6.5.2G(1)

- 2.15 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)

- 2.16 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, the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the breach 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)

- 2.17 The FSA will regard as more serious a breach which is deliberately or recklessly committed, giving consideration to factors such as whether the person has given no apparent consideration to the consequences of the behaviour that constitutes the breach. 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.

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

- 2.18 When determining the amount of penalty to be imposed on an individual, the FSA will take into account that individuals will not always have the resources of a body corporate, that enforcement action may have a greater impact on an individual, and further, that it may be possible to achieve effective deterrence by imposing a smaller penalty on an individual than on a body corporate. The FSA will also consider whether the status, position and/or responsibilities of the individual are such as to make a breach committed by the individual more serious and whether the penalty should therefore be set at a higher level.

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

- 2.19 The FSA may take into account whether there is verifiable evidence of serious financial hardship or financial difficulties if the person were to pay the level of penalty appropriate for the particular breach. The FSA regards these factors as matters to be taken into account in determining the level of a penalty, but not to the extent that there is a direct correlation between those factors and the level of penalty.

Conduct following the breach: DEPP 6.5.2G(8)

- 2.20 The FSA may take into account the degree of co-operation the person showed during the investigation of the breach by the FSA.

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

- 2.21 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.

Enforcement Guide

- 2.22 The FSA's policy on exercising its enforcement power is set out in EG, which came into effect on 28 August 2007. Although the references in the Final Notice are to the EG, the FSA has also had regard to the appropriate provisions in ENF, which preceded the EG and applied during part of the relevant period.

- 2.23 The FSA's approach to exercising its powers to make prohibition orders and withdraw approvals is set out at Chapter 9 of EG.

- 2.24 EG 9.1 states that the FSA's power to make prohibition orders under section 56 of the Act helps it work towards achieving its regulatory objectives. The FSA may exercise this power where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he may perform.

- 2.25 EG 9.4 sets out the general scope of the FSA's powers in this respect, which include the power to make a range of prohibition orders depending on the circumstances of

each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant. EG 9.5 provides that the scope of a prohibition order will vary according to the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk posed by him to consumers or the market generally.

- 2.26 In circumstances where the FSA has concerns about the fitness and propriety of an approved person, EG 9.8 to 9.14 provides guidance. In particular, EG 9.8 states that the FSA may consider whether it should prohibit that person from performing functions in relation to regulated activities, withdraw that person's approval or both. In deciding whether to withdraw approval and/or make a prohibition order, the FSA will consider whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions.
- 2.27 EG 9.9 states that the FSA will consider all the relevant circumstances when deciding whether to make a prohibition order against an approved person and/or to withdraw that person's approval. Such circumstances may include, but are not limited to, the following factors:
- (1) whether the individual is fit and proper to perform functions in relation to regulated activities, including in relation to the criteria for assessing the fitness and propriety of an approved person in terms of competence and capability as set out in FIT 2.2;
 - (2) the relevance and materiality of any matters indicating unfitness;
 - (3) the length of time since the occurrence of any matters indicating unfitness;
 - (4) the particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates;
 - (5) the severity of the risk which the individual poses to consumers and to confidence in the financial system; and
 - (6) the previous disciplinary record and general compliance history of the individual.
- 2.28 EG 9.12 provides a number of examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order or withdraw the approval of an approved person. The examples include serious lack of competence.