
FINAL NOTICE

To: Mohammed Suba Miah

Date of Birth: 12 October 1979

Date: 7 February 2008

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

1. ACTION

- 1.1. The FSA gave Mr Mohammed Suba Miah ("Mr Miah") a Decision Notice dated 4 February 2008 which notified Mr Miah that the FSA had decided to impose on Mr Miah:
 - (a) a prohibition order, pursuant to section 56 of the Financial Services and Markets Act 2000 ("the Act") in the terms set out below; and
 - (b) a financial penalty of £21,000, pursuant to section 66 of the Act.
- 1.2. The terms of the prohibition order are that Mr Miah be prohibited him from performing any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm. The prohibition order is effective from 8 February 2008.
- 1.3. Mr Miah agreed to settle this matter at an early stage of the proceedings. In particular, Mr Miah agreed that he will not be referring the matter to the Financial Services and Markets Tribunal. Mr Miah therefore qualified for a 30% (stage 1) reduction in the penalty pursuant to the FSA's executive settlement procedures. Were it not for the discount, the FSA would have sought to impose a financial penalty of £30,000 on Mr Miah.

2. REASONS FOR THE ACTION

- 2.1. The FSA decided to take this action as a result of Mr Miah's conduct as an approved person, under section 59 of the Act, at Square Mile Securities Limited ("Square Mile") in the period from December 2005 to May 2006 ("the relevant period").
- 2.2. During the relevant period, Mr Miah was approved to perform the 'Investment Adviser' controlled function (CF21) (as it then was) at Square Mile and his role included recommending to customers the purchase of higher risk securities issued by smaller capitalised companies that had been, or were to be, admitted to trading on the Alternative Investment Market ("AIM") or PLUS market (previously known as OFEX).
- 2.3. During the relevant period, Mr Miah's conduct fell short of the FSA's prescribed regulatory standards for approved persons. In particular, Mr Miah breached the FSA's Statements of Principle and Code of Conduct for Approved Persons ("APER") in that:
 - (a) he failed to act with integrity by intentionally and dishonestly writing out Square Mile trade tickets to record the purchase of securities by Square Mile customers when the customer had not given their explicit agreement or consent to the transaction (in breach of Statement of Principle 1);
 - (b) he failed to act with due skill, care and diligence in carrying out his controlled function when making recommendations to Square Mile's customers to purchase higher risk securities issued by smaller capitalised companies (in breach of Statement of Principle 2). In particular, Mr Miah:
 - (i) did not provide all customers with adequate risk warnings and failed at all times to take reasonable steps to ensure that customers understood the particular and higher risks of the securities he recommended and/or otherwise made statements to customers that obscured and/or diminished those risks;
 - (ii) made factually inaccurate and potentially misleading statements to customers about the higher risk securities he recommended and the issuing companies;
 - (iii) made recommendations to customers to purchase higher risk securities without having obtained sufficient information about, or having sufficient regard to, the personal and financial circumstances and needs of customers to ensure the suitability of his recommendations; and
 - (iv) employed unacceptable methods and practices that resulted in high and undue pressure on customers to purchase the securities he recommended.
- 2.4. The FSA regards Mr Miah's misconduct as particularly serious in view of the following considerations:
 - (a) Square Mile's customers were entitled to rely on Mr Miah to take reasonable steps to ensure the suitability of the advice they received and to be treated fairly.

Square Mile's customers should not have been subjected to inappropriate sales practices which actively encouraged and pressured them to make immediate investment decisions about higher risk securities based on information that was inaccurate, incomplete and misleading. Mr Miah's conduct presented a real and significant risk of customers being misold securities; and

- (b) Mr Miah's misconduct may have serious financial consequences for Square Mile's customers in that, following his recommendation, they purchased securities that were higher risk and/or illiquid and have decreased in value since they were purchased.
- 2.5. In mitigation, Mr Miah now accepts that his conduct was improper, has expressed regret about his actions and has indicated his wish to undertake retraining to address his failings. Mr Miah also co-operated with the investigation and moved quickly to agree the facts and matters with the FSA. The FSA also takes into consideration the fact that Mr Miah has not previously been subject to any findings of misconduct by the FSA or any other regulatory body.
- 2.6. By virtue of the matters referred to above, the FSA has concluded that:
- (a) Mr Miah is not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm;
 - (b) having regard to its regulatory objectives, including the risk that Mr Miah poses to consumers and maintaining confidence in the financial system, it is necessary and desirable for the FSA to exercise its power to make a prohibition order against him; and
 - (c) in all the circumstances, it is appropriate to impose a financial penalty on Mr Miah.

3. RELEVANT STATUTORY PROVISIONS, RULES AND GUIDANCE

Relevant Statutory Provisions

- 3.1. The FSA's statutory objectives, as set out in section 2(2) of the Act, include maintaining confidence in the financial system and the protection of consumers.
- 3.2. The FSA has the power pursuant to section 56 of the Act to make an order prohibiting an individual from performing a specified function, any function falling within a specified description, or any function, if it appears to the FSA that that individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by any authorised person, exempt person or exempt professional person.
- 3.3. Section 66 of the Act provides:
- (1) *The Authority may take action against a person under this section if –*
 - (a) *it appears to the Authority that he is guilty of misconduct; and*

- 4.4. Mr Miah described his first role at Square Mile as that of an 'Equities Broker; which involved him making the initial contact with individuals to solicit their interest in the small cap securities offered by Square Mile and to open new customer accounts. If the customer agreed to listen to a recommendation about small cap securities, Mr Miah would then open a new account and collate limited personal information about the customer before referring them to a 'senior dealer'. Mr Miah was promoted to the role of 'senior dealer' in January 2004.
- 4.5. As a senior dealer, Mr Miah was responsible for making recommendations to customers regarding higher risk small cap securities issued by new or emerging smaller capitalised companies that Square Mile was offering for sale.
- 4.6. Mr Miah received a basic salary which was enhanced by commission that was based on the value of the securities that he sold to and which were actually paid for by customers. This commission generally varied between 5% to 10% of the value of the securities he sold. Higher rates of commission were generally paid on sales of securities issued by less established companies and those traded on PLUS.

FSA Investigation

- 4.7. As part of its investigation, and having identified evidence suggesting misconduct, the FSA carried out a detailed review of 19 transactions, including number of recordings of telephone calls between December 2005 and May 2006, which involved Mr Miah recommending the purchase of higher risk small cap securities to Square Mile customers (the "transactions reviewed"). On the basis of the transactions reviewed, the FSA has concluded that Mr Miah's conduct was in breach of Statement of Principle 1 and Statement of Principle 2 of APER.

Breach of Statement of Principle 1

- 4.8. The FSA's investigation revealed that Mr Miah conducted himself dishonestly in eleven of the transactions reviewed in that he knowingly recorded a purchase of securities by a customer of Square Mile without having obtained the instruction (written or verbal), agreement or consent from the customer.
- 4.9. The FSA identified that, in those eleven transactions, Mr Miah completed a trade ticket recording a purchase of securities by the customer when, in fact, the customer had not given their instruction, agreement or consent to purchase the securities in question. The effect of Mr Miah's actions was that unauthorised trades were recorded against customers' accounts. This established in Square Mile's financial records a liability for the customer to pay for the securities detailed in the trade ticket and caused contract notes requiring payment to be sent to customers.
- 4.10. The eleven transactions related to securities from four different issuing small cap companies. Ten of the eleven transactions concerned two customers who were, at the time of the transactions, over 80 years old. In total, the eleven unauthorised transactions established liabilities of approximately £114,000.

- 4.11. Given that Mr Miah received commission on the securities he sold, he would have received remuneration in respect of the eleven transactions if the customers paid for them.
- 4.12. Further, the FSA identified one instance where Mr Miah attempted to convince a customer that they had purchased shares when, in fact, the trade to which Mr Miah referred was not authorised by the customer. During a call at 10.10am on 16 March 2006, Mr Miah referred an elderly customer to an unauthorised trade that another senior dealer, with whom Mr Miah worked closely, had recorded as being a purported purchase of shares at a cost to the customer of £25,000. When Mr Miah congratulated the customer on the purchase the customer explained that he could not recall committing himself to the investment. Despite this, Mr Miah assured the customer of his previous commitment and appears to have convinced him that he had agreed to purchase the shares.
- 4.13. Square Mile did not have any permission that would have allowed Mr Miah to trade on a discretionary basis for the customer accounts. Accordingly, the purchases of the securities in question were booked to the customers' accounts without appropriate authorisation by the customer and without the customer being aware of their potential liability until they received the demand for payment in the form of the contract note.
- 4.14. Mr Miah accepted writing out the trade tickets but failed to provide any evidence of the customers' agreement, consent or instruction in respect of the transaction or any meaningful explanation why the trade tickets were completed without the customers' agreement, consent or instruction.
- 4.15. The FSA considers that this conduct by Mr Miah was dishonest and deliberately misleading and falls within that covered by APER 4.1.8E and 4.1.9E. Accordingly, the FSA considers Mr Miah's conduct demonstrates a lack of integrity and therefore a failure to comply with Statement of Principle 1.
- 4.16. Such misconduct is particularly serious as Mr Miah exposed customers to the risk of being sold, charged and paying for the purchase of securities they did not want. The FSA considers that such misconduct by Mr Miah undermined the protection and fair treatment of consumers and confidence in the financial services industry.

Breach of Statement of Principle 2

- 4.17. The transactions reviewed revealed that Mr Miah has failed to act with the due skill, care and diligence reasonably to be expected of an approved person during the relevant period in that:
- (a) he failed at all times to provide all customers with adequate risk warnings and take reasonable steps to ensure that customers understood the particular and higher risks of the securities he recommended and/or otherwise made statements that obscured and/or diminished those risks;
 - (b) he made factually inaccurate and potentially misleading statements to customers about the higher risk securities and the issuing companies;

- (c) he made recommendations to customers to purchase higher risk securities without having obtained sufficient information about, or having sufficient regard to, the personal and financial needs of customers to ensure the suitability of the recommendations; and
- (d) employed unacceptable methods and practices that resulted in high and undue pressure on customers to purchase the securities he recommended.

Inadequate explanation of risks

- 4.18. During the relevant period and in respect of the particular securities he was recommending, Mr Miah was required to provide Square Mile's customers with a specific risk warning ("the required risk warning"). This risk warning should have made it clear to customers that there may be a restricted market for the securities in that it may be difficult to deal in the securities or obtain reliable information about their value and/or there is an extra risk of losing money when shares are bought in some smaller companies including penny shares; there is a big difference between the buying price and the selling price of these shares; if the shares have to be sold immediately, the customer may get back much less than they paid for them and the price may change quickly and it may go down as well as up.
- 4.19. In all 19 of the transactions reviewed, Mr Miah failed to provide Square Mile's customers with the required risk warning.
- 4.20. In addition, Mr Miah provided inadequate and/or unclear information to customers which distorted the overall balance and content of the recommendation. In particular, when making recommendations to customers, Mr Miah failed to explain the particular and higher risks associated with the small cap securities he was recommending. Instead, Mr Miah made statements that emphasised the potential benefits of the securities he was recommending which undermined and/or diminished the higher risks of the securities.
- 4.21. The FSA expects investment advisers to provide a balanced description of the products that they recommend including any required risk warning as well as a warning and explanation of any particular and higher risks involved. The FSA considers these to be risks that a customer would consider important and need to know about in order to make an informed investment decision. By not providing a warning and explaining the risks, Mr Miah deprived customers of key information that may have affected their investment decision about whether the products were suitable for them.
- 4.22. In summary, the FSA considers that the above conduct demonstrates that Mr Miah failed to take reasonable steps to ensure that customers understood the particular and higher risks associated with the securities he was recommending.
- 4.23. The FSA considers Mr Miah's conduct in this regard falls within that covered by APER 4.2.3E and 4.2.4E and therefore demonstrates a failure to comply with Statement of Principle 2.

Misleading information

- 4.24. The transactions reviewed revealed that Mr Miah made factually inaccurate and potentially misleading statements about the history, commercial activities and financial results of the issuing companies of the securities he was recommending.
- 4.25. Square Mile prepared a 'stock information sheet' in respect of the securities it recommended. These stock information sheets were circulated to Square Mile advisers, including Mr Miah. However, they were insufficient for the purposes of making a recommendation to a customer. The stock information sheets contained only basic summary information about the securities and a short summary of the history of the issuing company. They did not adequately explain the business and history of the issuing company and/or the specifics of the particular securities. Further, the information was at times outdated, inaccurate and incorrect.
- 4.26. Mr Miah supplemented this limited information with his own opinion but failed to take reasonable steps to verify the accuracy of the information he provided to customers. Mr Miah's explanation of the securities he was recommending often went beyond the limited information provided by Square Mile and was inconsistent with publicly available information.
- 4.27. Mr Miah failed to pay due regard to the information needs of Square Mile's customers and communicate information in a way that was clear, fair and not misleading by providing inaccurate and incomplete information in conjunction with personal and speculative opinion.
- 4.28. When making recommendations to customers, Mr Miah made a number of factually inaccurate and potentially misleading statements. For example, in one transaction, Mr Miah made statements in respect of one issuing company which created the impression that it was an established and profitable company:
- (a) On 28 March 2006, Mr Miah told a customer that Company A had recorded turnover of £4.5 million during the previous year and that "*already in 2006, they've managed to make themselves a figure of ... something like 6.5 million, so evidently the business is expanding.*" At no point during the call did Mr Miah explain that the financial information to which he had referred, and which was related to information he received from Square Mile, related to the performance of another company in which Company A had invested and purchased a minority interest. Company A had only been incorporated since October 2005 as a 'shell' company and made only one investment. When it did publish its results in July 2006 it stated that it made no revenue in the period since it was incorporated. Accordingly, the information Mr Miah provided to the customer was misleading.
- 4.29. In that instance, the customer agreed to purchase securities costing £4,000.
- 4.30. Therefore, Mr Miah gave the impression that he was recommending the purchase of securities in an operational trading company with significant profitability, rather than a new investment company which had a minority interest in another company and which

was formed to pursue other investments. Mr Miah did not make clear that the financial information did not relate to Company A which did not have an established business.

- 4.31. Mr Miah also made unfair and misleading claims about significant increases in the price of securities that he had previously recommended to customers. Not only is past performance of any security no indicator of future performance but, in this case, references were made to securities that had no direct business, financial or commercial factors in common with the securities being recommended and, in any event, sometimes Mr Miah's statements were untrue.
- 4.32. For example, when recommending the securities of Company A to a customer, Mr Miah referred to the performance of shares issued by another company (Company B) and informed the customer that the directors of the two companies were the same. Mr Miah went on to state that *"my clients who invested in [Company B] at the right time ... they are absolutely cleaning up. They are making about 600-700% some of them."* Mr Miah failed, however, to inform the customer that such returns might not be achieved in respect of Company A or that previous recommendations had not performed as predicted. He also did not make it clear that the directors of Company A were not the directors of Company B. In fact, the only connection was that one of the directors of Company B had become a director of a company in which Company A had a minority interest and then became a director of Company A, which Mr Miah failed to make clear.
- 4.33. In another call, Mr Miah recommended a particular security and told the customer *"I'm the chap who put you into [an unrelated security] – I made you 40-50% on that one."* Mr Miah failed to inform the customer that such past performance is no indicator of future performance, nor did he inform the customer that his other recommendations had not made such returns.
- 4.34. It is important that customers are provided with information that is clear, fair, and not misleading. The transactions reviewed identified that during recommendations Mr Miah did not always provide such information to Square Mile's customers. Mr Miah only provided customers with examples of small cap securities that had performed well and failed to provide balanced information about securities that had not performed well. This conduct may have unduly influenced the investment decisions of customers as their confidence and trust was built on misrepresentations and inaccurate information.
- 4.35. As a result of Mr Miah's conduct, there was a serious risk that Square Mile customers may have invested in securities based on information that was inaccurate, incomplete and potentially left them with a misleading impression of the issuing company and a flawed view of the potential performance prospects of their investments.
- 4.36. The FSA considers Mr Miah's conduct falls within that covered by APER 4.2.3E and 4.2.4E and therefore demonstrates a failure to comply with Statement of Principle 2.

Know your customer information

- 4.37. The transactions reviewed revealed that Mr Miah made personal recommendations without having obtained, and without having regard to, sufficient personal and financial information about customers. By failing to take reasonable steps to obtain such information, and failing to have regard to it, Mr Miah could not ensure the recommendations he made were suitable for the needs, objectives and financial circumstances of Square Mile's customers and appropriate for their risk appetite.
- 4.38. In all of the transactions reviewed, Mr Miah failed to seek information from his customers about their current investment objectives, or their personal or financial circumstances, including whether they could afford the securities he recommended.
- 4.39. Further, the transactions reviewed revealed that Mr Miah also failed to have sufficient regard to the preferences of customers and disregarded customers' concerns about their ability to afford the securities he was recommending. For example:
- (a) During one telephone call, a customer explained to Mr Miah that his financial commitments meant that he was *"really stretched"*. Although Mr Miah acknowledged that the customer did not want to trade for the next six weeks he telephoned the customer six days later on 8 May 2006. During the call, Mr Miah made a recommendation and told the customer he was letting himself down by not purchasing the securities and stated *"I know there's always going to be a liquidity concern. I know you're always going to have a million and one demands on your money"*. Although the customer again told Mr Miah of his immediate financial commitments, Mr Miah stated *"Yeah, no, of course, no problem"* and told the customer that they were going *"wrong"* as *"...we're picking the right stocks but we're not putting enough in"*. Mr Miah persisted with his recommendation until the customer stated that he would invest £1,000. Mr Miah, however, pressed the customer until he agreed to purchase securities costing £2,000 *"...can you stretch it to maybe two? Just push yourself to the limits on this one. ...Make it two for me ..., I'll be happy with that for now"*. The customer later contacted Mr Miah to ask for the trade to be unwound as he had encountered financial difficulty but Mr Miah declined to do so.
 - (b) During another telephone call, Mr Miah introduced the securities to a customer and asked the customer him if he could *"find [him] a few thousand for something which looks good"*. Although the customer explained that it would be *"very, very tough"* indicating financial difficulty, Mr Miah told him *"it's worth stretching for"* and persisted with the recommendation that he purchase the securities. After the customer told Mr Miah that he could not afford £10,000, Mr Miah recommended that the customer invest £5,000 or £6,000. The customer indicated that it would be *"very, very difficult"*. Despite this, Mr Miah continued and suggested a £4,000 investment. The customer told Mr Miah he was awaiting funds and had *"no cash, at all"*. Mr Miah acknowledged that the customer had no cash to speculate with but then continued with highly promotional statements about the prospects for the securities until the customer agreed to invest £3,000 at which point Mr Miah attempted to secure a greater investment of £4,000. Mr Miah closed the call by reminding the customer that

he expected him to send a cheque for £8,000 to pay for other trades in respect of which the customer had, at the time, an outstanding liability to Square Mile.

- 4.40. The transactions reviewed also revealed that Mr Miah failed on at least six occasions to have sufficient regard to customers' agreed risk capital level or seek confirmation from the customers that they would be willing to purchase shares in excess of their agreed risk capital level. The agreed risk capital level of a customer was considered by Square Mile to be the amount of money that the customer could afford to invest and lose in the market in higher risk small-cap securities without any significant lifestyle change. Each customer of Square Mile was required to agree their risk capital level.
- 4.41. The transactions reviewed revealed that Mr Miah made recommendations to customers to purchase securities without apparently considering or adhering to the customer's agreed risk capital level and failed to discuss this with them at the time of the trade. For example:
- (a) The evidence available to the FSA suggests that one customer had an agreed risk capital level of £5,000. As at 19 December 2005, when Mr Miah recommended that the customer purchase securities costing £11,600, securities costing £27,500 had already been booked to the customer. Again, on 1 March 2006, when Mr Miah recommended that the same customer should purchase securities costing £8,760, securities costing £74,100 had already been booked to the customer.
 - (b) The evidence available to the FSA suggests that another customer had an agreed risk capital of £10,000. As at 20 March 2006, when Mr Miah recommended that the customer purchase securities costing £20,000, securities costing £127,100 had already been booked to the customer. Again, on 9 May 2006, when Mr Miah recommended the customer purchase securities costing £25,000, securities costing £259,000 had already been booked to the customer.
- 4.42. In both examples, Mr Miah failed to obtain the customers' consent to exceed their agreed risk capital levels or explain the consequences of doing so.
- 4.43. Mr Miah's actions exposed customers to the risk of financial loss as Mr Miah failed to ensure his recommendations were affordable and/or within the customer's apparent agreed exposure to risk. Mr Miah's misconduct in this regard is serious as Mr Miah made recommendations which might not have been suitable for customers, especially those that could not afford to invest.
- 4.44. The FSA considers that this conduct falls within that covered by APER 4.2.5E and therefore demonstrates a failure to comply with Statement of Principle 2.

Pressure selling

- 4.45. The FSA identified that, when recommending higher risk securities to customers during the relevant period, Mr Miah used unacceptable sales practices that applied high and undue pressure on customers to make immediate investment decisions. Mr Miah did this despite the customer having expressed reluctance or uncertainty, or otherwise hesitated regarding the recommendation. Mr Miah did this in a number of ways:

- (a) repeatedly calling customers to pressure them into a purchase even though the customer had indicated that they did not want to purchase the securities;
 - (b) controlling the direction of telephone calls to customers involving speaking over customers and not allowing them opportunities to speak, and pressing them to make decisions when they had expressed reluctance or otherwise showed hesitation; and
 - (c) telling customers who indicated hesitation that it would be the last investment he would ask them to purchase and later contacting them again.
- 4.46. When customers expressed reluctance to make a purchase of securities, on a number of occasions, Mr Miah implied that his recommendation would be the last time that he would ask the customer to purchase securities. Mr Miah inappropriately suggested this should be taken into account by the customer when considering the affordability of the recommendation.
- 4.47. For example, one customer agreed to purchase securities costing £2,000. Mr Miah pressured the customer into agreeing to purchase the securities ignoring the customer's reservations and unease about purchasing the securities. In that telephone call, the customer told Mr Miah *"It's making me a bit shaky..."*, *"oh crickey [sic], I don't know whether I'm going to be able to do it"* and *"...well, I'll have to think about it for the moment ...I'm not going to make any hasty decision"* and *"I'm certainly not comfortable with [investing] £4,000"*. The customer also explained that the total of his investment was *"...creeping up and up and I'm not seeing anything back"*. Despite these reservations, Mr Miah continued throughout the call to pressure the customer. At one point, the customer raised his voice and stated *"Let me speak, please!"*. Mr Miah continued until the customer agreed to locate funds and invest £2,000 on the condition that the adviser agreed that it would be the last time he would be asked to invest. In particular, the customer was pressed to the point that he stated *"If I give you this capital does that now, you know, put a stop on, on the investments for a while?"*. Despite this, a further purchase of securities was booked to the account of the customer on 19 April 2006.
- 4.48. Mr Miah also made multiple calls to customers over a number of days when they had previously indicated they had no available funds and/or they were not in a position to invest.
- 4.49. For example, in respect of one customer, Mr Miah made six phone calls over a three day period and pressured the customer into agreeing to purchase securities costing £15,000, ignoring numerous statements by the customer that he could not afford to purchase the shares.
- 4.50. In another example, Mr Miah contacted one customer 13 times in eight days. On 23 March 2006 and despite telling Mr Miah that he had only £5,000 in cash, the customer was sold £7,000 of small cap securities. In that telephone call, Mr Miah told the customer *"...I'm never going to ask you this sort of figure again. This is the last holding I want you to take ..."*. Mr Miah called the customer again less than two hours later and persuaded him to purchase a further £3,000 of the securities. In that call, Mr

Miah told the customer *"I'm not going to ask you to invest anything further this year, to be honest with you"*. Mr Miah continued to contact the customer over the following eight days and, despite the customer expressing his clear reluctance to purchase any more, pressured the customer until he agreed to purchase a further £4,000 in another security. The effect of the pressure created by the repeated calls was that the customer was sold £14,000 of small cap securities even though he had made clear his reluctance to purchase them and his limited financial position.

- 4.51. The FSA is concerned that high pressure sales practices such as the examples above requires customers to make important investment decisions when they are unfairly subjected to undue higher pressure.
- 4.52. Mr Miah ignored customers' concerns and, instead, continued to pressure them through continual phone calls until they agreed to purchase the securities he was recommending. This indicates that Mr Miah was more concerned in achieving a sale rather than the interests and fair treatment of the customers.
- 4.53. The FSA considers that the customers' reluctance to purchase the securities and clear protestations in the face of Mr Miah's continued pressure to purchase the securities he was recommending should have led Mr Miah to conclude that the recommendation might not be suitable for that customer. Despite this, Mr Miah persisted with recommendations until customers finally agreed to purchase securities. The FSA considers that this conduct falls within that covered by APER 4.2.5E and therefore demonstrates a failure to comply with Statement of Principle 2.
- 4.54. The failures set out above are particularly serious as undue pressure was placed on customers to make higher risk investment decisions quickly without time to consider the risks of the securities. Mr Miah failed to treat customers fairly and subjected them to poor and inappropriate sales practices and exposed them to unnecessary risks.

5. CONCLUSION

Prohibition Order

- 5.1. The FSA considers that the facts and matters described above together demonstrate that Mr Miah's conduct fell short of the relevant regulatory requirements in that he failed to act with integrity and due skill, care and diligence in carrying out his controlled function.
- 5.2. The FSA further considers that, through his misconduct, Mr Miah had failed to demonstrate a readiness and willingness to comply with the requirements and standards of the regulatory system.
- 5.3. The FSA concludes, therefore, that Mr Miah has breached the fit and proper criteria and is not a fit and proper person.
- 5.4. Having regard to its regulatory objectives, including the need to maintain confidence in the financial system and to secure the appropriate degree of protection for consumers, the FSA considers it necessary to impose a prohibition order prohibiting Mr Miah from

performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

Financial Penalty

- 5.5. The FSA's general approach in deciding whether to take action and the imposition and amount of penalties is set out in Chapter 6 of the Decision Procedure and Penalties Guide ("DEPP"), which is part of the Handbook of Rules and Guidance. The principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring firms and approved persons who have breached regulatory requirements from committing further contraventions, helping to deter other firms and approved persons from committing contraventions and demonstrating, generally, to firms and approved persons, the benefit of compliant behaviour (DEPP 6.1.2G).
- 5.6. In determining whether a financial penalty is appropriate and proportionate, the FSA will consider all the relevant circumstances of the case. DEPP 6.5.2G sets out guidance on a non-exhaustive list of factors that may be of relevance in determining the amount of a financial penalty.
- 5.7. In deciding to take the action, the FSA considers the factors outlined in paragraphs 5.8 to 5.16 to be particularly relevant.

Deterrence: DEPP 6.5.2G (1)

- 5.8. In determining the appropriate level of penalty, the FSA has had regard to the need to promote high standards of regulatory conduct by deterring those who have committed breaches from committing further breaches and to help to deter others from committing similar breaches.

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

- 5.9. The FSA has considered the nature and seriousness of the contraventions and considers the following to be relevant in this regard:
 - (a) The breaches occurred over a protracted period of six months; and
 - (b) Mr Miah's conduct caused significant risk of loss to consumers or investors, many of whom were elderly.

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

- 5.10. The FSA considers that Mr Miah dishonestly completed trade tickets in the knowledge that customers had not agreed to purchase the securities in question. This was deliberate conduct because Mr Miah must have intended and foreseen that the consequence of him completing trade tickets in this way was that customers would be charged for, and might mistakenly pay for, the trade.

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

- 5.11. The FSA recognises that the financial penalty imposed on Mr Miah is likely to have a significant impact on him as an individual.

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

- 5.12. The FSA has taken into account the financial resources and other circumstances of Mr Miah.

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

- 5.13. The FSA has had regard to the fact that Mr Miah created the opportunity to earn commission on the unauthorised trades in the region of £8,425, which he would have had to share with a colleague, in addition to his annual basic salary of £29,000.

Conduct following the breach: DEPP 6.5.2G (8)

- 5.14. Although Mr Miah did not bring the failings to the FSA's attention, and has failed to provide any meaningful explanation in respect of the unauthorised trades, he has co-operated with the FSA during the course of the investigation.

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

- 5.15. The FSA has not previously taken any disciplinary action against Mr Miah.

Previous action taken by the FSA: DEPP 6.5.2G (10)

- 5.16. The FSA seeks to ensure consistency when it determines the appropriate level of penalty. The FSA has in the past taken action against persons for similar failings and these have been taken into consideration in setting the level of penalty against Mr Miah.

6. DECISION MAKER

- 6.1. The decision which gave rise to the obligation to give this notice was made by the Settlement Decision Makers on behalf of the FSA.

7. IMPORTANT

- 7.1. This Final Notice is given to Mr Miah in accordance with section 390 of the Act.

Manner and time for payment

7.2. The financial penalty must be paid in full by Mr Miah to the FSA by no later than 7 February 2009 and by way of two instalments as follows:

- (1) £4,200 by 7 August 2008; and
- (2) £16,800 by 7 February 2009.

If the financial penalty is not paid

7.3. If all or any of the financial penalty is outstanding on 8 February 2009, or if all or any of any instalment is outstanding on the day after the instalment is due, the FSA may recover the outstanding amount as a debt owed by Mr Miah and due to the FSA.

Publicity

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

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

FSA contacts

7.6. For more information concerning this matter generally, please contact Stephen Robinson (direct line: 020 7066 1338) of the Enforcement Division of the FSA.

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Georgina Philippou
Head of Department
FSA Enforcement Division

ANNEX - Relevant Regulatory Rules and Guidance

The Fit and Proper Test

- 1.1. The criteria by which the FSA assesses whether a person is fit and proper are contained in the Fit and Proper test for Approved Persons ("FIT") which is found in the FSA's Handbook. The most important considerations include the person's "*honesty, integrity and reputation*" (FIT 1.3.1G).
- 1.2. In determining a person's honesty, integrity and reputation, the FSA will have regard to the criteria listed in FIT 2.1.3G which includes, but is not limited to, the following matters:
 - (a) FIT 2.1.3G (5): whether the person has contravened any of the requirements and standards of the regulatory system or the equivalent standards or requirements of other regulatory authorities (including a previous regulator), clearing houses and exchanges, professional bodies, or government bodies or agencies;
 - (b) FIT 2.1.3G (13): whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards.

The Enforcement Guide

Prohibition orders

- 1.3. The FSA's policy in relation to prohibition orders is set out in Chapter 9 of the Enforcement Guide ("EG").
- 1.4. EG 9.4 summarises the FSA's policy on making prohibition orders and the circumstances under which Enforcement will consider recommending such action. In particular:

"The FSA has 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. Depending on the circumstances of each case, the FSA may seek to prohibit individuals from performing any class of function in relation to any class of regulated activity, or it may limit the prohibition order to specific functions in relation to specific regulated activities. The FSA may also make an order prohibiting an individual from being employed by a particular firm, type of firm or any firm."

- 1.5. EG 9.5 continues that:

"the scope of a prohibition order will depend on 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 which he poses to consumers of the market generally."

1.6. EG 9.8 provides:

"When the FSA has concerns about the fitness and propriety of an approved person, it may consider whether it should prohibit that person from performing functions in relation to regulated activities, withdraw its approval, or both. In deciding whether to withdraw its approval and/or to make a prohibition order, the FSA will consider in each case whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions, for example, public censures or financial penalties, or by issuing a private warning."

1.7. EG 9.9 explains that, when it decides to make a prohibition order and/or withdraw its approval, the FSA will consider all the relevant circumstances of the case. The relevant circumstances may include, but are not limited to, the following:

- a) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of approved persons are set out in Chapter 2 of FIT;
- b) whether, and to what extent the approved person has failed to comply with the Statements of Principle issued by the FSA with respect to the conduct of approved persons; and
- c) the severity of the risk which the individual poses to consumers and to confidence in the financial system.

1.8. EG 9.12(5) points to serious breaches of the Statements of Principle for approved persons as an example of a type of behaviour which has previously resulted in the FSA deciding to issue a prohibition order or to withdraw the approval of an approved person. This includes such things as failing to make terms of business regarding fees clear, or actively misleading customers about fees; acting without regard to instructions; providing misleading information to customers, consumers or third parties; giving customers poor or inaccurate advice, or using intimidating or threatening behaviour towards customers and former customers.

1.9. EG 9.23 provides that, in appropriate cases, the FSA may take other action against an individual in addition to making a prohibition order and/or withdrawing its approval, including the use of its powers to impose a financial penalty.

Decision Procedures and Penalties Manual

Financial Penalties

1.10. EG 7 provides guidance as to the FSA's power to impose a financial penalty and, as set out in EG 7.4, the FSA's statement of policy in relation to the imposition of financial penalties is set out in the Decision Procedures and Penalties Manual ("DEPP") in the FSA's Handbook at DEPP 6.2 (Deciding whether to take action), DEPP 6.4 (Financial penalty or public censure) and DEPP 6.5 (Determining the appropriate level of financial penalty).

The Statements of Principle and Code of Conduct for Approved Persons

1.11. The Statements of Principle and Code of Conduct for Approved Persons ("APER") sets out the Statements of Principle in respect of approved persons and provides examples of conduct which, in the opinion of the FSA, does 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.

1.12. The guidance provided in APER 3.1.3G provides that:

"The significance of conduct identified in the Code of Practice for Approved Persons as tending to establish compliance with or a breach of a Statement of Principle will be assessed only after all the circumstances of a particular case have been considered. 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."

1.13. APER 3.1.4G provides that:

"(1) An approved person will only be in breach of a Statement of Principle where he is personally culpable. Personal culpability arises where an approved person's conduct was deliberate or where the approved person's standard of conduct was below that which would be reasonable in all the circumstances (see DEPP 6.2.4G (Action against approved persons under section 66 of the Act)).

(2) For the avoidance of doubt, the Statements of Principle do not extend the duties of approved persons beyond those which the firm owes in its dealings with customers or others."

1.14. APER 3.1.5G provides that:

"In particular, in determining whether or not an approved person's conduct complies with a Statement of Principle, the FSA will take into account the extent to which an approved person has acted in a way that is stated to be in breach of a Statement of Principle.

1.15. APER 3.2.1G provides that:

"In determining whether or not the particular conduct of an approved person within his controlled function complies with the Statements of Principle, the following are factors which, in the opinion of the FSA, are to be taken into account:

(1) whether that conduct relates to activities that are subject to other provisions of the Handbook;

(2) whether that conduct is consistent with the requirements and standards of the regulatory system relevant to his firm."

1.16. The FSA considers Statement of Principle 1 and Statement of Principle 2 to be relevant to Mr Miah's conduct. APER 4 identifies, for each Statement of Principle, specific types of conduct which, in the opinion of the FSA, does not comply with the statement.

As set out below, APER 4 sets out descriptions of conduct which does not comply with Statement of Principle 1 and Statement of Principle 2.

Statement of Principle 1

1.17. Statement of Principle 1 provides that:

"An approved person must act with integrity in carrying out his controlled function."

1.18. APER 4.1.2E identifies different types of conduct which, in the opinion of the FSA, do not comply with Statement of Principle 1. This includes conduct that is described in APER 4.1.8E.

1.19. APER 4.1.8E states that the following conduct does not comply with Statement of Principle 1:

"Deliberately preparing inaccurate or inappropriate records or returns in connection with a controlled function, falls within APER 4.1.2E."

1.20. Examples of the behaviour referred to in APER 4.1.8E are set out in APER 4.1.9E and includes deliberately:

"(3) preparing inaccurate trading confirmations, contract notes or other records of transactions or holdings of securities for a customer, whether or not the customer is aware of these inaccuracies or has requested such records."

Statement of Principle 2

1.21. Statement of Principle 2 provides that:

"An approved person must act with due skill, care and diligence when carrying out his controlled function."

1.22. APER 4.2.2E identifies different types of conduct which, in the opinion of the FSA, do not comply with Statement of Principle 2. This includes conduct that is described in APER 4.2.3E and APER 4.2.5E.

1.23. APER 4.2.3E states that the following conduct does not comply with Statement of Principle 2:

"Failing to inform:

(1) a customer;

of material information in circumstances where he was aware, or ought to have been aware, of such information, and of the fact that he should provide it..."

1.24. Examples of the behaviour referred to in APER 4.2.3E are set out in APER 4.2.4E and include:

"(1) failing to explain the risks of an investment to a customer"

- 1.25. APER 4.2.5E states that the following conduct falls within APER 4.2.2E and therefore, does not comply with Statement of Principle 2:

"Recommending an investment to a customer, or carrying out a discretionary transaction for a customer, where he does not have reasonable grounds to believe that it is suitable for that customer ..."