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**FINAL NOTICE**

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To: **TBO Investments Limited ("TBO/ the firm")**  
Of: **Suite One**  
**Chestnut Court**  
**148 Lawrence Street**  
**York**  
**Y010 3EB**

**2 October 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 requirement to pay a financial penalty.**

**1. THE PENALTY**

- 1.1. The FSA gave TBO a Decision Notice on 24 September 2008, which notified TBO that pursuant to section 206 of the Financial Services and Markets Act 2000 ("the Act"), the FSA has decided to impose a financial penalty of £28,000 on TBO in respect of breaches of Principle 3 (Management and Control) and Principle 9 (Customers: relationships of trust) of the FSA's Principles for Businesses ("FSA Principles") between December 2001 and October 2007 ("the relevant period").
- 1.2 TBO confirmed on 19 September 2008 that it will not be referring the matter to the Financial Services and Markets Tribunal.

- 1.3 Accordingly, for the reasons set out below and having agreed with TBO the facts and matters relied on, the FSA hereby imposes a financial penalty on TBO of £28,000.
- 1.4 TBO agreed to settle at an early stage of the FSA's investigation. It therefore qualifies 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 £40,000 on TBO.

## 2. REASONS FOR THE ACTION

### Summary

- 2.1 The FSA has decided to impose a financial penalty on TBO for breaches of the FSA Principles as referred to above. These breaches relate to TBO's failure within the relevant period to establish and maintain effective systems and controls to: clearly document the explanation of the risks of transactions to clients; make and retain records that demonstrate the suitability of its advice; and ensure that its business is conducted in accordance with FSA requirements. These failings are set out in summary below and in more detail in section 4.

### 2.2 Summary of failings:

- (1) TBO failed to take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems **in contravention of Principle 3** by: having inadequate supervision and monitoring of staff providing advice to customers; failing to record both the information provided by customers and the reasons for recommending products; having inadequate systems and controls in relation to trust signatures; and acting outside of its regulatory permission by advising a customer in relation to an occupational pension transfer at a time when it did not have permission from the FSA to undertake such activity.
- (2) TBO failed to take reasonable care to ensure the suitability of its advice **in contravention of Principle 9** by failing to obtain and retain sufficient information about customers' personal and financial circumstances and objectives which led to an unacceptable risk of unsuitable investment advice being provided to TBO's customers. In further contravention of Principle 9, the firm issued suitability letters that did not always explain why the relevant transaction was suitable for the customer in question, having regard to his personal and financial circumstances and attitude to risk, and did not contain a summary of the main consequences and possible disadvantages of the transaction including appropriate explanations of the risks associated with the transaction.

### 2.3 TBO's failings are viewed as being serious because:

- (1) the failures to provide adequate suitability letters and to monitor staff providing advice to customers effectively exposed customers to a potential risk of loss from the provision of unsuitable advice;
- (2) failures in record keeping procedures meant that the firm was unable to

demonstrate how the products recommended to clients were suitable and appropriate to the client's circumstances;

- (3) the firm's failure to implement adequate systems and controls in relation to the signatures required on trust documentation potentially compromised the validity of these trusts and left them open to actions that had not been properly authorised;
- (4) there was a failure to address systemic failures and inadequate compliance arrangements despite past compliance reports over a number of years highlighting the relevant areas of weakness within the firm; and
- (5) relevant and significant information relating to signatures on trust documentation that was in the firm's possession could have been provided to the FSA at an earlier stage.

2.4 The FSA has also taken into account the following steps taken by TBO which have served to mitigate the seriousness of its failings:

- (1) TBO accepted at an early stage in the investigation that there were inadequacies in its recording of information collected from customers and the content of suitability letters sent to customers. The firm also accepts the fact that historic compliance standards were poor and that there were weaknesses in historic procedures for signing trust documentation;
- (2) TBO has been proactive in taking steps to rectify its shortcomings. After compliance issues were raised by the FSA, TBO's existing efforts to address these issues were further enhanced, in particular it employed an external compliance consultant to review its systems and all files and report back findings to the directors. Compliance at the firm has improved as a result;
- (3) prior to the FSA's investigation, TBO instigated a new procedure to validate signatures on trust documentation;
- (4) TBO has not been the subject of any previous disciplinary action by the FSA; and
- (5) in order to address the potential risk of unsuitable recommendations having been made to customers, TBO is committed to appointing an external compliance consultant to undertake a past business review ("PBR") of a percentage of sales of certain products selected on risk-based criteria with a view to:
  - (a) identifying any unsuitable recommendations;
  - (b) assessing any loss to customers; and
  - (c) paying appropriate redress where unsuitable advice has led to loss.

The PBR will be supervised by the Small Firms and Contact Division of the FSA.

## **RELEVANT STATUTORY AND REGULATORY PROVISIONS**

- 2.5 The FSA's statutory objectives set out in section 2(2) of the Act are market confidence, public awareness, the protection of consumers and financial crime. In taking action against TBO, the FSA is working towards its objective of protecting consumers.
- 2.6 The FSA is authorised by section 206 of the Act to impose a financial penalty of such amount as it considers appropriate where the FSA considers an authorised person has contravened a requirement imposed upon it by or under the Act.
- 2.7 Under the FSA's rule-making powers, the FSA has published in the FSA Handbook the "Principles for Businesses" which apply either in whole, or in part, to all authorised persons and, in particular, apply in whole to TBO. These Principles are a general statement of the fundamental obligations of firms under the regulatory system and reflect the FSA's regulatory objectives. Breaching a Principle makes a firm liable to disciplinary action. The Principles relevant to this matter are set out below.
- (1) Principle 3 (Management and control) requires that a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
  - (2) Principle 9 (Customers: relationships of trust) requires that a firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgement.

## **FACTS AND MATTERS RELIED ON**

### **Background**

- 2.8 TBO is a small firm of investment advisors. It is a limited company consisting of two directors, both providing advice. Both directors are also shareholders in the company. The main activity of the firm is to provide general financial advice to clients based mainly in the UK.
- 2.9 As a result of the FSA's investigation into TBO's sales, monitoring and training processes, the FSA has found evidence of breaches of Principles as set out below.

### **Breaches of Principles**

#### *Systems and Controls*

- 2.10 TBO was unable to demonstrate that it consistently and effectively monitored or assessed those staff advising customers. At times during the relevant period, the two directors giving advice to customers checked each other's files but this was undertaken on an ad hoc basis. There was also no formal process for the feedback or recording of any identified issues, nor any process for implementing changes in the event that systemic weaknesses were identified.
- 2.11 Where compliance consultants were utilised by the firm and failures highlighted, the

firm's systems and processes were not effectively altered to ensure that such compliance failures were not repeated. This was evidenced by the fact that many of the type of compliance failures identified throughout the relevant period were highlighted to the firm in a report in January 2002 by an external compliance consultant.

- 2.12 TBO failed to record the information supplied by customers effectively and the reasons why recommended products were considered suitable. Paper copies of customer files were stored for a period of time in an offsite location having been electronically scanned but a lack of coordination and compatibility between this system and the firm's own computerised customer database meant that record keeping was inconsistent and inadequate.
- 2.13 Systems and controls weaknesses were also highlighted in relation to the signing of trust documentation. The firm used an external trust specialist whose signature differed across a range of documents. It was not until issues with the system were raised in a report from the trust specialist in mid 2007 that TBO upgraded their procedures. TBO did not, until this time, have adequate systems in place to ensure that the signature on trust documentation was authentic. The weaknesses in the system before this time left the trusts vulnerable to actions that had not been appropriately authorised and potentially compromised the validity of the trusts themselves.
- 2.14 There were no controls in place to ensure that customers' instructions were received and recorded prior to any fund switches being undertaken by the firm. An advisor could, if he so wished, have acted without the customer's consent and outside of the firm's regulatory permission by taking such decisions on a discretionary basis. Of the files reviewed by the FSA, one contained a form signed by the customer that consented to TBO undertaking discretionary portfolio management on their behalf. The firm does not and has never had regulatory permission to undertake discretionary portfolio management. However, the FSA notes that there is no evidence to demonstrate that such discretionary decisions were actually taken by the firm in this or any other case.
- 2.15 On one file of the sample reviewed by the FSA it was apparent that an occupational pension transfer was undertaken by TBO at a time when the firm did not have the necessary regulatory permission to undertake such a transfer. The firm accepts it should not have transacted the pension transfer at the time. The firm has subsequently obtained permission to advise on such pension transfers. As a result of undertaking this transaction without the necessary permission TBO contravened Section 20 of the Act (*Authorised persons acting without permission*).
- 2.16 By failing to ensure that appropriate management and control arrangements were in place at the firm, the firm failed to take reasonable care to organise its affairs responsibly and effectively with adequate risk management, in breach of Principle 3.

#### *Suitability of advice*

- 2.17 TBO's suitability letters often failed to identify customers' attitude to risk and it followed that the firm was unable to explain why the recommended product matched customers' individual risk profile. In other cases, the firm did not refer to the

customer's individual financial and personal objectives within the suitability letter and did not therefore link the recommended product to those objectives and explain why the recommendation met their needs. The firm also did not consistently provide adequate risk warnings about the recommended products within suitability letters. In a minority of cases, no risk warnings at all were included.

- 2.18 The firm failed to record sufficient information from customers effectively and consistently. Fact finding was carried out by taking apparently unstructured hand written notes, and Fact Find documents were not seen or signed by customers as a matter of course. In other cases, Fact Find information had not been updated for a significant period of time. As a consequence, there were instances where insufficient information about customers was collated to enable the firm to ensure the suitability of its advice.
- 2.19 TBO did not record the product research undertaken for specific customers. Although an electronic library of research existed, this was not customer specific and nor was such research evidenced on paper files.
- 2.20 As a result the firm was unable to demonstrate that the decisions reached when recommending products accurately matched the needs, objectives and attitude to risk of the customer. TBO therefore failed to take reasonable care to ensure the suitability of its advice, in breach of Principle 9.

#### **ANALYSIS OF THE SANCTION**

- 2.21 The FSA's policy on whether to issue a financial penalty is set out in Chapter 6 of the Decision Procedures and Penalties Manual ("DEPP"), which forms part of the FSA Handbook. The principal purpose of imposing 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.
- 2.22 The FSA will consider all the relevant circumstances of the case when deciding whether or not to impose a financial penalty. DEPP 6.2.1G sets out a non-exhaustive list of factors that may be relevant for this purpose. In light of the duration of the breaches (December 2001 to October 2007), which revealed systemic weaknesses in the firm's internal controls relating to an important part of its business, and the risk of loss to consumers caused by those breaches, the FSA considers that it is appropriate to impose a financial penalty on the firm.
- 2.23 The FSA will consider all the relevant circumstances of the case when deciding on the level of financial penalty. DEPP 6.5.2G sets out a non-exhaustive list of factors that may be relevant for determining the appropriate level of financial penalty to be applied.
- 2.24 The FSA considers the following factors to be particularly relevant in this case:

**(1) DEPP 6.5.2G(1): Whether or not deterrence may be effectively achieved**

A financial penalty would deter TBO from further breaches of regulatory Principles. Equally, other firms will be deterred from following TBO's practices and this will promote the message to the industry that the FSA expects firms to maintain high standards of regulatory conduct.

**(2) DEPP 6.5.2G(5): The size and financial resources of the firm**

The firm is a small firm whose breaches, albeit over a protracted period, have put at risk a relatively small customer base.

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

In determining the seriousness of TBO's failings, the FSA has had regard to the nature of the breaches, the duration of the breaches, and the number of customers who were affected and/or placed at risk.

**(4) DEPP 6.5.2G(8): TBO's conduct following the breach**

The firm has been proactive in taking steps to rectify its shortcomings.

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

TBO has not been the subject of previous disciplinary action.

**(6) DEPP 6.5.2G(10): The FSA's approach in similar previous cases**

In determining that a financial penalty is appropriate, the FSA has taken account of sanctions against other authorised persons for similar conduct. In the circumstances, the FSA considers that a financial penalty, together with the remedial action described in paragraph 2.4(6), is a proportionate and appropriate outcome to this case.

**CONCLUSION**

- 2.25 The nature and extent of the breaches of the FSA's Principles for Businesses detailed above have led the FSA to consider, having regard to its regulatory objectives and the relevant mitigating factors, that a financial penalty of £28,000 is appropriate.

## **DECISION MAKERS**

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

## **IMPORTANT**

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

### **Manner of and time for Payment**

The financial penalty must be paid in full by the Firm to the FSA by no later than 31 March 2009.

### **If the financial penalty is not paid**

If all or any of the financial penalty is outstanding on 1 April 2009, the FSA may recover the outstanding amount as a debt owed by the Firm and due to the FSA.

### **Publicity**

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 a manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.

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

### **FSA contacts**

For more information concerning this matter generally, you should contact John Tutt at the FSA (direct line: 020 7066 1240).

**Jonathan Phelan**  
**Head of Department**  
**FSA Enforcement Division**