

NOTE: This prohibition order was revoked by the FCA on 13/02/2019.



Financial Services Authority

FINAL NOTICE

To: Timothy James Marlow

Date of Birth: 6 January 1979

Date: 20 July 2009

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you final notice of its decision to take the following action:

1. THE PENALTY

1.1. The FSA gave Timothy James Marlow (“Timothy Marlow”) a Decision Notice on 14 July 2009 which notified him that the FSA had decided to issue:

1.1.1. a prohibition order, pursuant to section 56 of the Financial Services and Markets Act 2000 (“the Act”), prohibiting him from performing significant influence functions in relation to any regulated activity carried on by authorised or exempt person or exempt professional firm; and

1.1.2. a financial penalty of £31,838, pursuant to section 66 of the Act,

for breaching Statement of Principle 2 of the FSA’s Statements of Principle for Approved Persons.

1.2. The financial penalty consists of the following elements:

- 1.2.1. a disgorgement of financial benefit arising from the misconduct of £14,510 (being the commission that Timothy Marlow received from the Scheme); and
- 1.2.2. An additional penal element of £17,328.
- 1.3. Timothy Marlow agreed to settle this matter at an early stage of the proceedings. He therefore, qualified for a 30% (stage 1) reduction in the penal element of the financial penalty under the FSA's executive settlement procedures. Were it not for the discount, the FSA would have sought to impose a financial consisting of the disgorgement set out in paragraph 1.2(i) and an additional penal element of £34,753.
- 1.4. The level of the penalty reflects the fact that:
 - 1.4.1. Investors were ultimately reimbursed;
 - 1.4.2. the FSA accepts that Timothy Marlow did not deliberately set out to mislead investors; and
 - 1.4.3. Timothy Marlow admitted his misconduct at an early stage of the investigation and co-operated with the FSA's investigation.
- 1.5. But for these factors, the FSA would have sought to impose a significantly higher penalty on Timothy Marlow.

2. REASONS FOR THE ACTION

Summary

- 2.1. The FSA are taking this action as a result of Timothy Marlow's conduct during the period September 2005 to September 2007 ("the Relevant Period").
- 2.2. During the Relevant Period, Timothy Marlow was approved to perform the controlled functions of CF1 (Director) and CF21 (Investment Adviser) at Bridford Optimum Returns Limited ("BORL") and Bridford Money Management Limited ("BMML"). Timothy Marlow ceased to be an Approved Person on 31 March 2008.
- 2.3. From 21 January 2005 until 1 September 2006, BORL and BMML were appointed representatives ("ARs") of City Gate Money Managers Limited ("City Gate").
- 2.4. During the Relevant Period, Timothy Marlow was a director of BMML (as well as being a financial adviser at the firm). As a director of BORL, Timothy Marlow directed the firm's marketing of investment products to independent financial advisers ("IFAs"). Those products were typically sold by BMML. The IFAs would use information and documents, designed by BMML and marketed by BORL, as the basis for the advice they gave to their customers. Timothy Marlow was also a director of Bridford Financial Services Limited ("BFSL") which was an unregulated firm.
- 2.5. During the Relevant Period, Timothy Marlow's conduct fell short of the FSA's prescribed regulatory standards for approved persons. For the reasons set out below, Timothy Marlow's conduct demonstrated a lack and integrity and, as a result, the FSA does not consider Timothy Marlow to be fit and proper to perform significant

influence functions in relation to regulated activity carried on by authorised or exempt persons or exempt professional firms.

- 2.6. Timothy Marlow demonstrated a lack of integrity because in August 2007, he twice transferred assets from an investment scheme (“the Scheme”) without the authority or knowledge of the Scheme’s trustees or the investors. On the first occasion Timothy Marlow transferred the Scheme’s assets into a bank account in the name of Bridford Financial Services Limited (“BFSL” – the administrators of the Scheme) and on the second to the control of a third party which resulted in the investors’ funds being put at significant risk of loss.
- 2.7. Timothy Marlow also breached Statement of Principle 2 of the Statements of Principle and Code of Practice for Approved Persons (“APER 2”) contained in the FSA Handbook as his conduct in carrying out his controlled functions demonstrated a lack of due skill, care and diligence.
- 2.8. In particular, Timothy Marlow breached APER 2 for the following reasons:
 - 2.8.1. Between January and March 2006, in his capacity as a director of BORL, he submitted financial promotions (“the Scheme Financial Promotions”) to City Gate in relation to the Optimum Returns (BFIG) Trust (“the Scheme”). The Scheme Financial Promotions omitted material information in relation to the Scheme of which Timothy Marlow was aware.
 - 2.8.2. In February 2006, in his capacity as director of BMML, Timothy Marlow:
 - i. allowed BMML’s financial advisers to recommend the Scheme to customers without his having a reasonable understanding of the risks of the Scheme and accordingly, without being able to assess the suitability of the Scheme for the customer; and
 - ii. failed to ensure that BMML’s customers were provided with all material information regarding the Scheme.
- 2.9. The FSA considers Timothy Marlow’s misconduct to be particularly serious in view of the following considerations:
 - 2.9.1. Timothy Marlow promoted the Scheme and sought to ensure that others recommended the Scheme, without undertaking sufficient adequate due diligence into the Scheme and without having a sufficient understanding of the nature of the Scheme itself.
 - 2.9.2. Timothy Marlow produced financial promotions for the Scheme which had the effect of misleading consumers in that they did not set out the true nature of the Scheme and significantly understated the risks of investing in the Scheme.
 - 2.9.3. By August 2006, Timothy Marlow was aware that there was no bank guarantee (the “Bank Guarantee”) as required by the terms and conditions of the Scheme but failed to inform investors of this fact. Timothy Marlow knew that the Bank Guarantee was a crucial part of the Scheme and that investors

had been told that, in the event that if it was not obtained investors had been told that their investment would be refunded.

- 2.94. By late August 2007, Timothy Marlow was aware of a number of reasons to doubt the viability of the Scheme. Despite this, he did not take steps to secure customers' investments when he had the opportunity to do so; instead, in a final attempt to secure the promised returns for investors and to prove that the concept of the Scheme could work, he transferred the funds to the control of a third party.
- 2.95. He knew that he did not have permission to transfer the Scheme's assets but did so anyway on two separate occasions.
- 2.10. The FSA has had regard to the fact that Timothy Marlow has accepted that transferring the assets without permission was wrong. The FSA has also taken into consideration the fact that Timothy Marlow has not previously been subject to any findings of misconduct by the FSA, or any other regulatory body.
- 2.11. By virtue of the matters referred to above, the FSA has concluded that:
 - 2.11.1. Timothy Marlow is not a fit and proper person to perform significant influence functions in relation to any regulated activity carried on by any authorised or exempt persons or exempt professional firms.
 - 2.11.2. Having regard to its regulatory objectives, including the risk that Timothy Marlow poses to consumers and the need to maintain confidence in the financial system, it is necessary and desirable for the FSA to exercise its power to make a prohibition order against him.
 - 2.11.3. Having regard to all the circumstances, it is appropriate to impose a financial penalty on Timothy Marlow.

3. RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND FSA GUIDANCE

Relevant Statutory Provisions

- 3.1. The FSA's statutory objectives, set out in section 2 of the Act, include market confidence and the protection of consumers.
- 3.2. Section 66 of the Act provides that the FSA may impose a financial penalty on an Approved Person or publish a public statement of misconduct where it considers that he is guilty of misconduct. Misconduct is defined in the Act as including a failure while an Approved Person to comply with a Statement of Principle issued under section 64 of the Act. Principle 2 (APER 2) states "*An approved person must act with due skill, care and diligence in carrying out his controlled function.*" (APER 2.1.2P).

Relevant Guidance

- 3.3. In deciding to take the action described above, the FSA has had regard to the guidance published in the Decision Procedure and Penalties Manual ("DEPP"), which forms

part of the FSA Handbook and, together with the Enforcement Guide (“EG”), came into effect on 28 August 2007. In particular, the FSA has taken into account the general criteria for determining whether to take disciplinary action and the factors relevant to determining the appropriate level of financial penalty set out in DEPP 6.2 and 6.5 respectively.

- 3.4. The FSA has also had regard to the guidance published in the Enforcement Manual (“ENF”), and in particular Chapters 11 and 13 which set out the relevant guidance in force when the breaches set out in paragraphs 2.7 to 2.8 above were committed. ENF was replaced by DEPP and EG on 28 August 2007. In this case, there are no material differences between the guidance and factors to be taken into account when determining whether to take disciplinary action and the factors relevant to determining the appropriate level of financial penalty that were in force during the Relevant Period and those presently in force.

Prohibition

- 3.5. The FSA has the power, under section 56 of the Act, to make an order prohibiting an individual from performing a specified function, any function falling within a specific description, or any function, if it appears to the FSA that the individual is not a fit a proper person to perform functions in relation to a regulated activity carried on by an authorised person. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description or all regulated activities.
- 3.6. The FSA will consider making a prohibition order where it appears that an individual is not fit and proper to carry out functions in relation to regulated activities carried on by firms. The FSA may exercise these powers where it considers that to achieve any of its statutory objectives it is necessary to prevent an individual from carrying out any function in relation to regulated activities. The FSA Handbook sets out rules and guidance relating to the Fit and Proper Test for Approved Persons (“FIT”) which provides that the most important considerations in assessing the fitness and propriety of a person to perform a particular controlled function are the person’s honesty, integrity and reputation; competence and capability and financial soundness (FIT 1.3.1G). The FSA’s approach to exercising its powers to make a prohibition order is set out in Chapter 9 of EG.

4. FACTS AND MATTERS RELIED ON

The Bridford Group

- 4.1. During the Relevant Period, BORL, BMML and BFSL were members of the Bridford Group, a group of private family-owned businesses based in Skipton, North Yorkshire. During the Relevant Period, Timothy Marlow and his father, Neil Marlow, were directors of BORL, BMML and BFSL. They were also shareholders in those companies. Neil Marlow held the CF1 (Director), CF 21 (Investment Adviser) and CF 24 (Pension Transfer Specialist) controlled functions in relation to BORL and BMML. Timothy Marlow and Neil Marlow shared the responsibilities of the day to day management of the companies.
- 4.2. The main activities of BMML, BORL and BFSL during the Relevant Period were:

- 4.2.1. BMML: acting as an IFA by providing advice to high net worth individuals on investments, pensions, life assurance and inheritance tax planning.
 - 4.2.2. BORL: the marketing, sale, and administration of life assurance policies, life settlements and viaticals and the promotion of the Scheme. BORL was previously known as Bridford Life Settlement Limited but the name was changed to BORL to reflect the name of the Scheme.
 - 4.2.3. BFSL: the administration of the Scheme and arranging asset finance for motor cars.
- 4.3. As BORL and BMML were not authorised persons but ARs of City Gate between 21 January 2005 and 1 September 2006, pursuant to section 21 of the Act they had to submit to City Gate for prior approval any financial promotions that they intended to issue either directly to customers or to other IFAs.

Timothy Marlow's introduction to the Scheme

The Investment Opportunity

- 4.4. In or around September 2005, Timothy Marlow was approached by businessman with an investment opportunity ("the Investment Opportunity"). The Businessman and an associate (collectively "the Businessmen") explained that the Investment Opportunity related to the inter-bank money market and that, while the inter-bank money market was normally only available to banks who invested £10 million or more, with the Businessmen's help Timothy Marlow could access it.
- 4.5. The Businessmen explained that the Investment Opportunity would enable Timothy Marlow to offer customers a guaranteed return of 6% over a fixed one year period, higher than the return offered by other guaranteed investments at that time. The Businessman also claimed that both customers' capital and the 6% return would be guaranteed by a bank ("the Bank Guarantee").
- 4.6. They explained that the capital from customers would be used as collateral to secure additional funds from a bank ("the Credit Line") which a trader ("the Trader") would use to trade on and generate returns. The vast majority of these returns, which the Businessmen explained could be greater than 100% of the amount invested, would be divided between the Trader, the Businessmen, and the Bridford Group.

Timothy Marlow's understanding of the Investment Opportunity

- 4.7. Timothy Marlow viewed the Investment Opportunity as a commercial opportunity for the Bridford Group. He believed that he could package the Investment Opportunity into a short term investment product that would be attractive to customers of BMML and customers of other IFAs who were seeking high returns at little or no risk but did not want to lock their capital up for longer than a year. Timothy Marlow considered that the Investment Opportunity would be an attractive alternative to bank and building society deposit accounts.
- 4.8. Timothy Marlow considered that the only risk to customers' funds was the risk of default by the bank supplying the Bank Guarantee.

Timothy Marlow's due diligence into the Investment Opportunity

- 4.9. Timothy Marlow had no knowledge or experience of financial products which involved the leveraged trading of customers' funds or of investing in the inter-bank money market.
- 4.10. Timothy Marlow relied on the Businessmen's representations that the proposed investment scheme was suitable for marketing to BMML's customers and that the risks involved were negligible. Timothy Marlow did not take sufficient steps to test or challenge the Businessmen's representations. In particular, Timothy Marlow accepted, at face value, the Businessmen's assertions that:
 - 4.10.1. the inter-bank money market could be accessed using his proposed investment structure;
 - 4.10.2. it would be possible to obtain the Bank Guarantee; and
 - 4.10.3. that the only risk to customers was if the bank that offered the Bank Guarantee defaulted.
- 4.11. Timothy Marlow also accepted at face value the Businessmen's claim that the Scheme was likely to generate returns well in excess of what was required to pay the guaranteed 6% return to customers. The Businessmen explained that the invested funds would be used as collateral by the Trader to secure the Credit Line which the Trader could use to pursue a trading strategy.
- 4.12. Timothy Marlow accepted the Businessmen's assertion that the Trader could use the Bank Guarantee as collateral to obtain a Credit Line without knowing, or taking reasonable steps to understand:
 - 4.12.1. the identity, regulatory status, experience or location of the Trader;
 - 4.12.2. the investment strategy to be used by the Trader, how the Trader proposed to make the anticipated returns and the feasibility of this;
 - 4.12.3. the consequences of the Trader either failing to make the anticipated returns or to do so in a timely manner having regard to the one year term of the proposed investment;
 - 4.12.4. the nature of (identity, regulatory status and location) the financial institution prepared to provide the Credit Line;
 - 4.12.5. the extent to which the proposal to use customer's capital as collateral put at risk the purported 'guaranteed' status of customer's capital; or
 - 4.12.6. the exposure of the investors' funds to risk.
- 4.13 Timothy Marlow failed to obtain this information in the mistaken belief that the existence of the Bank Guarantee meant that he had no need to understand precisely how the Scheme would generate the required returns.

The Scheme

Establishment of the Scheme

- 4.13. The Scheme was established in the following way:
- 4.13.1. Neil Marlow was originally a trustee under a trust deed dated 18 January 2006 (“the Trust Deed”) until his resignation on 6 March 2006 when he was replaced by a corporate professional trustee. The Trust Deed established the Scheme as a bare trust to be operated in accordance with the Terms and Conditions annexed in a Schedule. The trustees had the power to do anything necessary or proper to carry out any transaction or act in connection with the Scheme and the power to make any arrangements generally for the administration of their duties as they saw fit.
 - 4.13.2. Timothy Marlow understood that the trustees were responsible for the assets of the Scheme, including any transfers, and the return of the assets to customers by repayment of their original investment and the guaranteed return.
 - 4.13.3. On 26 January 2006, BFSL entered into a written agreement with the Businessmen’s company under which BFSL was appointed to promote and sell the Scheme in the United Kingdom and Ireland.
 - 4.13.4. On 6 March 2006 BFSL entered into an agreement with the Trustees under which it was appointed to carry out administration services in relation to the Scheme.

The commission-sharing agreements

- 4.14. Timothy Marlow anticipated BFSL receiving administration fees, based on a percentage of the total invested by customers, in return for promoting the Scheme and providing administrative services to it. The administration fees due to BFSL were to be used to pay commission to IFAs, including BMML, who introduced customers to the Scheme.
- 4.15. Timothy Marlow anticipated that the Scheme would generate substantial income for both BFSL and BMML. He understood that BFSL would receive in commission 5.5% of the total amount invested in the Scheme by customers and that BMML would receive commission equivalent to 2% of the sales it made.
- 4.16. Timothy Marlow therefore anticipated the Bridford Group receiving at least £550,000 from BFSL’s administration fees in addition to any commission generated by BMML from recommending the Scheme to customers.
- 4.17. Based on his discussions with the Businessmen, Timothy Marlow anticipated that the Scheme would be the first of many products that would be structured similarly to the Scheme itself.

The promotion of the Scheme

4.18. Between January and March 2006, Timothy Marlow in his role as a director of BORL submitted a number of documents to City Gate which were designed to be used to promote the Scheme to customers. Timothy Marlow was aware that BORL, as an AR of City Gate, had to have any financial promotions it intended to issue approved by City Gate.

4.19. The Scheme Financial Promotions consisted of:

4.19.1. A one page document entitled ‘Key Characteristics of Bank Secured Product’ (“the Key Characteristics Document”).

4.19.2. Two four page documents entitled ‘Key Features’ (“the Key Features Document”).

4.20. The Key Features Document described the Scheme as:

...a common account fixed term deposit scheme enabling depositors to access the European Wholesale Inter-Bank Money Market and to obtain on a fixed 52 week deposit, a return of not less than 6% per annum on the basis of a guarantee issued by a bank recognised in the EU and UK and having a Moody’s rating of not less than A, and preferably Aa, or an internationally recognised status equivalent.

4.21. The Key Features Document explained that customers’ funds would be collected in the Scheme’s trust bank account (“the Trust Bank account”) and only released once a Bank Guarantee covering both the original capital and the 6% return had been received from a bank with a P1 or A credit rating.

4.22. The Key Features Document made it clear that in the event that a suitable Bank Guarantee was not obtained within the six week syndication period, customers would get their original investment back.

4.23. The Key Features Document identified the following risks to customers’ capital:

If prior to the relevant payment date [the bank giving the guarantee] goes into liquidation or becomes insolvent or fails to comply with the terms of its obligations then you may lose part or all of your money and therefore get back less than you invested.

4.24. Timothy Marlow failed to ensure that the Key Features Document properly reflected the Scheme constituted by the Trust Deed and Terms and Conditions. In particular, the Key Features Document failed to reflect the fact that customers’ capital:

4.24.1. would be transferred to the control of the Trader; and

4.24.2. would be used as collateral by the Trader, whose identity, status or reliability Timothy Marlow did not know, with a view to securing returns for the benefit of the Trader, the Businessmen and the Bridford Group through the use of unspecified, leveraged trading mechanisms.

Marketing the Scheme

- 4.25. On 19 January 2006, City Gate approved the Key Characteristics Document and the Key Features Document. On 9 March 2006, City Gate approved the Terms & Conditions Document. From February 2006, Timothy Marlow began marketing the Scheme through BORL to IFAs, including BMML.
- 4.26. Timothy Marlow described the Scheme to BMML's customer-facing financial advisers as low risk and suitable for customers who did not want to put their capital at risk.
- 4.27. Timothy Marlow directed BMML's financial advisers to recommend the Scheme to BMML's customers using the Scheme Financial Promotions.
- 4.28. Between February and September 2006 the various IFAs marketing the Scheme, including BMML, collected £9,452,000 from 53 customers ("the investors"), with £2,902,000 coming from BMML customers alone. The investors' funds were deposited in the Trust Bank account.

Operation of the Scheme

Sourcing the Bank Guarantee

- 4.29. Between August 2006 and early August 2007 Timothy Marlow attempted to source the Bank Guarantee highlighted as a key feature in the Scheme Financial Promotions; all of the attempts failed. During the course of these attempts, the Scheme's assets were transferred to a number of European banks including a German bank ("the German Bank"), a Swiss bank ("the Swiss Bank") and an Austrian bank ("the Austrian Bank").
- 4.30. Timothy Marlow did this despite knowing that:
 - 4.30.1. The Key Features Document stated that the Investors' funds would be returned to them if a Bank Guarantee was not obtained within six weeks of receipt of funds.
 - 4.30.2. Neither the German Bank, the Swiss Bank nor the Austrian Bank met the definition of the bank that was to give the Bank Guarantee as set out in the Scheme's Terms and Conditions Document.
 - 4.30.3. The Trader had failed to secure the Credit Line that was required to enable him to generate the returns on which the Scheme's success depended.
- 4.31. In addition, by mid-November 2006 Timothy Marlow was aware that the Scheme's assets had been frozen in the Swiss Bank and become the subject of an anti-money laundering investigation. The assets were only released following the conclusion of the investigation in June 2007.
- 4.32. Despite being aware that the Scheme was not operating in accordance with the terms and conditions of the documents that constituted it or the way that it had been

described to the investors, Timothy Marlow failed to take any steps to secure the return of the investors' capital to either the trustees or the investors themselves.

Transfer to the Austrian Bank

- 4.33. In June 2007, during his attempts to secure a Bank Guarantee, Timothy Marlow transferred the assets of the Scheme to an account at the Austrian Bank in the name of BFSL. This account had been set up by, and was controlled by, Neil Marlow and Timothy Marlow. Timothy Marlow effected this transfer without the authorisation or knowledge of the trustees.
- 4.34. Timothy Marlow knew that he did not have authority to transfer the Scheme's assets but believed that that he had no choice, he said that given the "*trustees' lack of action... it was left for [BFSL] to do what it did.*"
- 4.35. By late August 2007, with the Scheme due to mature on 5 September 2007, Timothy Marlow realised that BFSL and the Trader were running out of time to secure the Bank Guarantee and thereby generate the returns required to pay the guaranteed return to the Investors and BFSL and BMML's own commission. Timothy Marlow said that he transferred the assets to the Austrian Bank because he wanted "*to get the funds back to [the] investors with a 6% return after the 52 weeks, we felt...the best way and the quickest way of actually doing it*".
- 4.36. However, by this time Timothy Marlow knew that the Scheme's assets had been transferred to, "*...various different banks*" and that nothing "*...was going as planned or as smoothly as we liked*". Timothy Marlow was also concerned about the ability of the Trader to secure the Credit Line and subsequently generate the anticipated returns.

Transfer to the US Bank

- 4.37. In early August 2007, with approximately one month until the maturity date of the Scheme and having failed to secure the Credit Line at the Austrian Bank, the Trader told Timothy Marlow that a Bank Guarantee could be obtained through a bank in the US ("the US Bank").
- 4.38. On 29 August 2007, approximately one week before the maturity of the Scheme, Timothy Marlow signed a document authorising the transfer of the Scheme's assets to an account in the Trader's name at the US Bank. The actual transfer was not completed until 5 September 2007, the day of the Scheme's scheduled maturity.
- 4.39. Timothy Marlow understood that the Scheme's assets at the time were worth approximately £8.6 million and that, if the trustees had to sell the assets to return funds to customers, the proceeds would be insufficient to honour the full capital guarantee and repay the initial capital of £9,452,000, let alone the guaranteed return of 6%.
- 4.40. Timothy Marlow had an interest in transferring the Scheme's assets to the Trader as the only way BFSL and BMML would receive further income from the Scheme, and further schemes, was if the Trader was successful in securing the Credit Line.

- 4.41. Although Timothy Marlow knew that, in the absence of a Bank Guarantee, the transfer to the US Bank was a high risky, he did not discuss it with or seek or obtain the approval of the trustees either before or after the transfer despite knowing that he did not have the necessary authority from the Trustees to make the transfer.
- 4.42. Timothy Marlow made the transfer because he felt under pressure to get the investor's capital back and to show that the Scheme worked. If he was unable to show that it worked, the further schemes that he had been planning and from which BFSL and BMML would derive considerable income, would not get off the ground.
- 4.43. As late as 17 September 2007 Timothy Marlow was still actively pursuing the possibility of further tranches of the Scheme including an Asia tranche, a Guernsey tranche and a US dollar-denominated tranche.

Recoverability of the Scheme assets

- 4.44. In early September 2007, around the scheduled maturity date of the Scheme, the Trader informed Timothy Marlow that, as a result of a dispute between the Trader and the US Bank, the Trader was unable to realise the Scheme's assets to repay the Investors.
- 4.45. The Scheme failed to honour the commitments it had made to the Investors, and the Scheme's Investors would have lost their original investment (and the promised returns) had the Scheme's corporate trustee's professional indemnity insurers not agreed to pay investors their original capital and the guaranteed 6% return; this process was completed on 11 April 2008, approximately seven months after date on which the investors should have had their investment returned to them.

5. ANALYSIS OF THE SANCTION

Financial penalty

- 5.1. The FSA has taken all the circumstances of this case into account in deciding that it is appropriate to impose a financial penalty on Timothy Marlow for breaching APER 2 and considers that the level of penalty imposed is appropriate and proportionate to the breaches concerned. In taking this decision, the FSA has had particular regard to the guidance set out in DEPP 6.
- 5.2. The FSA considers that Timothy Marlow breached APER 2 in the following ways:
 - 5.2.1. As a CF1 (Director) of BORL: by submitting the Scheme Financial Promotions to City Gate, Timothy Marlow failed to inform City Gate 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.
 - 5.2.2. As a CF1 (Director) of BMML: by directing BMML's financial advisers to promote the Scheme using the Scheme Financial Promotions, Timothy Marlow:
 - i. failed to ensure that BMML's customers were provided with all material information relating to the Scheme, in circumstances where he was aware,

or ought to have been aware, of such information, and of the fact that the firm should provide it; and

- ii. allowed BMML's financial advisers to recommend the Scheme to customers without him having a reasonable understanding of the risk exposure of the transaction, and accordingly without being able to assess the suitability of the recommendation for the customer.

- 5.3. In determining the appropriate level of financial penalty the FSA has had regard to the guidance set out in DEPP 6.5. The FSA considers the following factors to be relevant to the level of financial penalty.

Deterrence

- 5.4. The principal purpose of imposing a sanction 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.
- 5.5. The penalty will assist the FSA in achieving these and its regulatory objectives.

The nature, seriousness and impact of the breaches in question

- 5.6. The FSA considers Timothy Marlow's conduct to be particularly serious; the result of his actions was to put £9,452,000 of investors' money at risk of loss.

The extent to which the breach was deliberate or reckless

- 5.7. Timothy Marlow promoted and recommended the Scheme to IFAs (including BMML) without sufficiently turning his mind to the risks inherent within the Scheme; in this regard his behaviour was reckless.

Whether the person on whom the penalty is to be imposed is an individual

- 5.8. Timothy Marlow is liable for a financial penalty as an individual rather than a body corporate and, as such, enforcement action is likely to have a greater impact on him than it would on a body corporate.

The amount of benefit gained or loss avoided

- 5.9 Had the Scheme succeeded, Timothy Marlow anticipated that it would generate approximately £0.5 million in commission for BFSL. Timothy Marlow received £14,510 in commission, after disbursements, including to the corporate trustee, whose professional indemnity insurance covered the investors' claims in full.

Disciplinary record and compliance history

- 5.11 Timothy Marlow has no record of disciplinary findings or previous issues regarding compliance.

Other action taken by the FSA

- 5.12 In deciding the appropriate level of financial penalty, the FSA has had regard to relevant past cases.

Prohibition

- 5.13 The FSA's effective use of the power to prohibit individuals who are not fit and proper from carrying out functions in relation to regulated activities helps the FSA to achieve its regulatory objectives and, in particular, those of maintaining confidence in the financial system, protecting consumers and financial crime. The misconduct which is the subject of this notice jeopardises the fulfilment of these objectives.
- 5.14 The FSA is satisfied that Timothy Marlow is not a fit and proper person to perform regulated activities and should therefore be prohibited from performing significant influence functions in relation to regulated activity under section 56 of the Act. The FSA has had regard to the guidance in EG 9 in deciding that it is appropriate to prohibit Timothy Marlow from performing any function in relation to any regulated activity performed by any authorised or exempt person or exempt professional firm.

Fitness and Propriety – lack of integrity

- 5.15 Timothy Marlow's conduct in relation to the matters described in this Notice demonstrates that he failed to act with integrity in that his actions in transferring the funds to the Trader demonstrate recklessness and the FSA considers that he is therefore not fit and proper to perform significant influence functions in relation to any regulated activity carried on by any authorised or exempt persons or exempt professional firms.
- 5.16 In reaching this conclusion the FSA has had regard to the criteria for assessing the fitness and propriety of approved persons contained in FIT 2.1 (honesty, integrity and reputation).
- 5.17 The FSA has concluded that Timothy Marlow, having already transferred the Scheme's assets from one bank to another without the permission or knowledge of the Trustees, transferred the assets into the control of the Trader in the knowledge that such a transfer was in breach of the terms of the Scheme and that he had no explicit authority to make the transfer. Timothy Marlow was also aware that transferring the assets to the control of the Trader was a high risk strategy in the absence of any guarantee or security for the Scheme assets.
- 5.18 Moreover, Timothy Marlow did not inform the Trustees of the transfer until after the scheduled maturity date of the Scheme when it was clear that the Trader was unable to return the Scheme's assets to the Trust Bank account.
- 5.19 The FSA finds that Timothy Marlow's actions were in large part motivated not by the interests of Investors in the Scheme but by his desire to prove that the concept of the Scheme could work thereby ensuring significant income for BFSL, BMML and, through those firms, himself. This desire to prove that the Scheme could work

affected his decision making and judgement and meant that he failed to give due consideration to the interests of the investors in the Scheme.

- 5.20 Timothy Marlow's conduct was deliberate and/or reckless in that it was unreasonable of him to transfer the Scheme's assets into the control of the Trader in circumstances where he knew, or should have known, that a significant risk existed.
- 5.21 By effecting the transfer Timothy Marlow demonstrated a lack of integrity and contravened standards of the regulatory system. Further, the misconduct demonstrates a lack of readiness and willingness to comply with the requirements and standards of the regulatory system.

6. CONCLUSION

- 6.1. The FSA has taken into account all the relevant circumstances in deciding that Timothy Marlow has breached APER 2 and should have imposed on him a financial penalty of £31,838.
- 6.2. Pursuant to section 56 of the Act, the FSA considers that Timothy Marlow is not fit and proper and that a prohibition order should be made prohibiting him from performing significant influence functions in relation to regulated activity carried on by any authorised or exempt persons or exempt professional firms.
- 6.3. In determining whether to exercise its power to make a prohibition order, the FSA has had regard to its statutory objectives and considers that Timothy Marlow poses a risk to consumers and to market confidence as demonstrated by the lack of integrity and honesty he displayed in causing the transfer of the Scheme's substantial assets out of the control of the trustees and in to a position of considerable risk without sufficient regard to the interests of the investors.

7. DECISION MAKER

- 7.1. 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.

8. IMPORTANT

- 8.1. This Final Notice is given to you under section 390 of the Act.

Manner of and time of payment

- 8.2. You must pay to the FSA £12,735 of the financial penalty within six months of the date of the Final Notice. The remaining balance of the financial penalty must be paid within twelve months of the Final Notice.

If the financial penalty is not paid

- 8.3. If all or any part of the financial penalty is outstanding after the agreed date of payment, the FSA may recover the outstanding amount as a debt owed by you and due to the FSA.

Publicity

- 8.4. 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 you or prejudicial to the interests of consumers.
- 8.5. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

- 8.6. For more information concerning this matter generally, you should contact Suzanne Burt at the FSA (direct line: 020 7066 1062 /fax: 020 7066 1063).

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Georgina Philippou

FSA Enforcement Division