Financial Services Authority

FINAL NOTICE

To:	**Timothy Langman**
Of:	**Perspective Financial Management Limited**
Individual reference:	**TML00011**
Date	**31 August 2011**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London, E14 5HS ("the FSA") has taken the following action:

1. ACTION

1.1. For the reasons listed below, the FSA has taken the following action against Mr Timothy Masson Langman ("Mr Langman"):

(1) pursuant to section 66 of the Financial Services and Markets Act 2000 ("the Act"), imposed on Mr Langman a financial penalty of £10,500 in respect of breaches of Statement of Principle 7 of the FSA's Statements of Principle and Code of Practice for Approved Persons ("the Statements of Principle") between 6 April 2006 and April 2008 ("the relevant period"); and

(2) made an order, pursuant to section 56 of the Act, prohibiting Mr Langman from performing any significant influence and any customer function in relation to the sale of unregulated collective investment scheme ("UCIS"), as defined in the FSA Handbook (the "prohibition order"). The prohibition order

also prohibits Mr Langman from communicating, or causing any authorised person to communicate, an invitation or inducement to participate in a UCIS.

1.2. Mr Langman agreed to settle at an early stage of the FSA's investigation and he therefore qualified for a 30 per cent (Stage 1) discount under the FSA's executive settlement procedures. The FSA would have otherwise sought to impose a financial penalty of £15,000 on Mr Langman.

2. REASONS FOR THE ACTION

2.1. On the basis of the facts and matters described below, the FSA imposed a financial penalty on Mr Langman for failing to comply with Statement of Principle 7 in performing the significant influence functions of CF1 (Director) and CF30 (Customer) at Perspective Financial Management Limited ("PFM") during the relevant period. Mr Langman was also PFM's Training and Competency ("T&C") Officer during the relevant period.

2.2. In summary, while performing his significant influence function, Mr Langman failed to:

(1) take reasonable steps to ensure that the business of PFM for which he was responsible in his controlled function, complied with the relevant requirements and standards of the regulatory system, in breach of Statement of Principle 7 by the following action and omissions.

(i) Mr Langman failed, as T&C Officer, adequately to address the significant concerns identified by two sets of external compliance consultants relating to the competency of two of PFM's advisers. He also did not ensure that the procedures for the supervision of the advisers (as set out in the internal Training and Competency Plan) were (a) adequate or followed and (b) were reviewed and improved following the identification of significant concerns by the external compliance consultants. Mr Langham's omissions resulted in a significant risk that customers would receive unsuitable advice from PFM's advisers.

(ii) Mr Langman did not take reasonable steps to ensure that he and the advisers for whose training and competency he was responsible had a sufficient understanding of the regulatory requirements and restrictions relating to the promotion of Unregulated Collective Investment Schemes ("UCIS"). The deficiencies created an unacceptably high risk that unsuitable recommendations to invest in UCIS were made to customers.

(2) As a result of the insufficiently robust compliance and monitoring arrangements that were in place, there was a risk that PFM's advisers would recommend pension switches to customers which were not demonstrably suitable.

2.3. By virtue of Mr Langman's failure to ensure that he and the other PFM advisers were adequately trained and assessed as competent to promote and sell UCIS, the FSA has

concluded that he failed to meet minimum regulatory standards in terms of competence and capability and that he is not fit and proper to perform both significant influence functions and customer functions in relation to UCIS sales. Accordingly, the FSA has imposed a prohibition order in respect of UCIS sales on Mr Langman.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

3.1. The relevant statutory provisions and regulatory requirements are attached at Annex A.

4. FACTS AND MATTERS RELIED UPON

Background

4.1. On 6 April 2006 ("A-Day"), the Government introduced changes to simplify the tax rules for personal and occupational pensions in the UK. In particular, limits to the amount that could be paid into a personal pension were removed, although restrictions on the amount of tax-free cash that could be taken from personal pensions remained. Additionally, from A-Day, alternatives to drawing a pension as an annuity become available. Following these changes many advisers reviewed their clients' existing pension arrangements. These reviews led to a significant increase in advice given to customers to transfer their existing pension arrangements into PPPs or SIPPs.

4.2. In light of the significant increase in pension switches the FSA become concerned that consumers may have been switched into pension products which carried high charges and had features or additional flexibility that customers did not need. The FSA was also concerned about whether firms' management oversight and compliance monitoring of this type of advice were robust enough to detect and prevent unsuitable advice and ensure fair outcomes for customers.

4.3. In the summer of 2008, the FSA commenced Phase 1 of a thematic review of pension switching advice, looking at pension switches made since A-Day. For the purposes of the FSA thematic review a pension switch was defined as advice to switch from any occupational or individual pension scheme to an individual PPP or SIPP.

4.4. The review also looked at firms' management and oversight and compliance monitoring of this type of advice.

4.5. In December 2008, the FSA published a report on the findings of phase 1 of the thematic review. The report noted that the FSA had visited 30 firms and assessed 500 customer files. A quarter of the firms visited were assessed as providing unsuitable advice in a third or more of the cases sampled. Overall, unsuitable advice was found in 16% of cases reviewed.

4.6. In February 2009, the FSA published guidance on assessing the suitability of pension switches, setting out the standards the FSA expects in relation to pension switches and the action firms should take to ensure that customers receive suitable advice.

4.7. The FSA wrote to over 4,500 firms to summarise our findings, to ask them to consider past and future sales in light of the findings and to take remedial action where

necessary. The FSA then undertook a further programme of firm assessments in the latter half of 2009 in Phase 2 of the thematic review.

The Firm

4.8. PFM is an IFA based in Milton Keynes with approximately 7 advisers which has been authorised and regulated by the FSA since 1 December 2001.

4.9. PFM has conducted 210 pension switches in the two years since A-Day, some 30 of these have been into SIPPs and, of those 30, 14 involved customers' pension funds being invested in a UCIS. In total, PFM sold UCIS to 15 customers.

Conduct in issue

4.10. Throughout the relevant period Mr Langman held the significant influence function of CF1 and CF30. Mr Langman was also the designated T&C Officer at PFM throughout the relevant period. The CF10 role was held by another director of PFM (who was also a CF1 and CF30).

Failure to Address the Concerns of PFM's Compliance Consultants

4.11. During the relevant period, PFM appointed a compliance manager to assist the director responsible for compliance (the CF10 holder). PFM also engaged the services of two external consultants during the relevant period to conduct quarterly file reviews. The external consultant was engaged to review a random sample of 10% of each advisers' total business on a quarterly basis. Amongst the files reviewed by the external consultants were those relating to advice given by PFM to customers to make pension switches. The outcome of the reviews were set out in a series of reports ("the reports") between 14 July 2006 and 11 April 2007 from the external consultants and addressed to the compliance manager. The reports, amongst other issues relating to compliance procedures and records, highlighted significant and repeated concerns about the quality of advice given by two advisers.

4.12. Despite these concerns both advisers were declared as competent by Mr Langman in 2006 and 2007 and in 2007 both advisers were appointed as additional support to Mr Langman for supervising IFA trainee advisers and one of them was appointed a supervisor after completing a supervisor course in May 2007. The two advisers were also given responsibility to sign off pre-submission file checks themselves.

4.13. It was Mr Langman's responsibility to monitor the competency of PFM's advisers yet he failed to take appropriate steps to address serious performance issues when they were raised by the external compliance consultants.

Failure to Fulfil Role as T&C Officer

4.14. Mr Langman also failed to ensure that the procedures for the supervision of the advisers, as set out in PFM's internal Training and Competency Plans were adequate or followed or reviewed and updated following the identification of these significant breaches by the external compliance consultant.

4.15. The advisers were subject to Key Performance Indicators ("KPIs") that set out the standards that all advisers were expected to achieve. One of the KPIs in relation to

file reviews stated that "*No more than 10% of files reviewed should have any difficulty in demonstrating the suitability of advice provided, in any review period. No files should be rejected for poor/unsuitable advice*." Both the 2006 and the 2007 Training and Competency Plans state that the degree of supervision for some advisers may be increased for advisers who deal with high-risk products and have poor KPIs (i.e. there is evidence of poor performance). Both plans also state that the Firm will use the one to one meeting form to record whether the adviser is then subject to standard, increased or reduced supervision. One to one meetings between the adviser and supervisor were required to be held on a monthly basis in 2006 which subsequently changed to quarterly in 2007.

4.16. Despite the concerns raised by the external compliance consultants after their file reviews, Mr Langman took no action to place the two advisers in question under any increased supervision as per the internal procedures. There are also no records of monthly one-to-one meetings taking place as per the internal procedures. This was all the responsibility of Mr Langman as T&C Officer.

4.17. As described in paragraph 4.22, Mr Langman has also failed to fulfil his role as T&C Officer in that he did not take appropriate steps to ensure that he and his advisers were adequately trained in the regulatory requirements and restrictions relating to UCIS which led to the risk that customers would be given unsuitable advice.

File reviews

4.18. The FSA has reached the conclusion, following a review of PFM's files, that there was a significant risk of customers receiving unsuitable advice. The review demonstrated that in 60 % (five files) of the nine pension switching files reviewed and in 100% (four files) of the four UCIS files reviewed PFM had failed to:

(1) obtain and/or record sufficient "know your client" ("KYC") information to establish its clients' needs and objectives to demonstrate that the advice to switch was suitable (COB 5.2.5R/COBS 9.2.2R);

(2) ensure that sufficient information was recorded on fact finds about customers' objectives (COB 5.2.5R/COBS 9.2.2R);

(3) ensure that the customers who were recommended to invest in UCIS fell within the exemptions set out in the Order and/or COB/COBS (see paragraph 4.23 below);

(4) failed to communicate clearly to those customers investing in UCIS, the true nature of the risk involved with investments of that nature;

(5) put in place a standard risk rating process. The way that PFM defined attitude to risk varied between its own standard documents. In particular, the fact find, supplementary fact find and pro forma suitability report all used different risk rating scales to classify a customer's attitude to risk. This meant that it was possible for the same client to be assigned differing attitudes to risk in the same client file (COB 5.2.5R/COBS 9.2.2R); and

(6) failed to disclose properly all charges connected with the advice.

4.19. As such, Mr Langman failed to ensure the suitability of PFM's pension switching and UCIS advice because he did not take reasonable steps to implement adequate and appropriate systems and controls to ensure PFM's compliance with regulatory requirements (as per APER 4.7.3) by not ensuring that the advisers were trained and fully competent to advise.

Breach of the Restriction on the Promotion of UCIS

4.20. UCIS is defined in the glossary to the FSA Handbook of Rules and Guidance as "*a collective investment scheme which is not a regulated collective investment scheme*". Unless a collective investment scheme ("CIS") falls within the narrow definition of a regulated CIS[1], it will be a UCIS. A UCIS does not carry the same level of regulatory oversight as a CIS in relation to matters such as the clarification of fees charged or diversification, but it is still subject to regulation, notably around the extent to which and persons to whom it can be marketed. Section 238 of the Act precludes the promotion of a UCIS by an authorised person, except in certain specified circumstances, broadly these include promotions to investment professionals, existing customers of an authorised person, and certain high net worth individuals or sophisticated investors.

4.21. UCIS are often characterised by high levels of volatility and illiquidity which in turn, entail a higher degree of risk for consumers.

4.22. During interviews with the FSA, clear deficiencies were demonstrated in the understanding of the regulatory requirements and restrictions relating to UCIS on the part of Mr Langman and two of PFM's advisers for whom Mr Langman was responsible. The FSA considers this particularly serious on Mr Langman's part as, in addition to his CF1 function at PFM, he also held a CF1 (Director) function at the company that operated the specific UCIS ("the investment management company") that he and the advisers were recommending to PFM's customers. Mr Langman was also, as T&C Officer, responsible for training and competence of advisers.

4.23. Mr Langman failed to ensure that PFM complied with the regulatory restrictions on the promotion of UCIS. It also appears that he both failed to undertake training himself and ensure that PFM's advisers were properly trained so as to have sufficient awareness of the following:

(1) The statutory restriction in section 238 of the Act ("the section 238 restriction");

(2) The exemptions on the promotion of UCIS provided in the Order; and

(3) The exemptions to section 238 of the Act provided in rule 3.1.12 of COB, which was the relevant part of the FSA's Handbook at the time this advice was being given.

[1] A CIS is defined in the Handbook Glossary as follows:
(a) An investment company with variable capital; or
(b) An authorised unit trust scheme: or
(c) A recognised scheme, (ie a CIS constituted overseas and formally recognised under sections 264, 270 or 272 of the Financial services and Markets Act 2000);
Whether or not the units are held within an ISA or personal pension scheme.

4.24. The FSA reviewed a sample of four customer files where a UCIS was recommended. It was not clear on any of the files reviewed which of the exemptions to the section 238 restriction the customer fell under. As a consequence of this, 14 of PFM's customers were exposed to the risk of receiving potentially unsuitable advice.

5. ANALYSIS OF MISCONDUCT AND SANCTION

5.1. The FSA concluded that Mr Langman, as the person authorised to carry out the controlled functions of CF1, CF30 and as T&C Officer at PFM, was responsible for the misconduct referred to above.

5.2. By reason of the facts and matters referred to in paragraphs 4.11 to 4.24 above, the FSA considered that Mr Langman failed to take reasonable steps to ensure that the business of the firm for which he was responsible in his controlled function complies with the relevant requirements and standards of the regulatory system, in breach of Statement of Principle 7. Specifically, Mr Langman:

(1) failed to fulfil the role of T&C Officer adequately and ensure that internal Training and Competence procedures were followed and revised after issues were raised;

(2) failed to address the serious and repeated issues raised by the external compliance consultants which included concerns about the competency of two of PFM's advisers; and

(3) failed to take steps to inform himself and to ensure that PFM's advisers were informed about and trained on the restrictions and the related exemptions under the Order and COB rules which apply/applied to the promotion of UCIS.

5.3. By reason of the facts and matters referred to in paragraphs 4.20 to 4.24 above relating to UCIS, the FSA considered that Mr Langman's conduct is sufficiently serious as to demonstrate that he lacks fitness and propriety in terms of the competence and capability required by individuals operating in the regulated financial services industry in relation to UCIS sales.

Imposition of financial penalty

5.4. The FSA's policy on the imposition of financial penalties is set out in Chapter 6 of the Decision Procedures and Penalties Manual ("DEPP") which forms part of the FSA Handbook. When determining the appropriate level of financial penalty the FSA has also had regard to Chapter 13 of the Enforcement Manual ("ENF"), the part of the FSA's Handbook setting out the FSA's policy on the imposition of financial penalties which applied up to 27 August 2007 and to Chapter 7 of the Enforcement Guide ("EG"), in force thereafter.

5.5. 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.

5.6. In determining whether a financial penalty is appropriate the FSA is required to consider all the relevant circumstances of a case. Applying the criteria set out in DEPP 6.2.1 (regarding whether or not to take action for a financial penalty or public censure) and 6.4.2 (regarding whether to impose a financial penalty or a public censure), the FSA considers that a financial penalty is an appropriate sanction, given the serious nature of the breaches, the risks created for customers of PFM and the need to send out a strong message of deterrence to others of the consequences of recommending a course of action to its customers without demonstrating the suitability of those recommendations.

5.7. DEPP 6.5.2 sets out a non-exhaustive list of factors that may be of relevance in determining the level of a financial penalty. The FSA considered that the following factors are particularly relevant in this case:

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

(1) The FSA considered that by virtue of Mr Langman's conduct there was a significant risk of customers receiving unsuitable advice arising from the deficiencies in the quality of advice given by PFM in respect of pension switching and the promotion of UCIS to retail customers.

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

(2) The FSA recognised that the financial penalty imposed on Mr Langman was 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)

(3) The FSA found no evidence to suggest that Mr Langman will be unable to pay this penalty.

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

(4) The FSA found no evidence that Mr Langman benefited directly from his breaches.

Conduct following the breach: DEPP 6.5.2G(8)

(5) The FSA took into account Mr Langman's co-operation with the FSA's investigation.

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

(6) The FSA took into account the fact that Mr Langman has not been the subject of previous disciplinary action by the FSA.

5.8. Having considered all the circumstances set out above, the FSA determined that £15,000 (before any discount for early settlement) was the appropriate financial penalty to be imposed on Mr Langman.

Prohibition

5.9. The FSA has had regard to Chapter 8 of the Enforcement Manual ("ENF"), the part of the FSA's Handbook setting out the FSA's policy on the imposition of prohibition orders which applied up to 27 August 2007 and to Chapter 9 of the Enforcement Guide ("EG"), in force thereafter. Having regard to this, the FSA considered it appropriate to make an order prohibiting Mr Langman from performing any significant influence and any customer function in relation to the sale and promotion of UCIS.

6. PROCEDURAL MATTERS

Decision maker

6.1. The decision which gave rise to the obligation to give this Final Notice was made on behalf of the FSA by Settlement Decision Makers for the purposes of DEPP. The effective date of the Prohibition Order is 19 August 2011.

6.2. This Final Notice is given to Mr Langman in accordance with section 390 of the Act.

Publicity

6.3. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Final 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 Langman or prejudicial to the interests of consumers.

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

FSA contacts

6.5. For more information concerning this matter generally, Mr Langman should contact Steve Page on 0207 066 1420.

Tom Spender
Head of Department
Financial Services Authority

ANNEX A

1. RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE

Statutory provisions

1.1. The FSA's statutory objectives, set out in Section 2(2) of the Act, include the reduction of financial crime, maintaining confidence in the financial system and the protection of consumers.

Financial Penalty

1.2. The FSA has the power, pursuant to section 66 of the Act, to impose a financial penalty of such amount as it considers appropriate where the FSA considers an approved person has failed to comply with a Statement of Principle issued under section 64 of the Act.

1.3. The Statements of Principle and Code of Practice for Approved Persons ("APER") set out the Statements of Principle in respect of approved persons and conduct which, in the opinion of the FSA, constitutes a failure to comply with them. They also describe the factors to be taken into account by the FSA in determining whether an approved person's conduct complies with a particular Statement of Principle.

1.4. APER 3.1.3G states that, when establishing compliance with, or breach of, a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour expected in that function. APER 3.1.4G states that an approved person will only be in breach of a Statement of Principle if they are personally culpable, that is, in a situation where their conduct was deliberate or where their standard of conduct was below that which would be reasonable in all the circumstances.

1.5. In this case, the FSA considers the most relevant Statement of Principle to be Statement of Principle 7.

1.6. Statement of Principle 7 requires that an approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system.

1.7. The FSA's approach to taking disciplinary action is set out in Chapter 2 of EG. In deciding to take the proposed action the FSA has also had regard to the appropriate provisions of ENF which was in force until 27 August 2007 and therefore during part of the Relevant Period. Imposing financial penalties and public censures shows that the FSA is upholding regulatory standards and helps to maintain market confidence, promote public awareness of regulatory standards and deter financial crime. An increased public awareness of regulatory standards also contributes to the protection of consumers.

1.8. The FSA's policy on the imposition of financial penalties is set out in chapter 6 of DEPP which is a module of the FSA's Handbook of rules and guidance (and, previously, ENF). 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 (DEPP 6.1.2G & previously ENF 13.1.2).

1.9. The FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty. DEPP 6.2.1G (and previously ENF 12.3.3) sets out guidance on a non-exhaustive list of factors that may be of relevance in determining whether to take action for a financial penalty, which include the following:

(a) DEPP 6.2.1G(1) and previously EG 12.3.3(2): The nature, seriousness and impact of the suspected breach

(b) DEPP 6.2.1G(2) and previously 12.3.3(3): The conduct of the person after the breach

(c) DEPP 6.2.1G(3) and previously ENF 12.3.3(4): The previous disciplinary record and compliance history of the person

(d) DEPP 6.2.1G(4): FSA guidance and other published materials

(e) DEPP 6.2.1G(5) and previously ENF 12.3.3(5): Action taken by the FSA in previous similar cases

1.10. The FSA will consider all the relevant circumstances of a case when it determines the level of financial penalty. DEPP 6.5.2G sets out guidance on a non-exhaustive list of factors that may be of relevance when determining the amount of a financial penalty, which include:

(a) DEPP 6.5.2G(1): Deterrence

(b) DEPP 6.5.2G(2) and previously ENF 13.3.3(1): The nature, seriousness and impact of the breach in question;

(c) DEPP 6.5.2G(4) and previously ENF 13.3.3(3): Whether the person on whom the penalty is to be imposed is an individual;

(d) DEPP 6.5.2G(5) and previously ENF 13.3.3(3): The size, financial resources and other circumstances of the person on whom the penalty is to be imposed;

(e) DEPP 6.5.2G(6) and previously ENF 13.3.3(4): The amount of benefit gained or loss avoided;

(f) DEPP 6.5.2G(8) and previously ENF 13.3.3(5): Conduct following the breach;

(g) DEPP 6.5.2G(9) and previously ENF 13.3.3(6): Disciplinary record and compliance history;

(h) DEPP 6.5.2.G(10) and previously ENF 13.3.3(7): Other action taken by the FSA;

(i) DEPP 6.5.2G(12): FSA guidance and other published materials; and

(j) DEPP 6.5.2G(13) and previously ENF 13.3.3(9): The timing of any agreement as to the amount of the penalty.

Fit and Proper Test for Approved Persons

1.11. The part of the FSA Handbook entitled "FIT" sets out the Fit and Proper Test for Approved Persons. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.

1.12. FIT 1.3.1G provides that the FSA will have regard to a number of factors when assessing a person's fitness and propriety. One of the considerations will be the person's competence and capability.

1.13. As set out in FIT 2.2, in determining a person's competence and capability, the FSA will have regard to matters including but not limited to:

(1) whether the person satisfies the relevant FSA training and competence requirements in relation to the controlled function the person performs or is intended to perform; and

(2) whether the person has demonstrated by experience and training that the person is able, or will be able if approved, to perform the controlled function.

FSA's policy for exercising its power to make a prohibition order

1.14. In deciding to take the proposed action the FSA has also had regard to the appropriate provisions of ENF which was in force until 27 August 2007 and therefore during part of the Relevant Period. The FSA's approach to exercising its powers to make prohibition orders is set out at Chapter 9 of the Enforcement Guide ("EG").

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

1.16. EG 9.4 sets out the general scope of the FSA's powers in this respect, which include the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant. EG 9.5 provides that the scope of a prohibition order will vary according to the range of functions which the individual concerned performs in

relation to regulated activities, the reasons why he is not fit and proper and the severity of risk posed by him to consumers or the market generally.

1.17. In circumstances where the FSA has concerns about the fitness and propriety of an approved person, EG 9.8 to 9.14 provides guidance. In particular, EG 9.8 states that the FSA may consider whether it should prohibit that person from performing functions in relation to regulated activities. In deciding whether to make a prohibition order, the FSA will consider whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions.

1.18. EG 9.9 states that the FSA will consider all the relevant circumstances when deciding whether to make a prohibition order against an approved person. Such circumstances may include, but are not limited to, the following factors:

(1) whether the individual is fit and proper to perform functions in relation to regulated activities, including in relation to the criteria for assessing the fitness and propriety of an approved person in terms of competence and capability as set out in FIT 2.2;

(2) the relevance and materiality of any matters indicating unfitness;

(3) the length of time since the occurrence of any matters indicating unfitness;

(4) the particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates;

(5) the severity of the risk which the individual poses to consumers and to confidence in the financial system; and

(6) the previous disciplinary record and general compliance history of the individual.

1.19. EG 9.12 provides a number of examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order or withdraw the approval of an approved person. The examples include serious lack of competence