FINAL NOTICE

To: **UBS AG**

FSA Reference Number: **186958**

Address: **1 Finsbury Avenue, London EC2M 2PP**

Date: **8 February 2013**

1. ACTION

1.1. For the reasons given in this Notice, the FSA hereby imposes on UBS AG (UBS) a financial penalty of £9.45 million.

1.2. UBS agreed to settle at an early stage of the FSA's investigation. UBS therefore qualified for a 30% (Stage 1) discount under the FSA's executive settlement procedures. Were it not for this discount, the FSA would have imposed a financial penalty of £13.5 million on UBS.

2. SUMMARY OF REASONS

2.1. The penalty is in respect of UBS' failure to comply with Principle 9 and Principle 6 and certain rules set out in the FSA Handbook in connection with its sale of the AIG Life Premier Access Bond, Enhanced Variable Rate Fund (the Fund) between 1 December 2003 and 15 September 2008 (the Sales Period) and its handling of related complaints between 15 September 2008 and 20 September 2011.

2.2. In selling the Fund, UBS failed to take reasonable care to ensure the suitability of its advice to its customers to invest in the Fund (in breach of Principle 9), and also failed to pay due regard to the interests of its customers and treat them fairly (in breach of Principle 6). Further, when customers complained to UBS that they should not have been sold the Fund, UBS failed to assess these complaints fairly (in breach of Principle 6 and DISP 1.4.1R(2)).

2.3. In particular, UBS:

(1) failed to conduct adequate due diligence on the Fund before selling it to customers. As a result, UBS had insufficient understanding of the nature of the assets in the Fund and the consequent risks associated with it. Furthermore, between January 2004 and August 2007, UBS failed to monitor effectively the asset composition of the Fund;

(2) failed to have an adequate sales process in place for the Fund. UBS' advisers were not provided with adequate training on the Fund and its features and risks. As a result, UBS did not ensure that advisers understood the risks of the Fund and could determine correctly whether the Fund was suitable for their customers;

(3) did not adequately capture customers' tolerance to risk in relation to the liquidity element of their portfolios with UBS, as well as customers' risk tolerance for their portfolios as a whole as part of the sales process of the Fund, and failed to ensure that annual reviews of customers' risk profiles and portfolios were performed;

(4) recommended the Fund to some customers even though it did not provide them with the level of capital security they appear to have required. UBS did not send suitability reports to customers to whom it sold the Fund. This meant that customers did not receive a written explanation of why the Fund was suitable for them taking into consideration their circumstances and investment objectives, including any competing objectives, or an explanation of the trade-off between the Fund's risks and returns. Further, there was no compliance monitoring review of any of the 1,998 sales of the Fund which could have rectified this failing;

(5) indicated to customers that the Fund was a cash fund which invested in money market instruments. However, a significant proportion of the Fund was invested in assets which did not meet this description and customers may have misunderstood the true position about the risks they were assuming;

(6) failed to respond appropriately during the financial crisis in 2007 and 2008 when it had concerns regarding the sale of the Fund and also realised there was a greater risk of the Fund suspending redemptions and of customers suffering a loss. In the third quarter of 2007, UBS took steps to improve its knowledge of the types of assets within the Fund and the risks associated with the Fund. Nevertheless, UBS failed to take appropriate action to address its concerns and the way in which it continued to sell the Fund. UBS also failed to ensure that advisers who sought to reassure existing customers inquiring about their investments in the Fund provided a fair and accurate explanation of the risks. Further, UBS failed to review its past sales of the Fund to ensure that these had been suitable for customers;

(7) despite conducting a thorough investigation of customer complaints relating to its sale of the Fund, failed to assess those complaints fairly; and

(8) failed to maintain adequate records of its sales of the Fund.

2.4. As a consequence of the above failings, UBS' customers were exposed to an unacceptable risk of an unsuitable sale of the Fund and were not treated fairly. At the time of the Fund's suspension on 15 September 2008, 565 UBS customers holding 618 policies had approximately £816 million invested in the Fund. Of these, 119 customers had complained by September 2011.

2.5. The FSA reviewed sales of the Fund made by UBS to 33 of its customers. It found that 19 of those 33 customers were mis-sold the Fund and that there was a considerable risk that 12 of the remaining 14 may have been mis-sold the Fund (albeit that customer contact would be required to determine whether those sales were actually unsuitable). The FSA also reviewed complaints made by 11 customers who had been sold the Fund and found that all 11 complaints had been assessed unfairly, albeit that six had been upheld by UBS.

2.6. Following discussions with the FSA, UBS has agreed to conduct a redress programme in relation to sales of the Fund to its customers who remained invested at the time of the Fund's suspension on 15 September 2008. It is estimated that compensation payable to customers will be in the region of £10 million.

3. DEFINITIONS

3.1. The following definitions are used in this Final Notice:

"the Act" means the Financial Services and Markets Act 2000;

"advisers" means UBS' customer advisers;

"AIG" means AIG Inc;

"ALICO" means American Life Insurance Company;

"the Complaints Period" means 15 September 2008 to 20 September 2011;

"COB" means the Conduct of Business part of the FSA Handbook;

"COBS" means the Conduct of Business Sourcebook which is part of the FSA Handbook;

"DEPP" means the Decision Procedure and Penalties manual which is part of the FSA Handbook;

"DISP" means the Dispute Resolution: Complaints part of the FSA Handbook;

"ENF" means the Enforcement manual which is part of the FSA Handbook;

"the FSA" means the Financial Services Authority;

"the FSA Handbook" means the FSA's handbook of rules and guidance;

"Fund" means the AIG Life Premier Access Bond, Enhanced Variable Rate Fund;

"PAB" means the AIG Life Premier Access Bond, which includes both the Fund and the SVRF;

"the Principles" means the FSA's Principles for Businesses;

"the Relevant Period" means 20 October 2003 to 20 September 2011;

"the Sales Period" means 1 December 2003 to 15 September 2008;

"SVRF" means the AIG Life Premier Access Bond, Standard Variable Rate Fund, which is part of the PAB;

"SYSC" means the Senior Management Arrangements Systems and Controls Sourcebook which is part of the FSA Handbook;

"Tribunal" means the Upper Tribunal (Tax and Chancery Chamber);

"UBS" means UBS AG.

4. FACTS AND MATTERS

Background

4.1. UBS offers investment banking, asset management and wealth management services. It has been authorised by the FSA since 1 December 2001 to perform a number of regulated activities, including advising on investments and arranging deals in investments.

4.2. UBS' wealth management division provides high net worth individuals with a range of investment products and services. The wealth management division of UBS' London branch started selling the Fund to its customers in December 2003. The Fund was recommended to UBS' customers in an advised sales process.

AIG Life Premier Access Bond

4.3. The AIG Premier Access Bond (PAB) was a single premium life assurance bond containing a range of unit-linked funds invested in financial and money market instruments. The PAB was marketed to high net worth individuals by several wealth management firms and advisers, including UBS, as distributor.

4.4. The product provider of the PAB was American Life Insurance Company (ALICO), a UK branch of a wholly-owned subsidiary of AIG. AIG was, and remains, one of the world's largest international insurance and financial services organisations and was AAA rated from 2003 and AA rated from 2005 until its downgrade to A on 15 September 2008.

4.5. ALICO's UK insurance business was ring fenced from its other liabilities through a separate account. The assets invested within the PAB could not, therefore, be the subject of attachment by creditors in the event that ALICO became insolvent. As the

Fund was held within an insurance bond, a customer's investment was also subject to the Financial Services Compensation Scheme, which covered 100% of the first £2,000, plus 90% of the balance (with no upper limit) in the event ALICO defaulted.

4.6. During the Sales Period the PAB included two variable rate funds, namely the Fund and the Standard Variable Rate Fund (SVRF). The SVRF was invested in certificates of deposit and bank deposits rated AAA and AA with terms to maturity of up to six months. By contrast, the Fund was invested in certificates of deposit and bank deposits as well as debt instruments such as floating rate notes, commercial paper/bonds and asset backed securities rated AAA, AA and A and with terms to maturity of up to five years. The Fund sought to provide a higher rate of return compared with the SVRF and was accordingly invested in some longer term and higher risk assets.

<u>The Fund</u>

4.7. Although the Fund was invested in some money market instruments, the Fund was not a typical money market fund because it sought to deliver an enhanced return by also investing a material proportion of the Fund's assets in:

(1) asset backed securities. These comprised on average 27% of the Fund's assets between 6 July 2005 and 28 December 2007 and reduced to between 23% and 15% in the period 1 February 2008 to 8 August 2008, varying over the Sales Period between approximately 31% and 14%. They were primarily backed by UK residential and commercial mortgages with exposure at certain times to non-conforming UK residential mortgages;

(2) floating rate notes. Floating rate notes comprised on average 38% of the Fund's assets between 6 July 2005 and 28 December 2007 and reduced to between 30% and 27% in the period 1 February 2008 to 8 August 2008, varying over the Sales Period between approximately 51% and 27%; and

(3) assets which had terms to maturity of between three and five years. These comprised on average 54% of the Fund's assets between 6 July 2005 and 28 December 2007 and reduced to between 41% and 15% in the period 1 February 2008 to 8 August 2008, varying between approximately 65% and 15% of the Fund's assets.

4.8. The Fund's investment strategy was to smooth out fluctuations in the market value of its assets so that it achieved steady, increasing returns for customers which were better than the returns available on a typical bank deposit account. Customers purchased units in the Fund which had a value assigned to them by ALICO. ALICO determined the value of the units by reference to the book value of the Fund's underlying assets, rather than their market value. This was because it was intended that the underlying assets would be held by the Fund to their maturity periods of between one day and five years. However, if necessary, the longer dated assets could also be sold on the secondary market prior to maturity for a price which depended upon market conditions. In uncertain or turbulent economic times, there was a potential that these assets could only be sold at a loss which would, in turn, affect the likelihood of investors receiving the full amount of their investment.

4.9. To meet ordinary levels of withdrawal requests, the Fund held a proportion of its assets in cash or near cash products (overnight cash or on very short term deposit). ALICO quoted variable annual rates of return for the Fund on an approximately one month basis.

4.10. The Fund was designed to be tax efficient; there was no personal liability to lower or basic rate income tax or capital gains tax because ALICO accounted for tax liabilities on the underlying funds. Higher rate tax payers were only liable to pay additional tax on any gains over the amounts invested when they withdrew more than 5% in any policy year.

Suspension of the Fund on 15 September 2008

4.11. During the financial crisis of 2007 and 2008, the market values of some of the assets in the Fund fell below their book values. There was also adverse press about the financial stability of ALICO's parent company, AIG. This, together with volatile market conditions, prompted concerns on the part of distributors of the Fund including UBS. From the third quarter of 2007, in view of the then market conditions, ALICO began to increase the liquidity of the Fund, including by decreasing the proportion of asset backed securities in the Fund and increasing the proportion of overnight cash.

4.12. On 15 September 2008, the day of Lehman Brothers' application for Chapter 11 bankruptcy protection in the US and a sudden drop in AIG's share price, a large number of investors sought to withdraw their investments and there was a run on the Fund. ALICO was unable to meet all withdrawal requests immediately. It established that it could not meet the requests without having to sell some of its longer dated assets for materially less than their book value, which would have given rise to a significant drop in the accrued value of customers' investments. ALICO suspended withdrawals (which the terms and conditions of the Fund allowed) and ultimately closed the Fund to new customers.

4.13. Existing customers were subsequently permitted to withdraw 50% of their investment (comprising capital plus accrued interest), realising its full accrued value. However, from 14 December 2008, they were able to withdraw the remaining 50% but not for its full value (as at 14 December 2008, this represented a 13.5% reduction in the accrued value of their entire investment). Alternatively, ALICO offered a guarantee that customers would get back this proportion of their investment in full, based on its value as at 14 December 2008, if they kept their money in a Protected Recovery Fund (which ALICO established) until at least 1 July 2012. On 1 July 2012, the Protected Recovery Fund was closed and customers were able to recover the value as at 14 December 2008 of the remaining 50% of their original investment into the Fund.

Impact on UBS' customers

4.14. At the time of the Fund's suspension on 15 September 2008, 565 UBS customers had approximately £816 million invested in the Fund.

4.15. 15 customers withdrew either all, or over 50%, of their investment in December 2008 and suffered a loss of approximately 27% of the accrued value of the withdrawn amount which exceeded 50% of their investment.

4.16. All of the remaining 550 customers elected to withdraw 50% of their investment (realising its full value) and to transfer all of the remaining 50% of their investment to ALICO's Protected Recovery Fund. On 1 July 2012, and taking into account distributions made from that Fund, customers who transferred all of the remaining 50% of their investment into the Protected Recovery Fund recovered 100% of the accrued value of their original investment as at 14 December 2008. However, they had lost the opportunity to earn an investment return on this proportion of their investment since that date.

Failings in selling the Fund to customers

Failure to carry out adequate due diligence

4.17. Before UBS made the Fund available for sale to its customers in December 2003, it failed to conduct adequate due diligence on the Fund. This appears to have been because the Fund was introduced by ALICO as an additional fund to the SVRF, a product within the PAB, which UBS had been selling since October 2000 and which had been through due diligence and UBS' formal new business approval process before it was launched.

4.18. The Fund shared some common features with the SVRF. However, as the Fund's objectives and asset profile were different from the SVRF, it should have been subjected to additional due diligence. UBS failed to undertake adequate due diligence and, consequently, UBS did not take the appropriate steps to understand the nature of the Fund's underlying assets or its features and risks, including how changes in market conditions might affect the Fund.

4.19. Shortly after the Fund was launched, one member of senior management requested and received from ALICO details of the Fund's underlying assets. This information included the asset types, counterparties, ratings and size of holdings of the Fund (a summary of which was already available to UBS). In providing this, ALICO stated that the Fund was "*expanding quite rapidly …so any snapshot at the moment might not be representative of the long term structure*". This information was cascaded to several individuals within UBS, but it is not clear what analysis (if any) was carried out in relation to this data. In any event, UBS did not obtain details from ALICO of plans for the "*long term structure*" and asset composition of the Fund.

Classification of the Fund as a "cash/liquidity" product which was low risk

4.20. UBS classified the Fund as a low risk product within its "cash/liquidity" asset class. Other products within this asset class included current accounts, notice/deposit accounts, money market funds and the SVRF.

4.21. During the Sales Period, there were no formal criteria or process used by UBS to determine (a) which products should be allocated to the "cash/liquidity" asset class; and (b) the risk profile of particular products. In the absence of such criteria, a product would be assigned a product manager within UBS who would determine to which asset class the product belonged and the risk profile of the product. However, due to the inadequate due diligence performed, the product manager did not have the necessary understanding about the underlying assets in the Fund and their associated

risks to determine the appropriate asset class for it. UBS accordingly classified the Fund as falling within the "cash/liquidity" asset class and as "low risk".

4.22. UBS deemed the Fund to be a potentially suitable product for all of its customers regardless of the customers' tolerance for risk because all customers had a "liquidity" element to their portfolio of assets with UBS. However, this meant that customers who had informed UBS that they were risk averse, that they wished to take "*no risk*" or wanted to invest only in "*low risk*" investments could still be recommended by their advisers to invest in the Fund.

4.23. The Fund was sold by advisers as the preferred product within UBS' "cash/liquidity" asset class, and in preference to the SVRF, even in circumstances where customers were seeking capital security and access to their investment within three months. In October 2007, it was recognised by senior management that many advisers were using the Fund as a default cash offering and were not fully considering alternative products, and some steps were taken to seek to address this.

Inadequate training on the Fund

4.24. Between December 2003 (when UBS made its first sale of the Fund) and November 2007, UBS advisers were not provided with sufficiently detailed training on the assets in which the Fund was invested and the consequent risks of the Fund. UBS, therefore, did not ensure that advisers had the appropriate understanding about the Fund to determine if it was suitable for their customers.

4.25. Although advisers were provided with a significant amount of training and regularly provided with AIG's monthly information sheets for the Fund (which included a breakdown of the ratings, sector, maturity and classes of the assets in which the Fund was invested), advisers did not receive an adequate explanation of the significance of the types of assets in the Fund and the Fund's consequent risks. For example, material used to train advisers prior to November 2007 described the PAB as being suitable for customers who were "*seeking means of enhancing cash yield*", required "*access to cash withdrawals*" or had "*specific tax or other liabilities to meet*". In making these statements about suitability, the training materials did not differentiate between the Fund and the SVRF.

4.26. In fact, the Fund was not suitable for customers who had tax bills or other liabilities to meet because the Fund did not provide capital security due to the presence in the Fund of asset backed securities and assets with terms of maturity of up to five years, including floating rate notes.

4.27. Furthermore, the Fund was not suitable for customers who required access to their money within three months. This is because ALICO reserved the right to defer withdrawals for up to three months in exceptional circumstances (for example, if ALICO was forced to sell the assets in the Fund at a loss in order to meet withdrawals, ALICO could choose to defer withdrawals rather than deplete all cash reserves within the Fund or suffer capital loss to the Fund. This risk crystallised on 15 September 2008).

4.28. Despite information relating to the above being included in the customer literature, training and customer presentations throughout the Sales Period, advisers do not appear to have understood properly how this might impact upon customers and to have taken this into account when making recommendations. UBS failed to give advisers adequate product-specific training and guidance to ensure that advisers properly understood the more detailed but potentially important characteristics of the Fund as well as its risks, could explain them adequately to customers, and determine when another product should be recommended instead of the Fund. For example, one adviser told UBS after the Fund had been suspended that he "*wasn't clear himself what was actually in it* [the Fund]". Another adviser, when asked whether he thought the Fund provided capital security, commented that "*we all did to some extent*" and that "*there was a view that the PAB was as safe as a bank account*".

4.29. Prior to November 2007, template presentations used by UBS to create bespoke customer presentations did not explain the underlying asset profile of the Fund, and stated that the Fund invested in "*a wider range of money market instruments*" than the SVRF which gave the incorrect impression that the Fund was invested in money market instruments exclusively.

4.30. From November 2007, the material used by UBS to train its advisers was improved to explain the underlying asset profile of the Fund. The material now stated that the Fund's underlying investments included asset backed securities and floating rate notes, provided a description of these assets in some detail and set out the Fund's exposure to different types of assets. The training material also explained different types of risks to which the Fund was exposed, but as set out below did not explain all of the risks properly or the circumstances in which these risks might crystallise.

Lack of suitability reports

4.31. UBS was required under the FSA's rules to issue suitability reports when advising customers to invest in the Fund for the first time. However, as a result of an apparent misunderstanding from a discussion in 2001 with UBS' then regulator, advisers were not required by UBS to send suitability reports to customers at any time during the Sales Period.

4.32. Advisers were instead trained to send a standard letter to customers prior to them investing in the PAB which was referred to within UBS as an "indemnity letter". This letter was not a suitability report because it did not constitute a written explanation of why the Fund was suitable for customers taking into consideration their particular circumstances, or an explanation of the main consequences and possible disadvantages of investing in the Fund.

4.33. The indemnity letter included details of different AIG products and was not specific to the Fund. The customers were required to tick the box next to the product that they wanted and acknowledge that they had received, read and understood the literature in relation to that specific product. The product literature relating to the Fund consisted of two documents which had been prepared by ALICO. The indemnity letter stated that ALICO reserved the right, in exceptional circumstances, to defer encashments for up to three months. By signing the indemnity letter, customers were asked to acknowledge that in exceptional circumstances, they may not have direct access to

their investment. From December 2007, the indemnity letter was improved to (a) refer to the underlying assets of the Fund (including certificates of deposit, commercial paper, floating rate notes and asset backed securities); (b) warn customers that their investment and return from it was only as secure as the selected range of assets purchased by the funds the customer chose; and (c) warn customers that their investment was at risk if any of those assets failed to meet their obligations.

4.34. However, there was no explanation to customers of when exceptional circumstances could occur and how the composition of the Fund affected the risk of such circumstances arising, or a proper indication of the adverse impact that this could have on their investment.

4.35. UBS relied on customers reading the ALICO product literature as well as the indemnity letter in order to understand the features and risks of the Fund. However, some customers do not appear to have received the ALICO product literature. Moreover, customers who had not received an appropriate oral explanation from their adviser of the Fund's risks, or had received a recommendation that the Fund was suitable for their needs without highlighting the risks, could not be expected from reading the indemnity letter and the ALICO product literature to recognise the importance of the information, or that it might differ from their previous understanding.

The FSA's sales review

4.36. The FSA reviewed the files of sales of the Fund made by UBS to 33 of its customers.

4.37. The FSA found that 19 of the 33 customers were mis-sold the Fund because the Fund was unsuitable for the customer for one or more of the following reasons:

(1) the customer required capital security;

(2) the customer required access to their investment within three months; and

(3) the customer's investment into the Fund resulted in the customer's portfolio with UBS not being appropriately diversified.

4.38. The FSA found that 12 of the remaining 14 customers may have been mis-sold the Fund. There was information in the sales files indicating unsuitability, but the FSA was unable to determine for certain whether these sales were unsuitable because there was insufficient information documenting the sale of the Fund due to poor record keeping.

Failings in relation to risk to capital

4.39. The FSA found that the Fund was sold to 15 customers who were "*low risk*", "*risk averse*" or "*very cautious*" in terms of their risk appetite, and who required capital security.

4.40. The Fund was potentially unsuitable for these types of customers because a significant proportion of its assets were not cash or near cash and because the Fund exposed them to a level of capital risk which was greater than they appeared willing to accept.

Failings in relation to access to capital

4.41. The FSA found that the Fund was sold to eight customers who required access to their investment within three months. The Fund could not guarantee access to capital within three months because ALICO reserved the right to defer withdrawals for up to three months in exceptional circumstances.

Failings in relation to diversification

4.42. The FSA found that four customers were advised to invest between 50% and 100% of what appears to have been their total investable assets in the Fund. The FSA did not find evidence of any reasonable rationale for this level of investment in the Fund.

4.43. Although the Fund's underlying assets were diverse, by investing such a high proportion of their overall wealth in one product, customers were over-exposed to risks associated with ALICO and AIG and to the risk of the Fund failing to meet regular withdrawal requests due to the long-dated nature of some of its underlying assets.

Incorrect statements made to customers about the Fund

4.44. The FSA found that some advisers informed customers that the Fund offered "*immediate liquidity*" and "*instant access*". Advisers also sold the Fund to customers who wanted to invest in "*cash*", "*near cash*" or "*close to cash*". In a significant number of cases, customers were told that the Fund was a "*money market fund*". These statements, which gave a misleading impression of the level of capital and liquidity risk associated with the Fund, may have been a result of advisers' lack of training on the risks of the Fund which was exacerbated by the internal classification of the Fund as a low risk, "cash/liquidity" product that was potentially suitable for all customers.

Failure to respond appropriately to the changing market conditions in late 2007 and during 2008

4.45. In late 2007 and during 2008, there was increased uncertainty with regard to the market value and liquidity of some of the underlying assets of the Fund. These issues particularly affected the asset backed securities (which were primarily backed by UK residential and commercial mortgages) and floating rate notes in the Fund. As a result, during this period, there was an increased risk of the Fund suspending redemptions and of customers suffering a loss because:

(1) the market value of a material proportion of the Fund's assets dropped to below their book value. This gave rise to an increased likelihood of ALICO changing the valuation approach for the Fund's units so that they reflected the market value of those assets rather than their book value. This would have resulted in a decrease in the value of the Fund's units and consequently a reduction in the value of customers' investments in the Fund; and

(2) there was speculation in the press about the financial stability of ALICO's parent company, AIG. Together with the volatile market conditions, this

increased the risk of a run on the Fund. In this event, ALICO was unlikely to be able to meet all withdrawal requests without having to sell quickly some of the longer dated and less liquid assets in the Fund at below book value. A significant increase in withdrawals could have forced ALICO to suspend withdrawals from the Fund to allow it to sell assets and fairly value customers' units in the Fund.

4.46. From the third quarter of 2007, UBS took steps to improve its knowledge of the specific portfolio of assets within the Fund. By July 2007, UBS had developed concerns about the level of the Fund's exposure to the US sub-prime market and requested information from ALICO about the underlying assets in the Fund. UBS used the information received from ALICO to review the underlying assets in the Fund. From September 2007 onwards, UBS also:

(1) started monitoring the underlying asset mix of the Fund on a regular basis;

(2) monitored the long term credit ratings of ALICO and AIG and analysed the impact of these ratings on the PAB;

(3) reviewed UBS Investment Bank research on AIG;

(4) reviewed information received from ALICO relating to the inflows and outflows of the Fund; and

(5) re-confirmed the ring-fencing of policyholder assets in the Fund by taking legal advice on the protection afforded by the Delaware Insurance Code and the extent of segregation in the UK and US business of ALICO and AIG.

4.47. In early September 2007, UBS formed a Cash Management Committee to take responsibility for monitoring cash management funds in which UBS customers were invested, including the PAB. The Committee had its first meeting on 17 September 2007.

4.48. During this meeting, the Committee received a presentation about the state of the Fund prepared by a member of UBS wealth management staff who had performed an examination of the Fund's underlying assets based on information received from ALICO. This presentation recognised that the Fund had close to 80% exposure to assets with more than three months to maturity and a relatively large allocation to floating rate notes and asset backed securities with a maturity of longer than 364 days. In fact, at this point, approximately 28% of the assets within the Fund were floating rate notes (with a maturity of 3 to 5 years) and 25% of the assets were asset backed securities.

4.49. Furthermore, it was recognised in this presentation that the Fund's "*capital value is vulnerable in any scenario where it is forced to liquidate its investments. This is because, for a cash fund it has a relatively long weighted-average-life. Having said that, it has significant short-term funds and it should be able to meet redemptions of up to 20% of the fund without too many problems. Beyond that it might be forced to either impose some time limit on withdrawals or, a haircut on the capital value*."

4.50. UBS recognised at this meeting that its own customers represented approximately 25% of the total investments in the Fund, and was concerned about the consequences of this and whether there was sufficient liquidity to meet large redemptions.

4.51. UBS met with ALICO in early October 2007 and took comfort from ALICO's decision to increase the overall cash composition of the Fund in view of market conditions by decreasing the proportion of asset backed securities and increasing the proportion of overnight cash. However, UBS still had concerns about the Fund and remained uncomfortable with the proportion of the Fund held by its own customers, and increased its ongoing monitoring of the Fund's liquidity levels.

4.52. In late October 2007, sales management expressed concerns to the Cash Management Committee about the direct loss of business that might arise from a complete cessation of sales of AIG products. In November 2007, senior management took the decision that UBS should continue to sell the Fund because it considered "*there* [*was*] *nothing wrong with the product*", but "*would avoid specific sales push*" which it thought to be inappropriate given the prevailing market environment around asset backed securities, collateralised debt obligations and mortgage backed related instruments. It was decided that the content of presentations and letters to customers would be updated "*so risks of AIG were spelled out*" and that advisers would be updated following the recognition noted at paragraph 4.23 above that many advisers had been treating the PAB as a "*default instrument*" for customers' cash management or liquidity needs.

4.53. From November 2007, changes were made to training materials and the indemnity letter to place greater emphasis on the asset profile of the Fund and the implications of this on its suitability for customers (as explained in paragraphs 4.30 and 4.33). However, these documents still failed to explain the risks of the Fund properly.

4.54. Template presentations which were used by UBS to create bespoke customer presentations were also amended to include some details about the underlying assets of the Fund and to state that the Fund was "*not equivalent to a cash deposit, and clients must recognise the additional risks involved*" and that it was *"not suitable for use as a general cash account with multiple subscriptions and redemptions*". The presentations were also revised to no longer state that the Fund was suitable for customers who had specific tax or other liabilities to meet, or for customers who wanted access to cash withdrawals. UBS also failed to carry out a review of past sales of the Fund to determine whether its risks had been adequately highlighted to customers and whether they had received a suitable recommendation to invest in the Fund.

4.55. Despite the change to training material, template customer presentations and the indemnity letter, there is evidence that some advisers still did not fully understand the underlying assets and risks of the Fund. For example, some advisers continued to sell the Fund to customers who had low appetite for risk, who were "*very cautious*" and who desired capital security, and the Fund was described to customers as a "*cash solution"* or a *"cash based option"* which provided "*enhanced cash rates*". This was possibly because the Fund continued to be classified as a "cash/liquidity" product and referred to within UBS as a cash product. Some advisers continued to sell the Fund as a cash fund which provided instant access and capital security.

4.56. In 2008, some customers who had invested in the Fund contacted their advisers expressing concerns about AIG. Some advisers, in turn, sought internal guidance. For example, one adviser asked the product manager responsible for the Fund in February 2008 whether UBS was still comfortable with the Fund. The product manager's response was that UBS was still comfortable selling the Fund but that it was for each adviser to assess with their customer whether a move to the SVRF was appropriate. Some customers were reassured by their advisers that the Fund continued to be an appropriate investment for them.

4.57. In March 2008, customers were contacted by UBS and provided a copy of AIG's most recent newsletter which set out a summary of the Fund's composition and an explanation of the increased risks of the Fund. Prior to this point, UBS had not sent any communications to customers to attempt to explain the increased risks of the Fund despite the fact that UBS had had concerns about the Fund since October 2007.

4.58. However, it appears that some advisers continued not to understand this information or the increased risks. For example, one adviser told his customer in April 2008 that the Fund had no exposure to sub prime. However, in February 2008, UBS had already concluded from information received from ALICO that 7% of the Fund was exposed to UK sub prime mortgages. Again, by 17 June 2008, UBS had discovered that 42% of the Fund comprised floating rate notes with an average term to maturity of 2.75 years. Despite this knowledge, one customer was told in August 2008 that the Fund was a "*cash based option*" and invested in the Fund later in the month.

4.59. Whilst UBS did take some appropriate steps in view of the changing market conditions in late 2007 and 2008, overall they amounted to an insufficient response to the increased risks to the Fund and UBS' customers which UBS had identified.

Failure to assess customer complaints fairly

4.60. By September 2011, UBS had received complaints concerning the Fund from 119 customers who were invested in the Fund at the time of its suspension in September 2008 (representing 21% of the customers who remained invested in the Fund at suspension on 15 September 2008). Compensation of approximately £2.8 million has been paid to 27 customers and interest-free loans of £4.5m were advanced to six customers.

4.61. The FSA reviewed complaints to UBS from 11 customers who had invested in the Fund and found that each of these complaints had been assessed unfairly, although six complaints had been upheld. In particular, UBS failed to assess fairly whether the Fund had been suitable for these customers and employed a narrow complaints handling methodology. Although the complaints were thoroughly investigated, UBS' decision to reject or uphold a complaint depended primarily on whether the complainant had received the ALICO product literature and indemnity letter. It appears that in cases where complainants had received the ALICO product literature, UBS would usually reject the complaint on the basis that the literature fully explained the risks of the Fund. Issues relating to how advisers had assessed that the Fund was suitable for complainants, and how advisers had described the Fund to the complainants were not adequately addressed.

4.62. UBS also applied an inconsistent approach to its assessment of and reliance on information and evidence collected as part of its investigation into the complaint. The FSA found examples where complainants' investment objectives, as set out in forms they had completed when opening their accounts with UBS, were relied on as evidence to support UBS' position. However, this information was given no or insufficient weight when it did not support UBS' decision to reject the complaint.

Issues with risk profiling of customers who were sold the Fund

4.63. Customers completed risk profiling questionnaires when they opened their accounts with UBS. These questionnaires assessed customers' risk tolerance and investment goals. The output of these questionnaires and follow-up discussions between customers and their advisers resulted in customers being allocated one of the following risk profiles: "Fixed Income", "Income", "Yield", "Balanced", "Growth" and "Equity". However, these profiles failed to describe the level of risk the customer wished to be exposed to; rather, they summarised the types of assets that customers should invest in which, in turn, determined the level of risk that they would assume. For example, a customer with a "Fixed Income" risk profile would be investing mostly in high quality fixed term instruments.

4.64. Some customers expressed one risk tolerance level for the liquidity element of their portfolio which was different to their risk tolerance level for their overall portfolios. However, during the Sales Period, this information about customers' attitude to risk to various elements of their portfolio was not always recorded by advisers when giving advice in respect of the Fund. An internal review by UBS' Group Internal Audit in 2008 found that this was due to confusion amongst advisers as to whether customers' risk profiles should be recorded at the customer level, at portfolio level or both.

Failure to perform adequate monitoring and reviews in relation to sales of the Fund

<u>Failure to conduct annual reviews of customers' risk profiles and portfolios</u>

4.65. Advisers were expected to pro-actively contact their customers at least annually to identify any changes in their personal circumstances, to review their risk profiles and portfolios, and to update UBS' electronic records accordingly. However, the annual review of customer risk profiles by advisers was not always completed in a timely manner and many were overdue at any one time.

4.66. An internal review carried out by UBS Group Internal Audit in 2008 identified that the annual reviews were not being completed consistently by advisers. Due to a lack of knowledge among advisers on how to record and keep customer risk profile information on UBS' electronic system up to date, and a lack of enforcement of the requirements, advisers were not keeping adequate records to explain why customers' risk profiles did not match up with customers' portfolios. In a number of cases, the portfolio held was more aggressive than the customer's risk profile, or was more aggressive than the one agreed at the account opening stage, without documentation to explain the difference.

4.67. The weaknesses in recording and reviewing customers' risk profiles placed customers at an increased risk of being sold the Fund despite it not being suitable for their circumstances and investment objectives. Following the Group Internal Audit review in 2008, UBS has taken extensive steps to enhance its risk profiling and record-keeping arrangements.

Failure to monitor adequately the composition of the Fund

4.68. Until the third quarter of 2007, UBS did not take adequate steps to monitor the asset composition of the Fund. Although UBS carried out some monitoring of the Fund prior to this period, this was completed on an *ad hoc* basis and was very high level. However, UBS did periodically monitor AIG's performance from 2004 onwards. UBS also made enquiries into the ring-fencing of assets within the PAB in mid-2005. Nevertheless, UBS did not carry out regular and sufficiently detailed analysis of the composition of the underlying assets in the Fund until August 2007.

Failure to review sales of the Fund

4.69. During the Sales Period of nearly five years, UBS made 1,998 sales of the Fund. However, UBS failed to perform any compliance monitoring review of these sales to ensure that they had been suitable for customers.

Failure to keep adequate records

4.70. During the Sales Period, UBS failed to maintain adequate records in relation to its sales of the Fund. In particular, with regard to sales made to 12 of the 33 customers reviewed by the FSA, the deficiencies in the records meant that the FSA was unable to make a determination as to whether the sale of the Fund was suitable for the customer.

4.71. Furthermore, UBS did not record whether customers were sold the Fund on an advised, discretionary or non-advised basis (although UBS has confirmed that sales of the Fund were made on an advised basis only).

5. FAILINGS

5.1. On the basis of the facts and matters set out above, UBS has breached Principle 9, Principle 6 and certain rules set out in the FSA Handbook in relation to suitability, complaints handling and record-keeping. These rules are referred to in Annex A.

5.2. Principle 9 states:

"*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 judgment.*"

UBS has breached Principle 9 by failing to take reasonable care during the Sales Period to ensure the suitability of its advice in relation to the Fund for its customers. UBS has also breached COB 5.3.5R and COBS 9.2.1R by failing to take reasonable steps to ensure that its personal recommendations were suitable for its customers.

5.3. In addition, UBS' failure to issue suitability reports to customers to whom it had made a personal recommendation to invest in the Fund resulted in breaches of COB 5.3.14R and COBS 9.4.2R.

5.4. Principle 6 states:

"A firm must pay due regard to the interest of its customers and treat them fairly."

UBS has breached Principle 6 by failing to treat its customers fairly for the reasons set out at paragraph 2.3(6).

5.5. Furthermore, UBS breached Principle 6 and DISP 1.4.1R(2) by failing to assess fairly complaints from its customers relating to UBS' sales of the Fund.

5.6. UBS has breached SYSC 9.1.1R and SYSC 3.2.20R(1) for failing to keep adequate and orderly records of its business and internal organisation.

6. SANCTION

Relevant guidance on sanction

6.1. The FSA has considered the disciplinary and other options available to it and has concluded that a financial penalty is the appropriate sanction in the circumstances of this particular case.

6.2. In determining the financial penalty, the FSA has had regard to guidance contained in DEPP and ENF, which formed part of the Handbook during the Relevant Period. During that period, both DEPP 6.5 and Chapter 13 of ENF contained some of the factors that may be of particular relevance in determining the appropriate level of a financial penalty. However, DEPP 6.5.1 G and ENF 13.3.4 G both stated that the criteria listed in DEPP 6.5 and ENF 13.3 respectively were not exhaustive and that all relevant circumstances of the case should be taken into consideration. In determining whether a financial penalty is appropriate and the amount, the FSA is therefore required to consider all the relevant circumstances of the case.

Deterrence

6.3. The FSA considers that in this case, the financial penalty will promote high standards of regulatory conduct by deterring firms who have breached regulatory requirements from committing further contraventions, helping to deter other firms from committing contraventions and demonstrating generally to firms the benefit of compliant behaviour. It will strengthen the message to the industry that it is vital for firms to take reasonable care to ensure the suitability of their advice to customers and to treat customers fairly.

The nature, seriousness and impact of the breach in question

6.4. The FSA has had regard to the seriousness of the breaches, including the nature of the requirements breached, the number and duration of the breaches, the number of customers who were exposed to risk of loss and whether the breaches revealed serious or systemic weakness of the management systems or internal controls. In view of

these, the FSA considers that UBS' breaches are of a serious nature. The failings in relation to the sale of the Fund took place over a period of nearly five years, and the failure to handle complaints about the Fund fairly occurred over a period of three years.

6.5. The FSA has also had regard to the following mitigating factors:

(1) some of UBS' sales of the Fund were made during the financial crisis. The FSA recognises that, when selling the Fund between 2003 and the first part of 2007, UBS would not have expected the severe economic conditions which existed during the financial crisis and their consequent impact on markets and investment products;

(2) UBS took steps to improve its knowledge and monitoring of the Fund from the third quarter of 2007 onwards and took some, albeit inadequate, action in relation to its sales of the Fund; and

(3) some other distributors of the Fund also appear to have had a mistaken impression as to the risks of the Fund.

The extent to which the breach was deliberate or reckless

6.6. The FSA does not consider that the misconduct on the part of UBS was deliberate or reckless. However, the FSA considers it particularly serious that UBS failed to take reasonable care to establish and maintain an adequate sales process for the Fund and ensure the suitability of its advice throughout the Relevant Period. The FSA also considers it particularly serious that UBS failed to respond appropriately to issues it identified in relation to the Fund and its sale of it.

The size, financial resources and other circumstances of the firm

6.7. The FSA has taken into account UBS' size and financial resources. UBS is one of the largest investment banks in the UK with a major private banking arm. As such, it has a leading competitive position in the market and its practices set an example for others in the financial services industry. During the Sales Period, UBS' gross income from sales of the Fund and the SVRF was approximately £11.5 million. During the Sales Period, UBS advised on investments in the Fund to approximately 1,998 customers. The total value of initial investments in the Fund by UBS' customers was approximately £3.5 billion with additional investments into the Fund of approximately £2.6 billion.

Disciplinary record and compliance history

6.8. UBS was fined £8 million on 5 August 2009 for breaches of Principles 2 and 3 which occurred between 1 January 2006 and 31 December 2007 in its wealth management business, £29.7 million on 26 November 2012 for breaches of Principles 2 and 3 which occurred between 1 June 2011 and 14 September 2011 in its Global Synthetic Equities business, and £160 million on 18 December 2012 for breaches of Principles 3 and 5 which occurred between 1 January 2005 and 31 December 2010 for misconduct relating to the London Interbank Offered Rate and the Euro Interbank Offered Rate.

6.9. None of these disciplinary actions related to the suitability of UBS' advice to customers.

Conduct following the breaches

6.10. UBS and its senior management have co-operated with the FSA during its investigation.

6.11. Following discussions with the FSA, UBS has agreed to conduct a redress programme in relation to sales of the Fund to its customers who remained invested at the time of the Fund's suspension on 15 September 2008. It is estimated that compensation payable to customers will be in the region of £10 million.

7. PROCEDURAL MATTERS

Decision makers

7.1. The decision which gave rise to the obligation to give this Final Notice was made by the Settlement Decision Makers.

7.2. This Final Notice is given under, and in accordance with, section 390 of the Act.

Manner of and time for payment

7.3. The financial penalty must be paid in full by UBS to the FSA by no later than 14 days from the date of this Final Notice.

If the financial penalty is not paid

7.4. If all or any of the financial penalty is outstanding after 14 days from the date of this Final Notice, the FSA may recover the outstanding amount as a debt owed by UBS and due to the FSA.

Publicity

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

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

FSA contacts

7.7. For more information concerning this matter generally, contact Lance Ellison (direct line: 020 7066 2422 /fax: 020 7066 2423) of the Enforcement and Financial Crime Division of the FSA.

Signed:

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Tom Spender

FSA Enforcement and Financial Crime Division

ANNEX A

1. RELEVANT STATUTORY AND REGULATORY PROVISIONS

Statutory provisions

1.1. Under section 2(2) of the Act, the protection of consumers is one of the FSA's statutory objectives.

1.2. Section 206 of the Act provides:

"*If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act, it may impose on him a penalty, in respect of the contravention, of such amount as it appears appropriate*."

1.3. UBS is an authorised person for the purposes of section 206 of the Act. The requirements imposed on an authorised person include those set out in the FSA Principles and rules made under section 138 of the Act.

1.4. The FSA's rule-making powers are set out in Chapter I of Part X of the Act (Rules and Guidance). The FSA has made rules, in particular those contained in SYSC, COB, COBS and DISP in accordance with its powers and provisions under this part of the Act.

The Principles for Businesses

1.5. Principle 6 states:

"A firm must pay due regard to the interest of its customers and treat them fairly."

1.6. Principle 9 states:

"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 judgment."

Conduct of Business (COB)

1.7. COB 5.3.5R (in force between 1 December 2001 and 30 November 2004 (inclusive)) states:

"(1) A firm must take reasonable steps to ensure that it does not in the course of designated investment business:

(a) make any personal recommendation to a private customer to buy or sell a designated investment; or

(b) effect a discretionary transaction for a private customer (except as in (3));

unless the recommendation or transaction is suitable for the private customer client having regard to the facts disclosed by him and other relevant facts

about the private customer of which the firm is, or reasonably should be, aware.

(2) *A firm which acts as an investment manager for a private customer must take reasonable steps to ensure that the private customer's portfolio or account remains suitable, having regard to the facts disclosed by the private customer and any other relevant facts about the private customer of which the firm is or reasonably should be aware.*

(3) *Where, with the agreement of the private customer, a firm has pooled his funds with those of others with a view to taking common discretionary management decisions, the firm must take reasonable steps to ensure that a discretionary transaction is suitable for the fund, having regard to the stated investment objectives of the fund."*

1.8. COB 5.3.5R (in force between 1 December 2004 and 5 April 2006 (inclusive)) states:

(1) A firm must take reasonable steps to ensure that, if in the course of designated investment business:

(a) it makes any personal recommendation to a private customer to:

(i) buy, sell, subscribe for or underwrite a designated investment (or to exercise any right conferred by such an investment to do so); or

(ii) elect to make income withdrawals; or

(iii) enter into a pension transfer or pension opt-out from an occupational pension scheme; or

(b) *it effects a discretionary transaction for a private customer (except as in (5)); or*

(c) *it makes a personal recommendation to an intermediate customer or a market counterparty to take out a life policy;*

the advice on investments or transaction is suitable for the client.

(2) If the recommendation or transaction in (1) relates to a packaged product:

(a) it must, subject to COB 5.3.8.G – COB 5.3.10R, be the most suitable from the range of packaged products, on which advice on investments is given to the client as determined by COB 5.1.7R; and

(b) if there is no packaged product in the firm's relevant range of packaged products which is suitable for the client, no recommendation must be made.

(3) In making the recommendation or effecting the transaction in (1), the firm must have regard to:

(a) *the facts disclosed by the client; and*

(b) *other relevant facts about the client of which the firm is, or reasonably should be, aware.*

(4) *A firm which acts as an investment manager for a private customer must take reasonable steps to ensure that the private customer's portfolio or account remains suitable, having regard to the facts disclosed by the private customer and other relevant facts about the private customer of which the firm is or reasonably should be aware.*

(5) *Where, with the agreement of the private customer, a firm has pooled his funds with those of others with a view to taking common discretionary management decisions, the firm must take reasonable steps to ensure that a discretionary transaction is suitable for the fund, having regard to the stated investment objectives of the fund."*

1.9. COB 5.3.5R (in force between 6 April 2006 and 31 October 2007 (inclusive)) states:

(1) *A firm must take reasonable steps to ensure that, if in the course of designated investment business:*

(a) *it makes any personal recommendation to a private customer to:*

(i) *buy, sell, subscribe for or underwrite a designated investment (or to exercise any right conferred by such an investment to do so); or*

(ii) *elect to make income withdrawals, or purchase a short-term annuity or not; or*

(iii) *enter into a pension transfer or pension opt-out from an occupational pension scheme; or*

(b) *it effects a discretionary transaction for a private customer (except as in (5)); or*

(c) *it makes a personal recommendation to an intermediate customer or a market counterparty to take out a life policy;*

the advice on investments or transaction is suitable for the client.

(2) *If the recommendation or transaction in (1) relates to a packaged product:*

(a) *it must, subject to COB 5.3.8.G – COB 5.3.10R, be the most suitable from the range of packaged products, on which advice on investments is given to the client as determined by COB 5.1.7R; and*

(b) *if there is no packaged product in the firm's relevant range of packaged products which is suitable for the client, no recommendation must be made.*

(3) *In making the recommendation or effecting the transaction in (1), the firm must have regard to:*

   (a) the facts disclosed by the client; and

   (b) other relevant facts about the client of which the firm is, or reasonably should be, aware.

(4) *A firm which acts as an investment manager for a private customer must take reasonable steps to ensure that the private customer's portfolio or account remains suitable, having regard to the facts disclosed by the private customer and other relevant facts about the private customer of which the firm is or reasonably should be aware.*

(5) *Where, with the agreement of the private customer, a firm has pooled his funds with those of others with a view to taking common discretionary management decisions, the firm must take reasonable steps to ensure that a discretionary transaction is suitable for the fund, having regard to the stated investment objectives of the fund."*

1.10. COB 5.3.5AG (in force between 1 December 2004 and 31 October 2007) states:

(1) If circumstances arise in which a firm reasonably concludes that there are several packaged products in the relevant range which would satisfy the test in COB 5.3.5R(2), it will act in conformity with that rule if it recommends only one of those products.

(2) If a client does not wish to proceed in accordance with a recommendation, a firm may nonetheless make further recommendations providing any such recommendation is suitable for the client in accordance with the obligation in COB 5.3.5R

1.11. COB 5.3.14R (in force between 1 January 2003 and 30 November 2004 (inclusive)) states:

If, following a personal recommendation by the firm, a private customer:

(1) buys, sells, surrenders, converts, cancels, or suspends premiums for or contributions to, a life policy, pension contract or stakeholder pension scheme; or

(2) elects to make income withdrawals; or

(3) acquires a holding in, or sells all or part of a holding in, a scheme; or

(4) enters into a pension transfer or pension opt-out from an OPS;

the firm must provide the customer with a suitability letter, within the time period stipulated by COB 5.3.18R, unless one of the exceptions in COB 5.3.19R applies.

1.12. COB 5.3.14R (in force between 1 December 2004 and 5 April 2006 (inclusive)) states:

(1) A firm that gives a personal recommendation, in relation to a life policy, to a person who is a policyholder or a prospective policyholder of a life policy, must provide the person with a suitability letter prior to the conclusion of the contract, unless one of the exceptions in COB 5.3.19 R applies.

(2) If, following a personal recommendation by a firm that does not fall within (1), a private customer:

(a) *buys, sells, surrenders, converts, cancels, or suspends premiums for or contributions to, a pension contract or a stakeholder pension scheme; or*

(b) *elects to make income withdrawals or purchase a short-term annuity; or*

(c) *acquires a holding in, or sells all or part of a holding in, a scheme; or*

(d) *enters into a pension transfer or pension opt-out from an OPS;*

the firm must provide the customer with a suitability letter, within the time period stipulated by COB 5.3.18R, unless one of the exceptions in COB 5.3.19R applies.

1.13. COB 5.3.14R (in force between 6 April 2006 and 5 April 2007 (inclusive)) states:

(1) A firm that gives a personal recommendation, in relation to a life policy, to a person who is a policyholder or a prospective policyholder of a life policy, must provide the person with a suitability letter prior to the conclusion of the contract, unless one of the exceptions in COB 5.3.19 R applies.

(2) If, following a personal recommendation by a firm that does not fall within (1), a private customer:

(a) *buys, sells, surrenders, converts, cancels, or suspends premiums for or contributions to, a pension contract or a stakeholder pension scheme; or*

(b) *elects to make income withdrawals or purchase a short-term annuity; or*

(c) *acquires a holding in, or sells all or part of a holding in, a scheme; or*

(d) *enters into a pension transfer or pension opt-out from an OPS;*

the firm must provide the customer with a suitability letter, within the time period stipulated by COB 5.3.18R, unless one of the exceptions in COB 5.3.19R applies.

1.14. COB 5.3.14R (in force between 6 April 2007 and 31 October 2007 (inclusive)) states:

(1) A firm that gives a personal recommendation, in relation to a life policy, to a person who is a policyholder or a prospective policyholder of a life policy, must provide the person with a suitability letter prior to the conclusion of the contract, unless one of the exceptions in COB 5.3.19 R applies.

(2) If, following a personal recommendation by a firm that does not fall within (1), a private customer:

(a) *buys, sells, surrenders, converts, cancels, or suspends premiums for or contributions to, a personal pension scheme or a stakeholder pension scheme; or*

(b) *elects to make income withdrawals or purchase a short-term annuity; or*

(c) *acquires a holding in, or sells all or part of a holding in, a scheme; or*

(d) *enters into a pension transfer or pension opt-out from an OPS;*

the firm must provide the customer with a suitability letter, within the time period stipulated by COB 5.3.18R, unless one of the exceptions in COB 5.3.19R applies.

Conduct of Business Sourcebook (COBS)

1.15. COBS 9.2.1R (in force between 1 November 2007 and present) states:

(1) *A firm must take reasonable steps to ensure that a personal recommendation, or a decision to trade, is suitable for its client.*

(2) When making the personal recommendation or managing his investments, the firm must obtain the necessary information regarding the client's:

(a) knowledge and experience in the investment field relevant to the specific type of designated investment or service;

(b) financial situation; and

(c) investment objectives;

so as to enable the firm to make the recommendation, or take the decision, which is suitable for him.

1.16. COBS 9.4.2R (in force between 1 November 2007 and present) states:

If a firm makes a personal recommendation in relation to a life policy, it must provide the client with a suitability report.

Senior Management Arrangements Systems and Controls Sourcebook (SYSC)

1.17. SYSC 3.2.20R(1) (in force between 1 December 2001 and present) states:

"*A firm must take reasonable care to make and retain adequate records of matters and dealings (including accounting records) which are the subject of requirements and standards under the regulatory system.*"

1.18. SYSC 9.1.1 R (in force between 1 November 2007 and 30 June 2011 (inclusive)) states:

"*A firm must arrange for orderly records to be kept of its business and internal organisation, including all services and transactions undertaken by it, which must be sufficient to enable the FSA or any other relevant competent authority under MiFID to monitor the firm's compliance with the requirements under the regulatory system, and in particular to ascertain that the firm has complied with all obligations with respect to clients."*

Dispute Resolution: Complaints (DISP)

1.19. DISP 1.4.1R (in force between 1 November 2007 and 31 August 2011 (inclusive)) states:

"*Once a complaint has been received by a respondent, it must:*

(1) investigate the complaint competently, diligently and impartially;

(2) assess fairly, consistently and promptly:

(a) the subject matter of the complaint;

(b) whether the complaint should be upheld;

(c) what remedial action or redress (or both) may be appropriate;

(d) if appropriate, whether it has reasonable grounds to be satisfied that another respondent may be solely or jointly responsible for the matter alleged in the complaint;

taking into account all relevant factors;

(3) offer redress or remedial action when it decides this is appropriate;

(4) explain to the complainant promptly and, in a way that is fair, clear and not misleading, its assessment of the complaint, its decision on it, and any offer of remedial action or redress; and

(5) comply promptly with any offer of remedial action or redress accepted by the complainant."

1.20. DISP 1.4.1R (in force between 1 September 2011 and present) states:

"*Once a complaint has been received by a respondent, it must:*

(1) investigate the complaint competently, diligently and impartially, obtaining additional information as necessary;

(2) assess fairly, consistently and promptly:

(a) the subject matter of the complaint;

(b) whether the complaint should be upheld;

(c) what remedial action or redress (or both) may be appropriate;

(d) if appropriate, whether it has reasonable grounds to be satisfied that another respondent may be solely or jointly responsible for the matter alleged in the complaint;

taking into account all relevant factors;

(3) offer redress or remedial action when it decides this is appropriate;

(4) explain to the complainant promptly and, in a way that is fair, clear and not misleading, its assessment of the complaint, its decision on it, and any offer of remedial action or redress; and

(5) comply promptly with any offer of remedial action or redress accepted by the complainant."