Financial Services Authority

FINAL NOTICE

To: **Wills & Co Stockbrokers Limited**

Of: **33 Queen Street**
London
EC4R 1AP

FSA Reference Number: **126232**

Date: **16 February 2010**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives you final notice about its decision to issue a statement of misconduct.

1. ACTION

1.1. On 16 February 2010 for the reasons set out below and pursuant to section 205 of the Financial Services and Markets Act 2000 ("FSMA"), the FSA decided to issue a

public statement to censure Wills & Co Stockbrokers Limited ("Wills & Co"/ the "Firm") for breaches of Principles 2, 3, 6, 7, 9 and 11 of the FSA's Principles for Businesses (the "Principles").

1.2. The firm confirmed on 15 February 2010 that it will not be referring the matter to the Financial Services and Markets Tribunal ("the Tribunal").

1.3. Accordingly for the reasons set out below the FSA will issue a statement of misconduct.

2. REASONS FOR THE ACTION

2.1. The FSA has decided to issue a public censure in respect of Wills & Co for breaches of the Principles in respect of failings in its sales practices and compliance monitoring between 1 November 2007 and 28 July 2009 (the "Relevant Period") and in respect of failings in its complaints handling processes between 1 January 2009 and 31 December 2009. Wills & Co is a stockbroking firm which specialises in advising retail customers, recommending and trading in "high risk securities", namely securities that have been admitted to trading on the AIM and PLUS markets ("the Relevant Business"). The Firm makes recommendations and sales to its customers primarily by telephone. This public censure is issued in respect of failings identified in the Relevant Business.

2.2. Wills & Co was fined £49,000 by the FSA on 31 October 2007 in relation to the Relevant Business on the basis of failings in its sales practices, the information provided to its customers and its systems and controls (the "2007 Final Notice"). The Enforcement Investigation was concluded via executive settlement and the FSA required the Firm to confirm in writing to the FSA that certain remedial actions to deal with the issues identified in the Final Notice had been implemented by 23 December 2007 ("the Undertaking").

2.3. The Undertaking stated that the majority of the corrective action had been undertaken and that the Firm's monitoring procedures were now robust and satisfied the FSA's rules and Principles. The Undertaking was signed by the Firm.

2.4. The FSA visited Wills & Co in May 2008 to assess whether it had implemented the remedial actions required by the settlement agreement and rectified the failings as identified in the 2007 Final Notice. The FSA identified similar failings in the Firm's sales practices and compliance monitoring to those set out in the 2007 Final Notice and subsequently commenced an investigation.

2.5. The FSA has concluded that during the Relevant Period Wills & Co has breached:

(1) Principle 2 (Skill, care and diligence) by failing to conduct its business with due skill, care and diligence;

(2) Principle 3 (Management and control) by failing to establish and maintain robust systems and controls, in respect of sales and compliance processes, that were appropriate for the Relevant Business;

(3) Principle 6 (Customers' interests) by failing to pay due regard to the interests of its customers and treat them fairly;

(4) Principle 7 (Communications with clients) by failing to take reasonable steps to ensure customers understood the nature of the risks involved, by not paying due regard to the information needs of its customers and communicating information in a manner which was not clear, fair and not misleading;

(5) Principle 9 (Customers: relationships of trust) by failing to give due consideration to the suitability of its recommendations for customers; and

(6) Principle 11 (Relations with regulators) by failing to deal with the FSA in an open and co-operative way.

2.6. The FSA views the Firm's failings in relation to the performance of the Firm's compliance monitoring function and sales processes as particularly serious in view of the following considerations:

(1) the FSA had taken previous disciplinary action against the Firm in respect of serious failings in its systems and controls and sales practices. The 2007 Final Notice detailed the failings of the Firm in respect of the Relevant Business, yet the Firm failed to ensure that the Firm's systems and controls were appropriate and that its sales practices were improved sufficiently;

(2) the breaches revealed serious weaknesses in the management systems and internal controls relating to the Relevant Business and presented a significant risk to the FSA's objectives of securing the appropriate degree of protection for consumers and maintaining confidence in the financial system;

(3) Wills & Co's customers were entitled to rely on it to take reasonable steps to ensure the suitability of its advice, and to be treated fairly. The Firm's failure in respect of its sales practices and compliance monitoring created a risk of customers being recommended securities which were unsuitable for them;

(4) The Firm's failings in respect of its complaints handling procedures created a further risk that its customers would not be treated fairly after the sales process was completed, as the Firm failed to deal with complaints appropriately. As such, customer redress arising from the Firm's non-compliant sales practices in the period prior to the 2007 Final Notice, was delayed (although it was eventually paid); and

(5) the Firm failed to establish and implement adequate monitoring processes to cover the Relevant Business to ensure compliance with the FSA's regulatory requirements.

2.7. The FSA recognises that there were some improvements to the Firm's compliance monitoring procedures since the date of the 2007 Final Notice and the visit in May

2008. However the Firm's sales and compliance monitoring practices remained below the relevant regulatory standards for the Relevant Period.

3. RELEVANT STATUTORY PROVISIONS

3.1. The FSA's statutory objectives are set out in Section 2(2) of FSMA, maintaining market confidence in the financial system, public awareness, the protection of consumers and the reduction of financial crime.

3.2. The FSA has the power pursuant to section 205 of FSMA to issue a public censure where it considers that an authorised person has contravened a requirement imposed on him by or under FSMA.

Relevant Principles

3.3. The FSA Principles for Businesses are a general statement of the fundamental obligations of firms under the regulatory system and reflect the FSA's regulatory objectives.

(1) Principle 2 states that a firm must conduct its business with due skill, care and diligence.

(2) Principle 3 states that a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

(3) Principle 6 states that a firm must pay due regard to the interests of its customers and treat them fairly.

(4) Principle 7 states that a firm must pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading.

(5) Principle 9 states that a firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgement.

(6) Principle 11 states that a firm must deal with its regulators in an open and cooperative way, and must disclose to the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice.

4. FACTS AND MATTERS RELIED ON

4.1. Wills & Co was fined £49,000 by the FSA on 31 October 2007 in relation to the Relevant Business on the basis of failings in its sales practices, the information provided to its customers and its systems and controls. The failings can be summarised as follows:

(1) failing to establish and maintain robust systems and controls that were appropriate for the Relevant Business, including the failure to establish and implement a suitably comprehensive compliance monitoring programme;

(2) failing to take reasonable steps to ensure customers understood the nature of the risks involved and by not paying due regard to the information needs of its customers, communicating information in a manner which was not clear, fair and not misleading;

(3) failing to maintain appropriate and documented procedures detailing its approach to compliance monitoring; and

(4) failing to establish and implement a comprehensive compliance monitoring programme and robust compliance controls that were sufficiently tailored to its regulated business.

Unacceptable sales practices

4.2. The FSA undertook a review of the Firm's sales practices in respect of the Relevant Business between 17 January and 17 March 2009. The FSA reviewed 19 transactions which were representative of the Relevant Business undertaken during that time, three of which had been reviewed by the Firm's internal compliance monitoring function. The FSA identified compliance failings in all 19 transactions, a number of which related to the same, or similar, failings as highlighted in the 2007 Final Notice.

4.3. A general risk warning was given in 16 of the 19 transactions; in those three in which it was not given, the adviser had attempted to give it but the customer had indicated that they did not wish to hear it. However, in eight of the 19 transactions the general risk warning was given (or attempted) only after the sale had been agreed by the customer. In four of the 19 transactions the general risk warning was undermined by the adviser. In addition, such risk warnings were fairly limited, referring only to the fact that the stock was a penny share, that it was high risk and/or that the value of the stock could go down or up and/or that the customer could make or lose money on the investment. In none of the 19 transactions was the customer informed during the sales call that they could lose all the capital they had invested in the stock. Although the Firm's Terms of Business state that all equity investments involve the risk of losing all or part of the investment, where positive statements have been made regarding a share, this must be balanced by the provision of the risks of the stock, which would include the risk of losing the entire investment.

4.4. In 18 of the 19 transactions, no stock specific risk warnings were given to the customer, with the result that there was no, or little, balance in the recommendation. In the one transaction where stock specific risks were given, they were given only in response to a specific question from the customer and the risks were then immediately dismissed by the adviser. The FSA reviewed the admission to trading

(on AIM or PLUS) documents relating to three of the stocks sold in these transactions and have determined that those documents set out in detail the risk factors involved in investing in those companies. These documents would, or should, have been known to Wills & Co as they were publicly available. However, none of the risk factors listed in those documents was mentioned to customers by Wills & Co's advisers in the sales calls reviewed.

4.5. In eight of the 19 transactions, the adviser did not communicate clearly the mark-up received by Wills & Co on the securities being sold (i.e. the difference between the price at which Wills & Co took the principal position in the securities being sold and the price at which the transaction was executed for the customer). In those cases where the adviser did clearly disclose the mark-up, this disclosure was made only after the customer had agreed to purchase the stock. As a result, customers may not have been aware of the nature and extent of the mark-up on the stocks being recommended to them and, therefore, the amount of profit which Wills & Co was making on the transaction. The FSA did not have details of the mark-ups on all of the stocks sold in the 19 transactions. However, on the basis of the information given to customers in those calls where the mark-up was communicated clearly, the FSA has calculated that the mark-ups on those stocks ranged from 2.9% to 173%, with all but three of the calls showing mark-ups of 70% or more.

4.6. Wills & Co recommended that customers should not invest more than 10% of their total personal assets in high risk stocks. In four of the 19 transactions, it was apparent from the sales calls that the customer had exceeded this limit. In one of the four transactions in which it was apparent that the 10% limit had been exceeded, the customer had been allowed to invest 26% of his net liquid assets in high risk stocks and the adviser told the customer, "*as this is the last investment you're putting into AIM I'm comfortable to keep us there*". In three of the four transactions, the customer was not advised that he had exceeded the 10% limit until after he had agreed to purchase the recommended securities and, in the fourth

transaction, the customer was only told that he exceeded the limit when he brought the issue up himself during the sales call.

4.7. In eight of the 19 transactions, the adviser gave an unbalanced account of the past performance of the stock, with no indication that past performance was not a reliable indicator of future results.

4.8. In 15 of the 19 transactions, the adviser made unsubstantiated comments about the future performance of the stock being recommended. In 8 of those 15 transactions, the adviser gave specific but unsubstantiated projections for the share price.

4.9. In six of the 19 transactions, the adviser made comparisons between the stock being recommended and other stocks; in four of those six transactions, the adviser mentioned the past performance of other stocks the Firm had previously sold to customers, thereby giving the impression that the stock being recommended would, or could, perform as well as those stocks.

4.10. In 15 of the 19 transactions, the adviser informed the customer that the transaction was "commission free", that there was no commission payable by the customer or that there was "minimal commission". One customer was told that he would not be charged commission because it was his first transaction. Such statements may have led customers to believe that there were no additional charges or fees for the transaction, particularly in those nine transactions where the nature and extent of the mark-up on the securities was also not communicated clearly (see paragraph 4.5 above). Such statements may also have been misleading in that they may have given the impression that the adviser was making an exception for the customer in not charging him commission, when in fact the Firm did not charge a routine "commission" charge on the Relevant Business but instead charged a £15 compliance charge and profited via its principal position in the stocks (through the mark-up payable). Although the adviser did sometimes mention the £15 compliance charge (in 14 of the 19 trades) and the fact that stamp duty of 0.5% was payable (in five of the 19 trades), and a Commission Schedule attached to the

Firm's Terms of Business listed stamp duty and compliance charges, the position in relation to commission should have been made clear given that disclosure of commission and the compliance charge were issues specifically raised in the 2007 Final Notice.

4.11. The above failings indicate that the Firm did not pay due regard to the information needs of its customers and did not communicate information to them in a way which is clear, fair and not misleading, in breach of Principle 7.

4.12. These, or similar, issues had all been identified in the 2007 Final Notice. The Firm's sales practices have not therefore improved significantly in these areas since the 2007 Final Notice was issued, notwithstanding the Undertaking in December 2007 that remedial action had been undertaken.

Failing to give due consideration to the suitability of its recommendations

4.13. In all of the 19 transactions reviewed by the FSA, there was a risk that the recommendation may not have been suitable for the customer involved.

4.14. In none of the 19 transactions did the adviser seek to obtain up-to-date personal and financial information about the customer before making the recommendation. There was therefore a risk that the recommendation was not suitable for the customer. Although in 12 of the 19 transactions a Client Information Form ("CIF") had been completed and sent to the customer within three months of the date of the recommendation, in some cases a much longer period of time had elapsed. For instance, in two cases, almost three years had elapsed since a recorded CIF update, in one case 12 months had elapsed since a recorded CIF update and in three cases five months had elapsed since a recorded CIF update. In one case, there was no CIF on file for the customer. The Firm's Terms of Business state that it is the customer's responsibility to inform the Firm of facts material to their circumstances and that the customer agrees to update all information supplied on a continuous basis. However, it was the Firm's responsibility to ensure that each and every

recommendation was suitable for the customer. The Firm should not have assumed that, if the customer had not given the Firm notice of a change of circumstances, such change had not in fact occurred, particularly if it had been some time since the last CIF was updated.

4.15. This is an additional failure to those identified in the 2007 Final Notice.

4.16. The Firm's practice of selling high risk securities to customers in volumes which exceeded the Firm's recommended limit of 10% of the customer's total personal assets (see paragraph 4.6 above) also indicates that customers may have been sold securities in volumes which were not suitable for them.

4.17. These failings indicate that the Firm did not take reasonable care to ensure the suitability of its advice for its customers, who are entitled to rely upon its judgment, in breach of Principle 9.

Placing undue pressure on customers

4.18. In some of the 19 transactions reviewed, advisers applied undue pressure on customers to make investment decisions. This put customers at risk of detriment as there was a risk that the securities may not have been suitable for their needs. Customers were also put at risk of detriment as they were pressured to make higher risk investment decisions quickly and without time to consider the risks of the securities and whether they wanted to invest.

4.19. For instance, in six of the 19 transactions, the customer had indicated that they did not want to make the specific investment and, in five of the 19 transactions, the customer had indicated that they did not want to make the type of investment, but the adviser persisted with the recommendation.

4.20. In four of the 19 transactions the adviser suggested that the customer was running out of time in which to purchase the stock, either because the Firm's allocation was running out or because the price of the recommended stock was about to move up, the implication being that the customer should buy now before the price moved up even further or the stock ran out. Although the FSA did not have enough information to verify whether the Firm's allocation was in fact running out, or whether the price was in fact about to move up, the time pressure imposed on the customer may have meant that the customer did not have enough time to consider whether the investment was suitable for them and/or whether they wanted to invest.

4.21. In 10 of the 19 transactions the adviser persuaded the customer either to purchase a greater volume of securities than the customer had initially stated he wanted to purchase or to spend more than he had initially stated he wanted to spend (in three of those 10 transactions, the customer had initially indicated that they did not want to purchase any securities at all).

4.22. This is an additional failure to those identified in the 2007 Final Notice and indicates that the Firm is not paying due regard to the interests of its customers and treating them fairly, in breach of Principle 6.

Normal Market Size

4.23. In all of those trades where the adviser informed the customer of the Normal Market Size ("NMS") for the recommended share (nine of the 19 transactions), the size of the trade significantly exceeded the NMS. The implication of the NMS being exceeded was that it might impact on the liquidity/future selling price of the security (i.e that the customer may have difficulty selling a volume of securities greater than the NMS for the market price). In none of the trades where the NMS was given and exceeded did the adviser fully explain the implications of this to the customer during the sales call.

4.24. For instance, one customer was sold 125,000 shares when the NMS was 3,000 and another customer was sold 125,000 shares when the NMS was 2,000. The FSA does not have sufficient information to indicate whether the NMS was exceeded in respect of the other transactions reviewed as the NMS was not communicated to the customer on the sales calls (with the exception of one customer, who was told that there was no NMS, which was incorrect).

4.25. In six of the nine transactions where the NMS was given (and exceeded), the customer was told that they may need to sell their securities in more than one block and/or that they might not get the indicated price, but the adviser did not put any emphasis on this being a particular difficulty and/or did not present it clearly and/or immediately undermined it. In two sales calls, the customer was told that NMS does not apply on the PLUS market, when this is not in fact the case.

4.26. This is an additional failing to those identified in the 2007 Final Notice. The Firm's failure to communicate clearly to customers the implications of them purchasing securities in a volume that significantly exceeds the NMS indicates that the Firm was not treating its customers fairly. It also indicates that the Firm was not paying due regard to the information needs of its customers and was not communicating information to them in a way which is clear, fair and not misleading, in breach of Principle 7.

Inadequate compliance monitoring arrangements and controls

4.27. The Investigators reviewed materials relating to the Firm's compliance monitoring function. They also reviewed three transactions which had been reviewed by the Firm's internal compliance monitoring function (see paragraph 4.6 above). The Investigators' review of the three trades identified that, in all three trades, the

monitoring team had failed to identify concerns or issues which the Investigators consider should have been followed up with the adviser. The Investigators identified concerns in all three transactions even though the Firm's compliance monitoring function had not identified any issues in two of the three trades reviewed and had identified only a limited number of issues in the third trade reviewed.

4.28. This indicates that call monitoring by the Firm was not comprehensive and that the Firm's compliance function continued to fail to identify that customers were not being provided with appropriate information about the stocks being recommended. The failure of the Firm's compliance monitoring team to identify the issues set out above is particularly concerning given that many of these issues were similar to, or the same as, those which had been identified in the 2007 Final Notice. The following concerns in particular were highlighted in the 2007 Final Notice but do not appear to have been picked up as part of the Firm's compliance monitoring process:

(1) lack of stock specific risk warnings;

(2) undermining of general risk warning;

(3) unclear and unbalanced statements about past performance;

(4) misleading and unbalanced statements about future performance;

(5) unsupported and unbalanced comparisons with other stocks; and

(6) failure to clearly explain the mark-up or providing such explanation only after the transaction had been agreed.

4.29. The proportion of sales calls which were reviewed by the Firm's compliance monitoring team was also inadequate. The compliance monitoring team reviewed,

on average, three calls for each dealer per month, although the number of calls monitored can be increased to six or eight depending on the dealer's risk status. In relation to trainee dealers, the Firm monitored six calls per month for the first three months of dealing. This process was in place in January 2009, when there were nine advisers employed in the Relevant Business, and on average, each adviser made 49 calls each month that resulted in a completed transaction. Therefore, the compliance function monitored between 6% and 16% of calls that resulted in a transaction.

4.30. These levels of monitoring were inadequate given the nature of the Firm's sales process, the volume of monthly sales, the high risk nature of the stocks sold and the fact that issues relating to sales calls had been the subject of FSA disciplinary action. The 2007 Final Notice had identified that it was inadequate for the Firm to be monitoring only five sales per month for each trainee adviser and three sales per month for each adviser it had classified as competent, on the basis that the number of transactions reviewed was not proportionate to the overall volume of monthly sales. It appears that the Firm did not significantly increase the level of call monitoring after the publication of the 2007 Final Notice.

4.31. This concern has not therefore been adequately addressed by the Firm in the period since the 2007 Final Notice was issued and the Firm has continued to fail to monitor sufficient levels of sales calls for each adviser.

Conduct by the Firm after 28 July 2009

4.32. The FSA communicated its concerns about the results of its review of the 19 transactions to the Firm in July 2009 and proposed an own initiative variation of permission to stop the Firm from advising on securities. The Firm responded to the threat of FSA action by enhancing its compliance monitoring process by employing a consultant, at considerable expense, to rigorously review the Firm's compliance monitoring arrangements and sales practices in relation to the Relevant Business. This included reviewing a significant proportion of calls made by its advisers, each

of whom had to be deemed competent to advise by the retained consultant. The retained consultant reported to the FSA's Regulatory Decisions Committee on 18 August and 30 October 2009. Notwithstanding these reports, the FSA considered that the Firm continued to pose a risk to customers and published a Second Supervisory Notice in respect of this matter on 15 February 2010.

4.33. It was the action the FSA took in July 2009 which led to the Firm retaining the external consultant. Prior to this, the Firm had failed to establish and implement adequate monitoring processes to cover the Relevant Business and to ensure compliance with the FSA's regulatory requirements. This failure indicates that the Firm did not take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems, in breach of Principle 3.

The handling of complaints

The process of handling complaints

4.34. The process for handling complaints set out in Wills & Co's Internal Complaints Procedure does not detail the practical steps which should be taken to investigate the complaint, what information should be considered by the complaints handler, how any decision in respect of the complaint should be made or who, within the Firm, has authority to determine the appropriate outcome of the complaint.

4.35. During the Relevant Period, the Firm employed three dedicated complaints handling staff.

4.36. Wills & Co produced Compliance Monitoring Reports which were provided to the Firm's Board which detailed various high level statistics on the complaints being dealt with by the Firm, including the total redress that had been paid in the month. However, no underlying information was provided, in these reports or otherwise, to enable the Firm to assess whether the complainant had been treated fairly at the point of sale or as a complainant.

Volume of complaints

4.37. Wills & Co received 194 complaints from customers during the period 1 January to 31 December 2009 and during this period, 94 complaints were referred to the Financial Ombudsman Service ("FOS"). Most of the complaints referred related to transactions undertaken prior to the 2007 Final Notice.

Financial Ombudsman Service

4.38. The FOS was established pursuant to Part XVI of FSMA. The statutory objective of the FOS is to operate a scheme for the resolution of customer complaints which is independent and resolves the complaints quickly and with minimum formality.

4.39. Complaints are assessed by an adjudicator and a provisional decision is issued. The authorised Firm, in this case Wills & Co, is able to make representations on the provisional decision and provide any further information in relation to the complaint. The provisional decision and any additional information are considered by an Ombudsman who will then issue a Final Decision. A Final Decision made by an Ombudsman is binding on the authorised firm and the complainant where the complainant has accepted the determination. If a determination is rejected by a complainant, or not accepted by a complainant in the time specified by the Ombudsman, the Final Decision is not binding and the complainant may still pursue legal remedies he would otherwise have against the Firm.

4.40. During the period 1 January to 31 December 2009, the FOS closed[1] 88 complaints made against Wills & Co, of these, 73 were upheld in favour of the complainant. Most of these complaints related to transactions undertaken prior to the 2007 Final

[1] The outcomes of the complaints that were closed include: rejected by the FOS because the complaint was outside of its jurisdiction, withdrawn by the complainant, settlement prior to assessment by an adjudicator, upheld in favour of Wills & Co and upheld in favour of the complainant.

Notice. The uphold rate for complaints determined by the FOS during the relevant period was 83%. This uphold rate is significantly higher than the average uphold rates of 42% for complaints referred to the FOS relating to stockbroking and portfolio management in the period 30 March 2008 to 31 March 2009.

Interaction with the FOS

4.41. Written correspondence sent by Wills & Co to the FOS was sometimes inappropriate, for example, questioning the qualifications and independence of the adjudicators and Ombudsmen who determined complaints against Wills & Co and the FOS twice expressed its concerns about this to the Firm in 2009.

4.42. In response to provisional decisions by adjudicators, Wills & Co often posed a list of rhetorical questions or stated that it disagreed with the decision rather than by providing additional information that was relevant to the determination of the complaint and would affect the Final Decision, as made by the Ombudsman. This approach resulted in a further delay in the resolution of the complaint and where the complaint was upheld, payment of redress to the customer (although it was ultimately paid).

4.43. In some cases reviewed by the FSA, Wills & Co referred to a purported rule in the FSA's Conduct of Business Sourcebook which it claimed recommended that customers should hold up to 10% of their investment portfolio in high risk securities. In June 2009, the FOS asked Wills & Co to identify the location of this purported FSA rule which Wills & Co was unable to confirm. There is no such rule within the FSA Handbook. On 26 June 2009 the FOS informed Wills & Co that it considered that the Firm had attempted to mislead it throughout the complaints process by referring to an FSA rule which did not exist. Despite this, Wills & Co continued to refer to this purported FSA rule in correspondence with the FOS after June 2009.

Failure to take sufficient account of previous FOS Final Decisions on complaints against Wills & Co

4.44. Wills & Co failed to take sufficient account of Final Decisions made by the FOS when responding to subsequent provisional decisions issued by the FOS and in the sales practices employed by its advisers during the Relevant Period:

(1) Final Decisions were issued by the FOS in January and February 2009 in respect of complaints that related to sales of high risk securities that took place prior to the 2007 Final Notice. The FOS concluded that in these cases, insufficient risk warnings were given and the recommendations were unbalanced and referred to potential upsides of the transaction without explaining the downsides. These failings were also identified in the 19 transactions that were reviewed by the FSA which took place between 17 January and 17 March 2009; and

(2) Final Decisions were issued in June 2009 in respect of cases where the customers' Attitude to Risk had been amended from medium to high, which enabled advisers to recommend that customers invest in high risk securities. In both cases, the FOS concluded that there was no recorded information to demonstrate why this change in Attitude to Risk was appropriate or that the customer had given their express consent. Wills & Co failed to take account of these Final Decisions and apply the outcomes to its ongoing sales practices.

Cooperation with the FSA

4.45. The Investigators issued information requirements pursuant to its statutory powers on Wills & Co during the course of the enforcement investigation and in a number of cases, the Firm failed to provide a complete response to the requirement and failed to provide the information and documentation in compliance with the deadline set by the FSA.

5. ANALYSIS OF BREACHES

Principle 2

5.1. Principle 2 states that *"A firm must conduct its business with due skill, care and diligence"*. By reason of the facts and matters set out above in section 4 above, the FSA considers that Wills & Co has breached Principle 2. Wills & Co failed to take necessary steps to ensure that its sales practices and compliance monitoring procedures were in compliance with the relevant regulatory standards despite being aware of the Firm's failings from the 2007 Final Notice. The Firm provided the Undertaking to the FSA without taking adequate steps to ensure that the required remedial action had been completed.

Principle 3

5.2. Principle 3 states that *"A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems"*. By reason of the facts and matters set out in section 4 above, Wills & Co has breached Principle 3.

5.3. The FSA considers that the Firm failed to establish and maintain robust systems and controls, in relation to compliance monitoring and sales practices, that were appropriate for the business of recommending higher risk securities. This includes the failure to establish and implement a suitably comprehensive compliance monitoring programme. The FSA's review of 19 transactions, as described in detail above, indicate that the Firm failed to:

(1) treat its customers fairly;

(2) ensure that its sales practices were in compliance with the relevant regulatory standards;

(3) communicate information to customers in a way which is clear, fair and not misleading; and

(4) take reasonable care to ensure the suitability of advice.

5.4. The Firm failed to establish a sufficient complaints handling process which ensured that customer complaints were dealt with efficiently, fairly and professionally. The Firm failed to establish a process to ensure that its senior management could undertake a root cause analysis to mitigate the risk of customer detriment in the future.

Principle 6

5.5. Principle 6 states that *"A firm must pay due regard to the interests of its customers and treat them fairly"*. By reason of the facts and matters set out in section 4 above, Wills & Co has breached Principle 6. The Firm's failings in this area relate to the Firm's sales practices and its complaints handling procedures. Wills & Co failed to treat customers fairly by:

(1) using non-compliant sales practices in respect of the recommended securities to its customers;

(2) making unbalanced and unsubstantiated statements about the past or future performance of the recommended securities;

(3) failing to give stock specific risk warnings in respect of the recommended securities;

(4) failing to ensure that its complaints handling procedures were appropriate for the Relevant Business;

(5) failing to fully disclose the mark-up payable and the Firm's principal holding in the recommended securities or providing such explanations only after the transaction had been agreed; and

(6) failing to ensure that its senior management undertook a root cause analysis of complaints to mitigate the risk of customer detriment in the future.

Principle 7

5.6. Principle 7 states that *"A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading"*. By reasons of the facts and matters set out in section 4 above, Wills & Co has breached Principle 7. Wills & Co failed to:

(1) take reasonable steps to ensure customers understood the nature of the risks involved;

(2) make balanced and substantiated statements about the past or future performance of securities;

(3) give stock specific warnings; and

(4) fully disclose the level of mark-up payable and the Firm's principal holding in the recommended securities.

5.7. The failings outlined at paragraph 5.6 were also identified in the 2007 Final Notice.

Principle 9

5.8. Principle 9 states that *"A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment"*. By reason of the facts and matters outlined above in section 4, Wills & Co has breached Principle 9. Wills & Co failed to:

(1) obtain sufficient customer information to assess suitability before its recommendation;

(2) to record its suitability assessment;

(3) implement an appropriate and ongoing Know Your Client procedure to ensure that advisers held up-to-date information about their customer's financial and personal circumstances; and

(4) implement an appropriate procedure to ensure that a customer's Attitude to Risk was only amended following a documented review of the Know Your Client information and the customer's express authorisation.

Principle 11

5.9. Principle 11 states that "*A firm must deal with its regulators in an open and cooperative way, and must disclose to the FSA anything relating to the firm of which the FSA would reasonably expect notice*". By reason of the facts and matters outlined at section 4 above, Wills & Co has breached Principle 11. Wills & Co failed to provide the FSA with full and complete documentation as required pursuant to its statutory information powers and to provide information and documentation in compliance with deadlines imposed by the FSA.

6. ANALYSIS OF SANCTION

6.1. The FSA imposed an own initiative variation of permission on the Firm on 1 December 2009 which was referred to the Tribunal. The Firm entered into executive settlement with the FSA and agreed to withdraw its reference to the Tribunal. As a result of this, the FSA's own initiative variation of permission comes into effect on 29 January 2010 which removes the regulated activity of advising on investments (except on Pension Transfers and Opt Outs) with the result that the Firm is unable to advise retail clients on the purchase of securities. The Firm is in an orderly wind down and due to its current financial position, the substantial amount of customer redress outstanding (£831,382 as at 14 January 2010) and the significant number of customer complaints currently being considered by the FOS (167 as at 31 December 2009) the FSA considers that is not appropriate to impose a financial penalty. However the FSA considers that but for the outstanding customer

redress owing by the Firm a financial penalty of £1,500,000 would have been appropriate. This reflects the serious nature of the Firm's failings in its sales practices, compliance monitoring and complaints handling, particlularly given its previous disciplinary history.

6.2. The Compliance Director and Sales Director have both been subject to a public statement of misconduct by the FSA, have undertaken not to seek to hold significant influence functions for five and three years respectively and have agreed to resign their current directorships in respect of the Firm and other group companies. The other director of the Firm has undertaken not to seek to hold significant influence functions for two years and has agreed to resign current directorships in respect of the Firm and other group companies.

6.3. In determining the appropriate level of financial penalty, the FSA considers that no credit for cooperation would have been given.

7. CONCLUSION

7.1. Having regard to the matters summarised above, the guidance set out in the FSA's Decision Procedure and Penalties Manual ("DEPP") and to the FSA's statutory objectives of the protection of consumers and public awareness, the FSA considers it proportionate and appropriate in all the circumstances to issue a public censure against the Firm. However, the FSA considers that but for the outstanding customer redress owing by the Firm a financial penalty of £1,500,000 would have been appropriate.

8. DECISION MAKER

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

9. IMPORTANT

9.1. This Final Notice is given to you under section 390 of FSMA.

Publicity

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

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

FSA Contacts

9.4. For more information concerning this matter more generally, you should contact Suzanne Burt of the Enforcement and Financial Crime Division of the FSA (direct line: 0207 066 1062 / fax: 0207 066 1063).

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William Amos

Head of Department

FSA Enforcement and Financial Crime Division