



This Final Notice should be read in conjunction with the Final Notice issued to Mr Davis on 5 July 2012.

The FCA issued a Press Release dealing with both the Davis and Parikh Notices on 8 August 2013.

---

**FINAL NOTICE**

---

<b>To:</b>	Vandana Madhukar Parikh	<b>To:</b>	Paul E Schweder Miller & Co
<b>Address:</b>	C/o Slater & Gordon (UK) LLP 50-52 Chancery Lane London WC2A 1HL	<b>Address:</b>	46-50 Tabernacle Street London EC2A 4SJ

**Individual**

**Reference**

**Number:** VMP01002

**Firm**

**Reference**

**Number:** 124404

**Date:** 6 August 2013

**TAKE NOTICE:** The Financial Conduct Authority of 25 North Colonnade, Canary Wharf, London E14 5HS (the "FCA") hereby takes the following action:

## **ACTION**

1. The Authority served on Mrs Parikh a Decision Notice on 22 May 2013, which notified her that for the reasons given below and pursuant to section 66 of the Financial Services and Markets Act 2000, the Authority had decided to impose on Mrs Parikh a financial penalty of £45,673.50. This was imposed on the grounds that Mrs Parikh had failed to exercise due skill, care and diligence in breach of Principle 2 of the Authority's Statement of Principle and Code of Practice for Approved Persons.
2. Mrs Parikh has notified the Authority that she will not refer the matter to the Upper Tribunal (Tax and Chancery Chamber).
3. Accordingly, the Authority hereby imposes on Mrs Parikh a financial penalty of £45,673.50.

## **REASONS FOR THE ACTION**

4. The Authority has decided to take this action because Mrs Parikh breached Statement of Principle 2 in that she failed to exercise due skill, care and diligence whilst acting in her capacity as an approved person, by engaging with and assisting Mr Goenka in the practicalities of auction trading and the impact that various orders would have on the price of securities (i.e. explaining the process of manipulation to Mr Goenka), despite speculating that Mr Goenka had an ulterior purpose for his interest in the Closing Auction which was likely to have included his holding an underlying investment such as a structured product. Mrs Parikh's failings are set out in detail in the 'Failings' section of this Final Notice below.
5. On the basis of the facts and matters known to her at the time, as demonstrated by recordings and transcripts of contemporaneous telephone conversations, the Authority considers that Mrs Parikh should have been aware of the risk that Mr Goenka's objective was to trade in the Closing Auction for Gazprom GDRs in a manner such as to artificially position the price of Gazprom GDRs (albeit that his plan was not ultimately executed because of an unexpected announcement concerning Gazprom). Mrs Parikh failed to recognise the risk that Mr Goenka intended to commit market abuse and even though Mrs Parikh speculated that Mr Goenka had an ulterior purpose for his trading which might have included his holding an underlying investment such as a structured product, she discounted the possibility of market manipulation.
6. At the very least, Mrs Parikh should have properly challenged and made adequate enquiries, so as reasonably to satisfy herself that no such risk existed before continuing to engage with and assist Mr Goenka in the practicalities of auction trading and the impact that various orders would have on the price of securities. However, Mrs Parikh did not recognise the risk that Mr Goenka intended to commit market abuse and failed to make adequate enquiries, so as reasonably to satisfy herself that no such risk existed.

7. Further, Mrs Parikh failed to appreciate that by explaining the process of manipulation to Mr Goenka she not only facilitated Mr Goenka in his intended course of conduct through Schweder Miller but also failed to recognise the risk that he might take the knowledge he had gained from Mrs Parikh and use it to effect manipulation elsewhere.
8. On 18 October 2010, Mr Goenka (through Schweder Miller) effected orders to trade which artificially inflated the closing price of Reliance GDRs on that day. By increasing the closing price, Mr Goenka was able to avoid a loss of USD 3,103,640 under the terms of a structured product he held. In October 2011, the Authority issued a Final Notice to Mr Goenka imposing a total penalty of USD 9,621,240 for market abuse contrary to section 118(5) of the Act.
9. In July 2012, the Authority issued a Final Notice to Mr Davis imposing a total financial penalty of £70,258 for breaching Statement of Principle 6 in that he failed to properly challenge and to make reasonable enquiries before authorising Mr Goenka's orders to trade Reliance GDRs in the Closing Auction on 18 October 2010 which resulted in Mr Goenka's market abuse. The Authority withdrew the individual approval granted to Mr Davis to perform the Compliance oversight (CF10), CASS oversight (CF10a) and Money laundering reporting (CF11) significant influence functions. The Authority also made a prohibition order against Mr Davis prohibiting him from performing the Compliance oversight (CF10), CASS oversight (CF10a) and Money laundering reporting (CF11) significant influence functions in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm.
10. The Authority considers that Mrs Parikh's misconduct was serious and has taken account of the following matters:
  - a) Mrs Parikh, an approved person, failed to act with due skill care and diligence;
  - b) Mrs Parikh failed to recognise the risk that Mr Goenka intended to commit market abuse and even though Mrs Parikh speculated that Mr Goenka had an ulterior purpose for his trading which might have included his holding an underlying investment such as a structured product, she discounted the possibility of market manipulation;
  - c) Mrs Parikh discounted the possibility of market manipulation and continued to engage with and assist Mr Goenka in the practicalities of auction trading and the impact that various orders would have on the price of securities (i.e. she explained the process of manipulation to Mr Goenka) without properly challenging or making adequate enquiries, so as reasonably to satisfy herself that no risk of market manipulation existed; and
  - d) Mrs Parikh failed to appreciate that by engaging with and assisting Mr Goenka in the practicalities of auction trading and the impact that various orders would have on the price of securities (i.e. by explaining the process of manipulation to Mr Goenka), she not only facilitated Mr Goenka in his intended course of conduct

through Schweder Miller but also failed to recognise the risk that he might take the knowledge he had gained from Mrs Parikh and use it to effect manipulation elsewhere.

## DEFINITIONS

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

“A” means a London-based investment adviser to Mr Goenka.

“the Act” means the Financial Services and Markets Act 2000.

“APER” means the Statements of Principle and Code of Practice for Approved Persons issued under section 64(1) of the Act.

“the Authority” means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority. In this Final Notice “the Authority” is used to refer to that organisation both before and after the name change. “Closing Auction” means the closing auction of the LSE. This is a limited-period auction which takes place at the close of the main trading session. The results of the closing auction determine the closing price of listed securities.

“Mr Davis” means Mr David Thomas Davis (Individual reference No. DTD01011).

“Gazprom” means the Russian gas conglomerate Gazprom.

“GDRs” means Global Depository Receipts. These are parcels of shares in a particular company, which are listed and traded on international exchanges separately from the company’s shares. One GDR is equivalent to a multiple of the underlying security.

“Mr Goenka” means Mr Rameshkumar Satyanarayan Goenka.

“IOB” means the International Order Book of the London Stock Exchange.

“the IUP” means the Indicative Uncrossing Price.

“the IUV” means the Indicative Uncrossing Volume.

“LSE” means the London Stock Exchange.

“Mrs Parikh” means Mrs Vandana Parikh (Individual reference No. VMP01002).

“Reliance” means Reliance Industries Limited.

“Schweder Miller” means Paul E. Schweder Miller & Co (Firm reference No. 124404).

“Statement of Principle 2” means Statement of Principle 2 of APER.

“Statement of Principle 6” means Statement of Principle 6 of APER.

“Structured Product 1” means a “3Y USD Phoenix Plus Worst of Gazprom/Lukoil/Surgut” issued on 30 April 2007 which had a maturity date of 30 April 2010.

“Structured Product 2” means an “Airbag Leveraged Laggard Note on Indian ADR – Private Placement” issued on 17 October 2007 which had a maturity date of 18 October 2010.

“Upper Tribunal” means the Upper Tribunal (Tax and Chancery Chamber).

## **RELEVANT STATUTORY AND REGULATORY PROVISIONS**

12. The relevant statutory and regulatory provisions relevant to this Final Notice are contained in the Annex.

## FACTS AND MATTERS

### *Mrs Parikh*

13. Mrs Parikh is a broker and, at the relevant time, was employed by Schweder Miller in London. Mrs Parikh has been employed as a broker at Schweder Miller since 1987.
14. Mrs Parikh is an approved person and has held the Customer (CF30) controlled function since 1 November 2007. Previously, Mrs Parikh held the Investment adviser (CF21) controlled function between 1 December 2001 and 1 November 2007 and before that, was registered with the Securities and Futures Authority.
15. Mrs Parikh was introduced to Mr Goenka by A, a London-based investment adviser to Mr Goenka.
16. Mrs Parikh had received training in relation to the market abuse regime.

### *Mr Goenka*

17. Mr Goenka is an Indian businessman who has been living in Dubai for the last 12 years. He is a prominent and sophisticated investor with a substantial portfolio of investments.
18. Mr Goenka is not a member of the LSE and so can only trade on its markets through a member firm.

### *Mr Davis*

19. Mr Davis is the senior partner of Schweder Miller.
20. Mr Davis was approved at the relevant time to perform the Compliance oversight (CF10), CASS oversight (CF10a) and Money laundering reporting (CF11) significant influence functions, and the Customer (CF30) function for Schweder Miller.
21. Mr Davis had received training in relation to the market abuse regime.

### *The Structured Products*

22. Structured Product 1 and Structured Product 2 (referred to in this Final Notice together as "the Structured Products") were purchased by Mr Goenka in 2007. Mr Goenka purchased the Structured Products through accounts held with one of his banks.
23. The Structured Products each had a cost (face value) of USD 10 million.
24. The Structured Products related to a basket of three GDRs, representing shares in three different companies, as follows:

- a) In relation to Structured Product 1 the three GDRs concerned related to Russian companies, Gazprom, Lukoil and Surgutneftegaz.
  - b) In relation to Structured Product 2 the three GDRs concerned related to Indian securities, Reliance, ICICI Bank and HDFC Bank.
25. For both the Structured Products, the final payout to Mr Goenka was dependent on the closing price of the worst performing or “laggard” of the three different GDRs on the stated maturity dates. The closing price for the GDRs on which the Structured Products were based was determined by the closing auction on the LSE’s IOB. To determine the payout, the closing price of the laggard GDR would be judged against two figures being (a) the initial price of the “laggard” and (b) a pre-determined and lower “knock-in price”.
26. In the event, the worst performing securities in the baskets of GDRs were as follows:
- a) Gazprom for Structured Product 1.
  - b) Reliance for Structured Product 2.

### *The Closing Auction*

27. The initial phase of the Closing Auction, starting at 15:30 GMT, lasts for ten minutes and is known as the auction call phase. During this phase, member firms place orders that are recorded by the exchange but do not immediately result in a trade. Each time an order is entered, deleted or amended, the theoretical price and theoretical volume that will result from the closing auction is re-calculated.
28. The theoretical price and volume, known as the IUP and the IUV are visible to the member firms.
29. Subsequently, in the price determination/uncrossing phase of the auction, the exchange seeks to match orders for each stock. This occurs at a randomly determined time, during a thirty second period after the end of call phase, between 15:40:00 and 15:40:30 GMT. At that randomly determined time, the exchange runs an algorithm that seeks to optimise the volume of securities executed. The algorithm determines the price for each security at which the greatest volume can be traded and matches the orders accordingly; this is the closing price. Once the algorithm has been applied, the exchange disseminates the closing price and advises member firms, whose orders have been executed, of the trades.
30. Mrs Parikh has experience of trading in the Closing Auction.

### *Mr Goenka’s plan to manipulate prices in the Closing Auction*

#### *a) Structured Product 1 and the Closing Auction for Gazprom*

31. In early April 2010, A approached Mrs Parikh, on behalf of A’s client, Mr Goenka, to

discuss the Closing Auction process. A had known Mrs Parikh for approximately ten years and A's firm had an account with Mrs Parikh's firm. A and Mrs Parikh discussed the Closing Auction process.

32. On 22 April 2010, A called Mrs Parikh to discuss the practicalities of trading in the Closing Auction. At that time Mrs Parikh asked the names of the two stocks to be traded and was told "*Reliance*" and "*Gazprom*". A explained that the trading was likely to involve 20 - 30 million dollars and that A was arranging to be put in funds to this amount. A said that A would arrange a conference call to put Mrs Parikh in touch with "*this person in Dubai*", that person being Mr Goenka. A assured Mrs Parikh of Mr Goenka's wealth and ability to transact large trades. A also assured Mrs Parikh of Mr Goenka's honesty, at her request.
33. Later that day a conference call took place during which A introduced Mr Goenka to Mrs Parikh. Mr Goenka's opening comment was "*I just want to understand how this auction works ...in terms with IOB*". Whilst A was on the call, Mrs Parikh then proceeded to explain the Closing Auction process in considerable detail. In particular, Mrs Parikh explained the likely price movements that might result from placing orders of various sizes. Mr Goenka explained that he was looking to trade in Gazprom first and explored with Mrs Parikh the necessary steps for increasing the closing price and the latest time at which an order could be placed. They discussed a number of working examples. A was party to the discussions.
34. In the course of the conference call Mr Goenka asked "*can I ask you now closing at 23.42... if I want to make it 23.45 how can we do it?*" Mrs Parikh replied "*you will have to clear out everyone that was selling at 42 and for safety's sake go all the way to somebody closing at 46...*" The parties arranged for Mr Goenka to set up an online video calling account in order that Mr Goenka could see Mrs Parikh's screen in real time whilst Mrs Parikh was trading in the auction. A confirmed that A's firm had an account with Mrs Parikh's firm and that A would enable Mr Goenka to trade through Mrs Parikh.
35. Mr Goenka and Mrs Parikh agreed that there should be a number of practice runs before actual trading. Mr Goenka said there would be time to observe between 5 and 10 auctions before the actual trading and that they would have "*a few trial runs*" in order to "*try to minimise the mistakes*".
36. On 23 April 2010, A called Mrs Parikh to say that A had been thinking about the plan on the way to work and that "*nobody should be able to point a finger and say that you were manipulating a price*". Mrs Parikh dismissed this concern on the basis that they would be trading in a "*complete auction*" and that if other parties "*think it's manipulating*" or that "*it's a wrong price*" they could "*come and flog the stock*". A short discussion ensued about the risks of moving the price by a hypothetical 50 cents as opposed to USD 5. Mrs Parikh concluded the discussion with: "*you know, if this man has money enough to move the price for a day well... good luck to him...*" A replied: "*so all our safeguards are kind of in place... Good for him*". A informed Mrs Parikh that Mr Goenka was studying how the Closing Auction works. Mrs Parikh replied "*Yes, and I don't want to find out too much to what end he wants to do it.*"

*I'm just here to execute it for them".*

37. Later the same day Mrs Parikh spoke with Mr Goenka and explained in some detail the various orders that would need to be placed in order to achieve certain hypothetical price increases. Mr Goenka said that he was making notes and understood 50-60% of what Mrs Parikh was explaining at that time but *"by Monday you can teach me 100%"*. Mrs Parikh told Mr Goenka that this was *"no problem. If it takes till Wednesday, even if it takes till Friday you must be comfortable because it should be second nature to us, 'cause ...you have no time to think"*.
38. In a later call on 23 April 2010, Mrs Parikh asked A what would happen to Mr Goenka's stock once it was purchased in the Closing Auction. A informed Mrs Parikh that *"you sell it all the next day"* and that Mr Goenka *"is only interested in the official closing price of the stock on a particular date"*. A stated to Mrs Parikh that *"from reading between the lines I think he has got a structured product so he has got something...there is a trigger if the closing price is above or below a certain level"*. A then repeated A's opinion to Mrs Parikh that *"...he's aggressively done some structured note"*. Neither Mrs Parikh nor A expressed any concerns about Mr Goenka's trading strategy during the call. Further calls took place between Mrs Parikh and A on 26 April 2010 at which time they discussed her commission rates for the trading.
39. On 29 April 2010, a conference call took place between Mr Goenka, Mrs Parikh and A. Prior to Mr Goenka's joining the call Mrs Parikh discussed various matters with A including the planned trading. Mrs Parikh stated *"...we don't want to know what he wants to do, do we?... It's just one more headache... we don't want to know"*. A agreed and added *"let's keep it that way"*. A also instructed Mrs Parikh on the level of trading limit that she needed to have in place to facilitate the trading and assured Mrs Parikh that A would look after the money aspect of the trading. Mr Goenka then joined the call and the three parties discussed arrangements for the following day's trading. Mrs Parikh confirmed that she had increased her firm's trading limit from USD 30 million to USD 50 million in order to facilitate the Gazprom trading Mr Goenka required. The parties discussed the course of action to be taken if that limit were to be exceeded. In a later conversation they also explored the very latest time at which it would be possible to enter orders in the auction.
40. On the morning of 30 April, Mrs Parikh called A to ask whether she was authorised to trade up to USD 50 million. A confirmed that they were holding sufficient funds to this amount and told Mrs Parikh to go ahead with the trading. At 2.11pm on 30 April 2010, Mrs Parikh received an email from Mr Goenka's office with a list of the orders Mr Goenka wished her to place in the closing auction. The orders were all at price levels above any of the trading in Gazprom GDRs so far that day. The value of the orders totalled USD 66 million dollars. Mrs Parikh emailed A as follows: *"... [t]hese are the orders they have sent to us. Pls advise if you think they are inappropriate for any reason. The consideration if we entered all might be a touch steep usd66m well above the usd50m you said. What should I do?"* Mrs Parikh also called A to inform A that the orders amounted to more than the USD 50 million previously discussed. Mrs Parikh was informed by A that she should enter all of the orders on to her trading

system in preparation for the auction and that A would inform Mr Goenka. Mrs Parikh subsequently confirmed to A that she had done this. Mr Goenka subsequently called Mrs Parikh and asked that they speak by unrecorded mobile telephone in relation to the trading. Mrs Parikh informed A of this request and told him that she was not comfortable with receiving orders by an unrecorded line but A said that Mrs Parikh should not worry about it. Mrs Parikh has informed the Authority that she was concerned by this request and did not receive any calls from Mr Goenka on her mobile.

41. Mr Davis had limited involvement in the Gazprom trading. A few days before 30 April he was told by Mrs Parikh that a large trade in relation to a foreign stock was expected.
42. Mr Davis first saw Mr Goenka's orders at 2.30pm on 30 April 2010 when he left a meeting to speak with Mrs Parikh who had only received them shortly before that time. He left Mrs Parikh's room to return to his meeting expecting to return later to check on the orders prior to approving. Mrs Parikh subsequently interrupted the meeting to inform him that the Gazprom trading was not proceeding because of an unexpected announcement by Russia's President Putin concerning Gazprom.
43. The price of Gazprom GDRs prevailing in the market at the time the orders were sent to Mrs Parikh (at 2.11pm on 30 April 2010) was approximately USD 23.84, USD 0.07 below the "knock-in price". However, shortly before the auction was due to commence, Russia's President Putin made a live announcement on Russian television about a proposed merger of Gazprom and the Ukrainian gas company Naftogaz. The price of Gazprom securities fell on the news. Mrs Parikh called A to inform him of the announcement and that the price of Gazprom GDRs *"has now come down to about 23.38 right... which makes our job... much more difficult right?"* A agreed.
44. Mr Goenka was informed of President Putin's announcement and its impact. As a result of the announcement Mr Goenka instructed Mrs Parikh not to proceed with the planned auction trading because the Gazprom price had moved too far to enable the plan to be successfully executed. At 3.36pm Mr Goenka called A to inform A that *"we're not doing anything, we've lost the game"*. Mr Goenka also informed A that he had already spoken to Mrs Parikh about the matter.
45. Mrs Parikh and A discussed Mr Goenka's reaction to the news in a subsequent telephone call. A asked Mrs Parikh about the scenario *"if"* Mr Goenka had made *"10 million today"* and *"you"* [Mrs Parikh] *"would have been paid 10 basis points"* in commission? Mrs Parikh replied *"I don't care really because any day they're living by the sword and dying by the sword but... you can feel that disappointment"*. A described Mr Goenka's disappointment as: *"normally he's aggressive but he was like a mouse..."* Mrs Parikh repeated to A Mr Goenka's comment to her that the planned trading *"will now need much more money and won't be worth it"*.

*b) Structured Product 2 and the Closing Auction for Reliance*

46. In early October 2010, Mr Goenka informed A that he wished to buy Reliance GDRs

and participate in the LSE closing auction. A put Mr Goenka in touch with Mrs Parikh so that he could "*directly transact*". A confirmed to Mrs Parikh that she was authorised to deal directly up to a cap of USD \$50 million.

47. On 11 October 2010 Mr Goenka spoke to Mrs Parikh directly to discuss trading in Reliance GDRs. Mr Goenka explained that he had already discussed matters with A, including the necessary financing arrangements. Mrs Parikh said that she had also spoken with A and that "everything is in place".
48. On 15 October 2010 Mrs Parikh called A to discuss Mr Goenka's planned trading objectives in relation to Reliance GDRs. The two discussed the then prevailing market price of USD 47.10. Mrs Parikh commented "*I think our man said that anything under 47 and he's uncomfortable. It was 48 something and now it's 47.10 but I haven't heard from him... if it's under 47 he's got problems*". A suggested Mr Goenka might buy that evening.
49. A few days before 18 October 2010, Mr Davis was made aware by Mrs Parikh of an intended large trade by A's firm on behalf of Mr Goenka.
50. On the morning of 18 October 2010, Mr Davis was informed by Mrs Parikh that she expected the instruction that day. He confirmed that he would make himself available. Mr Davis states that he was informed by Mrs Parikh of matters in respect of Mr Goenka's reasons for and intentions regarding the Reliance GDRs trade. The detail of the information given to Mr Davis by Mrs Parikh is set out in the Final Notice issued to him. On the facts known to him, Mr Davis should have refused to accept Mr Goenka's instruction to trade in the Closing Auction for Reliance GDRs. The Authority has found that Mr Davis failed to act with due skill, care and diligence in carrying out his CF10 controlled function, in his role as the approved person responsible for compliance oversight at Schweder Miller, by approving the proposed trading in Reliance.
51. On the day of the auction trade, A was out of the country on a business trip. Both Mr Goenka and Mrs Parikh sought to contact A at A's office on several occasions during 18 October 2010.
52. The details of the orders to trade placed by Mr Goenka are set out in the Final Notice issued to him. In summary, Mr Goenka placed a series of large, pre-planned and carefully timed orders in the final seconds of the Closing Auction for Reliance GDRs. If fulfilled in their entirety, Mr Goenka's orders would have required an expenditure of approximately USD 55.4 million.
53. The impact of Mr Goenka's orders was to increase the closing price to USD 48.71, 6 cents above the "knock-in price" target that he needed to achieve in order to avoid a loss under Structured Product 2 of USD 3,103,640.
54. The price of Reliance GDRs dropped back the next day to close at USD 47.10. Mr Goenka sold the Reliance GDRs he had acquired.

## REPRESENTATIONS AND FINDINGS

55. Below is a brief summary of the key written and oral representations made by Mrs Parikh and Schweder Miller and how they have been dealt with. In making the decision which gave rise to the obligation to give this Final Notice, the Authority has taken into account all of Mrs Parikh's and Schweder Miller's representations, whether or not set out below.

### Breach of Statement of Principle 2

56. Mrs Parikh made representations that the Authority's allegation that she had breached Statement of Principle 2 by failing to exercise due skill, care and diligence whilst acting in her capacity as an approved person is without merit and is premised on a failure to properly understand Mrs Parikh's knowledge/awareness and her actions/conduct at the relevant time.

#### *Mrs Parikh's knowledge/awareness*

57. Mrs Parikh submitted that:

- a) her alleged misconduct must be assessed in the context of her actual knowledge at the relevant time and must not be viewed with hindsight. Mrs Parikh asserted that she was provided with limited information by both A and Mr Goenka. She asserted that she had been the innocent victim of Mr Goenka's concealed intentions. Mrs Parikh stated that she has an unblemished record of 26 years' services as a broker for her firm. She is of untainted good character. Her good character is attested to by the references she submitted as part of her representations. She has never been subject to any disciplinary proceedings or other action to do with wrongdoing in the execution of her job to date. Mrs Parikh asserted that she had no motive for becoming involved in market manipulation. The notion that a successful broker of many years with an unblemished record would risk her career in these circumstances for a person she has never met is inherently implausible and absurd;
- b) she had no reason to doubt A's reassurance that Mr Goenka was honest. Mrs Parikh has known A and acted for A's firm since 2007, without any reason to doubt A's integrity or to doubt that A's firm would have carried out its own full 'Know Your Client' analysis and that A was speaking with confidence and knowledge as to the character of A's own client. Mr Goenka was introduced to her by A. A's firm was her client. Mrs Parikh stated that she was acting as an execution only broker for A's firm in circumstances where A's firm had its own obligations to satisfy itself as to the integrity and background of its own client – Mr Goenka. Based on the information provided by A, Mrs Parikh was expecting an honest man, but someone who would ask many, many questions to be comfortable before wanting to execute any orders. Mrs Parikh also asserted that she had no reason to doubt A when A informed her that Mr Goenka was an individual with a net worth of US\$100 million. Mrs Parikh was not aware of Mr Goenka's actual net worth. She was not told about the nature and breadth of

his investment activity. She was not told about his expertise in markets. Mr Goenka's subsequent questions and interest in the Closing Auction and Mrs Parikh's responses to those questions must be seen in that context; and

- c) she had no knowledge of Structured Product 1 or Structured Product 2. Mrs Parikh submitted that she did not know of the existence or terms of Structured Product 1 or Structured Product 2. Mrs Parikh stated that at the material time, she and A merely discussed the possibility that Mr Goenka's interest might be prompted by interest in market manipulation. They speculated about the possibility of the existence of an underlying structured product but based on the information that Mrs Parikh had been given about Mr Goenka at the time in terms of his financial capacity and volume of trading he was proposing/intended to undertake and the highly liquid nature of Gazprom GDRs, Mrs Parikh was reasonably able to discount any real risk of market manipulation. Mr Goenka's means (as far as she was aware), coupled with the large volume in which Gazprom GDRs are ordinarily traded would have meant it was virtually impossible to have manipulated the price with trades the size that Mr Goenka was proposing.

58. The Authority has found that:

- a) it accepts Mrs Parikh's submission that her conduct must be assessed in the context of her actual knowledge at the relevant time and must not be viewed with hindsight. The Authority accepts that Mrs Parikh may have been the innocent victim of Mr Goenka's concealed intentions. However, the Authority considers that the recordings and transcripts of the telephone conversations involving Mrs Parikh provide strong contemporaneous evidence of Mrs Parikh's actual knowledge/awareness at the relevant time. Based on the contemporaneous recordings and transcripts of the telephone conversations involving Mrs Parikh, the Authority considers that Mrs Parikh should have been aware of the risk that Mr Goenka's objective was to trade in the Closing Auction in a manner such as to artificially position the price of Gazprom GDRs at the relevant time. Mrs Parikh discounted the possibility of market manipulation without making adequate enquiries. To the extent that Mrs Parikh was not aware of the risk that Mr Goenka intended to commit market abuse and failed to make reasonable enquiries, so as reasonably to satisfy herself that no such risk existed before continuing to engage with and assist Mr Goenka, she fell below the standard that is expected of an approved person in breach of Statement of Principle 2. The Authority has noted the written references which Mrs Parikh submitted as part of her representations attesting to her good character. However, the Authority has found that Mrs Parikh's long career at Schweder Miller and her asserted good character (supported by references) do not, in and of themselves, preclude the possibility that her conduct fell below the standard that is expected of an approved person in breach of Statement of Principle 2;
- b) it does not accept Mrs Parikh's submission that she had no reason to doubt A's reassurance that Mr Goenka was honest. On the basis of the facts and matters known to her at the time as demonstrated by the recordings and transcripts of

the telephone conversations, the Authority considers that Mrs Parikh should have been aware that Mr Goenka's objective was to trade in the Closing Auction for Gazprom GDRs in a manner such as to artificially position the price of Gazprom GDRs. By way of example only, the Authority notes that in a call on 23 April 2010, A stated to Mrs Parikh that *"from reading between the lines I think he has got a structured product so he has got something ... there is a trigger if the closing price is above or below a certain level"*. The Authority considers that it is insufficient for Mrs Parikh to simply assert that she was performing standard execution only broker services for her client (A's firm) in circumstances where A's firm had its own obligations to satisfy itself as to the integrity and background of its own client – Mr Goenka – and therefore could not be in breach of Statement of Principle 2. The Authority considers that Mrs Parikh's submission that she was acting merely as an execution only broker, fails to pay due regard to her obligations as an approved person. The Authority also notes that Mrs Parikh had received training in relation to market abuse. The Authority considers that as an approved person who had received training in relation to market abuse, Mrs Parikh should have been aware of the risk that Mr Goenka intended to commit market abuse and she should have properly challenged and made reasonable enquiries, so as reasonably to satisfy herself that no such risk existed before continuing to engage with and assist Mr Goenka. Further, Mrs Parikh failed to appreciate that by explaining the process of manipulation to Mr Goenka she not only facilitated Mr Goenka in his intended course of conduct through Schweder Miller but also failed to recognise the risk that he might take the knowledge he had gained from Mrs Parikh and use it to effect manipulation elsewhere. Notwithstanding the foregoing (and in any event), the Authority considers that the evidence contained in the recordings and transcripts of the telephone conversations which took place variously between Mr Goenka, Mrs Parikh and A clearly indicate that Mrs Parikh speculated that Mr Goenka had an ulterior purpose for his proposed trading in the Gazprom GDRs which was likely to have included his holding underlying investments such as a structured product. Accordingly, the Authority considers that it is irrelevant whether or not Mrs Parikh was told about the nature and breadth of Mr Goenka's investment activity. That is, Mrs Parikh should have been aware of the risk that Mr Goenka's objective was to trade in the Closing Auction for Gazprom GDRs in a manner such as to artificially position the price of Gazprom GDRs. The Authority therefore considers that Mrs Parikh failed to comply with Statement of Principle 2 by not recognising the real risk that Mr Goenka may have intended market manipulation and not making enquiries, so as reasonably to satisfy herself that no such risk existed before assisting/facilitating Mr Goenka's planned market manipulation; and

- c) it accepts Mrs Parikh's submission that she had no knowledge of Structured Product 1 and Structured Product 2. However, the Authority considers that Mrs Parikh should not have discounted the real risk of market manipulation by Mr Goenka without first making enquiries, so as reasonably to satisfy herself that no such risk existed. The Authority considers that if, as an approved person who had received training in market abuse, Mrs Parikh was aware of the risk that Mr Goenka intended to commit market abuse, she should have properly challenged

and made reasonable enquiries, so as reasonably to satisfy herself that no such risk existed before continuing to engage with and assist Mr Goenka. The Authority also considers that it was insufficient for an approved person such as Mrs Parikh to simply discount the risk of market manipulation on the basis that the Gazprom GDRs were too liquid for Mr Goenka to manipulate (based on the information she had received from A). In doing so, Mrs Parikh failed to appreciate that even by explaining the process of manipulation to Mr Goenka she not only facilitated Mr Goenka in his intended course of conduct through Schweder Miller but also failed to recognise the risk that he might take the knowledge he had gained from Mrs Parikh and use it to effect manipulation elsewhere. For the foregoing reasons, the Authority has found that Mrs Parikh's continued engagement with and assistance given to Mr Goenka as demonstrated by the telephone conversations and her related actions, amounts to a failure to act with the due skill, care and diligence required of an approved person in accordance with Statement of Principle 2.

### *Mrs Parikh's actions/conduct*

59. Mrs Parikh submitted that:

- a) in her capacity as a broker, she answered a number of questions put to her by Mr Goenka and his associates on the basic operation of the Closing Auction in the highly liquid stock of Gazprom GDRs, and showed him the Closing Auction market in operation on two days. Mrs Parikh strongly denied that she explained the process of manipulation to Mr Goenka. She asserted that her explanation was comparatively basic and did not provide a complete picture of how the Closing Auction worked which would have been necessary had her intention ever been to explain the process of manipulation to Mr Goenka (which it was not). Further, when she received Mr Goenka's orders to trade in the Gazprom GDRs which were significantly different in scale and quantity from those that had been previously discussed, she immediately raised Mr Goenka's proposed trading with Mr Davis, her Compliance Officer at the time, in accordance with regulatory good practice. She also referred the orders back to A (as the representative of her client) in writing. Mrs Parikh stated that she specifically asked A whether or not Mr Goenka's orders to trade were inappropriate for any reason because Mr Goenka was the client of A's firm and A's firm was primarily responsible for those trades; and
- b) she acted in accordance with the specified requirements of her compliance manual at the time. She notified her compliance officer of the trades. She sought express authorisation of the trades from A's firm (which she never received). Mrs Parikh stated that her compliance manual expressly forbade her to raise any suspicions directly with her client. It is therefore simply incorrect to suggest that Mrs Parikh dismissed her suspicions. Mrs Parikh was an execution-only broker acting for A's firm. She asserted that she would not have executed Mr Goenka's proposed trades without: (i) express instructions from A's firm that they were appropriate (which never materialised) and express authorisation to proceed; and (ii) without the approval of Mr Davis, her Compliance Officer.

60. The Authority has found that:

- a) notwithstanding Mrs Parikh's characterisation of her conduct in engaging with and assisting Mr Goenka in the practicalities of auction trading and the impact that various orders would have on the price of securities, Mrs Parikh accepted in her oral representations to the RDC on 22 November 2012 that "*[o]n reflection, perhaps [she] should not have engaged with [Mr Goenka] on how prices move. Maybe that was a question best left. It was perhaps an error of judgement*". Further, the Authority notes that Mrs Parikh failed to appreciate that even by explaining the process of manipulation to Mr Goenka in a very basic way she not only facilitated Mr Goenka in his intended course of conduct through Schweder Miller but also failed to recognise the risk that he might take the knowledge he had gained from Mrs Parikh and use it to effect manipulation elsewhere. The Authority does not accept that Mrs Parikh properly raised Mr Goenka's proposed trading with Mr Davis, her Compliance Officer at the time, in accordance with regulatory good practice. The Authority has found that she did not report matters to Mr Davis and only began to involve him in the trading on the morning of the intended trade (30 April) and then without providing him with any of the crucial information concerning her suspicions about the trading or of her discussions with Mr Goenka that had been ongoing since 22 April. For the reasons set out herein, the Authority considers that it is insufficient for Mrs Parikh to simply assert that she was performing standard execution only broker services for her client (A's firm) in circumstances where A's firm had its own obligations to satisfy itself as to the integrity and background of its own client – Mr Goenka; and
- b) despite having received training in market abuse and stating that she referred to her compliance manual, Mrs Parikh unreasonably placed sole reliance on a provision in her compliance manual which stated that suspicions should not be disclosed to the client. The Authority notes that Mrs Parikh's reliance on the particular provision clearly indicates that Mrs Parikh had suspicions that there was a risk of market manipulation. However, Mrs Parikh failed at the same time to pay any attention to the need to escalate those concerns. The Authority notes that the provision in Schweder Miller's compliance manual on which Mrs Parikh relies appears toward the end of a section entitled "*3.11.3 Surveillance and Reporting*" which details many of the characteristics of Mr Goenka's trading plan and explained why these characteristics were clear indicators of market abuse. At the very end of the list of indicators it is stated in bold that: "*you are required to remain vigilant at all times and if you are in any doubt whether a particular transaction should be reported you must contact the Compliance Department*". Whilst the Authority accepts that Mrs Parikh sought authorisation of Mr Goenka's proposed Gazprom GDRs trade from A's firm (which she never received), the Authority considers that Mrs Parikh should not have discounted the real risk of market manipulation by Mr Goenka without first making enquiries, so as reasonably to satisfy herself that no such risk existed. In particular, the Authority considers that she should have properly challenged and made reasonable enquiries, so as reasonably to satisfy herself that no such risk existed, before continuing to engage with and assist Mr Goenka. The Authority

also notes that such a course of action would not have been contrary to the guidance in her compliance manual because as Mrs Parikh has noted, Mr Goenka was not her client. In addition, the Authority considers that Mrs Parikh should have informed Mr Davis, her Compliance Officer that she had speculated that Mr Goenka had an ulterior purpose for his trading which might have included his holding an underlying investment such as a structured product before the date of the aborted Gazprom GDR trades. Mrs Parikh only began to involve her Compliance Officer in the trading on the morning of the intended trade (30 April 2010) and then without providing him with any of the crucial information concerning her suspicions about the trading or of her discussions with Mr Goenka that had been on-going since 22 April 2010. The Authority considers that it was insufficient for an approved person such as Mrs Parikh, who has concerns as to the bona fides of a proposed trade to do nothing more than seek clarification of her instructions on the date of the proposed trade. The Authority considers that Mrs Parikh should have properly challenged and made reasonable enquiries, so as reasonably to satisfy herself that no risk of market manipulation existed in advance of the date of the proposed trade and she should have informed her Compliance Officer that she had speculated that Mr Goenka had an ulterior purpose for his trading which might have included his holding an underlying investment such as a structured product. As already noted, in doing nothing more than seeking clarification of her instructions, Mrs Parikh failed to appreciate that even by explaining the process of manipulation to Mr Goenka she not only facilitated Mr Goenka in his intended course of conduct through Schweder Miller but also failed to recognise the risk that he might take the knowledge he had gained from Mrs Parikh and use it to effect manipulation elsewhere. For the foregoing reasons, the Authority has found that Mrs Parikh's continued engagement with and assistance given to Mr Goenka as demonstrated by the telephone conversations and her related actions, amounts to a failure to act with the due skill, care and diligence required of an approved person in accordance with Statement of Principle 2.

## Sanction

61. Notwithstanding Mrs Parikh's representations that she did not breach Statement of Principle 2, Mrs Parikh disputed the principle and the amount of any financial penalty proposed. Mrs Parikh made representations that even if the Authority has found that she did breach Statement of Principle 2 (which Mrs Parikh firmly rejects), it would be unjustified to suggest that the seriousness of the breach is level 4 (pursuant to DEPP 6.5B.2) in light of all the facts and circumstances. Mrs Parikh submitted that the imposition of the proposed sanction is disproportionate in all the circumstances of the case and does not reflect any of the compelling mitigation that exists (as already set out above).
62. The Authority considers that it is appropriate for Mrs Parikh's breach of Statement of Principle 2 to be categorised at seriousness level 4 for the reasons set out in this Final Notice (and specifically in the analysis of the sanction in the 'Sanction' section below). The Authority notes that approved individuals such as Mrs Parikh are gatekeepers against market abuse of any kind. Approved individuals should provide

front-line protection against abusive activity and not act as enablers/facilitators of such activity. Further, Mrs Parikh was not only an approved person, but she had also received training in relation to the market abuse regime. The Authority considers that this exacerbates the seriousness of Mrs Parikh's misconduct in circumstances where (for the reasons set out herein), the Authority has found that Mrs Parikh failed to comply with Statement of Principle 2 by her engagement with and assistance to Mr Goenka during April 2010 in the practicalities of auction trading and the impact that various orders would have on the price of securities in the Closing Auction despite speculating that Mr Goenka had an ulterior purpose for his interest in the Closing Auction which was likely to have included his holding underlying investments such as a structured product. Accordingly, the Authority has found that the categorisation of Mrs Parikh's misconduct as level 4 is justified. The Authority has also found that it rejects Mrs Parikh's assertion that the financial penalty is disproportionate for the reasons set out in the analysis of the sanction in the 'Sanction' section below.

## **INTERESTED PARTY**

63. Below is a brief summary of the key written representations made by Schweder Miller (as interested party) and how they have been dealt with. In making the decision which gave rise to the obligation to give this Final Notice, the Authority has taken into account all of Schweder Miller's representations, whether or not set out below.
64. Schweder Miller made representations that Mrs Parikh has worked with Schweder Miller for 26 years and her performance and compliance record has been exemplary. A's firm opened an account in 2007 and over this period they placed a number of orders for execution by Mrs Parikh. During that period neither Schweder Miller nor Mrs Parikh had any reason to doubt A's integrity. Schweder Miller asserted that Mrs Parikh always takes a cautious approach in her work. Schweder Miller maintains the highest compliance standards and Schweder Miller asserted that Mrs Parikh will act at all times with due integrity subject to the support and monitoring of the compliance function within the firm.
65. The Authority has found that it notes Schweder Miller's representations in support of Mrs Parikh. However, the Authority has found that (for the reasons set out herein) Schweder Miller's representations do not alter the Authority's finding that Mrs Parikh failed to exercise due skill, care and diligence whilst acting in her capacity as an approved person, by engaging with and assisting Mr Goenka in the practicalities of auction trading and the impact that various orders would have on the price of securities (i.e. explaining the process of manipulation to Mr Goenka), despite speculating that Mr Goenka had an ulterior purpose for his interest in the Closing Auction which was likely to have included his holding an underlying investment such as a structured product.

## **FAILINGS**

66. The Authority considers that by her engagement with and assistance to Mr Goenka during April 2010 in the practicalities of auction trading and the impact that various orders would have on the price of securities in the Closing Auction, despite

speculating that Mr Goenka had an ulterior purpose for his interest in the Closing Auction which was likely to have included his holding underlying investments such as a structured product, Mrs Parikh's conduct represented a failure to comply with Statement of Principle 2. In particular, the Authority notes that Mrs Parikh:

- a) answered repeated questions from Mr Goenka which she should have been aware were intended to ascertain how to manipulate the closing price of Gazprom GDRs in the Closing Auction;
  - b) explained to Mr Goenka on 22 April 2010, with the use of 3 separate illustrative examples, how false closing prices could be achieved in the auction and agreed to hold "trial runs";
  - c) used an additional 2 examples of price manipulation to Mr Goenka the following day (23 April 2010) despite having been told by A in the interim "no one should be able to put a finger and say that you were manipulating a price";
  - d) arranged an auction viewing session (also on 23 April 2010) for Mr Goenka and his colleagues " ... to give them the opportunity to keep influencing the price till 3.35 so they know that their maths is correct" and continued to arrange and provide "trial runs" whilst also explaining the latest time at which orders could be entered into the auction. Despite also having been told by A in the interim that A believed that Mr Goenka:
    - i. had a structured product triggered by the closing price;
    - ii. was only interested in the closing price on a particular day; and
    - iii. intended to sell the acquired stock the next day.
67. On the basis of the facts and matters known to her at the time as demonstrated by the recordings and transcripts of the telephone conversations, the Authority considers that Mrs Parikh should have been aware of the high likelihood that Mr Goenka's objective was to trade in the Closing Auction for Gazprom GDRs in a manner such as to artificially position the price of Gazprom GDRs (albeit that his plan was not ultimately executed because of an unexpected announcement concerning Gazprom). Mrs Parikh should have been aware of the risk that Mr Goenka intended to commit market abuse and she should have properly challenged and made reasonable enquiries, so as reasonably to satisfy herself that no such risk existed before continuing to engage with and assist Mr Goenka. However, Mrs Parikh did not recognise the risk, and did not make adequate enquiries so as reasonably to satisfy herself that no such risk existed. Whilst Mrs Parikh speculated that Mr Goenka had an ulterior purpose for his proposed trading in the Gazprom GDRs which was likely to have included his holding underlying investments such as a structured product she discounted the risk of market manipulation and continued to assist Mr Goenka.
68. Further, Mrs Parikh failed to appreciate that by explaining the process of manipulation to Mr Goenka she not only facilitated Mr Goenka in his intended course

of conduct through Schweder Miller but also failed to recognise the risk that he might take the knowledge he had gained from Mrs Parikh and use it to effect manipulation elsewhere.

69. In the circumstances described above, the Authority considers that Mr Parikh's conduct in April 2010 as an approved person was inadequate and represents a failure to comply with Statement of Principle 2. The Authority considers that Mrs Parikh has failed to meet minimum regulatory standards in respect of her conduct and on the basis of the facts and matters set out above the Authority is satisfied that it is appropriate in all the circumstances to take action against Mrs Parikh in relation to her breach of Statement of Principle 2.

## **SANCTION**

70. Under section 66(3) of the Act, the Authority may impose a penalty on any person if it is satisfied that he has failed to comply with a Statement of Principle.

71. The Authority's policy on imposing a financial penalty is set out in Chapter 6 of DEPP, relevant excerpts of which are contained in the Annex.

72. The principal purpose of imposing a financial penalty is to promote high standards of regulatory and market conduct by deterring persons who have committed breaches from committing further breaches, helping to deter others from committing breaches and demonstrating generally the benefits of compliant behaviour (DEPP 6.1.2G).

73. In determining whether to take action for a breach and, if so, what action is appropriate and proportionate, the Authority considers all the relevant circumstances of the case (DEPP 6.2.1G and DEPP 6.4.1G). For the reasons set out below, the Authority considers that it is appropriate to impose a financial penalty on Mrs Parikh in relation to her breach of Statement of Principle 2.

74. As the behaviour in this case occurred after 6 March 2010 the Authority's new penalty regime applies. The Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5B sets out the details of the five-steps for calculating financial penalties to be imposed on individuals. The application of the five-step framework to Mrs Parikh's conduct is as follows:

### **Step 1: Disgorgement**

75. Pursuant to DEPP 6.5B.1G, at Step 1, the Authority seeks to deprive the individual of the financial benefit derived directly from the breach. Mrs Parikh received no financial benefit derived directly from the breach because the trading in Gazprom GDRs did not proceed as Mr Goenka had intended. Accordingly, the Step 1 figure for Mrs Parikh's breach of Statement of Principle 2 is nil.

### **Step 2: The seriousness of the breach**

76. Pursuant to DEPP 6.5B.2G, at Step 2, the Authority will determine a figure to reflect

the seriousness of the breach based on the individual's relevant income. Mrs Parikh has supplied the Authority with information confirming her relevant income from Schweder Miller was £152,245.

77. The percentage of Mrs Parikh's income which forms the basis of Step 2 is assessed on a scale of 1 (least serious) to 5 (most serious) depending on the nature of the breach and whether it was committed deliberately or recklessly. A non-exhaustive list of factors likely to be considered level 4 or 5 factors are set out at DEPP 6.5B.2G(12).

78. The Authority considers Mrs Parikh's conduct to be serious for the following reasons:

- a) Mrs Parikh, is an approved person, whose actions resulted from competency failings on her part and were more than mere inadvertence;
- b) Mrs Parikh provided real and meaningful assistance to Mr Goenka (which he acknowledged) to enable him to develop and be ready to execute his intended plan; and
- c) the breach posed a significant risk of loss to consumers, investors and other market users. The scale of the proposed abusive trading was considerable (the planned orders to trade were potentially up to USD 60 million) and she suspected that Mr Goenka's motive was due to his holding an underlying investment linked to achieving a closing price in Gazprom at or above a certain level.

79. Taking into account those factors the Authority considers Mrs Parikh's conduct to be at level 4 in terms of its seriousness.

80. After applying the relevant level 4 multiplier (30%) to Mrs Parikh's relevant income, the resulting figure is £45,673.50.

81. Accordingly the Step 2 figure is £45,673.50.

### **Step 3: Mitigating and aggravating factors**

82. Pursuant to DEPP 6.5B.3G, at Step 3 the Authority may increase the Step 2 figure to take into account any factors which aggravate or mitigate the breach. The Authority does not consider that, taken together, the aggravating and mitigating factors set out at DEPP 6.5B.3G(2) affect to a significant extent the penalty appropriate to Mrs Parikh's actions in relation to her breach of Statement of Principle 2.

83. At Step 3 the penalty is therefore £45,673.50.

### **Step 4: Adjustment for deterrence**

84. Pursuant to DEPP 6.5B.4G, if the Authority considers that the figure arrived at after Step 3 is insufficient to deter the individual who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the

penalty. The Authority does not consider it necessary to make any adjustment at Step 4.

85. The Step 4 penalty for breach of Statement of Principle 2 is therefore £45,673.50.

## **Step 5: Settlement discount**

86. For the reasons set out above, the Authority proposes to impose on Mrs Parikh a combined Step 4 penalty of £45,673.50 for breach of Statement of Principle 2.

87. Pursuant to DEPP 6.5D.4G, if the Authority and an individual on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the individual reached agreement. No settlement discount applies to this matter. The penalty after Step 5 is therefore £45,673.50.

## **Financial penalty**

88. The Authority therefore proposes to impose a penalty of £45,673.50 for breach of Statement of Principle 2.

## **PROCEDURAL MATTERS**

### **Decision Maker**

89. The decision which gave rise to the obligation to give this Final Notice was made by the Regulatory Decisions Committee.

90. This Final Notice is given to Mrs Parikh and Schweder Miller under, and in accordance with, section 390 of the Act.

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

91. The financial penalty must be paid in full by Mrs Parikh to the Authority by no later than 20 August 2013, 14 days from the date of the Final Notice.

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

92. If all or any of the financial penalty is outstanding on 21 August 2013, the Authority may recover the outstanding amount as a debt owed by Mrs Parikh and due to the Authority.



## **Publicity**

93. 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 Authority must publish such information about the matter to which this notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
94. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

## **Authority contacts**

95. For more information concerning this matter generally, you should contact Kevin Thorpe of the Enforcement and Financial Crime Division of the Authority (direct line: 020 7066 4450).

**Matthew Nunan**

**Head of Department, Enforcement and Financial Crime Division, Financial  
Conduct Authority**

## **ANNEX: Relevant Statutory and Regulatory Provisions**

### **Relevant Guidance – Decision Procedures and Penalties Manual (DEPP)**

1. Section 1A(1) of the Act states that the body corporate previously known as the Financial Services Authority is renamed as the Financial Conduct Authority.
2. The Authority's operational objectives established in section 1(B) of the Act include protecting and enhancing the integrity of the UK financial system and the protection of consumers.
3. Section 66 of the Act provides that if the Authority considers that an approved person has failed to comply with a statement of principle issued by the Authority under section 64 of the Act, it may impose on him a penalty, in respect of the failure to comply, of such amount as it considers appropriate.

### **RELEVANT HANDBOOK PROVISIONS**

4. In deciding to take the action in this Final Notice, the Authority has had regard to the rules and guidance published in the Authority's Handbook at the relevant time.

### **Statements of Principles and Code of Practice for Approved Persons**

5. The Authority's APER are issued under section 64 of the Act. APER sets out descriptions of conduct which, in the opinion of the Authority, does not comply with a Statement of Principle.
6. When establishing compliance with, or a breach of, a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour expected in that function (APER 3.1.3G).
7. An approved person will only be in breach of a Statement of Principle if they are personally culpable, that is, in a situation where their conduct was deliberate or where their standard of conduct was below that which would be reasonable in all the circumstances (APER 3.1.4G).
8. In determining whether an approved person's conduct was in breach of a Statement of Principle, the Authority will take into account the extent to which the approved person acted in a way that is stated to be in breach of a Statement of Principle (APER 3.1.5G).
9. APER (and in particular the specific examples of behaviour which may be in breach of a generic description of conduct in the code) is not an exhaustive list of types of conduct that may contravene the Statements of Principle (APER 3.1.6G).
10. In determining whether or not the conduct of an approved person complies with Statement of Principle 2, the following are factors which, in the opinion of the

Authority, are to be taken into account:

- (a) whether he exercised reasonable care when considering the information available to him;
- (b) whether he reached a reasonable conclusion which he acted on;
- (c) his role and responsibility as an approved person performing a significant influence function;
- (d) the knowledge he had, or should have had, of regulatory concerns, if any, arising in the business under his control.

## **Relevant Rules and Guidance**

11. The section of the Handbook entitled "FIT" sets out the Fit and Proper test for Approved Persons. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an individual who is not an approved person.
12. FIT 1.3.1G provides that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person. The most important considerations will be the person's honesty, integrity and reputation, competence and capability, and financial soundness.
13. FIT 2.2.1G provides that in determining a person's competence and capability the Authority will have regard to all relevant matters including, but not limited to, whether the person satisfies the relevant Authority training and competence requirements in relation to the controlled function the person performs; whether the person has demonstrated by experience and training that the person is suitable to perform the controlled function; whether the person has adequate time to perform the controlled function and meet the responsibilities associated with that function.

## **OTHER RELEVANT REGULATORY PROVISIONS**

### **Authority's policy on the imposition of financial penalties**

14. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In respect of conduct occurring on or after 6 March 2010, the Authority applies a five-step framework to determine the appropriate level of financial penalty. The misconduct in respect of which the Authority has decided to impose a financial penalty on Mrs Parikh occurred on or after 6 March 2010, and the Authority has therefore had regard to the penalty regime introduced on 6 March 2010.
15. DEPP 6.1.2G provides that the principal purpose of imposing a financial penalty is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches, helping to deter

other persons from committing similar breaches, and demonstrating generally the benefits of compliant behaviour.

16. The Authority will consider the full circumstances of each case when determining whether or not to take action for a financial penalty (DEPP 6.2.1G). DEPP 6.2.1G sets out guidance on a non-exhaustive list of factors that may be of relevance in determining *whether* to take action for a financial penalty.
17. DEPP 6.4.1G(1) provides that the Authority will consider all the relevant circumstances of a case when it determines the level of financial penalty (if any) that is appropriate and in proportion to the breach concerned.
18. DEPP 6.5B sets out the five steps for calculating financial penalties to be imposed on individuals.