This Decision Notice was superseded by a Final Notice dated 22 November 2016:

https://www.fca.org.uk/publication/final-notices/tariq-carrimjee-2016.pdf

DECISION NOTICE

To:	Tariq Carrimjee	**To:**	Somerset Asset Management LLP
FSA Ref. Number:	TXC01113	**FSA Ref. Number:**	448781
Address:	91-93 Baker Street London W1U 6QQ	**Address:**	91-93 Baker Street London W1U 6QQ
Date:	26 March 2013		

ACTION

1. For the reasons given in this Decision Notice, the FSA has decided to:

   a) withdraw Mr Carrimjee's individual approvals, pursuant to section 63 of the Act;

b) make an order pursuant to section 56 of the Act prohibiting Mr Carrimjee from performing any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm; and

c) impose on Mr Carrimjee a financial penalty of £89,004, pursuant to section 66 of the Act, for breaching Statement of Principle 1.

REASONS FOR THE ACTION

2. The FSA has decided to take this action because it has found that Mr Carrimjee failed to act with integrity in breach of Statement of Principle 1 when he recklessly assisted his client, Mr Rameshkumar Goenka, in Mr Goenka's plan to manipulate the closing price of Gazprom GDRs in April 2010 and Reliance GDRs in October 2010. In making this finding, the FSA considers that Mr Carrimjee suspected that market manipulation was the goal of his client and Mr Carrimjee suspected that Mr Goenka held structured products which were related to the intended manipulation, yet he turned a blind eye to the risk of Mr Goenka's planned market abuse and recklessly assisted his client in his attempt to achieve that goal.

3. Mr Carrimjee introduced Mr Goenka to B, for the specific purpose of trading in the Closing Auction for Gazprom GDRs and Reliance GDRs. He made that introduction, participated in discussions about trading and assisted with the arrangements for trading despite suspecting that the objective of Mr Goenka's plan was to secure the price of Gazprom GDRs and Reliance GDRs at a false or artificial level.

4. Mr Goenka's plan to manipulate Gazprom GDRs was abandoned at a late stage due to events beyond Mr Goenka's control. However, on 18 October 2010, Mr Goenka (through B) 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 the structured product he held.

5. In October 2011 the FSA reached a settlement with Mr Goenka and 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.

6. Whilst Mr Carrimjee recklessly assisted Mr Goenka in his plan to manipulate the price of both Gazprom GDRs and Reliance GDRs, no manipulation of the price of Gazprom GDRs took place. In relation to the Reliance GDRs trading, Mr Carrimjee agreed to the Harrington Master Trust Fund (the fund in which Mr Goenka's assets were held) at his firm, Somerset, being used by B's firm (an empanelled broker firm to the fund) for

trading by Mr Goenka, and permitted Mr Goenka to instruct B directly. Without such facilitation, Mr Goenka could not have traded. Mr Carrimjee did so despite his suspicion of Mr Goenka's intentions in respect of the aborted Gazprom GDRs trading. Mr Carrimjee was not, however, directly involved in the execution of the trades in Reliance GDRs on 18 October 2010.

7. The FSA considers that, as a consequence of his conduct, Mr Carrimjee failed to act with integrity in breach of Statement of Principle 1 whilst acting in his capacity as an approved person and is not fit and proper. The FSA has therefore decided to withdraw Mr Carrimjee's individual approvals and to make a prohibition order against him. The FSA has also decided to impose on him a financial penalty of £89,004 under section 66 of the Act.

8. The FSA considers that Mr Carrimjee's misconduct was particularly serious and has taken account of the following matters in coming to this view:

   a) Mr Carrimjee's conduct was reckless. Mr Carrimjee suspected that Mr Goenka had an ulterior motive for his trading and wanted to manipulate the price of Gazprom GDRs and Reliance GDRs. Despite that he turned a blind eye to the risk of Mr Goenka's planned market abuse. Mr Carrimjee failed to take any steps to report or prevent the market abuse and chose instead recklessly to assist Mr Goenka to implement his plan to create an artificial price for both Gazprom GDRs and Reliance GDRs. He therefore failed to act with integrity;

   b) Mr Carrimjee was a senior and very experienced approved person. At the time of the activity described in this Decision Notice, Mr Carrimjee was approved to perform the Chief executive (CF3), Partner (CF4), Compliance oversight (CF10) and Money Laundering Reporting (CF11) significant influence functions on behalf of Somerset;

   c) Mr Carrimjee put Mr Goenka in touch with B and assisted Mr Goenka to put in place arrangements to enable him to secure the closing price of Gazprom GDRs and Reliance GDRs at a false or artificial level thereby enabling market abuse to take place;

   d) Mr Carrimjee's actions, in assisting Mr Goenka, resulted in a serious disruption of the market on 18 October 2010 by artificially increasing the price of Reliance GDRs. This posed a threat to the orderliness of and confidence in that market. It further led to a significant loss (of approximately USD 3.1 million) for the bank that was the counterparty to Mr Goenka's structured product;

e) Mr Carrimjee's actions were repeated, in that he assisted Mr Goenka in effecting his plan to manipulate the closing price for Gazprom GDRs in April 2010 and was also involved in the preliminary stages of Mr Goenka's plan to manipulate the closing price for Reliance GDRs in October 2010; and

f) Mr Carrimjee benefitted from his conduct through the retention of Mr Goenka's business for his firm.

DEFINITIONS

9. The following definitions are used in this Decision Notice:

"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.
"B"	means a London-based broker, introduced to Mr Goenka by Mr Carrimjee.
"Mr Carrimjee"	means Mr Tariq Carrimjee.
"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.
"EG"	means the Enforcement Guide.
"the FSA"	means the Financial Services Authority.
"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.
"Reliance"	means Reliance Industries Limited.
"SIF"	means Significant Influence Function.
"Somerset"	means Somerset Asset Management LLP.
"Statement of Principle 1"	means Statement of Principle 1 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.
"the Structured Products"	means Structured Product 1 and Structured Product 2.
"Upper Tribunal"	means the Upper Tribunal (Tax and Chancery Chamber).

RELEVANT STATUTORY AND REGULATORY PROVISIONS

10. The statutory and regulatory provisions relevant to this Decision Notice are contained in the Annex.

FACTS AND MATTERS

Mr Carrimjee

11. Mr Carrimjee is an experienced investment adviser and the senior partner at Somerset, a firm he started. Somerset's primary business is the provision of wealth management advice. Mr Carrimjee has a substantial financial interest in the business of Somerset.

12. At the time of the activity described in this Decision Notice, Mr Carrimjee was approved to perform the Chief Executive (CF3), Partner (CF4), Compliance Oversight (CF10) and Money laundering reporting (CF11) significant influence functions on behalf of Somerset. He is also approved to perform the Customer (CF30) function on behalf of Somerset. He has held those functions since May 2006 (since November 2007 for CF30). He previously held the Investment adviser (CF21) function.

13. Mr Carrimjee had received training in relation to the market abuse regime and was responsible for the oversight of compliance procedures at Somerset.

14. Mr Carrimjee had known B for approximately 10 years at the time of the activity described in this Decision Notice.

Mr Goenka

15. 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.

16. Mr Carrimjee has known Mr Goenka for approximately 15 years. Somerset managed a number of Mr Goenka's investments and Mr Carrimjee provided investment advice to Mr Goenka. Mr Goenka was a significant trophy client for Somerset representing 7-8% of its business. Somerset was paid by Mr Goenka according to the amount of funds under management.

17. Mr Goenka is not a member of the LSE and so can only trade on its markets through a member firm.

The Structured Products

18. The Structured Products were purchased by Mr Goenka in 2007. Mr Goenka purchased the Structured Products through accounts held with one of his banks.

19. The Structured Products each had a cost (face value) of USD 10 million.

20. 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.

21. 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 on the maturity date. 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 strike or "knock-in price".

22. The worst performing securities in the baskets of GDRs on the stated maturity dates were as follows:

    a) Gazprom GDRs for Structured Product 1; and

    b) Reliance GDRs for Structured Product 2.

The Closing Auction

23. 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.

24. The theoretical price and volume, known as the IUP and the IUV are visible to the member firms.

25. Subsequently, in the price determination/uncrossing phase of the Closing Auction, the exchange seeks to match orders for each stock. This occurs at a randomly determined time, in 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 LSE 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.

Mr Goenka's plan to manipulate prices in the Closing Auction

a) Structured Product 1 and the Closing Auction for Gazprom

26. In early April 2010 Mr Carrimjee visited Mr Goenka in Dubai. Mr Goenka discussed the possibility of trading in Gazprom GDRs and Reliance GDRs with Mr Carrimjee. Mr Carrimjee approached B on behalf of his client, Mr Goenka, to discuss the Closing Auction process. Mr Carrimjee had known B for approximately ten years and Somerset had an account at the firm where B worked. Mr Carrimjee and B discussed the Closing Auction process.

27. On 22 April 2010 Mr Carrimjee called B to discuss the practicalities of trading in the Closing Auction. B informed Mr Carrimjee that B had been monitoring the Closing Auction following their previous discussion. Mr Carrimjee informed B that he would

ensure Somerset was put in funds sufficient to facilitate the trading. At that time B asked the names of the two stocks to be traded and Mr Carrimjee stated "*Reliance*" and "*Gazprom*". Mr Carrimjee said that he would arrange a conference call to put B in touch with "*this person in Dubai*", that person being Mr Goenka. Mr Carrimjee assured B of Mr Goenka's wealth and ability to transact large trades. Mr Carrimjee also assured B of Mr Goenka's honesty.

28. Later that day a conference call took place during which Mr Carrimjee introduced Mr Goenka to B. Mr Goenka's opening comment was "*I just want to understand how this auction works …in terms with IOB*". Whilst Mr Carrimjee was on the call B then proceeded to explain the Closing Auction process in considerable detail. In particular, B 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 B the necessary steps for increasing the closing price, and the latest time at which an order could be placed. They discussed a number of examples. Mr Carrimjee was party to the discussions.

29. 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?*" B 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 B's screen in real time whilst B was trading in the auction. Mr Carrimjee confirmed that his firm, Somerset, had an account with B's firm thereby enabling Mr Goenka to trade through B.

30. In the course of the call in which Mr Carrimjee participated, Mr Goenka and B agreed that there should be a number of trial 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*".

31. On 23 April 2010 Mr Carrimjee called B to say that he had been thinking about the conference call on the way to work and that "*nobody should be able to point a finger and say that you were manipulating a price*". B 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 between Mr Carrimjee and B about the risks of moving the price by a hypothetical 50 cents as opposed to USD 5. Mr Carrimjee commented "*…at some stage I'm going to ask him suppose the price is, say $25 dollars…Okay, his goal is to take it to $25 50 cents, no big deal. But if his goal is to take it to $30...?*" B

concluded the discussion with: "*you know, if this man has money enough to move the price for a day well… good luck to him…*" Mr Carrimjee replied: "*so all our safeguards are kind of in place… Good for him*". Mr Carrimjee informed B that Mr Goenka was studying how the Closing Auction works. B 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*".

32. In a later call on 23 April 2010, Mr Carrimjee was asked by B what would happen to Mr Goenka's stock once it was purchased in the Closing Auction. Mr Carrimjee informed B 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*". Mr Carrimjee stated to B 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*". Mr Carrimjee then repeated his opinion to B that "*…he's aggressively done some structured note*". Further calls took place between Mr Carrimjee and B on 26 April 2010 at which time they discussed B's commission rates for the trading.

33. On 29 April 2010 a conference call took place between Mr Carrimjee, B and Mr Goenka. Prior to Mr Goenka joining the call Mr Carrimjee and B discussed the planned trading. B 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*". Mr Carrimjee agreed and added "*let's keep it that way*". Mr Carrimjee also instructed B on the level of trading limit that B needed to have in place to facilitate the trading and assured B that he 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. B confirmed that B had increased B's 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 and they also explored the very latest time at which it would be possible to enter orders in the auction.

34. At 2.11pm on 30 April 2010, B was provided with a list of the orders Mr Goenka wished B 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 and were also at levels above the "knock-in price" of Structured Product 1. The cost of the orders totalled USD 66 million. B called Mr Carrimjee to inform him that the orders amounted to more than the USD 50 million previously discussed and asked what to do. Mr Carrimjee informed B that B should enter all of the orders on to B's trading system in preparation for the auction and that Mr Carrimjee would inform Mr Goenka. B subsequently confirmed to Mr Carrimjee that B had done as he had requested. B informed Mr Carrimjee that B had been called by Mr Goenka and that Mr Goenka had asked that they speak by unrecorded

mobile telephone in relation to the trading. B said that B was not comfortable with receiving orders by an unrecorded line but Mr Carrimjee said that B should not worry about it.

35. Mr Goenka then called Mr Carrimjee at 3.03pm to inform Mr Carrimjee that Mr Goenka had discussed the matter of mobile phone calls with B. Mr Goenka said that B was not comfortable with this because B firm would not accept client orders by mobile. Mr Carrimjee said to Mr Goenka "*Why don't you do one thing, why don't you use your UK mobile?*" Mr Carrimjee then stated "*Why have any connection to this thing?*" Mr Carrimjee told Mr Goenka that he had reassured B that B should not worry about the use of mobile phones because "*there is no possibility of a fight, erm it has to be amicable because we all know in what interest we're doing this*". At the end of the call Mr Carrimjee told Mr Goenka again to "*Ok but use your UK mobile and call [B] on [B's] UK mobile*". Subsequently, calls were made on recorded lines and on unrecorded mobile telephones.

36. The price of Gazprom GDRs prevailing in the market at the time the orders were sent to B (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, 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. B called Mr Carrimjee 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?*" Mr Carrimjee agreed.

37. Mr Goenka was informed of President Putin's announcement and its impact. As a result of the announcement Mr Goenka instructed B not to proceed with the planned auction trading because the Gazprom price had moved too far to enable his plan to be successfully executed. At 3.36pm Mr Goenka called Mr Carrimjee to inform him that "*we're not doing anything, we've lost the game*". Mr Goenka explained to Mr Carrimjee that "*basically, what happened is the Putin news came out… the stock went down 2% so we can't do anything*". Mr Goenka informed Mr Carrimjee that he had already spoken to B about the matter.

38. Mr Carrimjee and B discussed Mr Goenka's reaction to the news in a subsequent telephone call. The two noted the amount of planning that had gone to waste. Mr Carrimjee made reference to what the parties would have achieved if Mr Goenka's plan had worked. He said: "if" Mr Goenka made "*10 million today*" (i.e. that Mr Goenka would have recouped his investment in full) "*you*" [B] "*would have been paid 10 basis*

points" in commission. B 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*".

39. There were various references in the conversation between Mr Carrimjee and B to "*the note*" held by Mr Goenka, which the FSA considers to have been references to Structured Product 1. Mr Carrimjee stated that "*the game was all about the closing price*" and observed that "*we don't know what the upside to that note is… Some of them have a multiplier …*".

b) Structured Product 2 and the Closing Auction for Reliance

40. In early October 2010 Mr Goenka informed Mr Carrimjee at a meeting in Dubai that he wished to buy Reliance GDRs and participate in the Closing Auction. Mr Carrimjee put Mr Goenka in touch with B so that he could "directly transact". Mr Carrimjee confirmed to B that B was authorised to deal directly up to a cap of USD 50 million.

41. On 11 October 2010 Mr Goenka spoke to B directly to discuss trading in Reliance GDRs. Mr Goenka explained that he had already discussed matters with Mr Carrimjee, including the necessary financing arrangements. B said that B had also spoken with Mr Carrimjee and that "everything is in place".

42. On 15 October 2010 B called Mr Carrimjee 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. B 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*". Mr Carrimjee suggested Mr Goenka might buy that evening.

43. On the day of the auction trade, 18 October 2010, Mr Carrimjee was out of the country on a business trip. Both Mr Goenka and B sought to contact Mr Carrimjee at his office on several occasions during 18 October 2010. Mr Carrimjee's office informed Mr Goenka that Mr Carrimjee could be reached on his mobile. There was a telephone call from Mr Carrimjee to Mr Goenka which lasted 7 seconds.

44. 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.

45. 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.

46. 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. Mr Carrimjee was aware of the sales and spoke with B following his return from his business trip.

REPRESENTATIONS AND FINDINGS

47. Below is a brief summary of the key written and oral representations made by Mr Carrimjee and how they have been dealt with. In making the decision which gave rise to the obligation to give this Decision Notice, the FSA has taken into account all of Mr Carrimjee's representations, whether or not set out below.

Breach of Statement of Principle 1

48. Mr Carrimjee made representations that the FSA's allegation that he breached Statement of Principle 1 by knowingly assisting Mr Goenka in his plan to manipulate the price of both Gazprom and Reliance GDRs or turned a blind eye as to that risk is without merit and is premised on a failure to properly understand: (1) Mr Carrimjee's knowledge/awareness of Mr Goenka's plan/intentions or (2) Mr Carrimjee's role in relation to Mr Goenka's affairs at the relevant time.

Mr Carrimjee's knowledge/awareness

49. Mr Carrimjee submitted that:

    a) his alleged misconduct must be assessed in the context of his actual knowledge at the relevant time and must not be viewed with hindsight. Mr Carrimjee asserted that a finding of a breach of Statement of Principle 1 is most appropriate in cases of actual knowledge and deliberate intent, neither of which he possessed. Mr Carrimjee stated that the FSA has not submitted any evidence that he both knew of, and chose to actively participate in (or knew of, yet ignored), Mr Goenka's market manipulation scheme. Mr Carrimjee asserted that without actual knowledge of Mr Goenka's plan/intentions, he cannot have knowingly assisted in Mr Goenka's attempt to manipulate market prices;

    b) he had no knowledge or experience of the Closing Auction. Mr Carrimjee asserted that he specifically sought to involve B because he understood that B and B's colleagues at B's firm have experience of trading during the Closing Auction.

Mr Carrimjee stated that he relied on B to explain the practicalities and associated risks of trading in the Closing Auction to him (and Mr Goenka). Mr Carrimjee submitted that his evidently limited understanding of the Closing Auction process casts doubt on the likelihood that he was involved in a market manipulation scheme to which auction trading was central;

c) he had no knowledge of the Structured Products. Mr Carrimjee submitted that he did not know of the existence or terms of the Structured Products. For the Structured Products to have had a bearing on his approach to Mr Goenka's trades he would have to have known of: (i) the existence of both Structured Products; and (ii) the mechanics of the Structured Products (such as how the pay-outs were to be calculated, which stocks were the potential "laggards" and the relevant maturity dates); and (iii) the respective "knock in" prices of the Structured Products. Mr Carrimjee stated that he merely speculated about the possibility that Mr Goenka's planned trades could relate to the holding of the Structured Products. Mr Carrimjee also speculated that Mr Goenka might consequently have some improper motives for the trades and discussed these with B, an experienced industry professional. Mr Carrimjee understood from (and was satisfied by) B that even if Mr Goenka's intention was to manipulate the price of particular GDRs in the Closing Auction (which Mr Carrimjee asserted was not known to him) such an outcome would be very difficult, if not impossible, to successfully achieve. Mr Carrimjee submitted that he was therefore not reckless as to the possibility Mr Goenka might be seeking to behave improperly;

d) he had no knowledge of Mr Goenka's motives for/intentions behind the Gazprom GDRs or Reliance GDRs trades because he had no knowledge of the Structured Products. Further, Mr Carrimjee submitted that he has known Mr Goenka for 15 years and had a longstanding business relationship with him during that time. Mr Carrimjee has never had a reason to question Mr Goenka's integrity or honesty in the past. Somerset conducted a full KYC check in respect of Mr Goenka and also had established relationships with some of Mr Goenka's associates. For the foregoing reasons, Mr Carrimjee had no reason to think Mr Goenka was intending to trade unlawfully. Mr Carrimjee asserted that he believed Mr Goenka wished to absorb a large seller and/or had a position which was about to expire and to which he wished to extend his exposure. Mr Carrimjee accepted that with the benefit of hindsight, there may have been warning signs as to Mr Goenka's true intentions, but he asserted that this does not constitute evidence of knowledge on his part. Mr Goenka did not divulge the true purpose of his trading strategy to Mr

Carrimjee. Had Mr Carrimjee known with any certainty of Mr Goenka's intentions he would not have allowed the trade to go ahead and would have contacted the necessary authorities. In relation to the Reliance GDR trading (in particular), Mr Carrimjee understood that Mr Goenka wanted to get blocks of a number of different shares – not just Reliance. Having agreed a trading cap of 50 million Euros, he had no knowledge of what Mr Goenka was trading in. Mr Carrimjee did not know that Mr Goenka was intending to buy rather than sell. In the call from B on 15 October 2010 concerning the Reliance GDRs trade he thought Mr Goenka had to sell and was corrected by B which he asserted shows he was not clear about what Mr Goenka wanted to do. Mr Carrimjee also asserted that he did not know about the trading on the day and could not have known the orders were placed above the "knock-in" price of the Reliance GDRs as he was not aware of Structured Product 2. He was not told of the trading until after it had occurred; and

e) even if he did know of Mr Goenka's motives for/intentions behind the aborted Gazprom GDRs trading and the Reliance GDRs trading (which he denied for the reasons set out above), he did not breach Statement of Principle 1. Mr Carrimjee submitted that he only had limited and passive involvement in the aborted Gazprom GDRs trading and the Reliance GDRs trading and in any event, he acknowledged, considered and subsequently dismissed the risk of Mr Goenka's trading being manipulative. Mr Carrimjee also stated that the fact he had made no effort to conceal his involvement in Mr Goenka's plan and the fact that he made no financial gain from the trading demonstrated that his behaviour fell far short of the usual systematic dishonesty, deception and pursuit of self-interest demonstrated by individuals who are found by the FSA to be in breach Statement of Principle 1. Mr Carrimjee also asserted that he had no motive to assist in Mr Goenka's market abuse scheme. Although Mr Carrimjee acknowledged that Mr Goenka represented a "feather" in Somerset's cap, he asserted that this reflected the fact that he is a well-known investor, not that Somerset's business depended on income from Mr Goenka. Mr Carrimjee stated that the fees received from Mr Goenka were not of material significance and therefore Mr Goenka was not a "trophy client" in a material sense. Mr Carrimjee also stated that the relationship between Mr Goenka and Somerset had been terminated and Somerset's business has not been materially affected.

50. The FSA has found that:

a) it accepts Mr Carrimjee's submission that his conduct must be assessed in the context of his actual knowledge at the relevant time and must not be viewed with hindsight. However, the FSA considers that the recordings and transcripts of the telephone conversations involving Mr Carrimjee provide strong contemporaneous evidence of Mr Carrimjee's actual knowledge/awareness at the relevant time. It is in this context that the FSA has found that Mr Carrimjee suspected that market manipulation was the goal of his client yet he turned a blind eye to the risk of Mr Goenka's planned market abuse and chose instead to recklessly assist Mr Goenka to implement his plan in breach of Statement of Principle 1;

b) it does not accept Mr Carrimjee's submission that he had no knowledge or experience of the Closing Auction. The FSA considers that having been provided with the LSE auction guide and participated in telephone calls (including observing a trading screen) where the process was discussed, Mr Carrimjee's knowledge of the Closing Auction process would have been considerably more advanced than most. The FSA also notes that Mr Carrimjee is an experienced industry professional who spent 5 years as a foreign exchange trader all of which would assist his understanding and (at the very least) enabled him to have spotted all the warning signs of potentially abusive trading;

c) it does not accept Mr Carrimjee's representations that he had no knowledge of the Structured Products. The FSA has found that Mr Carrimjee had sufficient knowledge to speculate that Mr Goenka held the Structured Products. The contemporaneous evidence makes clear that Mr Carrimjee expressly informed B that he thought Mr Goenka had a structured product which was affected by the closing price of securities being above or below a certain level. Mr Carrimjee specifically stated to B (following B's initial discussion with Mr Goenka) that "*nobody should be able to point a finger and say you were manipulating a price*". Mr Carrimjee also stated 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*". Mr Carrimjee then repeated his opinion to B that "*…he's aggressively done some structured note*" and following the aborted Gazprom GDR trading, he informed B that "*the game was all about the closing price*". The FSA considers that this is clear evidence that Mr Carrimjee was aware that Mr Goenka had an interest in manipulating the Closing Auction because he held a structured product/structured products and that Mr Carrimjee was aware that the structured product/structured products must have had a "knock in" price related to the closing price of the Gazprom GDRs and Reliance GDRs

on specific dates. The FSA has found that it is insufficient for Mr Carrimjee to simply seek to rely on B to satisfy himself that even if Mr Goenka's intention was to manipulate the price of particular GDRs in the Closing Auction such an outcome would be very difficult, if not impossible, to successfully achieve. Whilst the FSA accepts that Mr Carrimjee may have been less experienced in auction trading than B, as an approved person and a SIF holder, he was required to make robust enquiries and to challenge the information he received from B. The FSA considers that it was insufficient for an approved person such as Mr Carrimjee to simply accept B's assurance that the Gazprom GDRs were too liquid to manipulate and that there were market safeguards against manipulation;

d) it does not accept Mr Carrimjee's representations that he had no knowledge as to Mr Goenka's motives for/intentions behind the Gazprom GDRs or Reliance GDRs trades. Mr Goenka was an important client of Mr Carrimjee's whom he had known for 15 years. Mr Carrimjee knew that Mr Goenka was a USD billionaire (a fact which he failed to convey to B). From the outset Mr Carrimjee knew that Mr Goenka wished to trade in the Closing Auction in relation to two securities and that those securities were Gazprom and Reliance. In his telephone conversation with B, when B asked him the names of the two stocks to be traded, Mr Carrimjee stated "*Reliance*" and "*Gazprom*". Mr Carrimjee was aware from the calls in which he participated, prior to the aborted Gazprom trading, including the extensive discussions between B and Mr Goenka (that focused on moving price) and the subsequent updates that B provided to him directly, that Mr Goenka intended to seek to manipulate the price of the securities through auction trading. Mr Carrimjee also became aware that Mr Goenka had an interest in manipulating the Closing Auction because Mr Carrimjee arranged and participated in a conference call on 22 April 2010 at which time B and Mr Goenka discussed price movements that would result from placing orders of various sizes in a closing auction and discussed working examples. It was during that conference call that 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?"*. Mr Carrimjee had, by the next day, considered the possibility of market abuse and speculated with B about this possibility. He went on to caution B that "*nobody should be able to point a finger and say you were manipulating a price*". Mr Carrimjee also knew that Mr Goenka intended to sell the stock the next day and that Mr Goenka was "*only interested in the official closing price of the stock on a particular date*". The FSA also does not accept Mr Carrimjee's submissions that he did not know about the Reliance GDR trading on the day and that he was not told of the trading until after it had occurred. The

FSA notes that Mr Carrimjee was aware from the outset that Mr Goenka had a dual plan and intended to trade in both Gazprom and Reliance GDRs. When Mr Goenka subsequently approached Mr Carrimjee in relation to trading Reliance in the Closing Auction, Mr Carrimjee already knew of the earlier, aborted trading in relation to Gazprom. That knowledge together with Mr Carrimjee's prior suspicions that Mr Goenka held a structured product and that market manipulation was his goal meant that Mr Carrimjee would have been aware that Mr Goenka intended to engage in the same or similar behaviour in relation to Reliance. In addition, B alerted and/or reminded Mr Carrimjee on 15 October 2010 that Mr Goenka was preparing to trade in Reliance GDRs and that the falling stock price was a problem. Accordingly, the FSA also rejects Mr Carrimjee's submission that he could not have known the orders were placed above the "knock-in" price of the Reliance GDRs as he was not aware of Structured Product 2; and

e) it does not accept Mr Carrimjee's representation that even if he did know of Mr Goenka's motives for/intentions behind the aborted Gazprom GDR trading and the Reliance GDR trading, he did not breach Statement of Principle 1. Whilst the FSA accepts that Mr Carrimjee only had a limited involvement in the aborted Gazprom GDR trading and the Reliance GDR trading, it considers that in all the circumstances of this case, an approved person acting with integrity, particularly one in Mr Carrimjee's position, a SIF holder with the compliance oversight function for his firm, would have taken steps to ensure that Mr Goenka's planned market manipulation did not take place. The FSA considers that Mr Carrimjee had sufficient knowledge/awareness of the planned market manipulation to decline to assist Mr Goenka (for the reasons set out herein). Further, the FSA considers that Mr Carrimjee should have advised against such activity and/or ensured that the regulatory authorities were notified and that suspicious activity/transaction reports were filed. For the reasons set out herein, the FSA considers that Mr Carrimjee failed to comply with Statement of Principle 1 by recklessly assisting/facilitating Mr Goenka's planned market manipulation. The FSA has found that Mr Carrimjee was reckless in relation to the conduct that ultimately led to Mr Goenka's market abuse. The FSA does not accept Mr Carrimjee's submission that he had no motive to assist in Mr Goenka's market abuse scheme. The FSA considers that Mr Carrimjee benefitted from his conduct through the retention of Mr Goenka's business for his firm. Also, as Mr Carrimjee has acknowledged, Mr Goenka (a well-known investor) represented a "feather" in Somerset's cap and as such Mr Carrimjee may have hoped to have

attracted other well-known investors as clients of Somerset through his retention of Mr Goenka's business for his firm.

Mr Carrimjee's role

51. Mr Carrimjee made representations that:

a) Mr Goenka was a very sophisticated client and Mr Carrimjee's professional role in relation to Mr Goenka's affairs was to simply provide cash reconciliation, stock reconciliation, liquidity management and transactional support to Mr Goenka. Mr Carrimjee submitted that his role did not include the provision of strategic investment advice. Mr Goenka made independent investment decisions. In particular, Mr Carrimjee stated that he did not provide any investment advice to Mr Goenka in respect of the aborted Gazprom GDR trading in April 2010 and/or the Reliance GDR trading in October 2010. Further, Mr Carrimjee stated that it was not his practice in 2010 to question Mr Goenka's strategy in respect of a given trade;

b) Somerset does not trade for its clients and all trades are carried out through third party brokers. B's firm was an empanelled broker for the Harrington Master Trust Fund (the fund in which Mr Goenka's assets were held) and had been since February 2007 more than a year prior to Mr Carrimjee's introduction of B to Mr Goenka. Accordingly, Mr Carrimjee asserted that there was nothing unusual in the fact that he introduced B (and B's firm) to Mr Goenka for the purposes of executing Mr Goenka's proposed trades. Once B had been introduced to Mr Goenka in April 2010, Mr Carrimjee anticipated that he would step out of the arrangement and let the transaction progress directly between B and Mr Goenka. Mr Carrimjee stated that he never envisioned that he would play any significant role in the execution of any trade(s). His role was simply to introduce B to Mr Goenka and to ensure that his client, Mr Goenka, was satisfied with the services provided. Mr Carrimjee contended that there is no indication that his introduction of B to Mr Goenka was made with the purpose of facilitating market abuse/market manipulation;

c) he was conscious of his responsibilities as an approved person performing the customer function and with knowledge of compliance procedures. Mr Carrimjee stated that he was aware of the need to be vigilant to the possibility of behaviour which potentially amounted to market abuse. Mr Carrimjee accepted that he has received training in the market abuse regime and was responsible for the oversight of compliance procedures at Somerset during the relevant period and he

asserted that he exercised appropriate caution in respect of Mr Goenka. Mr Carrimjee stated that he considered it unlikely Mr Goenka would proceed with an abusive transaction/trade based on their past history. Although he was wary of the possibility of planned market manipulation, Mr Carrimjee asserted that he thought it would be inappropriate to challenge Mr Goenka directly absent a firm understanding that Mr Goenka was seeking, and would be successful in, market manipulation. Mr Carrimjee also stated that he did not consider there to be anything suspicious about Mr Goenka and B discussing examples of how an indicative price moved during the Closing Auction. Mr Carrimjee stated that this was a perfectly reasonable manner in which to explain how the Closing Auction worked;

d) he was not blind to Mr Goenka's possible intentions in relation to the aborted Gazprom GDR trading as he raised concerns about market manipulation with B in April 2010. B refuted those concerns, specifically on the basis that it was not possible to move the price of the stock (the Gazprom GDRs) as it was too liquid. In light of this, Mr Carrimjee asserted that he was doubtful that Mr Goenka had the financial means to manipulate the price of Gazprom. Mr Carrimjee submitted that it was reasonable for him to accept B's assurance that the stock was too liquid to manipulate as correct. Mr Carrimjee asserted that he had no reason to doubt B's analysis. Mr Carrimjee stated that he further understood from B that there were market safeguards against manipulation since B told him that it was technically impossible to manipulate the price of a stock in the Closing Auction as the technology didn't allow it. It was therefore his understanding (having raised his concerns with another professional, B) that manipulation of the closing price of a stock in the Closing Auction (regardless of motive) was unlikely to succeed and could only occur if the current price of the stock was very close to the desired price. Accordingly, Mr Carrimjee submitted that he was satisfied that it was not possible for Mr Goenka to manipulate the market. Further, Mr Carrimjee submitted that the proposed Gazprom GDRs trade did not proceed and the proposed trade was aborted before the announcement by President Putin. Mr Carrimjee asserted that Mr Goenka told him at 14:45pm on 30 April 2010 that he would not trade. Mr Carrimjee stated that he was not surprised by this news as Mr Goenka frequently changed his mind at a late stage. In any event, Mr Carrimjee stated that he did not think it would be possible to manipulate the auction with 1.5m GDRs and because the Gazprom GDRs trading did not go ahead, he had no reason to revisit the question as to whether manipulation was possible – he had already concluded it was not (for the reasons set out above); and

e) he was only peripherally involved in the trading arrangements for Reliance GDRs in October 2010. Mr Carrimjee submitted that he played virtually no role in the process by which the Reliance GDRs were acquired and was not in the country on the day the trading took place. Further, and as already stated, Mr Carrimjee had satisfied himself in April 2010 that Mr Goenka would not be able to manipulate the market and had no reason to raise further suspicions when the Gazprom GDR trades did not go ahead because there was no evidence available to Mr Carrimjee to contradict his understanding that Mr Goenka would not have been able to manipulate the market. In addition, on 17 May 2010, Mr Goenka entered a trade for 80,000 Reliance GDRs which was executed by B and there is no evidence that it was improper. Therefore when he became aware of an intention by Mr Goenka to enter further trades in Reliance GDRs in October 2010 there was no reason to consider this untoward.

52. The FSA has found that:

a) it accepts Mr Carrimjee's representations that Mr Goenka was a sophisticated client and that his role in relation to Mr Goenka's affairs did not include the provision of strategic investment advice. However, the FSA does not accept that Mr Carrimjee should have recklessly facilitated Mr Goenka's plan to manipulate the Closing Auction for Gazprom GDRs and Reliance GDRs. The FSA has found that it is insufficient for Mr Carrimjee to simply assert that it was not his practice in 2010 to question Mr Goenka's strategy in respect of a given trade. The FSA considers that an approved person acting with integrity, particularly one in Mr Carrimjee's position, a SIF holder with the compliance oversight function for his firm, would have taken steps to ensure that Mr Goenka's planned market manipulation did not take place. The FSA considers that Mr Carrimjee had sufficient awareness of Mr Goenka's intended market manipulation to decline to assist Mr Goenka. Further, the FSA considers that Mr Carrimjee should have advised against such activity and/or ensured that the regulatory authorities were notified and that suspicious activity/transaction reports were filed;

b) that it is insufficient for Mr Carrimjee to assert that he was simply performing standard services for his client and that his role was limited. In particular, the FSA has found that Mr Carrimjee's submission that he was acting merely as an introducer, fails to pay due regard to his obligations as an approved person and SIF holder with the compliance oversight function at Somerset. Further, the FSA notes that Mr Carrimjee had received training in relation to market abuse and that Somerset's own compliance manual, for which Mr Carrimjee was responsible,

warns against market abuse involving price manipulation. The FSA considers that as an approved person holding the compliance oversight function at Somerset, Mr Carrimjee would have been aware of the contents of Somerset's compliance manual. Notwithstanding the foregoing (and in any event), the FSA considers that the evidence contained in the recordings and transcripts of the telephone conversations which took place variously between Mr Goenka, Mr Carrimjee and B (particularly in April 2010) clearly indicate that Mr Carrimjee did not "step out of the arrangement" after introducing B to Mr Goenka. For the foregoing reasons, the FSA considers that it is irrelevant whether or not Mr Carrimjee introduced B to Mr Goenka with the purpose of facilitating market abuse/market manipulation and has found that Mr Carrimjee was reckless in relation to the conduct that ultimately led to Mr Goenka's market abuse. That is, he turned a blind eye to the risk that Mr Goenka was seeking to manipulate the Closing Auction. The FSA therefore considers that Mr Carrimjee failed to comply with Statement of Principle 1 by recklessly assisting/facilitating Mr Goenka's planned market manipulation;

c) it notes Mr Carrimjee's assertions that he was conscious of his responsibilities and the need to be vigilant to the possibility of behaviour which potentially amounted to market abuse. However, the FSA does not accept Mr Carrimjee's assertion that he exercised appropriate caution in respect of Mr Goenka. The FSA considers that an approved person in Mr Carrimjee's position - with compliance oversight responsibilities - is required to make robust enquiries and to challenge the information they receive. An approved person also has an overriding responsibility to take preventative action where the information they receive indicates that to do nothing may permit manipulation of the market. It is therefore insufficient for Mr Carrimjee to simply assert that he thought it would be inappropriate to challenge Mr Goenka directly absent a firm understanding that Mr Goenka was seeking, and would be successful in, market manipulation. The FSA also does not accept Mr Carrimjee's representations that he did not consider there to be anything suspicious about Mr Goenka and B discussing examples of how the indicative price moved during the Closing Auction. The FSA notes that it was this behaviour which resulted in Mr Carrimjee speculating (with B) about the possibility that Mr Goenka intended to manipulate the market;

d) it accepts Mr Carrimjee's submission that he raised concerns about Mr Goenka's potential market manipulation with B. However, the FSA does not accept that it was reasonable for Mr Carrimjee to accept B's assurance that it was not possible

for Mr Goenka to manipulate the market. Whilst the FSA accepts that Mr Carrimjee may have been less experienced in auction trading than B, as an approved person and a SIF holder, he was required to make robust enquiries and to challenge the information he received from B. The FSA considers that it was insufficient for an approved person such as Mr Carrimjee to simply accept B's assurance that the Gazprom GDRs were too liquid to manipulate and that there were market safeguards against manipulation. For the foregoing reasons, the FSA has found that Mr Carrimjee's failure to make robust enquiries of B and his failure to challenge the information he received from B (and Mr Goenka) indicates that he was turning a blind eye to the risk that Mr Goenka was seeking to manipulate the Closing Auction. The FSA also does not accept Mr Carrimjee's assertion that because the Gazprom GDRs trading did not go ahead as intended, he had no reason to revisit the question as to whether manipulation was possible. An approved person such as Mr Carrimjee, with compliance oversight responsibilities, is required to make robust enquiries and to challenge the information he receives. This is particularly so in circumstances such as this, where the FSA has found that Mr Carrimjee had sufficient awareness of Mr Goenka's intention to manipulate the market that he should have declined to act and/or taken steps to ensure that the manipulative trading did not take place (including advising against such activity and/or to ensure that the regulatory authorities were notified); and

e) it accepts that Mr Carrimjee was abroad on the specific day on which Mr Goenka's abusive trading in the Reliance GDRs took place (18 October 2010). The FSA therefore accepts that Mr Carrimjee was not actively engaged in the trading on that day. However, the FSA notes that having introduced Mr Goenka to B and having been closely/personally involved in the aborted Gazprom GDRs trading, Mr Carrimjee did not need to be closely/personally involved in the Reliance GDRs trading. The FSA does not accept Mr Carrimjee's submission that because the Gazprom GDRs trading did not go ahead as intended, he had no reason to revisit the question as to whether Mr Goenka could successfully manipulate the market. The FSA considers that an approved person with compliance oversight responsibilities is required to make robust enquiries and to challenge the information he/she receives. Mr Carrimjee failed to do so. The FSA does not accept that an approved individual with compliance oversight responsibilities (in Mr Carrimjee's position), is permitted to ignore their responsibility to take action to prevent manipulative trading on the basis that they consider the plan unlikely to succeed. Whilst the FSA accepts that on 17 May

2010, Mr Goenka entered a trade for 80,000 Reliance GDRs which was executed by B and there is no evidence that it was improper, the FSA considers that it is evident (from the contemporaneous recordings and transcripts of the telephone conversations involving Mr Carrimjee) that he was well aware of Mr Goenka's intended manipulative trading especially because Mr Carrimjee approved the financing arrangements in relation to the Reliance GDRs trading.

Sanction

53. Notwithstanding Mr Carrimjee's representations that he did not breach Statement of Principle 1, Mr Carrimjee also made representations that the imposition of the financial penalty and the prohibition order are disproportionate in all the circumstances.

Financial Penalty

54. Mr Carrimjee submitted that:

    a) it is disproportionate to assess his behaviour at seriousness level 5 (for all the reasons already stated in support of his submissions that he has not breached Statement of Principle 1) for the purposes of calculating the financial penalty. Specifically, Mr Carrimjee asserted that in order for his behaviour to be properly assessed at seriousness level 5, it would have to be characterised as involving dishonesty or deliberate misconduct. Mr Carrimjee also asserted that the FSA's assessment of his behaviour as being at seriousness level 5 is inconsistent with Mr Goenka's misconduct having been assessed at seriousness level 4 and other FSA cases; and

    b) it is unclear why the FSA has decided to apply a deterrence multiplier of 4 for the purposes of calculating the financial penalty. Mr Carrimjee asserted that it disproportionate for the FSA to apply a deterrence multiplier of 4 where it is also seeking to prohibit him.

55. The FSA has found that:

    a) it rejects Mr Carrimjee's assertion that the financial penalty is disproportionate. The FSA considers that it is appropriate for Mr Carrimjee's breach of Statement of Principle 1 to be categorised at seriousness level 5 for the reasons set out in this Decision Notice (and specifically in the analysis of the sanction below). The FSA notes that approved individuals such as Mr Carrimjee 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, Mr Carrimjee was not only an approved person, but he was also a SIF holder with the compliance oversight function for his firm, Somerset. The FSA considers that this exacerbates the seriousness of Mr Carrimjee's misconduct in circumstances where (for the reasons set out above), the FSA has found that Mr Carrimjee failed to comply with Statement of Principle 1 by recklessly assisting/facilitating Mr Goenka's planned market manipulation and that Mr Carrimjee was reckless in relation to the conduct that ultimately led to Mr Goenka's market abuse. Accordingly, the FSA has found that the difference in the categorisation of Mr Goenka's misconduct with Mr Carrimjee's misconduct is justified. In making this finding, the FSA has properly considered analogous cases although the FSA accepts that there are no cases that are directly comparable on their facts to this one;

b) a multiple of 4, as an adjustment for deterrence, is the minimum that is necessary to achieve its objective of credible deterrence for the reasons set out in this Decision Notice (and specifically in the analysis of the sanction below). The FSA rejects Mr Carrimjee assertion that it is disproportionate for it to apply a deterrence multiplier of 4 where it is also seeking to prohibit him. The prohibition is intended to achieve a different purpose to the financial penalty – namely the protection of consumers. The FSA considers that Mr Carrimjee poses a risk to consumers and to the financial system if he performs any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm. In any event, the FSA considers that the financial penalty is both appropriate and proportionate by reference to the factors set out in DEPP 6.5 (see the analysis of the sanction below).

Prohibition Order

56. Mr Carrimjee submitted that:

a) the imposition of a prohibition order is disproportionate in the circumstances. The prohibition order will effectively deprive Mr Carrimjee of his career and irreparably damage his professional reputation, which has been built up over many years. Mr Carrimjee asserted that he does not pose a risk to either consumers or the markets and therefore there is no justification for him being prohibited from conducting any work in relation to any regulated activity. Further, Mr Carrimjee contended that precedent cases indicate that breaches of Statement of Principle 1 and prohibition orders are most appropriate in cases of

deliberate misconduct or a deliberate closing of the individual's mind to the risks, neither of which is present in Mr Carrimjee's case; and

b) a prohibition order should only be used as a preventative measure and not a sanction. Mr Carrimjee asserted that the imposition of a prohibition order makes the imposition of a financial penalty even more damaging. Accordingly, Mr Carrimjee submitted that if a prohibition order is imposed on him, such an order should be imposed only for a certain period of time (an approach which the FSA has taken in other cases) or should state the FSA will revoke the prohibition order if Mr Carrimjee were able to demonstrate to the satisfaction of the FSA that he has taken adequate steps to remedy any failing which the FSA may identify (an approach which Mr Carrimjee stated the FSA has taken in at least one other case). Mr Carrimjee submitted that he has made personnel changes at Somerset which he asserted will remedy any failings the FSA may identify. Specifically, Mr Carrimjee stated that he has divested responsibility for the compliance oversight and money laundering reporting functions at Somerset to another. This will permit Mr Carrimjee to focus on strategic business issues. Mr Carrimjee also stated that he intended to appoint an independent finance director. Mr Carrimjee contended that the aforementioned personnel changes reflect the fact that he has sought to enhance the compliance procedures at Somerset to ensure that inappropriate behaviour by its clients is identified and addressed as quickly as possible.

57. The FSA has found that:

a) it rejects Mr Carrimjee's assertion that the prohibition order is disproportionate. The FSA considers that it is both proportionate and fair for Mr Carrimjee's breach of Statement of Principle 1 to result in the imposition of a prohibition order against him for the reasons set out in this Decision Notice (and specifically in the analysis of the sanction below). The FSA notes that approved individuals such as Mr Carrimjee 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, Mr Carrimjee was not only an approved person but he was also a SIF holder with the compliance oversight function for his firm, Somerset. The FSA considers that this exacerbates the seriousness of Mr Carrimjee's misconduct in circumstances where the FSA has found that Mr Carrimjee suspected that Mr Goenka had an ulterior motive for his trading and wanted to manipulate the price of Gazprom GDRs and Reliance GDRs. Despite that Mr Carrimjee turned a blind eye to the risk of Mr Goenka's

planned market abuse and chose instead to recklessly assist Mr Goenka to implement his plan in breach of Statement of Principle 1 (for the reasons set out in this Decision Notice). The FSA considers this to be a serious failing which goes directly to Mr Carrimjee's fitness and propriety. As such, Mr Carrimjee poses a risk to consumers and to the financial system if he performs any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm; and

b) the imposition of the prohibition order against Mr Carrimjee is a preventative measure because (as already set out above) the FSA considers that Mr Carrimjee poses a risk to consumers and to the financial system if he performs any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm. The FSA has noted Mr Carrimjee's submission that he has made personnel changes at Somerset which enhance the compliance procedures at Somerset to ensure that inappropriate behaviour by its clients is identified and addressed as quickly as possible in the future. However, the FSA does not consider that these changes alter the fact that Mr Carrimjee suspected that Mr Goenka had an ulterior motive for his trading and wanted to manipulate the price of Gazprom GDRs and Reliance GDRs. Despite that he turned a blind eye to the risk of Mr Goenka's planned market abuse and chose instead to recklessly assist Mr Goenka to implement his plan in breach of Statement of Principle 1. The FSA considers this to be a serious failing which goes directly to Mr Carrimjee's fitness and propriety. Accordingly, in all the circumstances of the case, the FSA considers its decision to impose a full prohibition on Mr Carrimjee to be entirely proportionate and fair. The FSA notes that Mr Carrimjee may apply to have the prohibition revoked at any time when he is able to satisfy the FSA that he is fit and proper to be an approved person.

The Applicable Standard of Proof

58. Mr Carrimjee made representations as to the applicable standard of proof. Mr Carrimjee submitted that although the civil standard of proof (being the balance of probabilities) applies, in light of the serious nature of the matter, and the very significant financial, reputational and personal consequences of a finding of a breach, the FSA should consider the likelihood of his alleged misconduct in assessing whether the required standard of proof has been met. Mr Carrimjee submitted that in view of his professional standing and personal investment in Somerset, it is inherently highly improbable that he would imperil his reputation by breaching Statement of Principle 1.

59. The FSA has found that the standard of proof to be applied to its administrative decision making process is well established. The FSA has made its decision having regard to the following:

    a) the FSA, in accordance with its powers under sections 63, 56 and 66 of the Act, may: (i) withdraw Mr Carrimjee's individual approvals if it considers that he is not fit and proper to perform the function to which the approvals relate; (ii) make an order prohibiting Mr Carrimjee from performing any function in relation to any regulated activity carried on by an authorised or exempt person or exempt professional firm if it appears to the FSA that he is not fit and proper; and (iii) impose a penalty if it considers that Mr Carrimjee has contravened a requirement imposed on him by or under the Act; and

    b) the Upper Tribunal, in regulatory cases, applies the civil standard of proof i.e. the balance of probabilities (is it 'more likely than not' that what is alleged actually occurred?).

60. The FSA has considered the likelihood of Mr Carrimjee's alleged misconduct in assessing whether the required standard of proof has been met. For the reasons set out in this Decision Notice, the FSA considers that the recordings and transcripts of the telephone conversations involving Mr Carrimjee provide strong contemporaneous evidence that Mr Carrimjee breached Statement of Principle 1.

FAILINGS

61. On the basis of the facts and matters summarised above, the FSA has found that, although he was not actively engaged in the Reliance GDRs trading on 18 October 2010, Mr Carrimjee was aware of Mr Goenka's plan to manipulate the price of securities and engage in market abuse. Despite that awareness, Mr Carrimjee failed to take any steps to report or prevent the market abuse taking place and chose instead to recklessly assist Mr Goenka to implement his plan. He did this whilst performing his approved functions.

62. Mr Carrimjee suspected that Mr Goenka held structured products which might form the reason for his intended trading in Gazprom GDRs and Reliance GDRs and knew that the intended trading plan was designed to affect the closing price of both Gazprom and Reliance securities. The relevant information, that Mr Carrimjee was aware of, can be summarised as follows:

In relation to Gazprom

a) Mr Carrimjee was aware that Mr Goenka had an interest in manipulating the Closing Auction because Mr Carrimjee arranged and participated in a conference call on 22 April 2010 at which time B and Mr Goenka discussed price movements that would result from placing orders of various sizes in a closing auction and discussed working examples. It was during that conference call that 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?*" B went on to explain how that price could be achieved.

b) Mr Carrimjee had, by the next day, considered the possibility of market abuse and told B that "*nobody should be able to point a finger and say you were manipulating a price*".

c) Mr Carrimjee spoke with B on other occasions regarding the planned trading and the extent to which Mr Goenka was studying the Closing Auction process.

d) Mr Carrimjee expressly informed B that he thought Mr Goenka had a structured product which was affected by the closing price of securities being above or below a certain level.

e) Mr Carrimjee was aware of the volume of the trades that Mr Goenka intended to place as he had discussed the matter with Mr Goenka and with B and he had taken an active role in arranging the finance. Mr Goenka could not instruct B without Mr Carrimjee's knowledge or consent as the Harrington Master Trust Fund (the fund in which Mr Goenka's assets were held) was with his firm, Somerset. Somerset was a client of (and therefore had a client account with) B's firm.

f) Mr Carrimjee knew that Mr Goenka intended to place large volume trades in the final seconds of the closing auction. Mr Carrimjee also knew that Mr Goenka intended to sell the stock the next day and that Mr Goenka was "*only interested in the official closing price of the stock on a particular date*".

g) Mr Carrimjee knew that Mr Goenka wanted to place his trading instructions on an unrecorded line and encouraged Mr Goenka to speak with B by unrecorded mobile to mobile to avoid creating records.

h) On the day prior to the Gazprom auction, Mr Carrimjee discussed the planned trading with B and did not want to know Mr Goenka's reasons for trading. However, it was clear from the recordings and transcripts of the telephone conversations involving Mr Carrimjee that he was aware that Mr Goenka wanted

to move the closing price. When, due to an unforeseen announcement, it proved impossible to execute the Gazprom plan, Mr Carrimjee said to B that "*the game was all about the closing price*".

In relation to Reliance

a) Mr Carrimjee was aware from the outset that Mr Goenka intended to trade in both Gazprom GDRs and Reliance GDRs. When Mr Goenka subsequently approached Mr Carrimjee in relation to trading Reliance GDRs in the Closing Auction, Mr Carrimjee already knew of the earlier, aborted trading in relation to Gazprom. That knowledge together with Mr Carrimjee's prior suspicions that Mr Goenka held a structured product and that market manipulation was his goal meant that Mr Carrimjee would have been aware that Mr Goenka intended to engage in the same or similar behaviour in relation to Reliance.

b) Having introduced Mr Goenka to B and, having closely overseen the planning on Gazprom, Mr Carrimjee did not need to be and was not as personally involved in the Reliance GDRs trading. However, it is evident (from the contemporaneous recordings and transcripts of the telephone conversations involving Mr Carrimjee) that he was aware of what was intended.

c) As was the case with Gazprom, Mr Goenka could not instruct B without Mr Carrimjee's knowledge or consent, as the Harrington Master Trust Fund (the fund in which Mr Goenka's assets were held) was with his firm, Somerset. Somerset was a client of (and therefore had a client account with) B's firm. Notwithstanding Mr Carrimjee's prior suspicions about Mr Goenka's intentions in relation to the aborted Gazprom GDRs trading, he was content to allow Mr Goenka to speak to and directly transact with B in relation to the Reliance GDRs trading.

d) B alerted and/or reminded Mr Carrimjee on 15 October 2010 that Mr Goenka was preparing to trade in Reliance GDRs and that the falling stock price was a problem.

e) Mr Carrimjee had approved the financing arrangements in relation to the Reliance GDRs trading.

63. On the basis of the facts and matters summarised above, the FSA has found that Mr Carrimjee recklessly facilitated Mr Goenka's plan to engage in market abuse. Despite Mr Carrimjee's suspicions as to Mr Goenka's intentions, and despite Mr Carrimjee's

status as an approved person, (specifically a SIF holder with the compliance oversight function at his firm), he took no steps to prevent the abuse and failed to make any filings in relation to the suspicious activity. Instead, Mr Carrimjee recklessly chose to disregard all warning signs and took steps to facilitate Mr Goenka's market manipulation plan in relation to both Gazprom GDRs and Reliance GDRs.

64. The steps taken by Mr Carrimjee to facilitate Mr Goenka's planned market manipulation can be summarised as follows:

a) Mr Carrimjee discussed auction trading in relation to two stocks with B and introduced Mr Goenka to B for the express purpose of trading in the Closing Auctions for Gazprom GDRs and Reliance GDRs. He suspected that Mr Goenka intended to seek to manipulate the price of securities through auction trading. Mr Goenka had no prior dealings with B. Mr Carrimjee had known B for approximately 10 years and knew that B was experienced in auction trading.

b) Mr Carrimjee willingly participated in a series of conference calls where Mr Goenka discussed a number of examples of moving the price of stock in considerable detail. Mr Carrimjee would have been aware that Mr Goenka was intending to manipulate the closing price determined by the auction. Mr Carrimjee assisted with the arrangements for and scheduling of the conference calls.

c) Mr Carrimjee agreed to Mr Goenka's use of Somerset's account with B's firm for the purpose of the trading in both Gazprom GDRs and Reliance GDRs and oversaw the financial arrangements for the facilitation of the trading. Mr Carrimjee also advised B in relation to the trading limits that would be necessary to facilitate the trading.

d) Mr Carrimjee provided information to B regarding the planned trading and acted as a conduit between B and Mr Goenka in relation to aspects of the planning including the financial aspects of the trading.

e) Despite his suspicions Mr Carrimjee turned a blind eye to Mr Goenka's purpose for trading. Mr Carrimjee encouraged Mr Goenka to use unrecorded mobile phones to avoid creating records.

f) Notwithstanding Mr Carrimjee's suspicion gained during the aborted Gazprom GDRs trading he was content to arrange for Mr Goenka to deal again with B and to "directly transact" in relation to the Reliance GDRs trading.

65. The FSA considers that in all the circumstances of this case, an approved person acting with integrity, particularly one in Mr Carrimjee's position, a SIF holder with the compliance oversight function for his firm, would have taken steps to ensure that Mr Goenka's planned market manipulation did not take place. The FSA considers that Mr Carrimjee had sufficient awareness of the planned market manipulation to decline to assist Mr Goenka. Further, the FSA considers that Mr Carrimjee should have advised against such activity and/or ensured that the regulatory authorities were notified and that suspicious activity/transaction reports were filed. An approved person acting with integrity would not, have recklessly facilitated the aborted trading in Gazprom GDRs and the actual trading in Reliance GDRs in the way that Mr Carrimjee did.

66. The consequences of Mr Carrimjee's conduct were serious. Mr Goenka was able to use the knowledge and experience he gained from the aborted Gazprom GDRs trading to proceed to engage in market abuse on 18 October 2010 by effecting orders to trade in Reliance GDRs which both gave a false or misleading impression as to the demand for and price of Reliance GDRs and secured those investments at a false or abnormal level.

Conclusion in relation to Statement of Principle 1

67. In the circumstances described above the FSA has found that Mr Carrimjee's conduct represents a failure to comply with Statement of Principle 1. The FSA considers that Mr Carrimjee has failed to meet minimum regulatory standards in respect of his integrity. In particular, Mr Carrimjee:

    a) recklessly assisted Mr Goenka in his plan on two occasions and facilitated Mr Goenka's intended market abuse, and

    b) failed, on two occasions, to take any steps to prevent the market abuse occurring or to notify the authorities.

68. On the basis of the facts and matters set out above the FSA is satisfied that it is appropriate in all the circumstances to take action against Mr Carrimjee.

69. Pursuant to section 66(3) of the Act the FSA has therefore decided to impose a penalty of such amount as it considers appropriate on Mr Carrimjee.

Fitness and Propriety

70. The FSA further considers that, as an approved person, in failing to act with integrity in the manner described in relation to Statement of Principle 1 above, Mr Carrimjee has demonstrated that he is not a fit and proper person to perform any function in relation to

any regulated activity carried on by any authorised or exempt person or exempt professional firm.

71. Approved individuals are gatekeepers against market abuse of any kind. Approved individuals should therefore provide front-line protection against abusive activity and not act as enablers. In Mr Carrimjee's case he was not only an approved person but also held significant influence functions for his firm which exacerbate the seriousness of his conduct. The FSA considers that Mr Carrimjee's conduct at the time of the activity described in this Decision Notice demonstrates that he is prepared to recklessly facilitate market abuse.

72. As such, Mr Carrimjee is not fit and proper to hold an approved function or to perform any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm.

SANCTION

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

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

75. 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).

76. In enforcing the market abuse regime, the FSA's priority is to protect prescribed markets from any damage to their fairness and efficiency caused by the manipulation of shares in relation to the market in question. Effective and appropriate use of the power to impose penalties for market abuse will help to maintain confidence in the UK financial system by demonstrating that high standards of market conduct are enforced in all UK regulated markets.

77. In determining whether to take action for a breach and, if so, what action is appropriate and proportionate, the FSA considers all the relevant circumstances of the case (DEPP 6.2.1G and DEPP 6.4.1G). For the reasons set out below, the FSA considers that it is appropriate to impose a financial penalty on Mr Carrimjee.

78. The FSA applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5B sets out the details of the five-step framework that applies in respect of financial penalties to be imposed on individuals in non-market abuse cases. The application of the five-step framework to Mr Carrimjee's conduct is as follows:

Step 1: Disgorgement

79. Pursuant to DEPP 6.5B.1G, at Step 1 the FSA seeks to deprive an individual of the financial benefit derived directly from the breach where it is practicable to quantify this.

80. Although the investment advice services Mr Carrimjee provided to Mr Goenka were paid for by Mr Goenka, in this case it is not possible to quantify any specific sum of financial benefit that Mr Carrimjee derived directly from the breach.

81. Accordingly, the Step 1 figure is nil.

Step 2: The seriousness of the breach

Relevant income

82. Pursuant to DEPP 6.5B.2G, at Step 2 the FSA will determine a figure that reflects the seriousness of the breach which is based on a percentage of the individual's relevant income from the employment connected to the breach.

83. Where the breach lasted less than 12 months, the relevant income will be that earned by the individual in the 12 months preceding the end of the breach. The relevant income is therefore the amount Mr Carrimjee earned between 17 October 2009 and 18 October 2010 (the date of the Reliance GDRs trading). Mr Carrimjee has supplied the FSA with information confirming his total income (drawings) from Somerset for this period was £55,627.81, which the FSA considers is his relevant income in this case.

The percentage to be applied

84. The percentage of Mr Carrimjee's income which will form the basis of the Step 2 figure depends on the seriousness of the breach. The seriousness of the breach will be assessed on a scale of 1 (least serious) to 5 (most serious) depending on the impact and nature of the breach and whether it was committed deliberately or recklessly.

85. In assessing the seriousness level, the FSA takes into account various factors which reflect the impact and the nature of the breach, and whether it was committed deliberately or recklessly. A non-exhaustive list of factors, which are likely to be considered level 4 or level 5 factors are set out at DEPP 6.5B.2G(12).

86. The FSA considers Mr Carrimjee's conduct to be particularly serious, for the following reasons:

a) His conduct was reckless. Mr Carrimjee suspected that Mr Goenka had an ulterior motive for his trading and wanted to manipulate the price of Gazprom GDRs and Reliance GDRs. Despite that he wilfully turned a blind eye to the risk of Mr Goenka's planned market abuse. Mr Carrimjee failed to take any steps to report or prevent the market abuse and chose instead to recklessly assist Mr Goenka to implement his plan to manipulate both Gazprom GDRs and Reliance GDRs.

b) Mr Carrimjee was Somerset's Chief Executive and an approved person. The misconduct was carried out in relation to the performance of Mr Carrimjee's customer function, namely the provision of investment advice. In addition, Mr Carrimjee was also a SIF holder, with the functions of Chief executive, Compliance oversight, Partner and Money laundering reporting for Somerset. Mr Carrimjee is an experienced financial services industry professional. He had received training on the market abuse regime.

c) Mr Carrimjee put Mr Goenka in touch with B and assisted Mr Goenka to put in place arrangements intended to enable Mr Goenka to secure the closing price of Gazprom and Reliance GDRs at a false or artificial level.

d) A consequence of his actions, in assisting Mr Goenka, was a serious disruption of the market on 18 October 2010 by artificially increasing the price of Reliance GDRs. This posed a threat to the orderliness of and confidence in that market. It further led to a significant loss (of approximately USD 3.1 million) for the bank that was the counterparty to Mr Goenka's Structured Product 2.

e) His actions were repeated, in that he assisted Mr Goenka in effecting his plan to manipulate the closing price for Gazprom GDRs in April 2010 and was involved in the preliminary stages in relation to Reliance GDRs in October 2010.

f) Mr Carrimjee benefitted personally from his conduct through the retention of Mr Goenka's business for Somerset, being the firm in which he had a substantial interest.

87. Taking into account these factors, the FSA considers Mr Carrimjee's conduct to be at level 5 (most serious) in terms of its seriousness.

88. After applying the relevant level 5 relevant multiplier (40%) to Mr Carrimjee's relevant income, the resulting figure is £22,251.

89. Accordingly, the Step 2 figure is £22,251.

Step 3: Mitigating and aggravating factors

90. Pursuant to DEPP 6.5B.3G, at Step 3 the FSA may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breach. Any such adjustment will be made by way of a percentage adjustment to the figure determined at Step 2.

91. The FSA does not consider that any of the aggravating factor set out at DEPP 6.5B.3G(2) affect to a significant extent the penalty appropriate to Mr Carrimjee's actions. The FSA has taken account of the fact that Mr Carrimjee has stated that he has divested responsibility for the compliance oversight and money laundering reporting functions at Somerset (as well as the fact that Mr Carrimjee has stated that he intended to appoint an independent finance director at Somerset) and not been the subject of any prior disciplinary action by the FSA.

92. Having regard to the above, the FSA does not consider it necessary to make any adjustment for Step 3. At Step 3 the penalty is therefore £22,251.

Step 4: adjustment for deterrence

93. Pursuant to DEPP 6.5B.4G, if the FSA 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 FSA may increase the penalty.

94. Specifically, pursuant to DEPP 6.5B.4G(e) the FSA may increase the figure arrived at after Step 3 where it considers that a penalty based on an individual's income may not act as a deterrent, for example if an individual has a small or zero income but owns assets of high value.

95. Mr Carrimjee owns assets of high value and during the relevant period became entitled to profit share (not drawn down) considerably in excess of his drawings of £55,627.81. In order to achieve a credible deterrent a multiplier of 4 has been applied.

96. The penalty figure after Step 4 is therefore £89,004.

Step 5: Settlement discount

97. Pursuant to DEPP 6.5B.4G, if the FSA 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 FSA and the individual reached agreement. The settlement discount does not apply to the disgorgement of the benefit calculated at Step 1.

98. No settlement discount applies to this matter. The penalty after Step 5 is therefore £89,004.

Penalty

99. The FSA has therefore decided to impose a total financial penalty of £89,004 on Mr Carrimjee for breaches of Statement of Principle 1.

Withdrawal of approval and prohibition

100. In considering whether to impose a prohibition order and withdraw Mr Carrimjee's existing approvals, the FSA has had regard to the provisions of EG, and in particular the provisions of EG 9.9. This includes, but is not limited to, whether the individual is fit and proper to perform functions in relation to regulated activities; whether the approved person has failed to comply with the Statements of Principle relating to the conduct of approved persons; the particular controlled functions the approved person was performing; and the relevance and materiality of any matters indicating unfitness.

101. The FSA has considered Mr Carrimjee's behaviour and conduct whilst an approved person and is of the view that the conduct indicates a serious lack of integrity on the part of Mr Carrimjee. The FSA also considers that Mr Carrimjee is not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm. In light of the above the FSA considers that Mr Carrimjee poses a serious risk to consumers and to confidence in the financial system if he continues to act as an investment adviser, or is involved in the running of, or holds a senior management role with, another authorised firm in the future.

102. The FSA therefore considers that it is necessary and proportionate to withdraw Mr Carrimjee's individual approval and to prohibit Mr Carrimjee from performing any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm.

103. The FSA is satisfied that it is appropriate in the circumstances of this case to make a prohibition order in respect of Mr Carrimjee in addition to withdrawing his existing approvals and imposing the financial penalty set out above.

PROCEDURAL MATTERS

Decision Maker

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

105. This Decision Notice is given to Mr Carrimjee and Somerset under sections 57, 63 and 67 and in accordance with section 388 of the Act. The following statutory rights are important.

Upper Tribunal

106. Mr Carrimjee and Somerset have the right to refer the matter to which this Decision Notice relates to the Upper Tribunal. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, Mr Carrimjee and Somerset have 28 days from the date on which this Decision Notice is given to them to refer the matter to the Upper Tribunal. A reference to the Tribunal is made by way of a signed reference notice (Form FTC3) filed with a copy of this Decision Notice. The Tribunal's address is: The Upper Tribunal, Tax and Chancery Chamber, 45 Bedford Square, London WC1B 3DN (tel: 020 7612 9700; email financeandtaxappeals@tribunals.gsi.gov.uk). Further details are contained in "Making a Reference to the UPPER TRIBUNAL (Tax and Chancery Chamber)" which is available from the Upper Tribunal website:

    http://www.tribunals.gov.uk/financeandtax/FormsGuidance.htm

107. Mr Carrimjee and Somerset should note that a copy of the reference notice (Form FTC3) must also be sent to the FSA at the same time as filing a reference with the Upper Tribunal. A copy of the reference notice should be sent to Kevin Thorpe at the FSA, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Access to evidence

108. Section 394 of the Act applies to this Decision Notice. In accordance with section 394, Mr Carrimjee and Somerset are entitled to have access to the:

    a) the material upon which the FSA has relied in deciding to give this Decision Notice; and

    b) the secondary material which, in the opinion of the FSA, might undermine that decision.

109. Mr Carrimjee and Somerset have been provided with all the material to which the FSA must grant them access.

Confidentiality and publicity

110. Mr Carrimjee and Somerset should note that this Decision Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). The effect of section 391 of the Act is that neither Mr Carrimjee, Somerset nor a person to whom this Decision Notice is copied may publish it or any details concerning it unless the FSA has published the Decision Notice or those details. The FSA must publish such information about the matter to which a Decision Notice or Final Notice relates as it considers appropriate. Mr Carrimjee and Somerset should be aware, therefore, that the facts and matters contained in this Decision Notice may be made public.

FSA contact

111. For more information concerning this matter generally, Mr Carrimjee and Somerset should contact Kevin Thorpe in the Enforcement and Financial Crime Division of the FSA (direct line: 020 7066 4450).

Martin Hagen
Deputy Chairman, Regulatory Decisions Committee

ANNEX: Relevant Statutory and Regulatory Provisions

Statutory provisions

1. The FSA's statutory objectives, set out in Section 2(2) of the Act, are maintaining market confidence, the protection of consumers, the reduction of financial crime and the stability of the UK financial system.

2. The FSA may prohibit an individual from carrying out regulated activities under section 56 of the Act which states:

   (1) Subsection (2) applies if it appears to the Authority that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person.

   (2) The Authority may make an order ("a prohibition order") prohibiting the individual from performing a specified function, any function falling within a specified description or any function.

   (3) A prohibition order may relate to

      (a) a specified regulated activity, any regulated activity falling within a specified description or all regulated activities;

      (b) authorised persons generally or any person within a specified class of authorised persons.

3. The FSA may also withdraw an individual's existing approval to perform a controlled function under section 63 of the Act which states:

   (1) The Authority may withdraw an approval given under section 59 if it considers that the person in respect of whom it was given is not a fit and proper person to perform the function to which the approval relates.

   (2) When considering whether to withdraw its approval, the Authority may take into account any matter which it could take into account if it were considering an application made under section 60 in respect of the performance of the function to which the approval relates.

4. The FSA may impose a financial penalty under section 66 of the Act which states:

   (1) The Authority may take action against a person under this section if –

      (a) it appears to the Authority that he is guilty of misconduct; and

(b) the Authority is satisfied that it is appropriate in all the circumstances to take action against him.

(2) A person is guilty of misconduct if, while an approved person –

(a) he has failed to comply with a statement of principle issued under section 64; or

(b) he has been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under this Act…

(3) If the Authority is entitled to take action under this section against a person, it may

(a) impose a penalty on him of such amount as it considers appropriate;

(aa) suspend, for such period as it considers appropriate, any approval of the performance by him of any function to which the approval relates;

(ab) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the performance by him of any function to which any approval relates as it considers appropriate;

(b) publish a statement of his misconduct

FSA Handbook

5. In deciding to take the action proposed, the FSA has had regard to rules and guidance published in the FSA Handbook.

Statements of Principle and Code of Practice for Approved Persons ("APER")

6. Individuals that are approved by the FSA to hold controlled functions are required to abide by the Statements of Principle for Approved Persons in the performance of their controlled functions under section 64(1) of the Act and APER 1.1.1.

7. Statement of Principle 1 at APER 2.1.2P states:

An approved person must act with integrity in carrying out his controlled function.

8. A Code of Practice for Approved Persons has been issued under section 64 of the Act and is set out at APER 3 and APER 4.

9. APER 3.1.1G states that the purpose of this code is to help determine whether or not an approved person's conduct complies with a Statement of Principle.

10. APER 3.1.3G states that the significance of conduct identified in the Code of Practice for Approved Persons as tending to establish compliance with or a breach of a Statement of Principle will be assessed only after all the circumstances of a particular case have been considered. Account will be taken of the context in which a course of conduct was undertaken, including the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour to be expected in that function.

11. APER 3.1.4(1)G states that an approved person will only be in breach of a Statement of Principle where he is personally culpable. Personal culpability arises where an approved person's conduct was deliberate or where the approved person's standard of conduct was below that which would be reasonable in all the circumstances.

12. APER 3.1.7G states that Statements of Principle 1 to 4 apply to all approved persons. In the Statements of Principle and in the Code of Practice for Approved Persons, a reference to "his controlled function" is a reference to the controlled function to which the approval relates.

13. APER 3.2.1(2)E states that in determining whether or not the particular conduct of an approved person within his controlled function complies with the Statements of Principle, the FSA will take into account whether the conduct relates to activities that are subject to other provisions of the FSA Handbook and whether the conduct is consistent with the requirements and standards of the regulatory system relevant to the firm in question.

Enforcement Guide ("EG")

14. Paragraph 9.1 provides an introduction to the FSA using its powers to prohibit under section 56 of the Act:

> *The FSA's power under section 56 of the Act to prohibit individuals who are not fit and proper from carrying out functions in relation to regulated activities helps the FSA to work towards achieving its regulatory objectives. The FSA may exercise this power to make a prohibition order where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any function in relation to regulated activities, or to restrict the functions which he may perform.*

15. Paragraph 9.2 provides an introduction to the FSA using its powers to withdraw approvals under section 63 of the Act:

The FSA's effective use of the power under section 63 of the Act to withdraw approval from an approved person will also help ensure high standards of regulatory conduct by preventing an approved person from continuing to perform the controlled function to which the approval relates if he is not a fit and proper person to perform that function. Where it considers this is appropriate, the FSA may prohibit an approved person, in addition to withdrawing their approval.

16. Paragraphs 9.3 to 9.7 of EG then set out the FSA's general policy in relation to prohibition orders and withdrawal of approval. Paragraph 9.4, for example, states:

> *The FSA has the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant. Depending on the circumstances of each case, the FSA may seek to prohibit individuals from performing any class of function in relation to any class of regulated activity, or it may limit the prohibition order to specific functions in relation to specific regulated activities. The FSA may also make an order prohibiting an individual from being employed by a particular firm, type of firm or any firm.*

17. Paragraphs 9.8 to 9.14 of EG set out additional guidance on the FSA's approach to making prohibition orders against approved persons or withdrawing such persons' approvals.

18. Paragraph 9.9 of EG provides that when considering whether to exercise its power to make a prohibition order against such an individual, the FSA will consider all the relevant circumstances of the case, which may include the following (but are not limited to these factors):

    (1) The matters set out in section 61(2) of the Act.

    (2) Whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of approved persons are set out in FIT 2.1 (Honesty, integrity and reputation); FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness).

    (3) Whether, and to what extent, the approved person has:

        (a) failed to comply with the Statements of Principle issued by the FSA with respect to the conduct of approved persons; or

        (b) been knowingly concerned in a contravention by the relevant firm of a requirement imposed on the firm by or under the Act (including the

Principles and other rules) or failed to comply with any directly applicable Community regulation made under MiFID.

(4) Whether the approved person has engaged in market abuse.

(5) The relevance and materiality of any matters indicating unfitness.

(6) The length of time since the occurrence of any matters indicating unfitness.

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

(8) The severity of the risk which the individual poses to consumers and to confidence in the financial system.

(9) The previous disciplinary record and general compliance history of the individual including whether the FSA, any previous regulator, designated professional body or other domestic or international regulator has previously imposed a disciplinary sanction on the individual.

19. Paragraph 9.10 of EG provides that the FSA can have regard to the cumulative effect of a number of factors. Further, that the FSA may also take account of the particular controlled function which an approved person is performing for a firm, the nature and activities of the firm concerned and the markets within which it operates. Paragraph 9.11 of EG provides that the factors set out at paragraph 9.9 are not a definitive list.

20. Paragraph 9.13 of EG provides that certain matters that do not fit squarely, or at all, within the matters listed may also fall to be considered. In such circumstances, the FSA will consider whether the conduct or matter in question is relevant to the individual's fitness and propriety.

21. Paragraph 9.23 of EG provides that a prohibition order and/or withdrawal of approval may be combined with other sanctions (such as the imposition of a financial penalty) where appropriate.

Fit and Proper Test for Approved Persons ("FIT")

22. FIT G 1.3.1 states that the FSA will have regard to a number of factors when assessing the fitness and propriety of a person to perform a particular controlled function. The most important considerations will be the person's:

(1) honesty, integrity and reputation;

(2) competence and capability; and

(3) financial soundness.

23. FIT 1.3.3 states:

> *The criteria listed in FIT 2.1 to FIT 2.3 are guidance and will be applied in general terms when the FSA is determining a person's fitness and propriety. It would be impossible to produce a definitive list of all the matters which would be relevant to a particular determination.*

24. FIT 1.3.4 states:

> *If a matter comes to the FSA's attention which suggests that the person might not be fit and proper, the FSA will take into account how relevant and how important it is.*

Decision Procedures and Penalties Manual ("DEPP")

25. The FSA's policy in relation to the imposition of financial penalties is set out in Chapter 6 of the part of the FSA Handbook entitled Decision Procedure and Penalties Manual ("DEPP"). DEPP 6.2.1G states that the FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty and sets out a non-exhaustive list of factors that may be relevant for this purpose.

26. In determining the appropriate level of financial penalty, the FSA has had regard to DEPP 6.5 as applicable to the period April to October 2010.