This Final Notice should be read in conjunction with the Final Notice issued to Mrs Parikh on 6 August 2013.

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

FINAL NOTICE

To: **David Thomas Davis**

FSA Ref No: **DTD01011**

To: **Paul E Schweder Miller & Co**

FSA Ref No: **124404**

Date: 5 July 2012

PROPOSED ACTION

1. For the reasons given in this Notice, the FSA hereby:

   i. withdraws individual approval, pursuant to section 63 of the Act, to prevent Mr Davis from continuing to perform the Compliance oversight (CF10), CASS oversight (CF10a) and Money laundering reporting (CF11) significant influence functions to which his approval relates;

   ii. makes an order pursuant to section 56 of the Act prohibiting Mr Davis from performing the Compliance oversight (CF10), CASS oversight (CF10a) and Money laundering reporting (CF11) significant influence functions in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm. This takes effect from 5 July 2012;

iii. imposes on Mr Davis a total financial penalty pursuant to section 66 of the Act (including interest and disgorgement) of £70,258 for breaching Statement of Principle 6 of the FSA's Statements of Principle and Code of Practice for Approved Persons ("APER").

2. This penalty consists of the following elements:

i. a disgorgement of financial benefit arising from the breach of £3,442 (excluding interest) being the financial benefit Mr Davis received in commission payments from the abusive trades, and

ii. an additional financial penalty of £66,371.

3. It is the FSA's policy to round down the final penalty figure (penalty plus disgorgement) to the nearest £100, leading to a financial penalty of £69,800.

4. Accordingly, for the reasons set out below, the FSA imposes a financial penalty on Mr Davis in the amount of £69,800. This sum does not include any interest payable on the disgorgement element of the penalty (see paragraph 75 below).

5. Mr Davis agreed to settle at an early stage of the FSA's investigation and has therefore qualified for a 30% (Stage 1) discount to the financial penalty under the FSA's executive settlement procedures. Were it not for this discount, the FSA would have imposed a financial penalty of £94,816 plus disgorgement.

SUMMARY OF REASONS

6. The FSA decided to take this action as a result of Mr Davis's conduct on and around 18 October 2010.

7. In October 2010, Mr Davis was the senior partner of Schweder Miller. He was approved to perform the Compliance oversight (CF10), Money laundering reporting (CF11) and Partner (CF4) significant influence functions at Schweder Miller. He was also approved to perform the Customer function (CF30), and subsequently became approved to perform the CASS oversight (CF10a) significant influence function at Schweder Miller.

8. As the person approved to perform the Compliance oversight function at Schweder Miller, Mr Davis had specific responsibility for ensuring that Schweder Miller's regulated activities complied with its obligations under the regulatory system. This was in addition to the obligations placed on him as a person approved to perform the significant influence functions of partner and money laundering reporting officer.

9. On and around October 2010, Mr Davis breached Statement of Principle 6 of APER in that he failed to exercise due skill, care and diligence in managing the

business of Schweder Miller for which he was responsible in his Compliance oversight function, as set out below.

10. Mr Davis failed properly to challenge and to make reasonable enquiries before authorising a series of substantial orders to trade Reliance GDRs in the final seconds of the LSE closing auction for 18 October 2010 and which raised a clear risk of market abuse. On the basis of the facts and matters known to him at the time, Mr Davis should have refused to accept the orders to trade in the closing auction.

11. The orders to trade in the closing auction were placed by Mr Rameshkumar Goenka with the intention of increasing the closing price for Reliance GDRs above a certain level. Mr Goenka had intended to increase the closing price in order to secure a pay-out under a structured product that he held. Mr Davis was unaware of this at the time.

12. The FSA reached a settlement with Mr Goenka pursuant to which a Final Notice was issued to Mr Goenka on 17 October 2011 (published 9 November 2011) imposing a total fine of USD 9,621,240 for market abuse contrary to section 118(5) of the Act. The fine comprised a financial penalty element of USD 6,517,600 together with restitution of USD 3,103,640.

13. Mr Davis approved the orders to trade in Reliance by Mr Goenka despite the fact that:

a) he knew that Mr Goenka had previously attempted to execute a complex series of substantial trades in Gazprom GDRs in May 2010, the rationale for which Mr Davis had not fully understood;

b) Broker B had informed him about the possibility of Mr Goenka holding an underlying product in relation to the trading in Reliance;

c) he was aware that if Mr Goenka was seeking to move the price of Reliance GDRs because he held a related product this was a suspicious trade and one which would amount to market manipulation;

d) Broker B was dealing directly with Mr Goenka rather than through the firm of Adviser A who was Schweder Miller's client and that Broker B was having difficulty contacting Adviser A;

e) the proposed trade was unusually large and involved approximately 1 million Reliance GDRs (approx USD 55 million), and

f) he knew exactly how the trade was to be structured and about the timing (including that the trades would be placed seconds before the close of auction

trading). Proper scrutiny of the orders would have identified that the orders were carefully layered and involved both a "wash trade" and a "standby" order. Further, all of the orders were at prices above the prevailing market price and the bulk of the orders were to be placed 10 and 8 seconds before the auction close. None of these characteristics was consistent with the purported suggestion that Mr Goenka did not want to move the price of Reliance GDRs and many of these characteristics were cited as identifiers of possible suspicious trading in Schweder Miller's compliance manual.

14. This information should have alerted Mr Davis to the risk of market abuse and he should, at the very least, have properly challenged and made reasonable enquiries, so as reasonably to satisfy himself that no such risk existed before authorising the trades. However, Mr Davis did not recognise the risk, made no enquiries and did not take any other steps to prevent the risk of market abuse, prior to authorising the trades.

15. Further, he observed the impact of the orders on the closing price of Reliance GDRs that day and could therefore ascertain that Mr Goenka's orders accounted for 90% of the auction trading and moved the closing price by 1.7%.

16. Following the auction and in the days immediately following the 18 October 2010 Mr Davis became aware of additional information that should have further prompted him to question and make enquiries regarding Mr Goenka's orders. Specifically:

    a) he was informed by Broker B that Mr Goenka was "*quite happy with the trading*" which had surprised him since he had fully expected Mr Goenka to be disappointed. Mr Davis knew that Mr Goenka had secured only a small portion (17%) of the 1 million Reliance GDRs he was apparently determined to purchase, and

    b) he knew that Mr Goenka was selling his Reliance stock (through Schweder Miller) almost immediately following the purchase.

17. Mr Davis did not report the trading as suspicious.

18. Mr Davis's behaviour whilst performing the Compliance oversight function at Schweder Miller was in breach of Statement of Principle 6 of APER. His behaviour also demonstrates a lack of competence and capability, such that he is not fit and proper to perform the Compliance oversight (CF10), CASS oversight (CF10a), and Money laundering reporting (CF11) significant influence functions.

19. The FSA has therefore decided to withdraw Mr Davis's individual approvals in respect of the Compliance oversight (CF10), CASS oversight (CF10a), and

Money laundering reporting (CF11) significant influence functions, to make a prohibition order prohibiting him from holding those functions and, to impose a financial penalty under section 66 of the Act of £66,371 (plus disgorgement and interest).

20. In addition, the FSA requires Mr Davis to disgorge the sum of £3,442, which was the amount of commission Schweder Miller was paid by Mr Goenka for placing the orders to trade.

21. The total rounded-down penalty imposed is therefore £69,800. This sum does not include any interest payable on the disgorgement element of the penalty.

22. The FSA considers that Mr Davis's misconduct was particularly serious and has taken account of the following matters:

a) detecting and preventing market abuse is a key part of Mr Davis's compliance oversight role at Schweder Miller. However, he failed properly to challenge and make reasonable enquiries before authorising the trades, despite the clear risk of market abuse posed by Mr Goenka's order;

b) Mr Davis's approach as the approved person responsible for compliance oversight was inadequate; both by authorising the execution of Mr Goenka's instructions to trade, and subsequently by failing to question them or report them as suspicious;

c) Mr Davis is a senior individual in a position of considerable responsibility at Schweder Miller. He has held the Compliance oversight function since January 2001 and has held the significant influence function of Partner since 1 December 2001;

d) a direct consequence of his failure to properly identify and prevent market abuse, 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, and

e) the scale of the abusive behaviour that Mr Davis failed to prevent was considerable and involved orders to trade that were potentially in excess of USD 55 million for Reliance.

DEFINITIONS

23. The following definitions are used in this Notice:

"the Act"	means the Financial Services and Markets Act 2000.
"Adviser A",	means a London-based investment adviser used by Mr Goenka. Adviser A is the senior partner of a firm whose main business is the provision of wealth management advice.
"Broker B"	means a broker employed by Schweder Miller.
"Closing Auction"	means the closing auction of the LSE. This is a limited-period auction which takes place at the close of the main trading session. The results of the closing auction determine the closing price of listed securities.
"Mr Davis"	means Mr David Thomas Davis (Individual reference No. DTD01011).
"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.
"LSE"	means the London Stock Exchange.
"Reliance"	means Reliance Industries Limited.
"Schweder Miller"	means Paul E. Schweder Miller & Co.
"Upper Tribunal"	means the Upper Tribunal (Tax and Chancery

Chamber).

FACTS AND MATTERS

Mr Davis

24. Mr Davis is the senior partner of Schweder Miller.

25. Mr Davis is approved to perform the Compliance oversight (CF10), CASS oversight (CF10a) and Money laundering reporting (CF11) significant influence functions, and the Customer (CF30) function, for Schweder Miller. He has been approved to perform the Compliance oversight and Money laundering reporting significant influence functions since 1 December 2001.

26. Mr Davis had received training in relation to the market abuse regime.

Mr Goenka

27. 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.

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

The Structured Products

29. In 2007 Mr Goenka purchased two structured products which are referred to in this Notice:

    a) 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 1").

    b) An "Airbag Leveraged Laggard Note on Indian ADR – Private Placement" issued on 17 October 2007 which had a maturity date of 18 October 2010 ("Structured Product 2").

30. The Structured Products each had a cost (face value) of USD 10 million and the payouts were dependent on the closing price of the worst performing or "laggard" of certain GDRs on the maturity date In the event, the relevant worst

performing securities were Gazprom for Structured Product 1 and Reliance for Structured Product 2.

The Closing Auction

31. 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.

32. The theoretical price and volume, known as the Indicative Uncrossing Price (the "IUP") and the Indicative Uncrossing Volume (the "IUV") are visible to the member firms.

33. Subsequently, in the price determination/uncrossing phase of the auction, the exchange seeks to match orders for each stock. This occurs at a randomly determined time, 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 exchange runs an algorithm that seeks to optimise the volume of securities executed. The algorithm determines the price for each security at which the greatest volume can be traded and matches the orders accordingly; this is the closing price. Once the algorithm has been applied, the exchange disseminates the closing price and advises member firms, whose orders have been executed, of the trades.

The plan to manipulate closing prices

a) The Gazprom plan

34. Mr Goenka's Structured Product 1 was due to reach maturity on 30 April 2010 and the payout depended on the closing price of Gazprom GDRs at that time. As the maturity date approached the outlook for Mr Goenka was uncertain. Mr Davis was not aware of these facts at the relevant time.

35. A few days before 30 April 2010 Broker B informed Mr Davis that they would shortly be expecting an unusually large trade in relation to a foreign stock.

36. Mr Davis first saw Mr Goenka's orders at 2.30pm on 30 April 2010 when he left a meeting to speak with Broker B who was taking down Mr Goenka's orders at that time. He was "*puzzled by*" the quantum and number of orders which he thought "*complicated*" and "*a bit of a funny order*". He left Broker B's room to return to his meeting expecting to return later to check on the order prior to approving. Broker B subsequently interrupted the meeting to inform him that the Gazprom trading was not proceeding because of an announcement by President Putin concerning Gazprom. He was relieved at the news but made no further

enquiries concerning the intended trading and made no record of any concerns.

b) The Reliance plan

37. Mr Goenka had purchased Structured Product 2 in October 2007. Structured Product 2 was due to reach maturity on 18 October 2010. As with Structured Product 1, the payout for Structured Product 2 was dependent on the closing price of the "laggard" (Reliance) in comparison to a "knock-in price" on the maturity date of 18 October 2010. The "knock-in price" for Reliance was USD 48.65. Mr Davis was not aware of these facts at the relevant time.

38. A few days before 18 October 2010, Mr Davis was made aware by Broker B of an intended large trade by Adviser A's firm on behalf of Mr Goenka.

39. On the morning of the 18 October 2010, Mr Davis was informed by Broker B that Broker B expected the instruction that day. He confirmed that he would make himself available.

40. Mr Davis states that he was informed by Broker B of the following matters in respect of Mr Goenka's reasons for and intentions regarding the Reliance trading:

a) he was told around 12.30pm on 18 October 2010 that Mr Goenka wanted a large amount of Reliance stock (approx 1 million GDRs) but did not want to put the Reliance price up in the market or move the price as that would make it more expensive for him to buy his shares. Further, that Mr Goenka was prepared to pay a premium for a block of shares as long as it did not increase the price of the stock;

b) he was also told that Mr Goenka wanted the stock to hedge a position and that Adviser A had approved the trading and had authorised up to USD 50 million of funds for the Reliance trade;

c) Broker B *"reminded him"* that Mr Goenka had wanted to trade in Gazprom earlier in the year;

d) Broker B said that they were concerned about the prior Gazprom experience and the possibility of an underlying product being involved and that Mr Davis should keep at the back of his mind that there could be a product on this occasion;

e) Broker B said they had been informed by Mr Goenka that if they were not able to source a block of shares during the day, Mr Goenka wanted to trade in the auction;

f) that as Broker B had been unable to get the stock during the day the only option left was to try the auction. Broker B said they had tried three merchant

banks, one of whom had offered them only 5000 shares but Broker B had asked the dealer to call back if he could find more, and

g) Mr Davis also knew that Broker B was dealing directly with Mr Goenka rather than through Adviser A's firm (who were Schweder Miller's client). He was informed by Broker B that they were having difficulty contacting Adviser A on the day.

41. Mr Davis states that, in assessing the proposed trading and the risk of there being an underlying product he placed considerable weight on the information provided to him by Broker B that Mr Goenka needed to purchase 1 million Reliance GDRs, that the GDRs were required for a hedge and that Mr Goenka did not want to move the price as this would make his purchases more expensive and would not be in his best interests. Further, he understood that Mr Goenka was prepared to pay a premium to obtain his stock and that the trading had been pre-approved by Adviser A.

42. Mr Davis discounted the possibility of there being an underlying product. Mr Davis did not, however, make any further enquiries, including direct enquiries of Mr Goenka or record his concerns and decision making process.

43. Mr Davis has confirmed to the FSA that between approximately 3.20 and 3.40 pm on 18 October 2010 he was in Broker B's room. He accepts that he knew from his presence the composition of the orders and how they were intended to be placed in the auction and that once the auction started he stood by to listen to what was going on.

44. At 3.19pm, approximately 10 minutes before the auction commenced, Mr Goenka called Broker B to confirm his orders for the auction trade. At the time Reliance GDRs were trading at USD 48.28.

45. Mr Goenka provided Broker B with details of the following orders that he wished to place:

- simultaneous buy and sell orders of 100 GDRs at USD 48.69;
- simultaneous buy and sell orders of 100 GDRs at USD 48.71;
- an order to buy 18,000 GDRs "at market";[1]
- an order to buy 770,000 GDRs at USD 48.71;
- a further standby order of 351,000 GDRs at USD 48.69 to act as "a cushion" and only be released on Mr Goenka's order.

46. The purpose of the two sets of simultaneous buy and sell orders for 100 GDRs each was to effect a trade and establish a closing price, above the knock-in price, should no other participants have entered orders into the auction. If this had occurred Mr Goenka would have achieved his objective of setting the closing price above the knock-in price without having to take a position in the GDRs. As with Gazprom all of the Reliance orders were at levels higher than where the stock had traded at any point on that day.

47. Mr Goenka had instructed Broker B that the order to buy 18,000 GDRs at market and the order to buy 770,000 GDRs at USD 48.71 should be entered at 3:39:54 pm (i.e. six seconds before the auction close). Mr Goenka had also informed Broker B he would instruct them at 3:39:54 pm whether the final "cushion" order of 351,000 was necessary. In a later call both agreed that six seconds was too little time for Broker B to operate and that Broker B would therefore place the orders for 18,000 and 770,000 eight seconds before auction close.

48. Taken in their entirety, Mr Goenka's orders were equivalent to 280% of the average daily volume of trading in Reliance GDRs at that time. All the orders were above the knock-in price and the level at which the GDRs were trading at the time. In total the orders, if filled in their entirety, would have required an expenditure of approximately USD 55.4 million.

49. The auction commenced at 3.30pm and Mr Goenka was in continuous telephone contact with Broker B during the closing auction. Mr Davis was present in Broker B's room throughout the duration of the closing auction and was therefore able to hear Broker B's (but not Mr Goenka's) participation in those calls so far as they were conducted in English (the calls having been partly conducted in Hindi). Mr Davis was also able to observe Broker B's execution of Mr Goenka's orders and the impact of those orders on the market price.

50. Whilst he was present, the first four buy and sell orders were placed. The order to buy 18,000 at market was entered at 3:39:50 pm, and the order to buy 770,000

[1] An order at market has no price limit and is given priority in the uncrossing phase of the auction.

at USD 48.71 was entered at 3:39:52 pm, ten and eight seconds respectively before the start of the randomisation period. The "cushion" order to buy 351,000 was not entered. In the event the prior orders were sufficient to take the Reliance IUP above Mr Goenka's target "knock-in" price of the structured product.

51. Prior to entering that final order for 770,000 GDRs the Reliance IUP was USD 47.93, 72 cents below Mr Goenka's target "knock-in price" of USD 48.65. The impact of Mr Goenka's orders was to increase the IUP price to USD 48.71, 6 cents above the target "knock-in price". This higher IUP was maintained throughout the remainder of the auction, and became the uncrossing, or closing, price. The increase from USD 47.93 to USD 48.71 represented a percentage increase of 1.7%. Mr Goenka's orders in the closing market were not all filled: the 193,550 GDRs he did purchase represented 46% of that day's trading volume and 90% of the trading in the closing auction. Had the final order entered by Mr Goenka for 770,000 GDRs been filled in its entirety that single order would have cost him USD 37.5 million and would have represented over 200% of the average daily trading volume for Reliance GDRs at the time.

52. The price of Reliance GDRs dropped back the next day to close at USD 47.10. Mr Goenka sold, through Schweder Miller, the Reliance GDRs he had acquired. Mr Davis was aware of the sales having taken place as he signs all of the firm's contract notes.

53. As a result of the price achieved in the auction, Mr Goenka was paid USD 10 million by the issuing bank under Structured Product 2. Had the Reliance price remained at its last indicative auction uncrossing level of USD 47.93, which was below the "knock-in" price, Mr Goenka would have incurred a loss on Structured Product 2 of USD 3,103,640.

54. Mr Davis received the benefit, through Schweder Miller, of the sum of £3,442 in commission which represented a 50% split of the trading commission with Broker B, as the broker who conducted the trading.

FAILINGS

55. The relevant statutory and regulatory provisions are contained in the Annex.

56. For the reasons set out in the Final Notice addressed to Mr Goenka dated 17 October 2011, the FSA has previously determined that Mr Goenka engaged in behaviour amounting to market abuse on 18 October 2010 when he manipulated the closing price of Reliance GDRs.

Breach of Statement of Principle 6

57. On the basis of the facts and matters summarised above, the FSA has concluded

that Mr Davis is guilty of misconduct, in that he failed to act with due skill, care and diligence in carrying out his CF10 controlled function, in his role as the approved person responsible for compliance oversight at Schweder Miller. The FSA is satisfied that it is appropriate in all the circumstances to take action against Mr Davis.

58. Mr Davis's breach of Statement of Principle 6 of APER is evidenced by his conduct on and around 18 October 2010 in failing properly to challenge and make reasonable enquiries before authorising the execution of the trades in Reliance GDRs, despite the clear risk of market abuse posed by Mr Goenka's order.

59. Mr Davis approved the orders to trade despite the fact that:

a) He knew that Mr Goenka had previously attempted to execute a complex series of substantial trades in Gazprom GDRs in April 2010, the rationale for which Mr Davis had not fully understood;

b) Broker B had informed him about the possibility of Mr Goenka holding an underlying product in relation to the trading in Reliance;

c) he was aware that if Mr Goenka was seeking to move the price of Reliance GDRs because he held a related product this was a suspicious trade and one which would amount to market manipulation;

d) Broker B was dealing directly with Mr Goenka rather than through the firm of Adviser A who were Schweder Miller's client and that Broker B was having difficulty contacting Adviser A;

e) the proposed trade was unusually large and involved approximately 1 million Reliance GDRs (approx USD 55 million);

f) he knew exactly how the trade was to be structured and about the timing (including that the trades would be placed seconds before the close of auction trading). Proper scrutiny of the orders would have identified that the orders were carefully layered and involved both a "wash trade" and a "standby" order. Further, all of the orders were at prices above the prevailing market price and the bulk of the orders were to be placed 10 and 8 seconds before he auction close. None of these characteristics was consistent with the purported suggestion that Mr Goenka did not want to move the price of Reliance GDRs and many of these characteristics were cited as identifiers of possible suspicious trading in the Schweder Miller compliance manual, and

g) he observed the impact of the orders on the closing price of Reliance GDRs that day and could therefore ascertain that Mr Goenka's orders accounted for

90% of the auction trading and moved the closing price by 1.7%.

60. Having regard to the facts and indicators referred to above, an approved person responsible for compliance oversight acting with due skill, care and diligence would have appreciated that the proposed volume, pricing and timing of Mr Goenka's trading in the closing auction represented a clear risk of market abuse. What Mr Davis witnessed during the auction call alone should have been enough to make him highly suspicious about what had just taken place.

61. Despite the clear "red–flags", Mr Davis also failed properly to challenge and to make reasonable enquiries as to the reasons for the trading, such as making direct enquiries of Mr Goenka, in the absence of being able to contact Adviser A. Following the auction trading Mr Davis's concerns should have been compounded by his subsequent knowledge that Mr Goenka was said to be "overjoyed" despite only 17% of his order being fulfilled and by his knowledge that Mr Goenka was promptly selling all the Reliance stock he had acquired. Mr Davis did not reflect on this information or consider the need to file an STR. He also made no record of his concerns or assessment of the situation.

62. The FSA notes the following specific example of market abuse (price manipulation) contained in the Code of Market Conduct at MAR 1.6.15E which has relevance to the facts of this case:

> "*a trader buys a large volume of commodity futures, which are qualifying investments, (whose price will be relevant to the calculation of the settlement value of a derivatives position he holds) just before the close of trading. His purpose is to position the price of the commodity futures at a false, misleading, abnormal or artificial level so as to make a profit from his derivatives position*".

63. On the basis of all the warning signs received by Mr Davis, if acting with due skill care and diligence, he should properly have challenged and made reasonable enquiries, such as reasonably to satisfy himself that no such risk existed before authorising the trades. On the facts known to him, Mr Davis should have refused to accept Mr Goenka's instructions to trade in the closing auction in the manner directed.

64. The consequences of Mr Davis's failings were serious and fundamentally undermined the purpose and obligations of his compliance function.

Fitness and propriety

65. The FSA further considers that in failing to act with due skill, care and diligence in the manner described above, Mr Davis has demonstrated that he is not competent and capable of holding the Compliance oversight (CF10), CASS oversight (CF10a) and Money laundering reporting (CF11) significant influence

functions.

66. Individuals approved to hold the Compliance oversight (CF10) significant influence function are a fundamental part of the regulatory system and provide front line protection against market abuse for the firms for which they work and the wider market. Mr Davis's conduct shows that he is unable to recognise signs of possible market abuse and has a flawed approach to compliance. As such, he does not have the requisite levels of competence and capability required to be fit and proper to hold the Compliance (CF10) and CASS oversight (CF10a) significant influence functions. For the same reason he lacks sufficient competence and capability to hold the Money laundering reporting (CF11) significant influence function which requires a similar level of alertness to warning signs.

SANCTION

67. 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.

68. 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.

69. 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).

70. 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 and related APER failings 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.

71. 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 has concluded that it is appropriate to impose a financial penalty on Mr Davis.

72. As the behaviour in this case occurred after 6 March 2010 the FSA's new penalty regime applies. 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 Davis's conduct is as follows:

Step 1: Disgorgement

73. Pursuant to DEPP 6.5B.1G, at Step 1 the FSA seeks to deprive an individual of the financial benefit derived as a direct result of the market abuse where it is practicable to quantify this.

74. In relation to the orders to trade in Reliance GDRs on behalf of Mr Goenka and the sales following the auction, Mr Davis received the benefit of a 50% commission split with the trader who placed the orders. Accordingly, Mr Davis received £3,442 in commission.

75. Step 1 is therefore £3,442. In accordance with the FSA's policy, interest will be charged on this figure up to the date of payment of the financial penalty.

Step 2: The seriousness of the breach

Relevant income

76. 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.

77. 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 Davis earned between 17 October 2009 and 18 October 2010 (the date of the Reliance trading). Mr Davis has supplied the FSA with information confirming his total income (drawings) from his partnership at Schweder Miller for this period was £79,014.53 which the FSA considers is his relevant income in this case.

The percentage to be applied

78. The percentage of Mr Davis'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.

79. 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).

80. The FSA considers Mr Davis's conduct to be serious for the following reasons:

a) detecting and preventing market abuse is a key part of Mr Davis's compliance oversight role at Schweder Miller. However, he failed to make reasonable enquiries before deciding whether to authorise the trades and despite the clear risk of market abuse placed by Mr Goenka's orders;

b) Mr Davis's approach as the approved person responsible for compliance oversight was inadequate; both by authorising the execution of Mr Goenka's instructions to trade, and subsequently by failing to question them or report them as suspicious;

c) Mr Davis is a senior individual in a position of considerable responsibility at Schweder Miller. He has held the Compliance oversight function since January 2001 and has held the significant influence function of Partner since 1 December 2001;

d) A direct consequence of his failure to properly identify and prevent market abuse, 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/or 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, and

e) The scale of the abusive behaviour that Mr Davis failed to prevent was considerable and involved orders to trade that were potentially in excess of USD 55 million for Reliance.

81. Taking into account these factors, the FSA considers Mr Davis's conduct to be at level 4 in terms of its seriousness.

82. After applying the relevant level 4 multiplier (30%) to Mr Davis's relevant income, the resulting figure is £23,704.

83. Accordingly, the Step 2 figure is £23,704.

Step 3: Mitigating and aggravating factors

84. 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.

85. The FSA does not consider that any of the aggravating or mitigating factors set

out at DEPP 6.5B.3G(2) affect to a significant extent the penalty appropriate to Mr Davis's breach. The FSA has also borne in mind that Mr Davis has co-operated with the FSA investigation and has not been the subject of any prior disciplinary action by the FSA.

86. Having regard to the above matters, the FSA does not consider it necessary to make any adjustment for Step 3. At Step 3 the penalty is therefore £23,704.

Step 4: adjustment for deterrence

87. 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 engaged in market abuse, or others, from committing further or similar breaches, then the FSA may increase the penalty.

88. 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.

89. Mr Davis owns assets of a high value and during the relevant period had further significant income in addition to his relevant income of £79,014.53. In order to ensure the penalty imposed is a sufficient deterrent a multiplier of 4 has been applied.

90. The FSA considers it appropriate to adjust the penalty level upwards by a multiple of four, to £94,816 in order to deter misconduct of this sort and to demonstrate to approved persons the consequences of such actions. In particular, in increasing the penalty the FSA seeks to remind approved persons that they must act as gatekeepers against instances of market abuse.

91. The penalty figure after Step 4 is therefore £94,816.

Step 5: Settlement discount

92. 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.

93. The FSA and Mr Davis reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.

94. The penalty after Step 5 is therefore £66,371 (plus disgorgement).

95. The total penalty to be imposed, including disgorgement of £3,442 is £69,813 (rounded down to £69,800). In addition, interest of £458 is payable on the disgorgement. The total penalty is therefore £70,258.

Penalty

96. The FSA therefore imposes a total financial penalty of £70,258 on Mr Davis for breaches of Statement of Principle 6.

Withdrawal of approval and prohibition

97. In considering whether to impose a prohibition order and withdraw Mr Davis's existing approvals, the FSA has had regard to the provisions of the Enforcement Guide ("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.

98. The FSA has considered Mr Davis's behaviour and conduct whilst an approved person and is of the view that Mr Davis lacks competence and capability and is not a proper person to perform the Compliance oversight (CF10), CASS oversight (CF10a) and Money laundering reporting (CF11) significant influence functions. The FSA has concluded that Mr Davis should therefore have his existing CF10, CF10a and CF11 approvals withdrawn under section 63 of the Act and be prohibited under section 56 of the Act from performing those functions.

PROCEDURAL MATTERS

Decision Maker

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

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

Manner of and time for payment

101. The financial penalty must be paid in full by Mr Davis within 14 days of the date

of this Final Notice, by 19 July 2012.

102. If any or all of the financial penalty is outstanding on 20 July 2012, the FSA may recover the outstanding amount as a debt owed by Mr Davis and due to the FSA.

Publicity

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

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

FSA contacts

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

Matthew Nunan

Acting Head of Department

FSA Enforcement and Financial Crime Division

ANNEX: Relevant Statutory and Regulatory Provisions

Statutory provisions

1. The FSA's statutory objectives, set out in Section 2(2) of the Act, include 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 6 at APER 2.1.2P states:

An approved person performing a significant influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in 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. A person performing a significant influence function is also subject to the additional requirements set out in Statements of Principle 5 to 7 in performing that controlled function.

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.

25. FIT 2.2.1 states:

In determining a person's competence and capability, the FSA will have regard to all relevant matters including but not limited to*:*

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

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

(3) *whether the person has adequate time to perform the controlled function* and meet the responsibilities associated with that function.

Decision Procedures and Penalties Manual ("DEPP")

26. 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.

27. 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.