Financial Conduct Authority

FINAL NOTICE

To: **Aberdeen Asset Managers Limited and Aberdeen Fund Management Limited**

(together "Aberdeen")

FCA Reference Numbers: 121891 and 119303

Date: 2 September 2013

1. ACTION

1.1. For the reasons given in this notice, the Financial Conduct Authority ("the Authority") hereby imposes on Aberdeen a financial penalty of £7,192,500 in accordance with section 206 of the Financial Services and Markets Act 2000.

1.2. Aberdeen agreed to settle at an early stage of the Authority's investigation. Aberdeen therefore qualified for a 30% (stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £10,275,000 on Aberdeen.

2. SUMMARY OF REASONS

2.1. In the period from 31 August 2008 to 31 August 2011 ("the Relevant Period") Aberdeen breached Principles 3 and 10 of the Authority's Principles for Businesses in failing to recognise that monies it placed on behalf of its clients in Money Market Deposits ("MMDs") were subject to Chapter 7 of the Client Assets Sourcebook ("Client Money Rules"). As a consequence Aberdeen breached rules 7.3.1R and 7.3.2R, 7.6.1R and 7.6.2R and 7.8.1R.

2.2. In particular, Aberdeen:

a) failed to take reasonable care to organise and control its client money placed on behalf of clients in MMDs such that it failed to ensure there were adequate risk management systems in place (Principle 3); and

b) failed to arrange adequate protection for certain of its clients' assets for which it was responsible (Principle 10).

2.3. The client money regime is designed to ensure protection of client money and assets in the event of firm failure. To achieve this, firms are required to ensure that both operational and actual arrangements comply with CASS.

2.4. Aberdeen's breaches arose from its failure to recognise that the monies it placed on behalf of its clients in MMDs with third party banks were governed by the Client Money Rules. As it did not take direct receipt of the money in question and by virtue of the process it had established for the placing of client money in MMDs, Aberdeen had incorrectly determined that the MMDs were outside the CASS regime.

2.5. As a result, Aberdeen did not provide appropriate trust letter notifications to the banks and did not seek or obtain acknowledgements from those banks confirming the trust status of the deposited monies. Aberdeen also employed inconsistent account naming conventions frequently using its own name, albeit often including an alphanumeric code which enabled Aberdeen to identify the underlying client internally. As part of the Authority's investigation, certain third party banks were approached. These enquiries suggested that some of the banks considered Aberdeen to be the legal owner of the MMDs and that there was a lack of clarity at the banks as to the identity of the beneficial owner of the monies in the accounts.

2.6. As a consequence of trust letters not being in place for the MMD accounts, client money in those accounts was not properly protected. In an insolvency situation, these monies were not ring-fenced for clients as required by the rules in CASS which could have led to complications and delay in the return of client money. Had debts been owed by Aberdeen to the banks, client money was at risk of set-off and an insolvency practitioner may have incurred costs in resolving such competing claims prior to any distribution resulting in a diminution of client money.

2.7. The Authority understands that no debts were owed by Aberdeen to the banks into which MMDs were placed throughout the Relevant Period, although the risk of set-off could have occurred at any time if such debts were owed.

2.8. The average daily balance of the MMDs during the Relevant Period was £685 million.

2.9. The Authority considers Aberdeen's failings to be serious for the following reasons:

a) Aberdeen is a leading asset management firm with significant operations in the UK and globally;

b) the breaches of Principles and of Client Money Rules took place over a period of three years;

c) had Aberdeen become insolvent, these failings could have led to complications and delay in distribution, and placed client money at risk of set-off and consequential diminution;

d) Aberdeen failed to give proper prompt consideration to whether the Client Money Rules applied to the MMDs. Even though questions were raised in 2009 and 2010 by new employees joining Aberdeen following acquisitions, it was not until 2011, when a third party bank queried Aberdeen's arrangements, that it sought external advice on the issue, reported it to the Authority and took steps to rectify the situation; and

e) there was a high level of awareness in the financial services industry at the time of the importance of handling client money properly given the collapse of Lehman Brothers on 15 September 2008. The Authority had sent letters to Compliance Officers of regulated firms in March 2009 and to Chief Executive Officers of regulated firms in January 2010 highlighting concerns about client money failings. The letter to Chief Executive Officers required them to confirm that the firm complied with CASS. Aberdeen provided such confirmation.

2.10. Whilst the Authority considers the failings to be serious, there was no actual loss of client money. Aberdeen also self-reported the issue to the Authority and fully cooperated with the Authority during its investigation. Aberdeen has also revised its client money arrangements so that they are governed by the CASS 8 regime which applies to firms that control clients' money under mandates.

3. DEFINITIONS

3.1. The definitions below are used in this Final Notice.

"Aberdeen" means Aberdeen Asset Managers Limited and Aberdeen Fund Management Limited. On 1 March 2012, Aberdeen Fund Management Ltd merged with Aberdeen Asset Managers Ltd;

"the Act" means the Financial Services and Markets Act 2000 (as amended);

"the Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;

"CASS" means the Client Assets Sourcebook contained in the Authority's Handbook;

"Client Money Rules" means Chapter 7 of CASS (as defined above);

"Custodian" means the custodian appointed by a client of Aberdeen;

"DEPP" means the Authority's Decision Procedure & Penalties Manual;

"EG" means the Authority's Enforcement Guide;

"IMA" means Investment Management Agreement;

"Lehman Brothers" means Lehman Brothers International (Europe) (in administration);

"MMD" means Money Market Deposit;

"Relevant Period" means 31 August 2008 to 31 August 2011;

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

"trust letter" means the written acknowledgement of the status of client money deposited with third parties required by CASS 7.8.1R.

4. FACTS AND MATTERS

Background

4.1. Aberdeen is an investment management firm which was founded in 1983 in Aberdeen, Scotland, and has grown both through acquisitions and expanding its own business. It is now an international investment management group with £169.9 billion under management as at 2011.

4.2. During the Relevant Period, both of the Firms had permission to hold and control client money.

Investment Management Services

4.3. Aberdeen provided discretionary investment management services to its institutional clients in accordance with the terms of IMAs entered into with each client.

4.4. The IMAs gave Aberdeen a broad discretion to manage, invest, realise or reinvest the assets of clients under its management.

4.5. Each client was required by its IMA to maintain a custody account with a third party Custodian. The Custodian held the client's assets and money and the client gave Aberdeen authority to instruct the Custodian, on the client's behalf, to enable Aberdeen to provide portfolio management services.

Money Market Deposits

4.6. An MMD is a term deposit made to obtain a return on the uninvested cash in a client's investment portfolio.

4.7. Where a client's portfolio included significant cash balances, Aberdeen would often invest this cash in MMDs in order to achieve a better rate of return on that money than was available from leaving the money on deposit with the Custodian and for risk diversification purposes. MMDs were placed with particular counterparty banks either for a fixed term, or alternatively so as to be available on call.

4.8. When arranging to place an MMD, the first step Aberdeen took was to create a form of account with the relevant third party bank. Aberdeen's usual practice was to open these accounts in its own name, also including in the name of the account an alphanumeric code which enabled Aberdeen to identify the underlying client for whom the account was being opened. Although the majority of the MMDs were named using this convention there were variances in its application.

4.9. Having created the account, Aberdeen would then instruct the Custodian to make payments of money from a client's custody account to the third party bank to be placed into an MMD. This was done with the use of Standard Settlement Instructions, being documents which provided instructions for the Custodian to pay the client's funds to the third party bank, and which told the third party bank to return the money to the Custodian when the MMD matured.

Client money

4.10. Aberdeen's approach to MMD accounts created a presumption that Aberdeen was the legal owner of the accounts and uncertainty as to the beneficial owner of the

monies. This introduced a risk to clients that, in the event of insolvency, the deposit banks might consider Aberdeen, rather than the client, to be the owner of the monies. In this regard, the question of who the counterparty banks understood to be the legal owner of the monies is a relevant indicator of ownership. As part of the Authority's investigation, certain third party banks were approached. These enquiries suggested that some of the banks considered Aberdeen to be the legal owner of the MMDs and that there was a lack of clarity at the banks as to the identity of the beneficial owner of the monies in the accounts.

4.11. By placing itself in the position of having legal ownership of the MMD monies by virtue of the naming convention used for those accounts, Aberdeen should have held the monies as client money. When holding client money Aberdeen was required to comply with the relevant rules in Chapter 7 of CASS in relation to this money. Aberdeen was also required to comply with its overriding obligations under Principles 3 and 10.

Identification of the issue

4.12. For the greater part of the Relevant Period, Aberdeen did not recognise that the money held in MMDs was client money for which it was responsible. Therefore, it did not take steps to comply with the rules in CASS 7 in relation to this money, including the requirement to obtain trust letters from the third party banks.

4.13. On 20 March 2009, Aberdeen received an industry-wide Dear Compliance Officer letter from the Authority. This letter flagged to senior management the Authority's concerns about firms' CASS compliance and set out the Authority's expectations of firms when arranging adequate protection of clients' assets and money. The letter emphasised, among other points, that when opening client bank accounts, firms needed to ensure that written notice of trust status was sent to the bank and acknowledged by that bank.

4.14. On 28 May 2009 there was a CASS thematic visit by the Authority to Aberdeen during which Aberdeen was advised by the Authority to ensure that it obtained trust letters for all client bank accounts.

4.15. In 2009, Aberdeen acquired part of Credit Suisse. This led to a significant increase in the number of new MMDs being opened. Staff taken on from Credit Suisse queried the naming convention used by Aberdeen for the MMDs and questioned whether trust letters should be in place for these accounts. Aberdeen considered this internally but reached the incorrect conclusion that trust letters were not required.

4.16. In early 2010 Aberdeen acquired part of the business of RBS and became aware that RBS also followed a practice of having trust letters in place for MMD accounts. Again Aberdeen considered it internally but the incorrect conclusion was reached that trust letters were not required.

4.17. On 19 January 2010, Aberdeen received an industry-wide Dear Chief Executive Officer letter from the Authority. This letter emphasised Principle 10 obligations in relation to client money and stated that "*a higher priority is being given to achieving compliance with client asset requirements because we are concerned that firms are not always achieving an adequate level of protection.*" The letter enclosed a Client Money and Asset Report which noted that the Authority considered compliance with the Client Money Rules to be poor across the financial services industry.

4.18. The Authority's letter required Aberdeen to consider this report at a senior level and for the CEO to confirm to the Authority that it was in compliance with its obligations regarding the protection of client money and assets.

4.19. On 31 March 2010, Aberdeen replied to the Dear Chief Executive Officer letter, stating that the content of the letter and Report had been considered by the relevant boards within Aberdeen and "*we are in compliance with the CASS regulations"*.

4.20. In late March 2011, Aberdeen decided to open a number of MMD accounts with a third party bank. That bank informed Aberdeen that trust letters would be required as it considered the account monies to be client money. The issue was considered and escalated internally within Aberdeen during April and May 2011. Aberdeen management's view remained that this was not client money. However, due to the contrasting view of the third party bank this issue was re-considered.

4.21. Aberdeen first reported the matter to the Authority in late June 2011. On 5 July 2011, Aberdeen wrote to the Authority to seek clarification of whether its procedures for placing MMDs for institutional clients were acceptable to the Authority.

4.22. On 22 July 2011, the Authority responded to Aberdeen explaining that it considered that Aberdeen held legal title to the money in the MMDs and was therefore required to comply with CASS 7 in relation to this money. The Authority stated that Aberdeen must correct the situation as a matter of urgency.

Changes to the management of client money

4.23. After Aberdeen identified the issue and notified it to the Authority, it took steps to consider and resolve the problem. Aberdeen has revised its client money arrangements for the MMDs and has now adopted a CASS 8 regime where it controls clients' money under mandates.

5. FAILINGS

5.1. The statutory and regulatory provisions relevant to this Final Notice are referred to in Annex A.

Breach of Principle 10, CASS 7.6.1R, 7.6.2R and CASS 7.8.1R

5.2. Principle 10 requires a firm to arrange adequate protection for clients' assets it is responsible for. The CASS section of the Authority's Handbook sets out the detailed requirements placed on firms to ensure that such adequate protection is in place for client money and assets.

5.3. CASS 7.6.1R requires that a firm keep such records and accounts as are necessary to enable it at any time and without delay to distinguish client money held for one client, from client money held for any other client, and from its own money.

5.4. CASS 7.6.2R requires that a firm maintains its records and accounts in a way that ensures their accuracy, and in particular their correspondence to the client money held for clients.

5.5. CASS 7.8.1R requires a firm that opens a client bank account (i) to request the bank to acknowledge in writing the trust status of the money in the account and (ii) in the case of a client bank account in the UK to withdraw all money from the account if such acknowledgment is not received from the bank within 20 business days. This is a key requirement for ensuring that client money is adequately protected.

5.6. Aberdeen did not give adequate and timely consideration as to whether the money of its clients placed in MMDs was client money for which it was responsible and should have held in accordance with CASS 7. As a result, Aberdeen failed to perform internal calculations and external reconciliations of this client money, as required by CASS 7.6.1R and 7.6.2R and Annex 1 of CASS 7. It did not properly and consistently name the accounts and most importantly, did not obtain trust letters. Consequently, there was a risk of delay and complication in distribution of

those funds. Had debts been owed by Aberdeen to the banks, client money was at risk of set off and an insolvency practitioner may have needed to resolve competing claims over client money prior to any distribution. This may have resulted in incurring costs with the risk of a diminution of client money.

Breach of Principle 3 and CASS 7.3.1R and 7.3.2R

5.7. Principle 3 requires a firm to take reasonable steps to ensure that it has organised its affairs responsibly and effectively, with adequate risk management systems.

5.8. CASS 7.3.1R requires a firm, when holding client money, to make adequate arrangements to safeguard the client's rights and prevent the use of client money for its own account.

5.9. CASS 7.3.2R requires a firm to introduce adequate organisational arrangements to minimise the risk of the loss or diminution of client money, or of rights in connection with client money, as a result of misuse of client money, fraud, poor administration, inadequate record keeping or negligence.

5.10. The Authority's investigation has identified certain systems and control failings during the Relevant Period, principally relating to Aberdeen's failure to:

a) employ consistent naming conventions, frequently using its own name, (albeit often including a client alphanumeric code) which may have led third party banks to conclude that the money belonged solely to Aberdeen;

b) identify that the money held in MMDs was client money for which it was responsible and should have held in accordance with CASS 7. This occurred despite queries raised by staff joining Aberdeen from other organisations which should have caused it carefully to consider this issue; and

c) ensure that the operational processes and the way money was held were undertaken in a consistent manner.

5.11. The following events (as set out above at paragraphs 4.12 to 4.22) should have prompted Aberdeen to undertake a proper review of the client money status and protections relating to money:

a) the Authority's Dear Compliance Officer letter of 20 March 2009 which outlined the Authority's concerns about firms' CASS compliance and emphasised the need to ensure that written notice of trust arrangements

was provided to, and acknowledged by, a bank where client money was placed;

b) the Authority's CASS thematic visit on 28 May 2009 during which Aberdeen was advised to ensure that it obtained trust letters for all client money bank accounts;

c) the queries raised by staff taken on from Credit Suisse during 2009. Incoming staff queried the naming convention used by Aberdeen for the MMDs, and questioned whether trust letters should be in place for those accounts;

d) the Authority's Dear Chief Executive Officer letter of January 2010 expressing concerns that firms were not always achieving an adequate level of protection of client money, and requiring firms to consider the Authority's Client Money and Asset Report at a senior level and confirm it was compliant with CASS. Aberdeen replied in March 2010 stating that it was in compliance with the CASS regulations; and

e) following the acquisition of part of the business of RBS in 2010 Aberdeen became aware that RBS also followed the practice of having trust letters in place for MMD accounts.

5.12. It was not until late March 2011, when a third party bank informed Aberdeen that trust letters would be required as the MMD monies were client money that Aberdeen sought further advice.

6. SANCTION

6.1. The FCA's policy on the imposition of financial penalties is set out in the Authority's Decision Procedure & Penalties Manual. In determining the financial penalty, the Authority has had regard to this guidance.

6.2. The principal purpose of a financial penalty is to promote high standards of regulatory conduct by deterring firms who have breached regulatory requirements from committing further contraventions, helping to deter other firms from committing contraventions and demonstrating generally to firms the benefits of compliant behaviour.

6.3. For the reasons set out above, the Authority considers that Aberdeen breached CASS rules 7.3.1R and 7.3.2R, 7.6.1R and 7.6.2R and 7.8.1R and failed to comply with Principles 3 and 10. In determining that a financial penalty is appropriate

and proportionate in this case, the Authority has considered all the relevant circumstances.

6.4. The conduct at issue took place both before and after 6 March 2010. As set out at paragraph 2.7 of the Authority's Policy Statement 10/4, when calculating a financial penalty where the conduct straddles penalty regimes, the Authority must have regard to both the penalty regime which was effective before 6 March 2010 (the "old penalty regime") and the penalty regime which was effective after 6 March 2010 (the "current penalty regime").

6.5. The Authority:

a) calculated the financial penalty for Aberdeen's misconduct from 31 August 2008 to 5 March 2010 by applying the old penalty regime to that misconduct;

b) calculated the financial penalty for Aberdeen's misconduct from 6 March 2010 to 31 August 2011 by applying the current penalty regime to that misconduct; and

c) added the penalties calculated under (a) and (b) to produce the total penalty.

Financial penalty under the old regime

Deterrence (DEPP 6.5.2G(1))

6.6. The Authority views compliance with the Client Money Rules to be of significant importance. The Authority considers there to be a continuing need to send a strong message to the industry that firms must handle client money in a way that is consistent with the Principles and Client Money Rules.

6.7. The principal objectives of the CASS rules to which this notice relates are to ensure that client monies are clearly identified as such and are ring-fenced from the firm's assets in the case of insolvency. The requirement to ensure that trust status is acknowledged and that trust letters are in place is intended to assist with achieving that important protection for a firm's clients.

6.8. Failure to organise properly client money affairs and to ensure adequate protections are in place significantly increases the risk that, in the event of insolvency, delivery up of client money will be delayed and that the funds

properly owing to clients will be diminished. It also exposes client monies to the risk of set-off from banks and/or to the claims of competing creditors.

6.9. The Authority considers that a significant financial penalty is an appropriate sanction given the serious nature of the breaches and the risk to certain of Aberdeen's clients.

Nature, seriousness and impact of the breach (DEPP 6.5.2(2)).

6.10. The Authority considers Aberdeen's breach of CASS Rules 7.3.1R and 7.3.2R, 7.6.1R and 7.6.2R and 7.8.1R and Principles 3 and 10 to be serious for the following reasons:

a) the risk to client money caused by Aberdeen's failure to take protective measures continued undetected for a prolonged period;

b) the average daily amount of client monies at risk throughout the Relevant Period was £685,000,000;

c) the protection of clients' money and assets is of critical importance to Aberdeen as an investment manager;

d) prior to 6 March 2010, Aberdeen received internal warnings from new staff members which should have alerted it to the fact that the procedures it followed for the placement of MMDs were not CASS compliant; and

e) Aberdeen received two key industry-wide communications from the Authority about the importance of client money protection and rule compliance.

The extent to which the breach was deliberate or reckless (DEPP 6.5.2(3))

6.11. Although the Authority has concerns that a number of internal warnings about the approach to MMDs were not sufficiently heeded, the Authority does not consider that Aberdeen committed the breaches deliberately or recklessly.

The size, financial resources and other circumstances of the firm (DEPP 6.5.2(5))

6.12. In deciding on the level of penalty, the Authority has had regard to the size of the financial resources of Aberdeen.

6.13. The Authority has no evidence to suggest that Aberdeen is unable to pay the financial penalty.

The amount of profits accrued or the loss avoided (DEPP 6.5.2(6))

6.14. Aberdeen did not profit from the breaches or avoid any loss.

Conduct following the breach (DEPP 6.5.2(8))

6.15. For almost all of the Relevant Period, Aberdeen failed to identify or act upon the failings set out in this Notice.

6.16. After Aberdeen identified the issue and notified it to the Authority, it took steps to consider and resolve the problem. Aberdeen has revised its client money arrangements and has now adopted a CASS 8 regime where it controls clients' money under mandates.

Disciplinary record and compliance history (DEPP 6.5.2(9))

6.17. Aberdeen has not previously been the subject of an adverse finding by the Authority.

Other action taken by the Authority (DEPP 6.5.2(10))

6.18. The Authority has had regard to previous cases involving the failure to protect adequately client money.

Conclusions in relation to the old penalty regime

6.19. The Authority considers that the seriousness of Aberdeen's failings merit a substantial financial penalty. In determining the financial penalty, the Authority has considered the need to send a clear message to the industry of the need to ensure that client money is properly protected in accordance with the Client Money Rules. Failure to ensure that appropriate measures are in place to protect client money, including acknowledgements of trust being in place in respect of all client bank accounts, will result in severe consequences.

6.20. The Authority therefore imposes a total financial penalty under the old penalty regime of £2,397,500 (£3,425,000 pre-discount) on Aberdeen for its breach of CASS Rules 7.3.1R and 7.3.2R, 7.6.1R and 7.6.2R and 7.8.1R and of Principles 3 and 10. This amount is approximately 1% of the average client money balances held over the Relevant Period (these balances averaging £685,000,000) after adjustment to take into account that half of the Relevant Period was before 6 March 2010.

Financial penalty under the current regime

6.21. All references to DEPP from this section are references to the version of DEPP implemented as of 6 March 2010 and currently in force. Under the current penalty regime, the Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5A sets out the details of the five-step framework that applies to financial penalties imposed on firms.

Step 1: disgorgement

6.22. DEPP 6.5A.1G provides that at Step 1, the Authority will deprive a firm of the financial benefit derived directly from the breach.

6.23. The Authority has not identified any financial benefit that Aberdeen derived as a result of the breaches. The Step 1 figure is therefore £0.

Step 2: the seriousness of the breach

6.24. DEPP 6.5A.2G(1) provides that at Step 2 the Authority determines a figure that reflects the seriousness of the breach. Although DEPP 6.5A.2G(1) indicates that in many cases the amount of revenue generated by a firm from a particular business area is indicative of the harm that the breach may cause, it also recognises that revenue may not be an appropriate indicator of the harm the breach may cause. In those cases the Authority will use an appropriate alternative.

6.25. The Authority considers that in cases that involve breaches of Principle 10, an appropriate alternative is to base the Step 2 figure on the average client money balances held by the firm over the Relevant Period as an appropriate indicator of the harm that the breach may cause.

6.26. In this case the average client money balances referable to the current penalty regime period are £685,000,000.

6.27. In deciding on the percentage of the average client money balances that forms the basis of the step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 4%. This range is divided into five fixed levels which increase with the seriousness of the breach, and vary according to whether the breaches relate to client money or client assets. The five levels are:

Level 1 – 0% for both client money and client assets

Level 2 – 1% for client money and 0.2% for client assets

Level 3 – 2% for client money and 0.4% for client assets

Level 4 – 3% for client money and 0.6% for client assets

Level 5 – 4% for client money and 0.8% for client assets

6.28. To assess the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and considers whether the firm committed the breach deliberately or recklessly. DEPP 6.5A.2G(12) lists factors likely to be considered 'level 1 factors', 'level 2 factors' or 'level 3 factors'. The following factors are relevant to the Authority's assessment:

a) no profits were made or losses avoided as a result of the breach; and

b) the breach was not committed deliberately or recklessly.

6.29. The Authority also considers that the following factors are relevant:

a) the breaches continued for 18 months after the current penalty policy was introduced, having already been continuing for 18 months before this time;

b) during the last 8 months of the Relevant Period, the client money balances increased significantly above the average client money balance; and

c) the breaches impacted the majority of Aberdeen's client monies.

6.30. The Authority has taken these factors into account, identified the overall seriousness of the breach as level 3, and applied the level 3 seriousness percentage (2%) to the average client money balances over the Relevant Period. The average client money balance for the Relevant Period was £685,000,000 and this has been adjusted to take account of the fact that half of the Relevant Period was after 6 March 2010. The relevant proportion of the average client money balances is therefore £342,500,000.

6.31. This results in a step 2 figure of £6,850,000.

Step 3: mitigating and aggravating factors

6.32. DEPP 6.5A.3G provides that at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2 to take into account factors

which aggravate or mitigate the breach. Having considered aggravating and mitigating factors, there is no change to the Step 2 figure. The Step 3 figure is therefore £6,850,000.

Step 4: adjustment for deterrence.

6.33. DEPP 6.5A.4G provides that if the Authority considers that the Step 3 figure is insufficient to deter the firm who committed the breach, or others, from committing further or similar breaches, the Authority may increase the penalty.

6.34. There are no relevant factors that justify a change to the Step 3 figure. The figure at Step 4 remains £6,850,000.

Step 5: settlement discount

6.35. DEPP 6.7.2G allows for settlement discounts for early settlement. DEPP 6.7.3G identifies the four stages at which agreement may be reached. Aberdeen has agreed to settle at Stage 1 and therefore qualifies for a 30% discount and the Step 5 figure is therefore £4,795,000.

Conclusion on financial penalty

6.36. The Authority therefore imposes on Aberdeen a financial penalty of £7,192,500 (£10,275,000 pre-Stage 1 discount).

7. PROCEDURAL MATTERS

Decision maker

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

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

Manner and time for Payment

7.2. The financial penalty must be paid in full by Aberdeen to the Authority by no later than 16 September 2013, 14 days from the date of the Final Notice.

If the financial penalty is not paid

7.3. If all or any of the financial penalty is outstanding on 17 September 2013, the Authority may recover the outstanding amount as a debt owed by Aberdeen and due to the Authority.

Publicity

7.4. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the Authority must publish such information about the matter to which this notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to Aberdeen or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

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

Authority contacts

7.6. For more information concerning this matter generally, contact Anthony Monaghan of the Enforcement and Financial Crime Division of the Authority (direct line: 020 7066 6772/fax: 020 7066 6773).

Stephen Robinson

Acting Head of Department

Enforcement and Financial Crime Division

ANNEX A

STATUTORY AND REGULATORY PROVISIONS

The Authority is authorised, pursuant to section 206 of the Act, if it considers that an authorised person has contravened a requirement imposed on it by or under FSMA, to impose on such person a penalty in respect of the contravention of such amount as it considers appropriate in the circumstances.

Pursuant to sections 1B(1) and 1C(1) of the Act, one of the Authority's operational objectives is to secure an appropriate degree of protection for consumers.

Principle 3

A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

Principle 10

A firm must arrange adequate protection for clients' assets when it is responsible for them.

Client Money Rules

CASS 7.1.1R

During the early part of the Relevant Period, (31 August 2008 - 31 December 2008) CASS 7.1.1R provided as follows:

> *This chapter (the client money rules) applies to:*
> *(1) a MIFID investment firm:*
> *(a) that holds client money; or*
> *(b) that opts to comply with this chapter in accordance with CASS 7.1.3R(1) (Opt-in to the MIFID client money rules); and*
> *(2) a third country investment firm that opts to comply with this chapter in accordance with CASS 7.1.3R(1) (Opt-in to the MIFID client money rules);*
> *Unless otherwise specified in this section.*

During the latter part of the Relevant Period, (1 January 2009 -31 August 2011) CASS 7.1.1R provided as follows:

> *"This chapter (the client money rules) applies to a firm that receives money from or holds money for, or on behalf of, a client in the course of, or in connection with:*
> *(1) [deleted]*
> *(a) [deleted]*
> *(b) [deleted]*
> *(2) [deleted]*
> *(3) its MiFID business; and/or*

(4) its designated investment business, that is not MiFID business in respect of any investment agreement entered into, or to be entered into, with or for a client; unless otherwise specified in this section."

CASS 7.3.1R

CASS 7.3.1R, in force throughout the relevant period, provides that

"*A firm must, when holding client money, make adequate arrangements to safeguard the client's rights and prevent the use of client money for its own account."*

CASS 7.3.2R

CASS 7.3.2R, in force throughout the Relevant Period, provides that

"a firm must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of client money, or of rights in connection with client money, as a result of misuse of client money, fraud, poor administration, inadequate record-keeping or negligence."

CASS 7.6.1R

CASS 7.6.1R, in force throughout the Relevant Period, provides that

"A firm must keep such records and accounts as are necessary to enable it, at any time and without delay, to distinguish client money held for one client from client money held for any other client, and from its own money."

CASS 7.6.2R

CASS 7.6.2R, in force throughout the Relevant Period, provides that

"A firm must maintain its records and accounts in a way that ensures their accuracy, and in particular their correspondence to the client money held for clients".

CASS 7.8.1R

CASS 7.8.1R, in force throughout the Relevant Period, provides that:

"(1) When a firm opens a client bank account, the firm must give or have given written notice to the bank requesting the bank to acknowledge to it in writing that:

(a) all money standing to the credit of the account is held by the firm as trustee (or if relevant, as agent) and that the bank is not entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against money in that account in respect of any sum owed to it on any other account of the firm; and

(b) the title of the account sufficiently distinguishes that account from any account containing money that belongs to the firm, and is in the form requested by the firm.

(2) In the case of a client bank account in the United Kingdom, if the bank does not provide the required acknowledgement within 20 business days after the firm dispatched the notice, the firm must withdraw all money standing to the credit of the account and deposit it in a client bank account with another bank as soon as possible."

A client bank account is defined, for the purposes of CASS 7, as:

> *"(a) an account at a bank which:*
> *(i) holds the money of one or more clients;*
> *(ii) is in the name of the firm; and*
> *(iii) is a current or a deposit account; or*
> *(b) a money market deposit account of client money which is identified as being client money."*

Client money is defined, for the purposes of CASS 7, as

> *"money of any currency:*
> *(a) that a firm receives or holds for, or on behalf of, a client in the course of, or in connection with, its MiFID business; and/or*
> *(b) which, in the course of carrying on designated investment business that is not MiFID business, a firm holds in respect of any investment agreement entered into, or to be entered into, with or for a client, or which a firm treats as client money in accordance with the client money rules*."