PURSUANT TO THE DECISION OF THE UPPER TRIBUNAL ON 29 JULY 2014, SEE THE FINAL NOTICE ISSUED ON 18 MARCH 2015

DECISION NOTICE

To:	Alberto Micalizzi	Dynamic Decisions Capital Management Ltd
Address:		28 Ives Street London SW3 2ND

Date: 20 March 2012

ACTION

1. For the reasons given in this Notice, the FSA has decided to take the following action against Mr Alberto Micalizzi:

   (a) impose a financial penalty of £3,000,000 for failure to comply with Statement of Principle 1 of the FSA's Statements of Principle for Approved Persons pursuant to section 66(3)(a) of the Financial Services and Markets Act 2000;

   (b) withdraw Mr Micalizzi's approval to carry out controlled functions, pursuant to section 63 of the Act; and

   (c) make an order, pursuant to section 56 of the Act, prohibiting him from

performing any function in relation to any regulated activities carried on by any authorised or exempt persons, or exempt professional firm, on the grounds that he is not a fit and proper person.

DEFINITIONS

2. The definitions below are used in this Notice.

"the Act" means the Financial Services and Markets Act 2000

"the Bank" means a state owned bank

"the Bond" means a private convertible bond, issued by a US company, which purported to be collateralised by, and convertible into, a diesel product which is used as heating oil and bunker fuel.

"CEO" means the Chief Executive Officer

"the Commentary Paragraph" means the paragraph drafted by Mr Micalizzi, in the monthly email to the Fund's investors, which described the Fund's performance during the previous month

"DEPP" means the Decision Procedure and Penalties Manual

"DDCM" means Dynamic Decisions Capital Management Limited

"EG" means the Enforcement Guide

"the Financial Penalty" means the financial penalty of £3,000,000 which the FSA has decided to impose on Mr Micalizzi

"FIT" means the part of the FSA Handbook entitled the Fit and Proper Test for Approved Persons

"the Feeder Funds" means the Dynamic Decisions Growth Premium 1X Ltd (the "Unlevered Feeder") and Dynamic Decisions Growth Premium 2X Ltd (the "Levered Feeder") which invested in the Fund

"the FSA" means the Financial Services Authority

"the Fund" means the Dynamic Decisions Growth Premium Master Fund

"the Lenders Report" means the weekly report about the Fund which was sent to certain parties

"the Main Strategy" means the quantitative market-neutral investment strategy, known as a "pairs strategy", used by the Fund

"NAV" means Net Asset Value

"the Prohibition Order" means the order the FSA has decided to make against Mr Micalizzi prohibiting him from performing any function in relation to any regulated activities carried on by any authorised or exempt persons, or exempt professional firm

"the Relevant Period" means the period from 1 October 2008 until 27 February 2009.

"the Statements of Principle" means the FSA's Statements of Principle for Approved Persons

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

SUMMARY OF REASONS

3. The FSA has decided to take the action set out above in respect of Mr Micalizzi's conduct between 1 October 2008 to 27 February 2009 and during the subsequent FSA investigation.

4. Between 1 October 2008 and 31 December 2008, Dynamic Decisions Growth Premium Master Fund suffered catastrophic losses amounting to approximately 85% of its NAV in volatile market conditions following the collapse of Lehman Brothers. In total, the losses amounted to at least USD 390 million.

5. These losses were deliberately concealed from investors and other interested parties by Mr Alberto Micalizzi, whilst holding the position of Chief Executive Officer of the Manager of the Fund, Dynamic Decisions Capital Management Limited.

6. Instead of informing the Fund's investors that the Fund had failed and their money had been lost, Mr Micalizzi advised them that the Fund was performing positively, and that market volatility was benefiting the Fund's performance.

7. In order to conceal the losses from investors, Mr Micalizzi entered into a series of contracts with Company A in November and December 2008. Under the contracts, the Fund purportedly acquired units of the Bond.

8. The contracts were deliberately designed to create gains artificially which could be booked into the Fund's NAV. The mechanism for this was fairly simple: units of the Bond were sold to the Fund at a deep discount to their face value, and then valued at approximately their face value in the Fund's NAV. Contracts were also deliberately backdated to enable the acquisition of the Bond to be used to inflate the calculation of the NAV for the prior month.

9. Mr Micalizzi used this mechanism to wrongfully inflate the October 2008 NAV by approximately USD 90 million and the November 2008 NAV by an additional USD 178 million.

10. On 29 and 30 December 2008, a further series of agreements were signed whereby the Fund acquired Bond units from Company A, and its parent company, Company B, and then instantly sold them back to Company A. The acquisition contracts were deliberately backdated. These contracts were designed to inflate the Fund's NAV by a further USD 201 million.

11. Mr Micalizzi also wrongfully diverted at least USD 7.5 million of the Fund's (and therefore investors') money to Company B and Company A, in connection with the Bond transactions.

12. Despite the losses suffered by the Fund, Mr Micalizzi continued to seek new investors. He deliberately concealed the true value of the Fund, by the provision of false and misleading information, from one new investor who subsequently invested USD 41.8 million.

13. On 27 February 2009, the Directors of the Fund wrote to Mr Micalizzi, instructing DDCM to cease acting as investment manager of the Fund.

14. In May 2009, the Fund was placed in liquidation. The Fund's liquidator estimated that the Fund's assets on liquidation were worth approximately USD 10 million. To date, no payment has been made to any investor by the liquidator.

15. The FSA considers that Mr Micalizzi entered into the Bond transactions knowing that the Bond was not a genuine financial instrument.

16. In August 2010, Mr Micalizzi was informed that the FSA had opened an investigation into his conduct. During the course of the investigation, Mr Micalizzi has repeatedly provided false and misleading information to the FSA.

17. Mr Micalizzi's behaviour is amongst the most serious that the FSA has encountered. As a result of his dishonest actions during the Relevant Period, and the false and misleading information that he has provided to the FSA during the course of the investigation, Mr Micalizzi's conduct merits the imposition of a substantial financial penalty in the amount of £3,000,000.

18. Mr Micalizzi has demonstrated a total lack of honesty and integrity, such that he poses a substantial risk to the FSA's statutory objectives of maintaining confidence in the financial system and securing the appropriate degree of protection for consumers. For these reasons the FSA considers that it is necessary and proportionate to withdraw his approval to perform controlled functions and to make the Prohibition Order against him.

FACTS AND MATTERS

Background

19. Mr Micalizzi is the Chief Executive Officer and Director of DDCM, which he founded in 2004. In connection with his role he has held controlled functions CF1 (Director) and CF3 (Chief Executive) since 10 December 2004, and controlled function CF30 (Customer) since 1 November 2007.

20. DDCM is an FSA authorised fund management company, which managed the Fund. It also managed the Feeder Funds which invested in the Fund. The investment strategy for the Fund was overseen by Mr Micalizzi.

21. DDCM managed the majority of the Fund's money using the Main Strategy - a quantitative market-neutral investment strategy known as a "pairs strategy". Essentially, DDCM sought to identify two related stocks (i.e. a pair) which were inconsistently valued (relative to one another) by the market. Once identified, a long

position would be taken in the undervalued stock, and a short position in the overvalued stock. Some investments in pairs were effected through derivative instruments known as outperformance options.

22. As at 31 January 2008 the NAV of the Fund stood at USD 352.3 million. By 30 September 2008, the NAV of the Fund had increased to USD 436.5 million, approximately half of which was represented by unrealised gains on outperformance options.

The performance of the Fund from 1 October 2008 to 31 December 2008 and the agreements entered into in relation to the Bond

23. Between 1 October 2008 and 31 December 2008, the Fund's Main Strategy did not operate profitably, and the Fund suffered significant losses during this period, losing USD 85 million in October 2008; USD 172 million in November 2008; and USD 136 million in December 2008. The majority of the losses represented the unwinding of previously recognised (but unrealised) gains on outperformance options. In total, in the final quarter of 2008, the Main Strategy lost at least USD 390 million, or 85% of the Fund's total assets under management.

24. The losses resulted from market volatility in the wake of the collapse of Lehman Brothers, which in turn caused a significant deterioration in value of the Fund's outperformance option positions, which were valued in part by reference to market volatility.

25. Over the same period, the Fund ceased to operate its Main Strategy and booked purported profits of approximately USD 418 million by entering into a series of transactions with Company A, a company incorporated in Australia in 2007 and with no identifiable track record in the financial services or commodity trading industries.

26. In every case, the Fund's acquisitions of the Bond were made at deep discounts to the face value of the Bond, but when the Fund's NAV was calculated, the Bond was valued at close to, or above, its face value. The transactions in the Bond generated profit at a very similar rate to the losses incurred by the Main Strategy, and always slightly in excess of those losses, such that in each month a relatively modest profit was reported by the Fund.

27. The first contracts between the Fund and Company A were signed on 10 November 2008, by which the Fund acquired Bond units with a face value of USD 500 million for a consideration of USD 250 million.

28. The acquisition made on 10 November 2008 was artificially split into two transactions:

    (1) an acquisition of Bond units with a face value of USD 200 million for a consideration of USD 100 million. This transaction was backdated to 30 October 2008 so that the Bond units could be included in the Fund's October 2008 NAV. In the October 2008 NAV, the Bond was valued at 95.06% of face value, or USD 190.12 million. The October 2008 NAV therefore included an unrealised profit of USD 90.12 million on the Bond; and

    (2) an acquisition of Bond units with a face value of USD 300 million for a consideration of USD 150 million. This transaction was dated 10 November 2008. In the November 2008 NAV, the Bond was valued at 103.42% of face value. As a result, the November 2008 NAV was inflated by an additional USD 178 million.

29. Pursuant to these contracts, the Fund was to pay USD 5 million on 10 November 2008, and the balance of the sums due on 15 January 2009 (although the balance was never paid).

30. The Fund at this time also entered into further contracts pursuant to which Company A agreed to repurchase the Bond units for an increased sum, as follows:

    (1) by an agreement dated 5 November 2008, Company A agreed to purchase Bond units with a face value of USD 200 million from the Fund for a consideration of USD 105 million; and

    (2) by an agreement dated 10 November 2008, Company A agreed to purchase Bond units with a face value of USD 300 million from the Fund for a consideration of USD 157.5 million.

31. At some point after 10 November 2008, Mr Micalizzi on behalf of the Fund entered into two further agreements, which entitled the Fund to sell the Bond units back to

Company A on or before 15 January 2009 for an increased sum. These contracts were backdated to 3 and 10 November 2008, and provided as follows:

(1) by a contract dated 3 November 2008, the Fund acquired the option to sell Bond units with a face value USD 200 million to Company A for USD 105 million; and

(2) by a contract dated 10 November 2008, the Fund acquired the option to sell Bond units with a face value USD 300 million to Company A for USD 223.5 million.

32. Additionally, on 29 and 30 December 2008, a series of agreements were signed whereby the Fund acquired Bond units from Company A, and its parent company, Company B (which, similarly to Company A, had no identifiable track record in the financial services or commodity trading industries), and then immediately sold the same units back to Company A for a total of USD 201 million more than the purchase consideration. The acquisition contracts were again backdated (to 2 and 3 December 2008). These contracts provided as follows:

(1) by an agreement dated 2 December 2008, the Fund acquired Bond units with a face value of USD 150 million in consideration of which Company B received shares in the Fund with a value (based on the November NAV of the Fund) of USD 75 million;

(2) by a contract dated 3 December 2008, the Fund acquired Bond units from Company A with a face value of USD 200 million for consideration of USD 60 million; and

(3) by an agreement dated 29 December 2008 pursuant to which Company A agreed to purchase the Bond units referred to at (1) and (2) above from the Fund for USD 336 million.

33. The Fund's remaining holding of the Bond was valued at 89.78% of face value in the Fund's draft December 2008 NAV. As a result of this reduction in value from November 2008, the transactions referred to above, and accrued interest on the Bond, the Fund's draft December 2008 NAV was inflated by USD 141.52 million. In the

event, the December 2008 NAV of the Fund was never finalised.

The payments in relation to the Bond and the communications with the Fund's Prime Broker

34. Pursuant to the agreement dated 30 October 2008, the Fund was to pay USD 5 million to Company A on 10 November 2008. In early November 2008, DDCM approached its Prime Broker (the financial institution which provided centralised securities clearing facilities and collateralised lending to the Fund) in order to effect the payment. Following a meeting with Mr Micalizzi on 12 November 2008 to discuss the Bond transactions, the Prime Broker refused to make the payment to Company A, and terminated their prime brokerage agreement with the Fund, citing *inter alia* their concern that the transaction involved a subsequent repurchase of the Bond by Company B, and that they were not comfortable facilitating the settlements or payments in connection with the transactions based on the information available to them.

35. On receipt of the Prime Broker's letter of termination, Mr Micalizzi sent correspondence to the Prime Broker in which he denied that there were any agreements to resell the Bond to Company A or any other third party. As Mr Micalizzi was aware, this statement was incorrect - Mr Micalizzi had signed two such agreements, dated 5 and 10 November 2008.

36. Mr Micalizzi subsequently transferred a total of USD 5 million from the Fund to Company A in respect of the purchase of the Bond on 30 October 2008. No further sums were paid by the Fund in respect of the various purchases of the Bond.

37. In addition, Mr Micalizzi also transferred USD 1.8 million to Company B, on the basis of a purported loan (which was never repaid by Company B) and purported Bond dematerialisation expenses, and a further USD 750,000 to Company A, also for purported Bond dematerialisation expenses. Dematerialisation is the process by which a paper security is substituted by an accounting entry, which allows the security to be traded electronically. The Bond was never dematerialised.

Communications with existing investors

38. During the Relevant Period, Mr Micalizzi issued, or caused to be issued, a number of material communications to investors.

General Communications with investors: Monthly performance estimates

39. Early each month, an email was sent to the Fund's investors, setting out the estimated performance of each of the Fund's share classes for the previous month. The email would also include the Commentary Paragraph describing the Fund's performance during the period month. The Commentary Paragraph was prepared by Mr Micalizzi.

40. The performance estimate for the month of October 2008 was emailed to investors on 5 November 2008. It reported positive performance for all the Fund's share classes. The Commentary Paragraph stated that recent price movements had "*allowed a final positive return MTD*". The Fund's Main Strategy had, in fact, lost USD 85 million during the month. The Bond was allocated an unrealised gain of USD 90 million.

41. On 3 December 2008, the November performance estimate was emailed to all investors. The NAV estimate suggested that the Main Strategy was profitable, and the Commentary Paragraph explained that market volatility was boosting performance. However, as a consequence of a spike in market volatility, there was a significant decrease in the value of the Fund's outperformance option positions.

42. On 6 January 2009, the December performance estimate was emailed to investors, reporting positive performance for the Fund, and again making no reference to the losses occurring. Instead it stated, "*Through year end we experienced a more solid basis for our pairs and we have also executed some cash management activities that increased the monthly return*".

43. No mention was made in the October, November or December 2008 Performance Estimates of the losses incurred by the Main Strategy, the fact that, by mid-November 2008, the Main Strategy had largely ceased to operate, or the Bond transactions.

19 January 2009 letter

44. On 19 January 2009, Mr Micalizzi sent a letter to a number of parties, including investors in the Fund. The letter summarised the Fund's performance for the year ended 31 December 2008. A key passage stated as follows:

> *"Despite the exceptional market conditions of 2008, Dynamic Decisions enjoyed continued success and the* [Unlevered Feeder] *achieved our target annual return across all share classes…"*
>
> *"…the* [Unlevered Feeder] *and* [Levered Feeder] *in USD returned +9.1% with 2.0% volatility and +16.2% with 4.0% volatility respectively, notably with only one slightly negative month in August. We are satisfied with the results and it supports our hypothesis that the mean reversion process built into the* [Fund's] *model works more efficiently in a high volatility environment."*

45. This was untrue. Rather than making positive returns (of 9.1% and 16.2% for the Unlevered and Levered Feeder Funds respectively), the Fund's Main Strategy had in fact lost approximately 85% of the Fund's total assets under management.

46. The letter continued:

> *"Our investable universe of pairs increased from 160 at the beginning of the year to 240 now. This allowed us to gradually expand the number of pairs in our portfolio without lowering the threshold for the strength of our conviction, further reducing volatility without compromising the returns…"*

47. Again, this was untrue. By this time, the assets of the Fund consisted almost entirely of the Bond and other illiquid instruments, and not in positions in accordance with the Main Strategy.

Communications with specific investors

48. In addition to Mr Micalizzi providing general communications to all investors, he sent further specific communications to two of the Fund's investors, Investor A and Investor B.

Specific Communications with Investor A

49. Between 1 October 2008 and 31 December 2008, Investor A was the Fund's largest investor, holding almost half of the Fund's shares. Investor A's investment was made in the form of lending provided to the Fund as leverage for the Levered Feeder Fund. Investor A made its returns by charging interest, rather than by profiting from any gain in value of its investment in the Fund.

50. DDCM had agreed with Investor A that DDCM would provide them with regular information in relation to the Fund's portfolio.

51. In accordance with this agreement, Investor A (and other parties, including Investor B) were sent the weekly Lenders Report. The Lenders Report generally consisted of a spreadsheet listing the Fund's positions, and a second spreadsheet which compared the Fund's positions against the investment restrictions agreed with the leverage providers

52. On 11 November 2008, Investor A was sent the 7 November 2008 Lenders Report. The list of the Fund's positions included an entry for the Bond, which was valued at 100% of its face value of USD 200 million. The Lenders Report therefore disclosed enough information for Investor A to know that the Fund had invested in a bond with a face value of USD 200 million which was valued at par. However, it was not possible to ascertain from the Lenders Report that the purchase price of the Bond was only USD 100 million (which had not, in fact, been paid), so that the Fund was accounting for a gain of USD 100 million on the Bond on its books.

53. The 7 November 2008 Lenders Report stated that the Bond was a cash instrument. The Bond was in fact an illiquid private bond with no cash-like features.

54. The Lenders Reports for 21 November and 5 December 2008 (sent to Investor A on 9 December 2008) also represented the Bond as a cash position. The reports stated that the Bond position had a face value and market value of USD 200 million (the value attributed to the Bond in the November NAV was USD 517 million).

55. Investor A first began to seek information in connection with the Bond position on 12 December 2008, following its review of the 5 December 2008 Lenders Report, which stated that the Fund's Bond position had a face value and market value of USD 200

million, when in fact the Fund's Bond position at this date had a face value of USD 500 million.

56. On 15 December 2008, Investor A requested a conference call with Mr Micalizzi in relation to the Bond.

57. During the conference call, which took place on 16 December 2008, Mr Micalizzi advised Investor A that the Fund's investment in the Bond was a cash management activity. Further, Mr Micalizzi stated that, in addition to its Bond position, the Fund had unencumbered cash balances of approximately USD 220 – 250 million

58. In later discussions with Investor A, Mr Micalizzi:

(a) understated the exposure of the Fund to the Bond, by claiming that the exposure was only USD 5 million, when in fact the November NAV of the Fund included unrealised gains of approximately USD 268 million in relation to the Bond;

(b) represented that the Bond satisfied the definition of a cash management security as set out in the Investor A Restrictions, and that it therefore complied with those restrictions, when it did not; and

(c) did not mention any of the losses suffered by the Main Strategy.

Specific communications with Investor B

59. Investor B was also, from 1 December 2008, a provider of lending to the Fund, providing leverage for the Levered Feeder Fund. Mr Micalizzi communicated with Investor B as follows:

(a) on 5 November 2008 Investor B was sent a performance commentary which stated that the Fund's Main Strategy was performing profitably, when, in reality, the Main Strategy had incurred losses of approximately USD 85 million in October 2008;

(b) on 20 November 2008 he emailed a manually altered Lenders Report of 7 November 2008 to Investor B which deliberately overstated the Fund's cash position by USD 132 million and on 21 November 2008 he emailed the

Lenders Report of 14 November 2008 to Investor B which deliberately overstated the Fund's cash position by USD 142 million;

(c) on 21 November 2008 he stated that the size of the Fund's Bond position was USD 200 million at face value, when it was in fact USD 500 million; and

(d) also on 21 November 2008 he stated that the Fund's exposure to the Bond was limited to USD 5 million, when in fact the NAV of USD 385 million at 30 November 2008 included unrealised gains of USD 268 million on the Bond;

60. Subsequently, on 1 December 2008, Investor B invested USD 41.8 million in the Fund.

Statements made to the FSA during the course of the investigation

61. In August 2010, the FSA commenced an investigation into Mr Micalizzi's conduct. During the investigation Mr Micalizzi provided information to the FSA, including information provided in compelled interview, and documentary evidence provided both on a voluntary basis and in response to compelled requests.

Information relating to back-dating of the Bond transactions

62. On 12 April 2011, during the course of a compelled interview with the FSA, Mr Micalizzi was questioned as to whether any of the Bond documentation had been backdated. Mr Micalizzi said that it had not been. Throughout the interview Mr Micalizzi stated that the Fund was involved in negotiations to acquire the Bond from early October 2008 onwards. In an attempt to prove this, and in response to a compelled document request, Mr Micalizzi subsequently provided various emails to the FSA, and advised that these emails related to negotiations to acquire the Bond.

63. There were in fact no negotiations to acquire the Bond before November 2008, and the evidence forwarded by Mr Micalizzi related to a different proposed bond transaction that was discussed in mid-October 2008.

Information relating to the purported insurance of the Bond

64. On 31 October 2010, Mr Micalizzi advised the FSA that he had been informed by a prospective purchaser of the Bond that insurance had been obtained in respect of any non-performance by the issuer of the Bond. Mr Micalizzi further stated that this insurance established that the Bond was a genuine financial instrument, and that the Fund's holding in the Bond was worth USD 460 – 465 million.

65. No insurance cover had been obtained. Mr Micalizzi was aware of this when contacting the FSA, and deliberately misled the FSA by stating that insurance cover had been provided.

FAILINGS

66. The regulatory provisions relevant to this Notice are set out in Annex A.

Breach of Statement of Principle 1 of the FSA's Statements of Principle for Approved Persons

67. The FSA considers that Mr Micalizzi's conduct as described in this Notice demonstrates that he acted dishonestly and without integrity in carrying out his controlled functions, in breach of Statement of Principle 1 of the Statements of Principle for Approved Persons.

68. In particular:

(a) Mr Micalizzi entered into a series of transactions with Company A for the purchase and re-sale of the Bond, and authorised the payment of USD 5 million by the Fund to Company A for the purchase of the Bond. Mr Micalizzi entered into these transactions despite there being no commercial rationale for the transactions, and no asset of any value was received by the Fund in return for the payments made. In fact, the purpose of the transactions was to create purported profits in order to conceal the losses the Fund had incurred from investors, and when agreeing to purchase the Bond, Mr Micalizzi was aware that the Bond was not a genuine financial instrument.

(b) Mr Micalizzi paid a further USD 2.55 million from the Fund to company B,

being a loan of USD 1,300,000, purported dematerialisation expenses of USD 750,000 and an unspecified amount of USD 500,000. The loan has not been repaid, and the Fund did not receive any benefit for these payments. The FSA considers that Mr Micalizzi made the loan payment knowing that the loan was unlikely to be repaid, and made the other payments knowing that they were not legitimate expenses payable by the Fund.

(c) Mr Micalizzi deliberately misled the investors in the Fund, and other persons, as follows:

(i) he attempted to mislead the Fund's Prime Broker by falsely denying the existence of any agreement to resell the Bond to company A or any third party;

(ii) he back-dated contracts for the acquisition of the Bond, in order to include these acquisitions of the Bond in the calculation of the NAV of the Fund for the prior month.

(iii) he failed to advise investors of the losses incurred, and instead concealed the losses by deliberately and falsely manipulating the NAV of the Fund by artificially inflating the value of the Bond; and also provided false information regarding the investment in the Bond and the sums paid in this regard, as well as falsely advising that the Bond complied with certain investment restrictions.

69. Mr Micalizzi acted this way in the course of carrying out his controlled functions at DDCM. His actions formed part of a persistent course of dishonest concealment of the Fund's true position, without regard for the possible risks for investors in the Fund. Such conduct by an approved person is unacceptable and clearly demonstrates a total lack of honesty and integrity on his part.

70. During the course of the FSA's investigation into these matters, Mr Micalizzi deliberately provided false and misleading information on several occasions to the FSA. The FSA considers this to be an extremely serious aggravating factor.

SANCTION

71. The FSA considers the conduct summarised above to be particularly egregious because Mr Micalizzi deliberately and persistently misled his investors as to the value and performance of the Fund throughout the Relevant Period, thereby seriously compromising their ability to accurately assess the performance of their investments. Furthermore, Mr Micalizzi procured significant further investment into the Fund by providing information to a new investor which he knew to be false. At the time when Mr Micalizzi fraudulently procured this investment, he knew that there was no realistic prospect of the investor recovering its money because of the losses which had been sustained by the Fund.

Prohibition and withdrawal of approval

72. The facts and matters described above demonstrate that:

a) Mr Micalizzi has failed to act with integrity and has acted dishonestly by deliberately misleading investors as to the value and performance of the Fund;

b) this deliberate course of conduct directly impugns Mr Micalizzi's honesty, integrity and reputation and demonstrates that he is not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised or exempt person;

c) these findings directly relate to the performance by Mr Micalizzi of his controlled functions, and are particularly serious given his position of significant influence; and

d) this conduct demonstrates that Mr Micalizzi presents a risk to the FSA's statutory objectives of consumer protection and market confidence.

73. As a result, the FSA considers it appropriate to make a prohibition order in the terms set out above in order to achieve its regulatory objectives, and to withdraw Mr Micalizzi's approval.

Financial Penalty

74. The FSA's current penalty regime applies to breaches which take place on or after 6

March 2010. However, in this matter, the Relevant Period falls under the previous penalty regime. Therefore, in deciding whether to take action and determining the appropriate level of financial penalty, reference has been made to Chapter 6 of the Decision Procedure and Penalties Manual, which forms part of the FSA Handbook and sets out the FSA's policy on the imposition of financial penalties prior to 6 March 2010. In addition, the FSA has had regard to the corresponding provisions of Chapter 7 of the Enforcement Guide.

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

76. In determining whether a financial penalty is appropriate and proportionate the FSA will consider all of the relevant circumstances of a case. DEPP 6.5.2G sets out a non-exhaustive list of factors that may be of relevance in determining the amount of a financial penalty. In deciding the appropriate penalty, the FSA considers that factors outlined below to be particularly relevant:

Deterrence DEPP 6.5.2G(1)

77. In determining the appropriate level of penalty, the FSA has had regard to the need to send a strong and robust message to the industry, that controlled function holders must act with honesty and integrity at all times in order not to endanger the FSA´s regulatory objectives. Such objectives include the protection of consumers, maintaining market confidence and the reduction of financial crime.

The nature, seriousness and impact of the breach in question DEPP 6.5.2G(2)

78. Mr Micalizzi´s conduct is considered to be particularly serious for the following reasons:

    (a) he acquired a fraudulent instrument, namely the Bond, and made substantial payments in the amount of USD 7.5 million in relation to the transactions, knowing that the Bond was not a legitimate financial instrument;

(b) he deliberately misled investors; consequently:

(i) investors were prevented from discovering the loss in the value of the Fund; and

(ii) Investor B's investment of USD 41.8 million was made on the basis of false representations about the performance and NAV of the Fund.

(c) he made false and misleading statements to the FSA in regulatory proceedings, in order to conceal his misconduct.

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

79. Mr Micalizzi's actions were deliberate and were taken by him to prolong the life of the Fund by concealing its true position from investors. This was done without regard to the significant risks to which they were exposed as a result.

Whether the person on whom the penalty is to be imposed is an individual DEPP 6.5.2G(4)

80. In determining the financial penalty the FSA recognises that the financial penalty imposed on Mr Micalizzi is likely to have a significant impact on him as an individual.

The size, financial resources and other circumstances of the person on whom the penalty is to be imposed DEPP 6.5.2G(5)

81. The FSA notes that the imposition of the Financial Penalty is likely to cause Mr Micalizzi serious financial hardship.

Conduct following the breach DEPP 6.5.2G (8)

82. As detailed above, Mr Micalizzi has deliberately attempted to mislead the FSA in regulatory proceedings. This behaviour has significantly increased the level of penalty that the FSA considers to be appropriate in the circumstances.

Disciplinary record and compliance history DEPP 6.5.2(9)

83. Mr Micalizzi has not previously been the subject of FSA enforcement action.

84. Having had regard to all of the factors outlined above the FSA has decided to impose a financial penalty on Mr Micalizzi of £3,000,000.

REPRESENTATIONS AND FINDINGS

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

Admissions

86. Mr Micalizzi accepted that:

(a) the communications to investors in the form of the commentaries to the performance estimates were misleading as they did not refer to the losses on the Main Strategy; he stated that he was very sorry for this and recognised that he should have made full disclosure of those losses to all investors;

(b) the letter dated 19 January 2009 to investors was misleading; and

(c) the due diligence undertaken on the Bond prior to purchase was, with the benefit of hindsight, inadequate and in the circumstances he had misjudged the risks of entering into the transactions and failed adequately to consider the possibility that the Bond might not be genuine or as valuable as he believed.

87. The FSA notes Mr Micalizzi's admissions. However, the FSA has found Mr Micalizzi's representations to be largely lacking in credibility, given the documentary evidence. Mr Micalizzi has explained his behaviour as set out in this Notice as being the result of inexperience or errors on his part, or of miscommunications and misunderstandings. The FSA has found that, in fact, Mr Micalizzi deliberately misled investors, the FSA and others, as set out above.

Genuineness of the Bond

88. Mr Micalizzi made representations that:

(a) he acknowledged that his conduct had fallen below that expected of an approved person. With hindsight he accepted that he failed adequately to consider the possibility that the Bond may not have been genuine, or as valuable as he believed – he may have been exploited by others due to his lack of experience. He should have carried out further due diligence on the Bond and events have shown that the valuations applied to the Bond units in the Fund's accounts were not justified. He did, however, believe at the time that those valuations reflected the value at which the Bond units could be sold;

(b) various correspondence involving Mr Micalizzi, such as emails in November 2008, support his position that he believed the Bond was genuine. He also openly discussed the nature of the Bond with a number of third parties. He would not have taken steps to convince reputable parties and other sophisticated market participants as to the genuineness of the Bond if he had expected that such interaction would be likely to raise serious concerns as to its genuineness. Further, he did not conceal the Main Strategy's losses from all of the Fund's investors – he discussed them with some of those investors; and

(c) he believed during the Relevant Period that the Bond was a genuine financial instrument, that the collateral supporting the Bond existed, and that the Bond units could be sold by the Fund because of the value of the collateral. If he had not believed that the Bond was genuine, there would have been no reason to purchase units of the Bond as they could not have provided any benefit to the Fund, and could only have led to the failure of the Fund.

89. The FSA has found that:

(a) the Bond was not a credible financial instrument. The premise and structure of the Bond, as well as the purported profits, were obviously implausible. The related documentation appeared on its face to lack authenticity. Further, there was no sensible commercial rationale behind the Bond transactions. In the circumstances it is clear that Mr Micalizzi chose not to carry out any meaningful due diligence on the Bond as

he was aware that it was not genuine;

(b) taking all of the evidence into account, Mr Micalizzi's contemporaneous correspondence does not demonstrate that he honestly believed that the Bond was genuine. Much of his contact with third parties related to his efforts to make the Bond more tradable, but does not demonstrate that he believed it was genuine. Further, there is no evidence that he ever informed any investors about the true position regarding the Main Strategy's losses or the amount of profit recognised on the Bond transactions. He deliberately gave investors a false and misleading impression about the Bond and the Fund; and

(c) Mr Micalizzi was fully aware throughout the Relevant Period that the Bond was not a genuine financial instrument and therefore had no value. He used the Fund's transactions in the Bond deliberately to conceal the losses incurred by the Main Strategy of the Fund. Mr Micalizzi recorded profits on the Bond each month which correlated extremely closely to the losses made on the Main Strategy, in some cases backdating contracts to record profits in earlier months. It is likely that he did so in an attempt to stave off the liquidation of the Fund so that he could attempt to raise sufficient capital from further investment to keep the Fund in operation, thus exposing further investor funds to the risk, and in the circumstances likelihood, of loss.

Investor A

90. Mr Micalizzi made representations that:

(a) he did not mislead Investor A by referring to an "exposure" of USD 5 million. He used the term "exposure" to mean the amount payable for the Bond that would be paid by the Fund; and

(b) although he mistakenly provided incorrect information to Investor A concerning the unencumbered cash position of the Fund, the information had no impact since Investor A decided to redeem its investment immediately thereafter.

91. The FSA has found that:

(a) Given that the investors, including Investor A, did not know that a USD 268 million gain had been recognised on the Bond transaction, it was deeply misleading

for Mr Micalizzi to lead Investor A to believe that the most the Fund stood to lose was USD 5 million; and

(b) irrespective of the outcome of Mr Micalizzi's attempt to mislead Investor A, he did so deliberately and this in itself was a breach of Statement of Principle 1.

Investor B

92. Mr Micalizzi made representations that:

(a) he did not mislead Investor B concerning the value ascribed to the Bond in the Fund or in relation to the purchase price or the amount paid; in the second week of November 2008 he told Investor B about the extent of the losses suffered by the Main Strategy in October 2008. Further, his reference to "exposure" in correspondence with Investor B was a reference to the amount of the price payable for the Bond that would be paid by the Fund; and

(b) he did not mislead Investor B in relation to the "cash" line in the Lenders Reports dated 7 and 14 November 2008 as these were designed to reconcile the Lenders Report to the previous month end trial balance. The components to be included had been agreed between DDCM and Investor B.

93. The FSA has found that:

(a) the documentary evidence shows that Mr Micalizzi misled Investor B as set out in this Notice and there is no evidence to support his claim that he informed Investor B about the losses the Fund's Main Strategy had incurred. As with Investor A, Mr Micalizzi's use of the term "exposure" was highly misleading in the circumstances; and

(b) Mr Micalizzi's explanation regarding the "cash" line is not credible. The purpose of a reconciliation is to explain why the numbers are different. Taking three figures together as one figure called "cash" would not serve the objective of reconciling the NAV of the Fund. It is not credible that Investor B agreed to this approach as it would not have assisted it in understanding what was in the Fund's portfolio. Further, there

is no evidence to support Mr Micalizzi's claim that this was agreed with Investor B.

Misleading the FSA

94. Mr Micalizzi made representations that:

(a) he never intended to mislead the FSA. English is not his first language and this may have contributed to some imprecision in his communications, leading to confusion;

(b) the contract for the purchase of USD 200 million of Bond units was signed after the end of October but related to an agreement to purchase which was made in October 2008; he had not carefully reviewed all of the purchase and sale contracts for the Bond units before his FSA interview, hence his denial that any had been backdated. The email correspondence that he had provided to the FSA, which wrongly gave the impression that the Bond had been discussed earlier than was in fact the case, had been provided in an attempt to assist the FSA and, though it was misleading in the circumstances, this was simply an error on Mr Micalizzi's part; and

(c) he believed that insurance cover had been obtained for the Bond when he informed the FSA of this.

95. The FSA has found that:

(a) Mr Micalizzi's English is very good, as shown in his correspondence and in person, and it is not credible that language difficulties were the cause of any of his misleading statements to the FSA, or to any other party, as set out in this Notice;

(b) Mr Micalizzi's current explanation regarding the backdating of one of the contracts does not correlate with his clear comments in interview. Further, he maintains that no other contracts were backdated, whereas in the FSA's view it is clear from the documentary evidence that they were. It is also not credible that the emails that Mr Micalizzi provided in support of his claims, which were highly misleading in the circumstances, were simply provided in error. This is particularly so where it appears that the emails provided were deliberately selected to be misleading, while at least one other email which would have clarified the position was

omitted. The FSA considers that Mr Micalizzi deliberately sought to mislead the FSA in this regard; and

(c) Mr Micalizzi deliberately misled the FSA by stating that, following lengthy due diligence by a bank (which he knew had not taken place), insurance coverage had been obtained against the risk of non-performance of the Bond, and that the genuineness of the Bond had therefore been established.

Sanction

96. Mr Micalizzi made representations that:

(a) in all the circumstances the penalty was too high, in particular in comparison with other FSA cases, such as that of Mr Visser. Mr Micalizzi did not stand to make any personal gain from the acquisition of the Bond units. The significant losses suffered by the Fund were suffered as a result of the Main Strategy. The loss suffered by the Fund as a result of the investment in the Bond, assuming it has a zero value, was around USD 7.5 million; and

(b) the imposition of the penalty would cause Mr Micalizzi serious financial hardship.

97. The FSA has found that:

(a) Mr Micalizzi's conduct was more serious than that of Mr Visser taking into account all of the circumstances. These included the size of the Fund, the significant amount invested as a result of Mr Micalizzi's misleading statements (with Investor B investing USD 41.8 million), the payment of USD 7.5 million in respect of the Bond which he knew was not genuine, and the fact that he deliberately misled the FSA. Mr Micalizzi's misconduct directly caused losses to investors of almost USD 50 million; by comparison, Mr Visser's misconduct directly caused losses of around USD 8 million. Taking into account the penalties imposed in other FSA cases, including that of Mr Visser, and in all of the circumstances, the penalty is appropriate; and

(b) the FSA will take serious financial hardship into account when determining the appropriate level of a financial penalty. However, it may not be appropriate to reduce a penalty where to do so would reduce its deterrent effect, even where this may result

in bankruptcy for the person concerned. The FSA considers that Mr Micalizzi's deliberately dishonest misconduct, as set out above, was so serious that the penalty should not be reduced.

PROCEDURAL MATTERS

Decision maker

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

99. This Notice is given under sections 57, 63 and 67 and in accordance with section 388 of the Act. The following statutory rights are important.

The Tribunal

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

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

101. Mr Micalizzi and DDCM should note that a copy of the reference notice (Form FTC3) must also be sent to the FSA at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to Charles Kuhn and Andrew Speake at the FSA, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Access to evidence

102. Section 394 of the Act applies to this Notice. The person to whom this Notice is given

has the right to access:

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

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

Confidentiality and publicity

103. This Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). The effect of section 391 of the Act is that the person to whom this Notice is given or copied may not publish the Notice or any details concerning it unless the FSA has published the Notice or those details. The FSA may publish such information about the matter to which a Decision Notice or Final Notice relates as it considers appropriate. The facts and matters contained in this Notice may therefore be made public.

FSA contacts

104. For more information concerning this matter generally, contact Charles Kuhn (direct line: 020 7066 9070) or Andrew Speake (direct line: 020 7066 5564) at the FSA.

Martin Hagen

Deputy Chairman, Regulatory Decisions Committee

ANNEX A:

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. Prohibition and Withdrawal of Approval

1.1. The FSA's statutory objectives, set out in section 2(2) of the Act are: market confidence; financial stability; consumer protection; and the reduction of financial crime.

1.2. The FSA has the power, pursuant to section 56 of the Act, to make an order prohibiting an individual from performing a specified function, any function falling within a specified description, or any function, if it appears to the FSA that that individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or exempt professional person.

1.3. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description or all regulated activities.

1.4. Pursuant to section 63 of the Act, the FSA 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. The Fit and Proper Test for Approved Persons

2.1. The part of the FSA Handbook entitled the Fit and Proper Test for Approved Persons ("FIT") sets out guidance on how the FSA will assess the fitness and propriety of a person to perform a particular controlled function.

2.2. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.

2.3. FIT 1.3.1G states that the FSA will have regard to a number of factors when assessing the fitness and propriety of a person and that the most important considerations will be the person's honesty, integrity and reputation, competence and capability and financial soundness.

2.4. FIT 2.1.1G provides that, in determining a person's honesty, integrity and reputation, the FSA will have regards to factors including, but not limited to, those set out in FIT 2.1.3G. FIT 2.1.3.G sets out the following factors, amongst others, which are relevant to this matter:

(1) whether the person has contravened any of the requirements and standards of the regulatory system (FIT 2.1.3(5)G); and

(2) whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory systems and with other legal, regulatory and professional requirements and standards (FIT 2.1.3(13)G).

3. The FSA's policy in relation to prohibition orders and withdrawal of approval

3.1. The FSA's policy in relation to prohibition orders and withdrawal of approval is set out in Chapter 9 of the Enforcement Guide ("EG").

3.2. EG 9.4 summarises the FSA's policy on making prohibition orders and the circumstances under which Enforcement will consider recommending such action. In particular:

"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."

3.3. EG 9.5 continues as follows: *"The scope of a prohibition order will depend on the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of the risk which he poses to consumers of the market generally."*

3.4. EG 9.8 provides: *"When the FSA has concerns about the fitness and propriety of an approved person, it may consider whether it should prohibit that person from performing functions in relation to regulated activities, withdraw its approval, or*

both. In deciding whether to withdraw its approval and/or make a prohibition order, the FSA will consider in each whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions, for example public censures or financial penalties, or by issuing a private warning."

3.5. EG 9.9 states that, when it decides to exercise its power to make a prohibition order against an approved person and/or withdraw its approval, the FSA will consider all the relevant circumstances of the case. These may include, but are not limited to, the following factors:

(1) 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. One criterion is the honesty, integrity and reputation of the individual (FIT 2.1);

(2) whether and to what extent the approved person has failed to comply with the Statements of Principle issued by the FSA with respect to the conduct of approved persons;

(3) whether the approved person has engaged in market abuse;

(4) the relevance and materiality of any matters indicating unfitness;

(5) 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; and

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

3.6. EG 9.11 provides that due to the diverse nature of the activities and functions which the FSA regulates, it is not possible to produce a definitive list of matters which the FSA might take into account when considering whether an individual is not a fit and proper person to perform a particular, or any, function in relation to a particular, or any firm. However, EG 9.12 gives examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order or to withdraw the approval of an approved person. These examples include:

(1) Providing false or misleading information to the FSA including information relating to business arrangements;

(2) severe acts of dishonesty, e.g. which may have resulted in financial crime; and

(3) serious breaches of the Statements of Principles for approved persons.

3.7. EG 9.14 states that where the FSA considers it appropriate to withdraw an individual's approval to perform a controlled function within a particular firm, it will also consider, at the very least, whether it should prohibit the individual from performing that function more generally. Depending on the circumstances, it may consider that the individual should also be prohibited from performing other functions.

3.8. EG 9.23 provides that in appropriate cases, the FSA may take other action against an individual in addition to making a prohibition order and/or withdrawing approval, including the use of its powers to impose a financial penalty.

4. Statements of Principle and Code of Conduct for Approved Persons

4.1. The FSA's statutory objectives, set out in section 2(2) of the Act, include the protection of consumers.

4.2. Section 66 of the Act provides that the FSA may take action against a person if it appears to the FSA that he is guilty of misconduct and the FSA is satisfied that it is appropriate in all the circumstances to take action against him.

4.3. An approved person is guilty of misconduct if, while an approved person, he has failed to comply with a Statement of Principle issued under section 64 of the Act or has been knowingly concerned in a contravention by the relevant authorised person or a requirement imposed on that authorised person by or under the Act.

4.4. The Statements of Principle and Code of Conduct for Approved Persons ("APER") sets out the fundamental obligations of approved persons and also conduct which, in the opinion of the FSA, constitutes a failure to comply with a particular Statement of Principle. It also describes factors which the FSA will take into account in determining whether an approved person's behaviour complies with it.

4.5. APER 3.1.3G states that, when establishing compliance with, or a breach of, a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour expected in that function.

4.6. APER 3.1.4G states that an approved person will only be in breach of a Statement of Principle when 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 circumstances.

Statement of Principle 1

4.7. Statement of Principle 1 is set out in APER 2.1.2P and requires that an approved person must act with integrity in carrying out his controlled function.

4.8. APER 3.3.1E provides that in determining whether or not the conduct of an approved person performing a controlled function complies with the Statements of Principle 1 to 4, the following are factors which, in the opinion of the FSA, are to be taken into account:

(1) whether that conduct relates to activities that are subject to other provisions of the Handbook; and

(2) whether that conduct is consistent with the requirements and standards of the regulatory system relevant to his firm.

4.9. APER 4.1 lists the types of conduct which, in the opinion of the FSA do not comply with Statement of Principle 1.

4.10. APER 4.1.3E states that deliberately misleading (or attempting to mislead) a client by act or omission falls within the type of conduct that would not comply with Statement of Principle 1. Examples of this type of behaviour are set out at APER 4.1.4E and include falsifying documents, misleading a client about the risks of an investment, mismarking the value of investments or trading positions, and procuring the unjustified alteration of prices on illiquid or off-exchange contracts.

4.11. APER 4.1.12E states that deliberately designing transactions so as to disguise

breaches of requirements and standards of the regulatory system also falls within the type of conduct that would not comply with Statement of Principle 1 .

5. The FSA's policy on financial penalties

5.1. The FSA's policy on the imposition and amount of penalties prior to 6 March 2010 was set out in Chapter 6 of the Decision Procedure and Penalties manual ("DEPP") in the FSA Handbook. This stated that the FSA would consider the full circumstances of each case when determining whether or not to take action for a financial penalty, and set out a non-exhaustive list of factors that may be relevant for this purpose.

5.2. The principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour.

5.3. The FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty. DEPP 6.2.1G set out guidance on a non-exhaustive list of factors that may be of relevance in determining whether to take action for a financial penalty, which include the following:

(1) the nature, seriousness and impact of the suspected breach (DEPP 6.2.1G(1)) including;

(a) whether the breach was deliberate or reckless; and

(b) the duration and frequency of the breach;

(2) the conduct of the person after the breach (DEPP 6.2.1G(2));

(3) the previous disciplinary record and compliance history of the person (DEPP 6.2.1G(3));

(4) FSA guidance and other published materials (DEPP 6.2.1G(4)).

(5) action taken by the FSA in previous similar cases (DEPP 6.2.1G(5)).

5.4. The FSA will consider all the relevant circumstances of a case when it determines the level of financial penalty. DEPP 6.5.2G sets out guidance on a non-exhaustive list of

factors that may be of relevance when determining the amount of a financial penalty.