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## FINAL NOTICE

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To: **Cantor Index Limited**  
Of: **One America Square**  
**London EC3N 2LS**  
Date: **30 December 2004**

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives Cantor Index Limited (“Cantor Index”) final notice about a requirement to pay a financial penalty.**

### **1. THE PENALTY**

- 1.1. The FSA gave Cantor Index a Further Decision Notice dated 15<sup>th</sup> December 2004 which notified Cantor Index that, pursuant to section 206 of the Financial Services and Markets Act 2000 (the “Act”), the FSA had decided to impose a financial penalty of £70,000 on Cantor Index in respect of breaches of Rule 3.2.6 in the part of the FSA's Handbook entitled *Senior management arrangements, Systems and Controls* ("SYSC Rules"), Rules 3.6.1(1), 3.7.1(1), 3.7.4, 3.8.4(1) and 3.8.8(1)(c) in the part of the FSA's Handbook entitled *Conduct of Business* ("COB Rules") and Principles 3 and 7 of the FSA's Principles for Businesses ("FSA Principles").
- 1.2. Cantor Index made a reference to the Financial Services and Markets Tribunal which has been withdrawn by agreement.
- 1.3. Accordingly, for the reasons listed below and having agreed with Cantor Index the facts and matters relied upon, the FSA imposes a financial penalty of £70,000 on Cantor Index (the "Penalty").

### **2. REASONS FOR ACTION**

- 2.1. The FSA has decided to impose the Penalty on Cantor Index in respect of breaches of the FSA Rules and Principles referred to in paragraph 1.1 in relation to:

- (1) Cantor Index's failure to establish and maintain effective systems and controls to enable it to comply with the applicable requirements and standards contained in Chapter 3 of the FSA's Conduct of Business Sourcebook ("COB 3"). In particular:
  - (a) Cantor Index did not have in place sufficiently rigorous and effective procedures for the proper prior approval of financial promotions to ensure that potential customers would fully understand their potential risks. Whilst its Compliance Manual made clear that its Compliance department should approve all marketing material prior to publication, a system of approval by e-mail on a case-by-case basis without the maintenance of any master record was not adequate to ensure that Compliance's approval was in all cases sought and, if given, recorded; and
  - (b) Cantor Index's senior management failed to ensure that there were adequate procedures for the prior approval of financial promotions and that they were systematically monitored.

The lack of adequate procedures and controls summarised above contributed to, or failed to prevent, the following failures set out below.

- (2) Cantor Index's failure to ensure that the financial promotions (the "Free Xda" promotions) which made up its major promotional campaign to launch Cantor Mobile - its new mobile spread betting device - at the beginning of September 2003 were clear, fair and not misleading and, in particular, its failure to ensure that the "Free Xda" promotions contained an adequate risk warning notice; and
- (3) Cantor Index's failure to make and retain adequate records demonstrating that it had confirmed that each "Free Xda" promotion complied with COB 3.

2.2. Cantor Index's breaches are viewed as being serious because of the following:

- (1) Cantor Index's arrangements and structures for ensuring the compliance of new financial promotions lacked rigour, effectiveness and proper documentation. The warnings and advice given by compliance staff were not consistent or adequate and were not in crucial respects followed by those preparing aspects of the Xda campaign;
- (2) The "Free Xda" promotions promoted spread betting, which is a high risk investment activity. A key risk of spread betting is that if a spread bet position moves against the customer he can incur additional liabilities far in excess of his initial margin deposit. It is therefore imperative that financial promotions disclose this in a clear, simple and prominent manner so that consumers fully understand the risk that they are taking on. The FSA had indicated in its Plan and Budget for 2002/2003 the increasing importance it attached to "fair treatment of consumers by enhancing the minimum standards for information given by firms to consumers". However, several of the "Free Xda" promotions did not contain a risk warning notice;

- (3) The main attraction of the campaign was the offer of a "free" combined handheld computer and mobile telephone known as an "Xda" which enabled a subscriber to spread bet in "real time". This offer was a strong incentive to open a spread betting account with Cantor Index. However, the Xda was only truly "free" if the customer placed spread bets above a certain value within the first nine months of opening an account. Accordingly, the structure of the offer drove consumers to spread bet;
- (4) Cantor Index chose to promote spread betting with this new device in ways that the "Free Xda" offer would come to the attention of relatively less experienced investors, who were encouraged to open a spread betting account by the incentive of receiving a free Xda. The means of promotion included handing out flyers, displaying large posters in railway stations, and advertising in the popular press. To open a spread betting account, although investors were required to agree to terms and conditions containing risk warnings and confirm that they had read and understood them, Cantor Index could not assume that investors would actually read such warnings. Cantor Index should have paid more attention to the greater potential risk posed to less experienced investors and the commensurately greater need to ensure that the risks associated with spread betting were likely to be understood by those persons. The lack of any risk warnings could have resulted in inexperienced potential investors being uninformed of those risks; and
- (5) The defects in this promotion were not identified by Cantor Index until four days into the "Free Xda" campaign, by which time the matter had already come to the attention of the FSA's Financial Promotion Monitoring Team ("FPMT") who wrote to Cantor Index asking them to take remedial action.

2.3. The significant failings in this case merit a penalty. In fixing the amount of such penalty however, the FSA has recognised that no customer of Cantor Index suffered any loss and the potential impact of these failings has been mitigated by the remedial action undertaken by Cantor Index. In particular, Cantor Index promptly:

- (1) ceased distribution of the "Free Xda" promotions and took steps to render future financial promotions compliant by including risk warnings in those financial promotions;
- (2) sent remedial letters to 304 clients who may have opened a spread betting account as a result of being influenced by the Xda promotions, giving them the opportunity to close their account and return the Xda at no cost; and
- (3) carried out an internal audit review after the FSA had referred this matter to Enforcement, which identified inadequacies in Cantor Index's procedures for the approval of financial promotions prior to publication and the keeping of records in relation to financial promotions and identified a "medium to high risk" that this could lead to financial promotions being released without the correct approval of Compliance or containing inappropriate or no risk warnings. Cantor Index has now adopted further changes to its financial promotion procedures.

- 2.4. Cantor Index has been open and co-operative with the FSA during its investigation. Were it not for the co-operation shown and the remedial action taken by Cantor Index, the financial penalty would have been significantly higher.

### **Relevant statutory provisions and regulatory requirements**

- 2.5. Section 206 of the Act provides:

*"If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act, it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate."*

#### FSA Systems and Controls Rules

- 2.6. FSA Rule SYSC Rule 3.2.6 provides that:

*"A firm must take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system."*

#### FSA Conduct of Business Rules

- 2.7. The FSA's rules which govern the communication and content of financial promotions are set out in COB 3.

- 2.8. COB Rule 3.6.1(1) provides that:

*"Before a firm communicates or approves a non real time financial promotion, it must confirm that the financial promotion complies with the rules set out in Chapter 3 of the COB rules which govern financial promotions."*

- 2.9. COB Rule 3.7.1(1) provides that:

*"A firm must make an adequate record of each non-real time financial promotion which it has confirmed as complying with the rules in this chapter [Chapter 3]."*

- 2.10. COB Rule 3.7.4 provides that:

*"A record in COB 3.7.1 R may be in any form, provided that it is readily accessible for inspection by the FSA."*

- 2.11. COB 3.7.5 G defines "readily accessible" as being available for inspection on 48 hours notice.

- 2.12. COB Rule 3.8.4 (1) provides that:

*"A firm must be able to show that it has taken reasonable steps to ensure that a non-real time financial promotion is clear, fair and not misleading."*

- 2.13. Evidential provision COB 3.8.5 E provides further detail as to how firms can comply with the clear, fair and not misleading rule in COB 3.8.4 including that:

*"A firm should take reasonable steps to ensure that, for a non-real time financial promotion:*

*(f) the design, content or format does not disguise, obscure or diminish the significance of any statement, warning or other matter which the financial promotion is required by this chapter to contain;*

*(h) it does not omit any matters the omission of which causes the financial promotion not to be clear, fair and not misleading;"*

2.14. COB Rule 3.8.8 (1)(c) provides that:

*"A specific non-real time financial promotion must include a fair and adequate description of ... the risks involved."*

2.15. COB 3.8.9 G (1) gives the following guidance:

*"A specific non-real time financial promotion should give a fair and balanced indication of the requirements in COB 3.8.8 R (1)(a) to (c), to meet COB 3.8.4 R (1)."*

2.16. COB 3.8.9 G (3)(a) gives the following guidance:

*"In giving a fair and adequate explanation of the investment or service being promoted firms should avoid:*

*(a) accentuating the potential benefits of an investment without also giving a fair indication of the risks;"*

#### FSA Principles for Business

2.17. The Principles are a general statement of the fundamental obligations of firms under the regulatory system. They derive their authority from the FSA's rule-making powers as set out in the Act and reflect the FSA's regulatory objectives.

2.18. FSA Principle 3 provides that:

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

2.19. FSA Principle 7 provides that:

*"A firm must communicate with its clients in a way that is clear, fair and not misleading."*

#### **The FSA's Regulatory Approach to Financial Promotions**

2.20. In April 2002, the FSA issued a publication entitled "The FSA's regulatory approach to financial promotions", which explained the FSA's approach to all financial promotions after 1 December 2001. The publication highlighted:

(1) the need for all financial promotions to give a fair and balanced picture of the nature of the investment being promoted and the commitment and risk

involved, and the need to avoid unduly accentuating the benefits of an investment product without also giving a fair indication of the risk in order to ensure that the financial promotion is clear, fair and not misleading; and

- (2) the need to ensure that key information is presented in the main body of the promotion, rather than in the small print, and that negative features and risk warnings are not played down so much that they are effectively hidden in advertising material.

- 2.21. The publication warned that where serious or persistent rule breaches are found, firms may be subject to enforcement action under the FSA's disciplinary procedures.

### **Facts and matters relied on**

#### The Firm

- 2.22. Cantor Index (part of the Cantor Fitzgerald group of companies) is a firm which offers spread betting services to its customers, including "real-time" internet spread betting. Cantor Index is made up of several business units or divisions: Cantor Index offers financial spread betting services, whilst Cantor Sport offers sports spread betting services.
- 2.23. Cantor Index became an authorised person on 1 December 2001 with permission granted by the FSA pursuant to the Act to conduct certain regulated activities, including dealing in spread bets as principal. It was previously authorised by the Securities and Futures Authority.

#### The "Free Xda" campaign

- 2.24. In the course of 2003, Cantor Index developed the concept of enabling its customers to spread bet via a mobile electronic device. The device in question was an "Xda", an integrated mobile phone and PDA (personal digital assistant). The use of this technology was to be promoted and operated by a new business division of Cantor Index, called "Cantor Mobile". Using the Xda, a subscriber to Cantor Mobile could receive live market and sport prices, access his spread betting account on-line and instantly execute spread bets in "real-time".
- 2.25. Cantor Mobile was launched in early September 2003. In order to promote the spread betting by mobile electronic device and to attract new customers to the launch, Cantor Index decided to offer the Xda "free" to new and existing customers together with a discounted monthly on-line connection tariff (which provided clients with about two to three hours of connection time each day).
- 2.26. The offer of a free Xda was a strong incentive to subscribe to Cantor Mobile and open an account with Cantor Index or Cantor Sport. However, the terms and conditions of the offer were such that, if the Xda service were to be truly free, the customer would have to place £50 aggregate bets with Cantor Index or £100 aggregate bets with Cantor Sport within the first nine months of opening his account. Otherwise, Cantor Mobile was allowed to charge the customer for the Cantor Mobile service subscription fee for the final three months of the first year of the customer's

agreement with Cantor Mobile (about £150). Accordingly, the structure of the offer encouraged consumers to spread bet.

- 2.27. Cantor Index promoted the "Free Xda" offer through a variety of specific non-real time financial promotions – the "Free Xda" promotions - which clearly identified and promoted a specific investment (i.e. spread betting) and service (i.e. Cantor Index's provision of a spread betting service). These "Free Xda" promotions included:
- (1) flyers the size and shape of an Xda that were to be handed out to the public at various London mainline and underground railway stations (the "Flyers");
  - (2) large posters displayed at several London mainline railway stations (the "Posters");
  - (3) a series of newspaper and magazine advertisements;
  - (4) television advertisements; and
  - (5) the Cantor Mobile website.
- 2.28. This was a large and expensive media campaign, the aim of which was to attract new clients with knowledge of spread betting to open spread betting accounts and start spread betting with Cantor Index. Notwithstanding this aim, the Xda promotions marked an increase in Cantor Index's marketing of spread betting to the general public.
- 2.29. The Flyers, Posters, newspaper and magazine advertisements, and television advertisements all directed interested consumers to the Cantor Mobile website and its customer services telephone number. Cantor Index preferred new customers to open accounts online via the website and the majority of new accounts were opened this way. However, new customers who preferred to complete their account application on paper were able to request an information pack, made up of an account application form, a customer agreement and brochures for Cantor Index and/or Cantor Sport.
- 2.30. The Flyers were distributed to members of the public at Canary Wharf underground station, where some of the recipients were FSA employees who brought the matter to the attention of the FSA's Financial Promotions Monitoring Team ("FPMT"). On 8 September 2003, FPMT wrote to Cantor Index, drawing attention to the fact that the Flyer contained no warnings about the risks of spread betting.
- 2.31. On 8 September 2003, Cantor Index had itself recognised that the Flyer did not contain a risk warning and took steps to withdraw the Flyer the following day (albeit other "Free Xda" promotions were not withdrawn until later).

Failure to ensure that the "Free Xda" promotions were clear, fair and not misleading

- 2.32. A key risk of spread betting is that, if a consumer loses the bet, he can incur additional liabilities in excess of his initial margin deposit. It is therefore imperative that financial promotions promoting spread betting disclose this in a clear, simple and prominent manner so that a consumer fully understands the risk that he is taking on. However, when Cantor Mobile was launched, the "Free Xda" promotions either

contained no description of the risks involved in spread betting or the risk warning notice was not fair and adequate:

- (1) neither the Flyers, the Posters, the television advertisements nor the Cantor Mobile web site contained any explanation of the risks involved in spread betting. Cantor Index has been unable to show that the relevant pages of its Cantor Index and Cantor Sport websites (to which a new customer was taken from the Cantor Mobile website in order to open an account before subscribing to the Cantor Mobile service) contained any or any adequate risk warning notices. Although before an investor could place a spread bet he was required to agree to terms and conditions which included risk warnings and to confirm that he had read and understood them, customers applying online having read the Flyers or seen the Posters may have nonetheless proceeded to open an account and place a spread bet without having seen any adequate risk warnings; and
- (2) whilst the newspaper and magazine advertisements contained risk warning notices, the key risk inherent to spread betting was not adequately explained. In particular, the phrase "*Spread bets carry a high level of risk to your capital*" did not adequately convey the risk that a consumer's liability may exceed his initial deposit or margin. Consumers familiar with fixed odds betting may not be familiar with this characteristic of spread betting.

2.33. Accordingly, these financial promotions did not contain an adequate risk warning notice. Consequently, the Xda promotions were not clear or fair and were misleading. For these reasons, Cantor Index breached COB Rule 3.8.8(1)(c) and COB Rule 3.8.4(1).

Failure to confirm that the "Free Xda" promotions were compliant before communication

2.34. In the case of a number of the "Free Xda" promotions, Cantor Index failed to confirm either properly or at all that the financial promotions complied with COB 3 (ie failed to approve the financial promotions) before they were published:

- (1) Cantor Index's Compliance department ("Compliance") did not review the final version of the Flyer before it was communicated. This breach occurred notwithstanding the fact that Compliance had already advised the Marketing department ("Marketing") that the Flyer should contain a risk warning notice and notwithstanding the fact that following that advice Compliance subsequently reviewed four further drafts of the Flyer which all lacked any risk warning and yet failed to remark on these omissions. As a result of this failure, 500,000 copies of the Flyer were printed for distribution without containing any form of risk warning; and
- (2) Compliance failed to consider properly whether the Poster amounted to a financial promotion and, if it did, what kind of risk warning was required. The issue was raised with Compliance by e-mail who sent a response three minutes later wrongly determining that the Poster was promoting an "unregulated product" (and despite having reached the opposite conclusion in respect of the



Flyer). The FSA considers that this does not amount to a confirmation that this particular financial promotion complied with COB 3. Similarly, Compliance did not consider properly whether the television advertisements complied with COB 3.

2.35. For these reasons, Cantor Index breached COB Rule 3.6.1(1).

Failure to make and retain adequate records

2.36. The records relating to the approval of each financial promotion were maintained by Marketing. Cantor Index did not keep a master record of financial promotions (eg recording the details of each financial promotion, the date on which it was published, the date on which Compliance approved the financial promotion, who it was approved by and any amendments required by Compliance). Instead, for each financial promotion, the records consisted of a file containing a hard copy of each promotion and a separate electronic record kept on the computer network of the e-mail containing Compliance's approval. Compliance did not maintain any separate record that it approved financial promotions, which in itself was contrary to Cantor Index's compliance policies.

2.37. Cantor Index's method of keeping records for approval of financial promotions was inadequate for the following reasons:

- (1) as there was no master record of financial promotions, the hard copies of the financial promotions kept on file by Marketing would each have to be linked with the record of approval kept on Cantor Index's computer network, with the consequent risk (which was also identified in Cantor Index's internal audit investigation) that the electronic approval may be difficult to correlate with the hard copy of the financial promotion kept on file;
- (2) evidence of Compliance's approval had to be reconstructed from contemporaneous exchanges of e-mails from which it is not always apparent that approval had in fact been given or that Compliance had properly considered that the promotion was compliant; and
- (3) Cantor Index was unable to locate any records to show that it approved the web site and some of the press advertisements.

2.38. Further, the records were not readily accessible for inspection. As hard copies of Compliance's approvals were not kept, Cantor Index had to reconstruct the records from the e-mail accounts of staff (some of whom had since left Cantor Index). The lack of readily available information also became apparent by Cantor Index's initial failure to mention the Posters when it was asked by FPMT to disclose the full extent of the Xda promotions.

2.39. For these reasons, Cantor Index breached COB Rules 3.7.1(1) and 3.7.4.

Failings in relation to senior management arrangements, systems and controls

2.40. Cantor Index's Compliance Manual, which was in force at the date that the "Free Xda" promotions were published, was issued in April 2002. The Compliance Manual

made clear that Compliance should approve all marketing material prior to publication. However, it did not set out any detailed mechanism to ensure that Compliance's approval was sought and, if given, recorded. Indeed, the procedures that were in place at the time that the "Free Xda" promotions were being prepared were inadequate to ensure that this occurred.

- 2.41. Although Compliance had produced a pro forma coversheet in November 2001 to ensure Compliance's approval of each non-real time financial promotion, the form was never used as Cantor Index's senior management decided soon after its introduction that it was sufficient for the approval of financial promotions to be given and recorded by e-mail. Accordingly, in the period from November 2001 until December 2003 (when a similar form was reintroduced), Cantor Index did not operate any effective system of control over its approval and recording of financial promotions.
- 2.42. Although Compliance sent memoranda to Marketing in May, August and September 2003, these memoranda either summarised the financial promotion regime or reiterated Cantor Index's policy set out in its Compliance Manual. None of these memoranda provided for a comprehensive and documented process to ensure that Cantor Index's financial promotions complied with COB 3, particularly (as in the case of the Flyer) where a succession of drafts is produced and sent to Compliance for approval.
- 2.43. This lack of adequate procedures and controls contributed to, or failed to prevent, the failures to comply with COB 3 set out above. In particular, the lack of an adequate procedure led to the failure by Cantor Index to approve the Flyer before it was issued to the general public. The Flyer was then distributed without containing any risk warning.
- 2.44. The weaknesses in the approval and recording procedures were compounded by inadequate arrangements for monitoring financial promotions once they had been issued. The role of Compliance in monitoring and reviewing records and transactions in order to identify potential and actual problems was clearly set out in Cantor Index's Compliance Manual, but this was not carried out systematically or recorded on a systematic basis in relation to financial promotions.
- 2.45. For these reasons, Cantor Index breached SYSC Rule 3.2.6.

#### Breach of FSA Principles

- 2.46. By virtue of FSA Principles 3 and 7, Cantor Index was required to take care to organise and control its affairs reasonably and effectively and communicate with clients in a way which was clear, fair and not misleading.
- 2.47. As detailed in paragraphs 2.32 to 2.45 above, Cantor Index has failed in relation to its approval of financial promotions to organise and control its internal affairs in a responsible manner. It also failed to communicate customers in a way that was clear, fair and not misleading.

## Remedial Action

- 2.48. Following the intervention of the FSA, Cantor Index undertook the following remedial action:
- (1) Cantor Index took steps to withdraw all remaining Flyers and Posters and agreed not to distribute further copies of the Flyer;
  - (2) Cantor Index inserted risk warnings or more prominent risk warnings on the Cantor Index, Cantor Sport and Cantor Mobile websites;
  - (3) risk warnings of an acceptable format and size were subsequently inserted into newspaper, magazine and television advertisements;
  - (4) Cantor Index sent letters to 304 clients who may have opened a spread betting account as a result of being influenced by the "Free Xda" promotions, giving them the opportunity to close their account, cancel the Cantor Mobile agreement and return the Xda at no cost. Of the 29 responses received to those 304 letters, 13 stated they were not aware of the risks of spread betting and one customer replied stating that he had lost money spread betting but this was not as a result of misunderstanding of risks by reason of the Xda campaign;
  - (5) Cantor Index reintroduced a document entitled "Financial Promotions Sign Off" in December 2003, which was to be completed in hard-copy whenever a final draft of a financial promotion was ready for approval, as part of the procedures on financial promotions and record keeping; and
  - (6) Cantor Index carried out an internal audit review and produced a report which identified that Cantor Index's procedures for seeking approval and record keeping were still insufficient leading to the risk that financial promotions could be released without the correct approval of Compliance or containing inappropriate or no risk warnings. Cantor Index has now adopted further changes to its financial promotion procedures.

## **3. RELEVANT GUIDANCE ON SANCTION**

- 3.1. The FSA's policy on the imposition of financial penalties is set out in Chapter 13 of the Enforcement Manual which forms part of the FSA Handbook ("ENF"). 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.
- 3.2. It is stated at paragraph 13.3.4 of the FSA Enforcement Manual that the criteria listed in the Manual are not exhaustive and all relevant circumstances of the case will be taken into consideration.
- 3.3. In determining whether a financial penalty is appropriate, and its level, the FSA considers all the relevant circumstances of the case. The FSA considers the following factors to be particularly relevant in this case.

### **The seriousness of the misconduct or contravention.**

- 3.4. The level of financial penalty must be proportionate to the nature and seriousness of the contravention. Cantor Index's senior management arrangements, systems and controls relating financial promotions, which relied on informal exchanges of e-mails rather than a comprehensive set of procedures supported by clear records, were ineffective to ensure that it complied with COB 3.
- 3.5. Although no consumer in fact suffered any loss as a result of the Xda campaign, the breaches identified in this case were serious due to the potential impact that they could have had on consumers. To open a spread bet account although investors were required to agree to terms and conditions which included risk warnings and confirm that they have read and understood them, Cantor Index could not assume that investors would actually read the warnings. The Flyers were widely circulated to members of the general public and the Posters were prominently displayed at several of London's major commuter stations. Although the FSA accepts that Cantor Index may not have deliberately targeted the general public, the placement of these financial promotions meant that it was unavoidable that the general public would to a large degree come into contact with these financial promotions. Cantor Index should have been aware of the greater potential risk posed to those investors and the greater need to ensure that the risks associated with spread betting were more likely to be understood by those persons. Notwithstanding this, both financial promotions failed to mention the risks of spread betting.

### **The size, financial resources and other circumstances of the firm**

- 3.6. There is no reason to believe that Cantor Index will not be able to pay the financial penalty.

### **The amount of profit accrued or loss avoided**

- 3.7. There is no evidence that Cantor Index deliberately set out to accrue additional profits as a result of its failings although the size of the campaign suggests that the firm anticipated it would provide a considerable number of new customers.

### **Conduct following the contravention**

- 3.8. Cantor Index only identified the breaches at a late stage by which time the FSA had intervened. However, once the breaches were brought to its attention by FPMT, it actively sought to improve its procedures to ensure future compliance. It has taken remedial action and offered redress to customers where appropriate.

### **Disciplinary record and compliance history**

- 3.9. Cantor Index has not been subject to any previous enforcement action.

### **Previous action by the FSA and other regulatory authorities in relation to similar failings**

- 3.10. The FSA has in the past taken action against firms for advertising failings. This action has included the imposition of financial penalties. The FSA has taken these

penalties into account. It should be noted, however, that past action taken against firms for advertising failings related to financial products that limited the investors' risk to their initial outlay. In this case clients risked more than their initial outlay, which is regarded as an important factor in this case.

#### **4. IMPORTANT NOTICES**

4.1. This Final Notice is given to Cantor Index in accordance with section 390 of the Act.

##### **Manner of payment**

4.2. The Penalty must be paid to the FSA in full.

##### **Time for payment**

4.3. The Penalty must be paid to the FSA no later than 13 January 2005, being not less than 14 days beginning with the date on which this Notice is given to Cantor Index.

##### **If the Penalty is not paid**

4.4. If all of the Penalty is outstanding on 13 January 2005, the FSA may recover the outstanding amount as a debt owed by Cantor Index and due to the FSA.

##### **Publicity**

4.5. 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 these provisions, the FSA must publish such information about the matter to which this Notice relates as it considers appropriate. The information may be published in such a manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to Cantor Index or prejudicial to the interests of consumers.

4.6. FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

##### **FSA contacts**

4.7. For more information concerning this matter generally, you should contact Mark Lewis or John Tutt at the FSA (direct lines: 020 7066 4244 / 020 7066 1240).

Alison Wheeler  
**Manager – Retail Selling**  
**FSA - Enforcement Division**