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**FINAL NOTICE**

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**To:** **City Gate Money Managers Limited**

**Address:** **1 Park Circus  
Glasgow  
Lanarkshire  
G3 6AX**

**FSA  
Reference  
Number:**

**196676**

**Dated:** **6 August 2012**

**1. ACTION**

- 1.1. For the reasons given in this Notice and pursuant to section 205 of the Financial Services and Markets Act 2000 (the “Act”), the FSA hereby issues a public censure of City Gate. This public censure is in respect of City Gate having carried on regulated activity in the United Kingdom otherwise than in accordance with the permission granted to it by the FSA, contrary to section 20(1)(a) of the Act, and in respect of breaches of Principles 2 and 3 and COBS 4.5.2R.
- 1.2. City Gate entered into voluntary liquidation on 2 November 2010. Were it not for City Gate’s financial circumstances, the FSA would have imposed a financial penalty of £180,000 in respect of the breaches identified. The FSA would prefer that any funds remaining within City Gate be available to meet any claims by creditors, including any customer claims.

- 1.3. The public censure will be issued on 6 August 2012 and will take the form of this Final Notice, which will be published on the FSA's website.

## **2. SUMMARY OF REASONS**

- 2.1. On the basis of the facts and matters described below, the FSA hereby issues a public censure in respect of breaches of section 20(1)(a) of the Act, Principles 2 and 3 and COBS 4.5.2R, all of which occurred in the relevant period. These breaches relate to the conduct of pension transfer and income drawdown business by City Gate, a number of failings in a financial promotion made by City Gate on behalf of the Issuing Company for which it was acting as agent, and a failure to have adequate systems and controls to monitor its advisers' and appointed representatives' compliance and training and competence.
- 2.2. This action follows previous Enforcement action taken against City Gate in July 2009 for materially similar systems and controls failings in relation to the approval of financial promotions and monitoring of appointed representatives. City Gate failed to address the issues identified in that action and take steps to ensure that they did not recur. In addition, City Gate breached the variation which took effect following the previous enforcement action. The FSA considers that this seriously aggravates the matters set out in this Final Notice.
- 2.3. In summary, City Gate failed to comply with section 20(1)(a) of the Act, in that it conducted pension transfer and income drawdown business after 13 July 2009, which was beyond the scope of its permission.
- 2.4. City Gate failed to comply with Principle 2 in that it acted without due skill, care and diligence by failing to ensure that a financial promotion it approved complied with FSA rules by (a) giving a balanced picture of the risks involved in the investment being promoted and (b) not containing material which created an inappropriately positive impression of the nature of the investment.
- 2.5. City Gate failed to comply with Principle 3 in that it failed to have adequate systems and controls in place to:

- (a) ensure that neither it, nor any of the firms approved as its appointed representatives, conducted activities beyond the scope of City Gate's permission;
- (b) monitor the advising and selling practices of its advisers and/or appointed representatives relating to regulated business;
- (c) review and monitor adequately the competence, knowledge, skills and training of its advisers and/or appointed representatives; and
- (d) review and approve financial promotions.

2.6. City Gate failed to comply with COBS 4.5.2R in that it failed to ensure that it did not emphasise potential benefits of the investment which was the subject of the financial promotion referred to at paragraph 2.4 above without also giving a fair and prominent indication of the relevant risks involved in that investment.

2.7. The FSA has taken into account as a mitigating factor City Gate's co-operation with the FSA's investigation.

### **3. DEFINITIONS**

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

“the Act” means the Financial Services and Markets Act 2000;

“City Gate” means “City Gate Money Managers Limited”;

“CF1” means the FSA controlled function of Director;

“CF30” means the FSA controlled function of Customer;

“COBS” means the Conduct of Business Sourcebook in the FSA Handbook;

“DEPP” means the Decision Procedures and Penalties Manual in the FSA Handbook;

“EG” means the Enforcement Guide;

“the financial promotion” means a financial promotion issued by City Gate on 18 January 2009 as agent for the Issuing Company;

“the FSA” means the Financial Services Authority;

“the FSA Handbook” means the FSA Handbook of rules and guidance;

“the Issuing Company” means the company for which City Gate made the financial promotion, in which an offer of investment was being promoted;

“Offer Letter 1” means the letter introducing the offer of investment to recipients of the financial promotion who were existing City Gate customers;

“Offer Letter 2” means the letter introducing the offer of investment to recipients of the financial promotion who were not City Gate customers and whose details City Gate had acquired by purchasing a client bank from another company;

“Offer Document” means the document entitled “Offer for Sale of Shares” which formed part of the financial promotion;

“the partner companies” means the companies which were held out in the financial promotion by City Gate as being in partnership with the Issuing Company;

“Principles” means the FSA’s Principles for Businesses;

“relevant period” means the period between 1 January 2009 and 12 July 2010;

“SIPP” means a self-invested personal pension plan;

“the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber);

“the variation” means the variation of City Gate’s Part IV permission applied for by City Gate on 13 July 2009, as granted by the FSA on 21 July 2009, with effect from 13 July 2009; and

“the Warning Notice” means the Warning Notice issued by the FSA to City Gate on 5 December 2010.

#### **4. RELEVANT STATUTORY AND REGULATORY PROVISIONS**

- 4.1. The relevant statutory provisions and regulatory requirements are set out at Annex A to this Final Notice.

#### **5. FACTS AND MATTERS**

##### **Background**

- 5.1. On 2 November 2010, City Gate entered into voluntary liquidation. Prior to this, City Gate operated as a personal investment firm authorised to advise on and arrange investments, mortgages and insurance. City Gate operated from an office in Glasgow and, immediately prior to its liquidation, had nine appointed representatives throughout the United Kingdom.
- 5.2. Until 12 July 2009, City Gate had permission to carry on the following regulated activities:
- (a) advising on investments (excluding pension transfers and pension opt outs);
  - (b) advising on pension transfers and pension opt outs;
  - (c) advising on regulated mortgage contracts;
  - (d) agreeing to carry on a regulated activity;
  - (e) arranging (bringing about) deals in investments;
  - (f) arranging (bringing about) regulated mortgage contracts;
  - (g) assisting in the administration and performance of a contract of insurance;
  - (h) making arrangements with a view to regulated mortgage contracts; and
  - (i) making arrangements with a view to transactions in investments.
- 5.3. City Gate was previously referred to Enforcement for inadequate systems and controls in relation to its approval of financial promotions and monitoring of its appointed representatives. On 20 July 2009, as a result of that investigation, City Gate

was fined £60,000 (reduced to £42,000 after application of the stage one discount) for breaches of Principles 2, 3 and 7 and associated FSA rules.

5.4. On 21 July 2009, as a result of the first Enforcement investigation and concerns raised contemporaneously by the FSA's Small Firms and Contact Division, City Gate voluntarily varied its permission so that with effect from 13 July 2009:

- (i) it would not take on as principal any new appointed representatives;
- (ii) it would not carry out any new business advising on or arranging a pension transfer, a new income drawdown contract, or switching from an existing pension contract into a new contract; and
- (iii) its appointed representatives would not carry out any pension transfer or income drawdown business or switching from an existing pension contract into a new contract.

5.5. During the relevant period, there were two individuals at City Gate approved to perform CF1, and 14 individuals approved to perform CF30. City Gate also operated as a network, with nine firms approved as appointed representatives during the relevant period. The appointed representatives paid a fee to City Gate, which in return provided assistance with compliance and oversight. City Gate's own business consisted largely of personal investment advice, in addition to some mortgage business.

#### **Acting outside the scope of its part IV permission**

5.6. On 13 July 2009, at the FSA's request and during the course of the investigation referred to at paragraph 5.3 above, City Gate applied to vary its permission voluntarily. The application signed by City Gate was granted by the FSA in the terms set out at paragraph 5.4 above on 21 July 2009.

5.7. However, between 13 July 2009 and 26 January 2010, City Gate advised, either directly or through one of its appointed representatives, on four new cases of pension transfer or income drawdown business in breach of the variation, and therefore beyond the scope of its permission.

### *Customer 1*

- 5.8. On 26 January 2010, six months after the variation, one of City Gate's appointed representatives submitted an application to the product provider for an income drawdown pension policy for Customer 1. The policy commenced on 18 February 2010.
- 5.9. Customer 1 did not sign the application form until 26 January 2010, and her customer file shows that no advice had been given, nor arrangements made in relation to the income drawdown prior to 15 January 2010, when one of City Gate's appointed representatives obtained a Key Facts Illustration.
- 5.10. There is no record on the customer file of any contact with the customer prior to the variation, and the first contact was not made until almost six months after the date of the variation.

### *Customer 2*

- 5.11. On 11 November 2009, four months after the variation, one of City Gate's appointed representatives submitted an application to the product provider for an income drawdown pension policy for Customer 2, on an execution-only basis. The policy commenced on 4 January 2010.
- 5.12. Customer 2 did not sign the application form until 11 November 2009, and the customer file shows that no arrangements had been made in relation to the income drawdown prior to 10 September 2009, when City Gate's appointed representative requested existing policy information from the provider.
- 5.13. There is no record of any contact with the customer prior to the variation, and the first contact was not made until almost two months after the date of the variation.

### *Customer 3*

- 5.14. On 12 August 2009, one month after the variation, one of City Gate's own advisers submitted an application to the product provider for an income drawdown pension

policy for Customer 3, on an execution-only basis. The policy commenced on 14 September 2009.

- 5.15. Customer 3 did not sign the application form until 10 August 2009, and her customer file shows that no arrangements had been made in relation to the income drawdown prior to 15 July 2009, two days after the variation, when Customer 3 contacted City Gate by letter to request arrangement of an income drawdown. The customer file also shows that City Gate did not receive a transfer valuation from Customer 3's existing provider until 29 July 2009.

#### ***Customer 4***

- 5.16. On 17 December 2009, five months after the variation, another of City Gate's appointed representatives submitted an application to the product provider for a SIPP for Customer 4. The SIPP commenced on 23 December 2009.

- 5.17. Customer 4 did not sign the SIPP application form until 17 September 2009, and the customer file shows that no advice had been given, nor arrangements made in relation to the pension transfer prior to 23 July 2009, ten days after the variation, when City Gate held its first meeting with Customer 4.

- 5.18. There is no record of any material contact with the customer prior to the variation, and the first meeting with the client was held ten days after the date of the variation.

#### ***Failure to monitor adequately its business and its appointed representatives to ensure compliance with the variation***

- 5.19. City Gate failed to implement any procedures which would have prevented business being written in breach of the variation. City Gate also failed to take reasonable steps to ensure that its advisers and appointed representatives fully understood the variation's application and effect and ceased to carry out new pensions business of the excluded kind.

- 5.20. On 14 July 2009, an email was sent to City Gate's advisers and appointed representatives which set out the conditions of the variation. City Gate did not provide any further information subsequent to the email, nor take any steps to ensure that all



advisers and appointed representatives had received the message and properly understood the effect of the variation.

- 5.21. City Gate had only a small number of advisers and appointed representatives who were writing only a small amount of pensions business. In light of this, City Gate should have ensured that each and every case was reviewed before it was written, by doing so personally or arranging for an appropriate delegate to undertake this review.
- 5.22. Instead, new business was submitted directly to the product providers by the appointed representatives without going through City Gate, and City Gate reviewed the new business register only after the business had been written. City Gate then reviewed only a very small portion of its new business.
- 5.23. City Gate failed to ensure that adequate systems and controls were put in place after the variation took effect, to ensure that no business was conducted by it or its appointed representatives which was beyond the scope of its permission.

#### **Financial promotion**

- 5.24. On 18 January 2010, City Gate approved the financial promotion which was an offer of shares issued by the Issuing Company for which City Gate was acting as agent. The financial promotion comprised the following documentation:
  - (1) Offer Letter 1;
  - (2) Offer Letter 2;
  - (3) a letter to recipients of the financial promotion who were customers of a company acquired by the Issuing Company, introducing the offer;
  - (4) the Offer Document;
  - (5) an application form for requesting a copy of the Offer Document; and
  - (6) an application form for taking up the offer of shares.

### ***Unauthorised use of company names in the financial promotion***

- 5.25. Incorporated into the Offer Document were the names, trademarks and logos of the partner companies, which were held out in the Offer Document as being in partnership with the Issuing Company. The references to these high profile companies bolstered the impression created by the Offer Document that the Issuing Company was a robust investment opportunity. However, City Gate took no steps to ensure that the Issuing Company was entitled to use the partner companies' names, trademarks and/or logos in the Offer Document, or that it had sought any approval that might be required. In relation to at least three of the partner companies, use of such material was specifically prohibited without express permission pursuant to the agency agreements that the Issuing Company had entered into with those partner companies.
- 5.26. Offer Letters 1 and 2 also each referred to the Issuing Company being in partnership with three of the partner companies. City Gate did not ensure that the Issuing Company was entitled to the partner companies' names in Offer Letters 1 and 2, or that it had sought any approval that might be required.

### ***Failure to emphasise risks of investment***

- 5.27. Offer Letters 1 and 2 described the benefits of investment in the Issuing Company by emphasising the strength of its management and assets, and providing a description of its recent and forecast asset growth and expansion. However, neither letter made reference to any risks involved in the investment being promoted. COBS 4.5.2R(2), dictates that a firm must ensure that a communication with retail clients "does not emphasise any potential benefits of relevant business or a relevant investment without also giving a fair and prominent indication of any relevant risks."

### ***Approval of the financial promotions***

- 5.28. City Gate was responsible for ensuring that the financial promotions approved by it complied with the FSA's rules. To discharge this obligation City Gate chose to delegate the review to a third party. However, despite having seen evidence of the steps taken by that third party to ensure that the financial promotion was compliant, City Gate failed to adequately review those steps in order to satisfy itself that the

financial promotion was compliant before approving it. Had City Gate adequately reviewed those steps it would have been clear to it that it was not.

- 5.29. The failure of City Gate to take reasonable steps is aggravated by the following:
- (a) that concerns had been raised with City Gate specifically by the Issuing Company as to whether the relevant permission had been obtained from the partner companies to associate them with the financial promotion; and
  - (b) the FSA's concerns relating to the approval of financial promotions by City Gate in the past. Specifically, City Gate had previously been fined by the FSA for failing to ensure a financial promotion was compliant. This arose from the failure of the firm to check that a bank guarantee that was fundamental to the investment offer being promoted was actually in place.

- 5.30. City Gate also failed to appreciate the particular degree of care necessitated by the financial promotion which, as an offer to subscribe for shares, was of a more complex nature than those previously made by City Gate and approved by them.

**Inadequate systems and controls relating to City Gate's advisers and appointed representatives**

- 5.31. City Gate delegated responsibility for compliance to particular individuals but failed to oversee these individuals adequately, resulting in serious compliance failures at City Gate during the relevant period. City Gate's advisers and appointed representatives were inadequately monitored and assessed, they received little management or network support, and the training and competence regime was not properly applied or reviewed.
- 5.32. City Gate failed to ensure that systems and controls set out in the compliance manual were adhered to. In particular, the following procedures in the compliance manual were neglected or entirely abandoned during the relevant period:
- (a) specific monitoring of sales of high-risk products;

- (b) regular one-to-one meetings with and assessment of advisers and appointed representatives;
  - (c) regular collation and analysis of management information and review of the systems and controls used by appointed representatives; and
  - (d) regular file reviews and feedback discussions with advisers.
- 5.33. As with City Gate's compliance manual, the following procedures in the training and competence manual were neglected or entirely abandoned during the relevant period:
- (a) provision of Continuing Professional Development training for advisers;
  - (b) peer reviews of customer files; and
  - (c) annual assessments and testing of adviser knowledge.
- 5.34. Both the compliance and the training and competence regimes in place at City Gate were first implemented in 2005 and were never reviewed or revised during the relevant period. City Gate allowed these procedures to remain in place despite the FSA raising concerns about the adequacy of City Gate's arrangements at the time of the previous Enforcement action and requiring City Gate to review its procedures to address these concerns.
- 5.35. By its Warning Notice dated 5 December 2011, the FSA gave notice that it proposed to take the action described above and City Gate was given the opportunity to make representations to the FSA about that proposed action.
- 5.36. No representations having been received by the FSA from City Gate within the time allowed by the Warning Notice, the default procedures in DEPP 2.3.2G of the FSA's Decision Procedure and Penalties Manual permit the facts and matters described in the Warning Notice, and repeated in this Final Notice, to be regarded as undisputed.
- 5.37. The FSA has therefore taken the action to issue a public censure of City Gate for the reasons described above.

## **6. FAILINGS**

### **Breach of Section 20**

- 6.1. The FSA has concluded that City Gate is in breach of section 20(1)(a) of the Act because City Gate and/or its appointed representatives either arranged, or gave advice on, pension transfer and income drawdown business after 13 July 2009, which was beyond the scope of its permission. The FSA considers this breach to be particularly serious because, in giving advice in relation to pension transfer and income drawdown business when it was not authorised to do so, City Gate and/or its appointed representatives exposed customers to the risk of receiving advice which was potentially unsuitable. City Gate had specifically agreed with the FSA, as a result of concerns previously raised by the FSA, that it ought not to be authorised to give such advice, and this agreement resulted in the voluntary variation of City Gate's permission.

### **Breach of Principle 2 (Skill, care and diligence)**

- 6.2. The FSA has concluded that City Gate failed to exercise due skill, care and diligence, in breach of Principle 2, because it:
- (a) failed to ensure that it had explained adequately in Offer Letters 1 and 2 the risks of investing in the offer being promoted. The FSA considers that as a result potential investors were not able to make a fully-informed decision as to whether to invest; and
  - (b) used high-profile partner companies' brands without ensuring that such use was allowed by those companies. The FSA considers that the unauthorised use of this intellectual property may have unduly enhanced the impression formed by recipients of the financial promotion as to the quality of the investment opportunity being promoted.

### **Breach of Principle 3 (Management and control)**

- 6.3. The FSA has concluded that City Gate failed to take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems, in breach of Principle 3, because it:

- (a) failed to ensure that it did not give advice which was beyond the scope of its permission (as detailed in paragraphs 5.6 to 5.23 above). City Gate failed to put in place systems and controls to prevent business being written in breach of the variation;
- (b) failed to have adequate systems and controls in place in order to monitor the advising and selling practices of its advisers and/or appointed representatives relating to regulated business;
- (c) failed to review and monitor their competence, knowledge, skills, training and performance as set out in paragraphs 5.31 to 5.34 above; and
- (d) failed to ensure its systems and controls for reviewing financial promotions were adequate.

6.4. The FSA considers that these failings materially contributed to City Gate acting beyond its Part IV permission and to City Gate's failure to rectify failings identified in enforcement action recently taken against it.

#### **Breach of COBS 4.5.2R**

6.5. The FSA has concluded that City Gate is in breach of COBS 4.5.2R because it failed to explain adequately the risks of investing in the share offer in Offer Letters 1 and 2 (as detailed at paragraph 5.27 above).

### **7. SANCTION**

7.1. The FSA's policy in relation to the imposition of a public censure is set out in Chapter 6 of DEPP. The relevant sections of DEPP are set out in more detail in Annex A. DEPP sets out the factors that may be of particular relevance in determining whether it is appropriate to issue a public censure rather than impose a financial penalty. The criteria are not exhaustive and all relevant circumstances of the case will be taken into consideration.

7.2. In addition, the FSA has had regard to the provisions of Chapter 7 of EG.

- 7.3. The principal purpose of imposing a financial penalty or issuing a public censure is to promote high standards of regulatory conduct by deterring firms which have committed breaches from committing further breaches, and helping to deter other firms from committing similar breaches, as well as demonstrating generally the benefits of compliant behaviour.
- 7.4. In determining whether a financial penalty or a public censure is appropriate the FSA is required to consider all the relevant circumstances of a case.
- 7.5. As set out below, the factors in this case would ordinarily merit the imposition of a financial penalty. However, the FSA considers that, in accordance with DEPP 6.4.2(8)G, there are exceptional circumstances under which a firm's conduct, that would ordinarily attract a financial penalty, could be dealt with by way of a public censure. In this case, there is evidence that City Gate has insufficient resources to pay a financial penalty given that it is in liquidation and therefore has no assets with which to meet any financial penalty imposed upon it. City Gate's breaches are such that the FSA would have otherwise imposed a financial penalty of £180,000.
- 7.6. The FSA considers that a public censure, rather than a financial penalty, is appropriate.
- 7.7. DEPP 6.4.2G sets out a list of factors that may be of relevance in determining whether to issue a public censure or a financial penalty. The factors are not exhaustive and the FSA will consider all the relevant circumstances of the case. The FSA considers that the following factors are particularly relevant in this case:

**Deterrence (DEPP 6.4.2G(1))**

- 7.8. In determining whether to publish a statement of City Gate's misconduct, the FSA has had regard to the need to ensure those who are authorised persons must act in accordance with regulatory requirements and standards. The FSA has concluded that a public censure should be imposed to demonstrate to City Gate and others the seriousness with which the FSA regards its behaviour.

### **The seriousness of the breach in question (DEPP 6.4.2G(3))**

- 7.9. In determining the appropriate sanction, the FSA has had regard to the seriousness of the breaches, including the nature of the requirements breached, the duration and frequency of the breaches, whether the breaches revealed serious failings in City Gate's systems and controls and the number of customers who were affected and/or placed at risk of loss.
- 7.10. City Gate's failings cover the period from 1 January 2009 to 12 July 2010 and are viewed as being serious because City Gate:
- (a) conducted pensions business which was beyond the scope of its permission and in breach of section 20 of the Act, even after having voluntarily varied its permission to preclude it from conducting such business because the FSA had concluded that City Gate was not competent to give such advice;
  - (b) approved a non-compliant and potentially misleading financial promotion;
  - (c) failed to ensure that it had adequate systems and controls to ensure compliance with regulatory standards and requirements; and
  - (d) had recently been the subject of enforcement action for similar systems and controls failings.

### **Conduct following the breach (DEPP 6.4.2G(5))**

- 7.11. The FSA has taken into account City Gate's cooperation with the FSA's investigation.

### **Previous action taken by the FSA (DEPP 6.4.2G(7))**

- 7.12. In determining the appropriate sanction, the FSA has taken into account sanctions imposed by the FSA on other authorised persons for similar behaviour. This was considered alongside the deterrent purpose for which the FSA imposes sanctions.



### **The financial impact on the person concerned (DEPP 6.4.2G(8))**

- 7.13. City Gate has breached section 20(1)(a) of the Act and failed to comply with Principles 2 and 3, and COBS 4.5.2R. The breaches are serious and the FSA would have imposed a financial penalty of £180,000 on City Gate as a result. However, given that City Gate is in liquidation, the FSA has concluded that it would not be appropriate to impose a financial penalty City Gate. Under these exceptional circumstances, the FSA publishes a statement of City Gate's misconduct and censures it publicly, instead.

## **8. PROCEDURAL MATTERS**

### **Decision maker**

- 8.1. The decision which gave rise to the obligation to give this Notice was made by the Regulatory Decisions Committee.
- 8.2. This Final Notice is given under, and in accordance with, section 390 of the Act.

### **Publicity**

- 8.3. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.
- 8.4. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

**FSA contacts**

- 8.5. For more information concerning this matter generally, contact Rachel West (direct line: 020 7066 0142/ fax: 020 7066 0143) of the Enforcement and Financial Crime Division of the FSA.

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**Bill Sillett**  
**Head of Department – Retail 3**  
**Enforcement and Financial Crime Division**  
**Financial Services Authority**

## ANNEX A

### **RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE**

#### **1. Statutory provisions**

- 1.1. The FSA's regulatory objectives are set out in section 2(2) of the Act and include market confidence, public awareness, the protection of consumers and the reduction of financial crime.
- 1.2. Section 138 of the Act provides that the FSA may make such rules applying to authorised persons as appear to it to be necessary or expedient for the purpose of protecting consumers.
- 1.3. The FSA has the power, pursuant to section 205 of the Act, to issue a public censure where it considers an authorised person has contravened a requirement imposed on him by or under the Act.
- 1.4. Section 20(1)(a) of the Act provides that if an authorised person carries on a regulated activity in the United Kingdom, or purports to do so, otherwise than in accordance with permission given to him by the FSA under Part IV of the Act, he is taken to have contravened a requirement imposed by the FSA on him under the Act.

#### **2. Relevant Handbook provisions**

- 2.1 In exercising its power to issue a public censure, the FSA must have regard to relevant provisions in the FSA Handbook. The main provisions relevant to the action specified above are set out below.

##### *Principles for Businesses*

- 2.2 Under the FSA's rule-making powers as referred to above, the FSA has published in the FSA Handbook the Principles for Businesses ("Principles"), which apply either in whole or in part to all authorised persons.

2.3 The Principles are a general statement of the fundamental obligations of firms under the regulatory system and reflect the FSA's regulatory objectives. A firm may be liable to disciplinary sanction where it fails to comply with the Principles.

2.4 The Principles relevant to this matter are:

(a) Principle 2 (Skill, care and diligence) which states that "a firm must conduct its business with due skill, care and diligence."

(b) Principle 3 (Management and control) which states that "a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems."

#### *Conduct of Business Sourcebook*

2.5 The Conduct of Business Sourcebook ("COBS"), set out in the Business Standards section of the FSA Handbook, applied to all firms during the relevant period.

2.6. COBS 4.5.2R requires that information in communications to clients, including in financial promotions, is accurate and, in particular, does not emphasise any potential benefits of an investment without also giving a fair and prominent indication of any relevant risks.

### **3. Other relevant regulatory provisions**

3.1. In exercising its power to issue a public censure, the FSA must also have regard to relevant regulatory provisions and guidance. The guidance that the FSA considers relevant to this case is set out below.

#### *Decision Procedures and Penalties ("DEPP")*

3.2 The FSA's policy in relation to the issue of public censures is set out in Chapter 6 of DEPP, which forms part of the FSA Handbook. The principal purpose of issuing a public censure 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.

3.3 DEPP 6.4.1G(1) provides that the FSA will consider all the relevant circumstances of a case when deciding whether to impose a penalty or issue a public censure.

3.4 DEPP 6.4.2G states that the criteria for determining whether it is appropriate to issue a public censure rather than impose a financial penalty are similar to those for determining the amount of penalty set out in DEPP 6.5. DEPP 6.4.2G further provides that some particular considerations that may be relevant when the FSA determines whether to issue a public censure rather than impose a financial penalty are:

- (1) whether or not deterrence may be effectively achieved by issuing a public censure;
- (2) if the person has made a profit or avoided a loss as a result of the breach, this may be a factor in favour of a financial penalty, on the basis that a person should not be permitted to benefit from its breach;
- (3) if the breach is more serious in nature or degree, this may be a factor in favour of a financial penalty, on the basis that the sanction should reflect the seriousness of the breach; other things being equal, the more serious the breach, the more likely the FSA is to impose a financial penalty;
- (4) if the person has brought the breach to the attention of the FSA, this may be a factor in favour of a public censure, depending upon the nature and seriousness of the breach;
- (5) if the person has admitted the breach and provides full and immediate co-operation to the FSA, and takes steps to ensure that those who have suffered loss due to the breach are fully compensated for those losses, this may be a factor in favour of a public censure, rather than a financial penalty, depending upon the nature and seriousness of the breach;
- (6) if the person has a poor disciplinary record or compliance history (for example, where the FSA has previously brought disciplinary action resulting in adverse findings in relation to the same or similar behaviour), this may be a

factor in favour of a financial penalty, on the basis that it may be particularly important to deter future cases;

- (7) the FSA's approach in similar previous cases: the FSA will seek to achieve a consistent approach to its decisions on whether to impose a financial penalty or issue a public censure; and
- (8) the impact on the person concerned. In exceptional circumstances, if the person has inadequate means (excluding any manipulation or attempted manipulation of their assets) to pay the level of financial penalty which their breach would otherwise attract, this may be a factor in favour of a lower level of penalty or a public statement. However, it would only be in an exceptional case that the FSA would be prepared to agree to issue a public censure rather than impose a financial penalty if a financial penalty would otherwise be the appropriate sanction. Examples of such exceptional cases could include where there is:
  - (a) verifiable evidence that a person would suffer serious financial hardship if the FSA imposed a financial penalty;
  - (b) verifiable evidence that the person would be unable to meet other regulatory requirements, particularly financial resource requirements, if the FSA imposed a financial penalty at an appropriate level; or
  - (c) in Part VI cases in which the FSA may impose a financial penalty, where there is the likelihood of a severe adverse impact on a person's shareholders or a consequential impact on market confidence or market stability if a financial penalty was imposed. However, this does not exclude the imposition of a financial penalty even though this may have an impact on a person's shareholders.