Financial Services Authority

FINAL NOTICE

To:	Dr Sandradee Joseph
Of:	12 Castelnau, London SW13 9RU
Individual Reference Number:	SXJ01353
Date	18 November 2011

ACTION

1. For the reasons given in this notice the FSA hereby:

   (a) imposes on Dr Sandradee Joseph ("Dr Joseph") a financial penalty of £14,000 ("the Financial Penalty") for failure to comply with Statement 6 of the FSA's Statements of Principle for Approved Persons pursuant to section 66(3)(a) of the Financial Services and Markets Act 2000 ("the Act"); and

   (b) makes an order, pursuant to section 56 of the Act, prohibiting Dr Joseph from performing any significant influence controlled function in relation to any regulated activities carried on by any authorised or exempt persons, or exempt professional firm ("the Partial Prohibition Order"), on the grounds that she is not a fit and proper person. This order takes effect from 18 November 2011.

2. Dr Joseph agreed to settle at an early stage of the FSA´s investigation. Dr. Joseph therefore qualified for a 30% Stage 1 discount under the FSA´s executive settlement procedures. Were it not for this discount the FSA would have imposed a financial penalty of £20,000 on Dr. Joseph.

SUMMARY OF REASONS

3. The FSA has decided to take the action set out above in respect of Dr Joseph's conduct between 18 November 2008 to 24 February 2009 (the "Relevant Period"), in relation to her role at Dynamic Decisions Capital Management Limited ("DDCM"), a hedge fund management company based in London (and Milan).

4. Dr Joseph joined DDCM in January 2008 and held the Compliance Oversight controlled function (CF10) and the Money Laundering Reporting controlled function (CF11) at DDCM. As CF10 she was responsible for the compliance function at DDCM.

5. In late 2008, a senior employee at DDCM ("Employee A") entered into a number of contracts, on behalf of investment funds managed by DDCM, for the purchase and resale of a bond ("the Bond"). The Bond was a fraudulent instrument and Employee A entered into these contracts in order to conceal significant losses suffered by the funds managed by DDCM.

6. Various concerns were raised in relation to the purchase of the Bond. The Prime Broker acting for DDCM refused to authorise a payment of USD 5 million for the purchase of the Bond, and resigned as Prime Broker as a result of its concerns. Although Dr Joseph responded to their Termination Letter she failed to read or give adequate consideration to the matters raised in it.

7. Further, the main investors in the Fund raised a number of concerns regarding the purchase of the Bond, urgently requesting further information regarding the Bond, before advising that the Bond was in breach of the investment restrictions. One investor also advised that the Bond was of doubtful provenance and legitimacy. Dr Joseph was copied into correspondence from the institutional investors in which they raised concerns about the Bond.

8. Dr Joseph failed to properly investigate and act on the information she received. She relied wrongly on Employee A and on her belief that external lawyers were instructed and would have acted on concerns as appropriate. In doing so, Dr Joseph did not engage with her responsibilities as a CF10 and therefore failed to act with due skill, care and diligence in performing the CF10 role at DDCM in breach of Statement of Principle 6.

9. For these reasons the FSA considers that it is necessary and proportionate to impose on Dr Joseph a financial penalty of £14,000 and the Partial Prohibition Order.

DEFINITIONS

10. The definitions below are used in this Notice:

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

"the Bond" means a US denominated bond issued by Company A premised on the purported assignment by the Charity of USD 10 billion of diesel oil to Company B

"DEPP" means the Decision Procedure and Penalties Manual

"DDCM" Dynamic Decisions Capital Management Limited

"Dr Joseph" means Dr Sandradee Joseph, the legal and compliance officer, and MLRO of DDCM, holding controlled functions CF10 and CF 11

"the Fund" means an investment fund which was managed by DDCM

"EG" means the Enforcement Guide

"the FSA" means the Financial Services Authority

"MLRO" means Money Laundering Reporting Officer

"NAV" means Net Asset Value

"the Prime Broker" means the broker instructed by DDCM in relation to the Fund

"the Relevant Period" means the period from 17 November 2008 until 24 February

2009

"the Risk Report" means a report produced on the Bond by a professional services firm

"the Termination Letter" means a letter dated 13 November 2008 sent from the Prime Broker to DDCM stating that it wished to terminate its prime brokerage relationship with DDCM

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

11. In relation to the Bond, the following definitions have been adopted:

"Company A" is the issuer of the Bond

"Company B" is the guarantor of the Bond

"the Charity" is a Spanish charity which owned the collateral, and was a related company to Company B, as the shareholders of the Charity also held 50% of the shares of Company B

"the Delivery Agent" is the delivery agent responsible for delivering the commodity.

FACTS AND MATTERS

Background

12. Dr Joseph was employed as a compliance officer and MLRO at DDCM, a hedge fund management company based in London (and Milan). From 30 January 2008 to 9 March 2009, Dr Joseph was approved to carry out the CF10 (Compliance Oversight) controlled function and the CF11 (MLRO) controlled function. Her responsibilities did not include involvement in the calculation of the NAV of the Fund.

13. DDCM was responsible for managing the Fund which suffered catastrophic losses in the wake of the collapse of Lehman Brothers. Between 1 October 2008 and 31 December 2008, the investment strategy adopted by DDCM for the Fund resulted in losses totalling approximately 85% of the Fund's total assets under management.

14. Rather than report these losses to the investors of the Fund, Employee A sought to

conceal these losses and took steps to acquire units of the Bond issued by Company A. The Bond was premised on the purported assignment by the Charity of USD 10 billion of diesel oil to Company B. The structure of the Bond was such that:

14.1. it was collateralised by a commodity (diesel oil) and notice could be given to convert the Bond into either cash (a cash conversion) or to diesel oil (a commodity conversion) at any time. Once notice is given, cash payments or physical delivery of the commodity would begin after 120 days and continue for 12 months.

14.2. in the alternative, the Bond could be sold to a third party without the need for a cash or physical conversion.

15. Employee A booked purported profits of approximately USD 418 million to the Fund by purchasing several units of the Bond from Company B. In every case, the Fund's acquisitions of the Bond were made at deep discounts to the face value of the Bond. However, when the NAV of the Fund was calculated, the Bond was valued at close to, or above its face value, therefore, allowing Employee A to book purported profits to the Fund which were slightly in excess of the losses suffered such that, in each month, a relatively modest profit was reported by the Fund.

The termination of the Fund's Prime Brokerage Agreement

16. Pursuant to an agreement dated 30 October 2008, the Fund was to pay USD 5 million to Company A on 10 November 2008 for the purposes of purchasing a unit of the Bond. In early November 2008, Employee A requested that the Prime Broker carry out the payment and informed it that DDCM would purchase Bond units from Company A.

17. Following a meeting with Employee A to discuss the transaction, the Prime Broker refused to make the payment to Company A, and terminated its prime brokerage agreement with the Fund by the Termination Letter dated 13 November 2008, sent by email to Employee A. In the Termination Letter, the Prime Broker referred to the transaction apparently involving a subsequent repurchase of the Bond by Company B and stated that, on the basis of its understanding of the transaction, it was not comfortable facilitating the settlement or payments.

18. On 14 November 2008, Employee A sent the Prime Broker an email (copied to Dr Joseph) which attached a letter dated 15 November 2008 purportedly reflecting a resolution reached by DDCM's Board of Directors which confirmed that there was no evidence of any repurchase of the Bond by any third parties from the Fund at a future date.

19. Dr Joseph was on her honeymoon from 3 to 16 November 2008 and returned to the office on 17 November 2008. On 18 November 2008, she responded to the Termination Letter by stating that the Prime Broker had misunderstood the facts pertaining to the Bond transaction and that there was no intended repurchase of the Bond by Company B.

20. Whilst Dr Joseph was at that time aware that the relationship between the Prime Broker and DDCM had been terminated, she did not appreciate that this was as a result of the Prime Broker taking issue with the Bond transactions. This was because she failed to properly read or give adequate consideration to the matters raised in the Termination Letter.

21. The Prime Broker reported its concerns to the FSA, and Employee A instructed another broker to transfer USD 5 million to Company B.

The concerns raised in relation to the purchase of the Bond - Investor A

22. Investor A was an institutional investor in the Fund and on 1 December 2008 invested USD 41.8 million. This was made on the basis that the NAV of the Fund was USD 385 million. At the time of making the investment, Investor A was unaware that since 1 October 2008, the Fund had lost approximately USD 255 million. Employee A had concealed the losses to the Fund by booking a purported USD 268 million gain through the acquisition of the Bond and had led Investor A to believe that the Fund's maximum exposure to the Bond was limited to USD 5 million. Investor A's capital was dependent upon the Fund realising a profit of USD 268 million on a Bond for which the Fund had purportedly paid USD 5 million.

23. The Bond was not a permitted instrument under the investment restrictions agreed with Investor A as it had a maturity of greater than 12 months; was issued by an unlisted entity; and there was no option for it to be converted into equity.

24. In addition, Investor A's restrictions stipulated a convertible bond limit which limited the exposure to convertible bonds to less than 3% of the NAV of the Fund.

25. In December 2008, Investor A sought further clarification about the content of the Fund's portfolio. On 16 December 2008, Investor A received a report from DDCM which reported the Fund's position as at 12 December 2008. The entry in relation to the Bond indicated a mark to market valuation of USD 190 million. Investor A was confused given the earlier indication from Employee A that the exposure of the Fund to the Bond was USD 5 million.

26. On 19 December 2008, Investor A started to question the Bond and sent three emails to Employee A (copied to Dr Joseph) asking for clarification of how the NAV of the Fund was calculated and to discuss the cash flow of the Fund. Employee A responded with copies of the offering circular supplement and price supplement for the Bond and a Risk Report. Employee A did not provide any further information and made reference by email of 22 December 2008 to "heavy confidentiality agreements" which restricted the amount of information that he could provide to Investor B.

27. The Risk Report was carried out by a global professional services firm. The firm was instructed by Employee A to estimate the financial risk profiles relating to the Bond transactions. However, Investor A found this to be of little value as the risk scenario analyses had been performed by ignoring impacts arising from country risks, reputational risks, legal risks and logistical risks. In addition, the Risk Report did not verify the Delivery Agent's capability to deliver the commodity in order to guarantee the Bond proceeds in cash settlement procedures.

28. On 22 December 2008, Investor A sent three more emails to Employee A (copied to Dr Joseph). Investor A stated that the information requested was straightforward and it could not see how it could fall to be confidential information. Investor A also asked Employee A to go through the Bond transactions so that it had a clear picture of the risks that it had in the Fund. Finally, Investor A stated that "*the risk taken in the Fund is beyond the guidelines that you signed up to and the documentation that has been provided around the Bond is far from complete. We therefore find ourselves in a position where we are unable to assess the risk of these trades*."

29. On 23 December 2008, Investor A emailed Employee A and Dr Joseph requesting a conference call and clarification of key details regarding the Bond including: evidence that the collateral existed, was secure and segregated in the name of DDCM; the price for the sale of the Bond; the settlement dates; the counterparty; and evidence of the transactions. Employee A did not respond to Investor A's 23 December 2008 request and rather than responding to Investor A's questions, Dr Joseph stated that all requests for information should be made in writing and not via telephone.

30. On 24 December 2008, Investor A filed a redemption request to DDCM. Investor A stated that after a week of trying to get to the bottom of the Bond transaction and why it occupied such a large part of the assets under management of the Fund, it was decided that Investor A would put in a redemption request as it was not comfortable with the explanations it was getting.

31. Dr Joseph was questioned in interview with the FSA as to why Investor A decided to redeem its investment 3 weeks after it had invested in the Fund. Her response was that she considered Investor A may have been "jumpy" given the environment at the time.

32. The redemption date was expected to be 21 January 2009 and Investor A became aware that the Fund did not have adequate cash to satisfy the redemption. Investor A was told by DDCM that there would be buyers willing to buy the Bond and on 11 February 2009, met with DDCM to seek further proof of buyers.

33. On 12 February 2009, Dr Joseph provided Investor A with a summary of the discussions of the sale of the Bond. Dr Joseph explained in interview that the information was not provided from her direct knowledge and was collated from others at DDCM.

The concerns raised in relation to the purchase of the Bond - Investor B

34. Investor B was another large institutional investor which invested in the Fund.

35. The Bond was not a permitted instrument under the investment restrictions agreed with Investor B, as:

    35.1. at no time did any market maker publish a bid-offer quote for the Bond; and

35.2. the Bond was also an expressly prohibited instrument, as it was an illiquid instrument and a "Reg S" security.

36. Further, the Bond failed to meet the restrictions in relation to its cash management activities criteria which required that "*the gross exposure to Positions in debt securities shall not exceed 100% of the NAV of the Fund, provided these debt securities are i) used for cash management only, ii) are AA rated and iii) have a duration less than 180 days*" as it was a speculative instrument, it was not rated and had a maturity date of over 180 days.

37. In December 2008, Investor B sought further information on the Bond. On 15 December 2008, Investor B spoke to Employee A about the Bond. Investor B thought the investment in the Bond to be atypical and Employee A explained that it was a cash management instrument intended to be sold off quickly. Employee A also explained that it was possible to sell the Bond back to Company A.

38. On 16 December 2008, Investor B made a redemption request as the Fund, by acquiring the Bond, had contravened the agreed investment restrictions.

39. On 22 December 2008, Investor B sent an email requesting a meeting with Employee A. Employee A responded by email (copied to Dr Joseph) by saying that he was not able to do anything without her. Later on 22 December 2008, Investor B sent an email to Dr Joseph requesting a redemption and to exit the Fund stating that it was "*simply not complying with the guidelines*".

40. Dr Joseph explained in interview that after receiving this email from Investor B, she would have looked at the Offering Memorandum in relation to the Bond, specifically to check if the restrictions had been complied with. She stated that, at the time, she developed no suspicions about the Bond.

41. On 23 December 2008, Investor B requested information and details of the Bond transaction from Dr Joseph and for her to respond within the next 30 minutes. On 29 December 2008, Investor B chased Employee A by email (copied to Dr Joseph) for answers to his email of 23 December 2008 as no response had been received from Dr Joseph despite Investor B's stated urgency. Later that day, Employee A asked Investor B to sign a non-disclosure agreement. Investor B responded and stated that

the Bond was not permitted by the investment guidelines. Employee A drafted a response to Investor B and stated that the acquisition of the Bond did not breach the investment guidelines and asked Dr Joseph to review the draft email before it was sent.

42. On 31 December 2008, Investor B sent an email to Employee A (copied to Dr Joseph) which showed its frustration with Employee A. Investor B stated, "*you have taken the responsibility to allocate the assets of the [Fund] in securities which are not eligible by any mean for the strategy you were supposed to follow: these securities are not permitted by our investment guidelines… I have tried to contact you numerous times over the last 48 hours by all means without being able to reach you and without you returning my calls. I urge you to call me please ASAP on my mobile*".

43. Dr Joseph explained in interview that she thought the breach of Investor B's investment restrictions had been cured by the sale of the Bond on 22 December 2008.

44. On 7 January 2009, Investor B signed the non-disclosure agreement and requested from Employee A and Dr Joseph further information about the Bond. On 8 January 2009, Employee A sent Investor B by email a set of documents relating to the Bond which included:

    44.1. the Offering Circular, the Supplement Offering Circular and Pricing Supplement;

    44.2. the Proof of Product which stated that the product existed;

    44.3. the Deed of Assignment where the commodity was assigned from the Charity to Company B;

    44.4. the Collateral Trust Agreement where Company B guaranteed the obligation of Company A as the issuer of the Bond;

    44.5. the Delivery Agreement which confirmed that once the Bond was issued, no party had a right on the commodity and that it was under the custodian of the Delivery Agent and remained available to the noteholder for conversion;

    44.6. the Bank Confirmation issued by a Russian bank guaranteeing the delivery

capacity of the Delivery Agent.

45. Dr Joseph was copied into this email. Dr Joseph was asked in interview whether she reviewed the documents. She explained that she could not remember if she read the documents.

46. Having reviewed the documents, Investor B remained concerned about the Bond. Its concerns included the following:

46.1. the locations of the companies involved were unusual; the companies were also not known and instead appeared "opaque", with Investor B being unable to trace Company B;

46.2. the Bond was a highly atypical financial asset and there were several aspects which appeared unusual;

46.3. the documentation was imprecise; and

46.4. the dealers for the Bond were not named.

47. As a result of its concerns, on 5 February 2009, Investor B issued a letter before action to the Directors of the Fund. In this letter, Investor B requested the immediate removal of Employee A from the DDCM as the investment manager of the Fund and that the Fund work with Investor B to remedy the situation.

48. Investor B carried out its own evaluation of the Bond and on 13 February 2009 sent an email to Employee A, copied to Dr Joseph, setting out its concerns as to the legitimacy and provenance of the Bond, and in particular that (i) the Bond was issued by a special purpose company, (ii) the Bond was not listed, quoted, or so far as they were aware eligible for trading in any international clearing system, (iii) the Bond was not issued through a known dealer, and (iv) that Company B was unknown, and had only been created in January 2008. Investor B further stated that there was absolutely no price for the Bond as no dealer or serious market participant would put a market quote on the Bond. Investor B reported its concerns to the FSA.

The response of Dr Joseph

49. Following the concerns raised by Investor A and Investor B, Dr Joseph did not take steps to investigate those concerns. In interview, Dr Joseph stated that;

    49.1. she considered her CF10 role as a reporting function, in addition to which, she would be responsible for setting up systems. She also stated that she instilled upon staff at DDCM that compliance was an individual responsibility rather than making one person collectively responsible;

    49.2. she had no responsibility for the Fund as a lawyer because that was dealt with by external law firms and therefore she could "take a back seat";

    49.3. she was satisfied that there were sufficient advisors looking at the documentation relating to the Bond;

    49.4. she did not understand the Bond, so she did not consider that reviewing the documents would have made much sense to her. She took comfort in her belief that external lawyers were looking at the transaction and considered that it would have been irresponsible of her to have "jumped in" in light of her belief that external lawyers were reviewing the Bond documentation; and

    49.5. she believed at the time that the Bond was legitimate, and continued to believe this.

50. However, no legal firm had been instructed, during the Relevant Period, to carry out due diligence on the Bond or assess counterparty risk. Dr Joseph had not seen any legal opinion or other report by any law firm, and did not take any steps to confirm if a law firm had been instructed, and if so what advice had been provided.

51. On 22 February 2009, Investor B sent an email to Employee A, copied to Dr Joseph, which stated that, based on their own checks, the Bond was a scheme involving companies that could be linked to suspicious activities, and that the Bond was likely to be counterfeit. The email further stated that the collateral for the Bond, being the diesel oil, did not exist, and that the Bond was a scheme put together to raise cash for unknown purposes.

52. The email further stated that Investor B had contacted the FSA regarding their concerns. Following this, Employee A advised DDCM that it was necessary to report Investor B to the FSA. On 24 February 2009, Dr Joseph contacted the FSA, refuting Investor B's allegations, but stating that DDCM were that day looking into the matter with external counsel and that proper steps would be taken to investigate the matter further.

53. Dr Joseph ceased acting in her controlled functions, CF10 and CF11, on 9 March 2009.

FAILINGS

54. The regulatory provisions relevant to this Notice are referred to in Annex A.

55. Dr Joseph was responsible for the compliance function at DDCM, which was to operate independently, and was responsible for:

    (1) monitoring and assessing the adequacy and effectiveness of the measures and procedures in place to detect any risk of failure to comply with its obligations under the regulatory system; and

    (2) advising and assisting the relevant persons responsible for carrying out regulated activities to comply with DDCM's obligations under the regulatory system.

56. In her role, if Dr Joseph became aware of concerns that the firm was not complying with its regulatory obligations, she should have taken steps to ensure that these concerns were investigated, to verify if the concerns appeared to be legitimate, and if so to take appropriate action.

57. As set out below, by her conduct during the Relevant Period, Dr Joseph breached Statement of Principle 6.

Termination of the Fund's Prime Brokerage Agreement

58. Dr Joseph failed to read properly or give adequate consideration to the issues raised in the Termination Letter about the circumstances surrounding the termination. This

failure meant that she did not put herself in a position from which she was able properly to discharge her regulatory obligations.

Failure to investigate the various concerns raised regarding the purchase of the Bond

59. As set out above, a number of serious concerns were raised regarding the transactions in relation to the Bond, including:

(1) the resignation of the Prime Broker in relation to the purchase of the Bond, and the apparent resale of the Bond to the vendor;

(2) the correspondence from Investor A and Investor B in which they repeatedly requested further information and raised concerns regarding the purchase of the Bond; in particular, Dr Joseph received correspondence from Investor A and Investor B advising that the purchase of the Bond was a breach of the agreed investment guidelines, and listing concerns. One investor also advised that the Bond was of doubtful provenance and legitimacy. Dr Joseph was also informed by Investor B that it was considering referring the matter to the relevant regulators and requesting the removal of the investment manager.

60. This should have raised concerns that:

(1) DDCM was not complying with its regulatory obligations and, in particular, that the Bond was not a suitable investment for the Fund as it was not a legitimate financial instrument, and as its purchase was a breach of agreed investment restrictions; and

(2) an attempt was being made to commit a fraud against the Fund/DDCM and that potentially a senior employee of DDCM might have been guilty of serious misconduct concerning his honesty and integrity.

61. Dr Joseph was also provided with a copy of various documents relating to the Bond on 8 January 2008. A review of this documentation should have raised further concerns regarding the legitimacy of the Bond.

62. Dr Joseph should have ensured that the concerns raised were urgently considered and investigated. If these investigations had not confirmed that the Bond was a legitimate

financial instrument, Dr Joseph should have notified the FSA that a person may have committed financial crime.

63. Dr Joseph did not take any such steps, but instead relied on her mistaken belief that external lawyers had advised on the Bond, without having seen this advice and without confirming whether any such advice had been obtained. She advised the FSA that she could not have added anything to any review by external lawyers, particularly as she did not have a full understanding of the Bond.

64. Dr Joseph failed to properly engage with her CF10 duties and absolved all responsibility for compliance at DDCM in relation to the Bond. She failed to take any steps to understand the Bond transaction and when concerns were raised, she failed to undertake any investigation to check whether those concerns were legitimate. She instead wrongly relied on Employee A and a belief that external parties would raise concerns as appropriate.

65. By her conduct, Dr Joseph was in breach of Statement of Principle 6, as she failed to exercise due skill, care and diligence in managing the compliance function of DDCM.

SANCTION

66. Dr. Joseph failed to act on clear concerns raised about the Bond transaction both by investors and the Prime Broker in relation to the Bond, thereby demonstrating a lack of due skill, care and diligence in managing the business of the firm for which she was responsible in her CF10 controlled function.

67. Dr. Joseph failed to subject the Bond to any degree of scrutiny and during the investigation did not accept that the Bond was a suspicious instrument. Any penalty must have a sufficient deterrent effect to ensure that the FSA sends a message that individuals holding controlled functions will be held to account for such misconduct.

Financial Penalty

68. The financial penalty imposed on Dr Joseph is in relation to her breach of Statement of Principle 6. The breach occurred before 6 March 2010, when a new policy framework came into force for determining financial penalties. The financial penalty

for this breach is therefore considered under the policy in force before 6 March 2010.

69. The FSA's policy on the imposition of financial penalties prior to 6 March 2010 was set out in Chapter 6 of the Decision Procedures and Penalties Manual ("DEPP"), which forms part of the FSA Handbook. All references to DEPP in paragraphs 6.2 – 6.12 are references to that version of DEPP, in force at the relevant time of the breach of Statement of Principle 6. In addition, the FSA has had regard to Chapter 7 of the Enforcement Guide ("EG").

70. DEPP 6.1.2G states that 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.

71. In determining whether a financial penalty is appropriate under the policy in place before 6 March 2010 the FSA is required to consider all the relevant circumstances of a case. Applying the criteria set out in the DEPP 6.2.1 (regarding whether or not to take action for a financial penalty or public censure) and 6.4.2 (regarding whether to impose a financial penalty or public censure), the FSA considers that a financial penalty is an appropriate sanction, given the serious nature of the breaches, the risks created and the need to send out a strong message to other individuals performing significant influence functions that they must ensure that the business for which they are responsible complies with its regulatory responsibilities.

72. DEPP 6.5.2 and prior to August 2007, ENF 13.3, set out a non-exhaustive list of factors that may be of relevance in determining the level of financial penalty. The FSA considers that the following factors are particularly relevant in this case.

Deterrence (DEPP 6.5.2G(1))

73. In determining the level of the financial penalty, the FSA has had regard to the need to ensure that compliance officers in the industry are made aware that it is unacceptable to fail to deal with obvious concerns at a firm and that doing so will result in Enforcement action. The FSA considered that a penalty should be imposed on Dr Joseph to demonstrate to her and others the seriousness with which the FSA

regards such behaviour.

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

74. Dr Joseph failed in her duties as compliance officer at DDCM. She failed to investigate the Bond transactions to ensure that she was satisfied that they were legitimate. Despite becoming aware of Investor A and Investor B's concerns, she failed to notify the FSA of concerns raised about the legitimacy of the Bond and to escalate the concerns within DDCM. Had she done so, she would have enabled the FSA and DDCM to respond appropriately.

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

75. Dr Joseph's conduct arose from a serious lack of the competence required to carry out the CF10 function effectively.

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

76. When determining the appropriate level of penalty, the FSA will take into account that individuals will not always have the same resources as a body corporate, the enforcement action may have a greater impact on an individual, and further, that it may be possible to achieve effective deterrence by imposing a smaller penalty on an individual that a body corporate. The FSA will also consider whether the status, position and/or responsibilities of the individuals are such as to make a breach committed by the individual more serious and whether the penalty should therefore be set at a higher level.

77. The FSA considers that the financial penalty imposed on Dr Joseph to be proportionate in relation to the seriousness of the misconduct.

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

78. The FSA has no evidence that Dr Joseph is unable to pay the amount of financial penalty.

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

79. The FSA has not previously taken any action against Dr Joseph.

Penalty

80. The FSA has considered the various factors above and determined that in all the circumstances, it is appropriate to impose a financial penalty of £14,000 on Dr Joseph for the contraventions of Statement of Principle 6.

Partial Prohibition Order

81. The FSA had regard to the guidance in Chapter 9 of the Enforcement Guide ("EG") in deciding that a Partial Prohibition Order was appropriate in this case.

82. The FSA has concluded that Dr Joseph's conduct fell short of the standards required by the FSA's Fit and Proper Test for Approved Persons in terms of competence and capability. In particular, Dr Joseph ignored her responsibilities and failed to conduct any investigation into the concerns raised, including the concerns as to the legitimacy of the Bond.

PROCEDURAL MATTERS

Decision maker

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

84. This Final Notice is given under section 206 and in accordance with section 390 of the Act.

Manner of and time for Payment

85. The financial penalty must be paid in full by Dr Joseph to the FSA by no later than 2 December 2011, 14 days from the date of the Final Notice.

If the financial penalty is not paid

86. If all or any of the financial penalty is outstanding on 3 December 2011, the FSA may recover the outstanding amount as a debt owed by Dr Joseph and due to the FSA.

Publicity

87. 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.

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

FSA contacts

89. For more information concerning this matter generally, contact Charles Kuhn (direct line: 0207066 9070) of the Enforcement and Financial Crime Division of the FSA.

Matthew Nunan
Acting Head of Department
Enforcement and Financial Crime Division
Financial Services Authority

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; the 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 6

4.7. The Statement of Principle relevant to this matter:

(1) Statement of Principle 6 which provides that an approved person performing a significant influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his controlled function.

4.8. 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 circumstances of the individual case, the characteristics of the particular controlled function and the behaviour expected in that function.

4.9. APER 4.6 lists types of conduct which do not comply with Statement of Principle 6.

4.10. APER 4.6.3E states that failing to take reasonable steps to adequately inform oneself as an approved person about the affairs of the business for which he is responsible in his controlled functions is conduct that breaches Statement of Principle 6.

4.11. APER 4.6.8E states that failing to supervise and monitor adequately the individual or individuals to whom responsibility for dealing with an issue or authority for dealing with a part of the business has been delegated by an approved person is conduct that breaches Statement of Principle 6.

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 following (paragraphs 5.3 to 5.5 below) are the provisions of DEPP which were applicable to misconduct during the relevant period. Revised provisions of DEPP came into force on 6 March 2010 for misconduct after 6 March 2010.

5.3. 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.

5.4. 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)).

5.5. 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. This includes other action taken by the FSA or a previous regulator (DEPP 6.5.2G (10)).