Financial Services Authority

FINAL NOTICE

To: **Jaspreet Singh Ahuja**

Date of birth: **24 March 1967**

Individual Ref: **JSA01038**

Date: **14 December 2011**

TAKE NOTICE: the Financial Services Authority of 25 the North Colonnade, Canary Wharf, London E14 5HS (the "FSA") gives Mr Ahuja final notice that it has taken the following action:

1. ACTION

1.1. The FSA gave Jaspreet Singh Ahuja a Decision Notice on 9 July 2010 (the "Decision Notice") which notified him that the FSA had decided to take the following action:

(1) to make an order pursuant to section 56 of the Financial Services and Markets Act 2000 (the "Act") prohibiting Mr Ahuja from performing any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm on the grounds that he is not a fit and proper person (the "Prohibition Order"); and

(2) to impose a financial penalty of £150,000 on Mr Ahuja pursuant to section 66 of the Act for breaching Statement of Principle 1 of the Statements of Principle for Approved Persons.

1.2 On 5 August 2010, Mr Ahuja referred the decision to the Upper Tribunal (Tax and Chancery Chamber) (the "Tribunal"). On 8 November 2011, Mr Ahuja notified the Tribunal of his intention to withdraw his reference. On 17 November 2011, the Tribunal gave consent to Mr Ahuja's withdrawal of his reference.

1.3 Accordingly, with effect from 14 December 2011, the FSA imposes the Prohibition Order and a financial penalty on Mr Ahuja in the amount of £150,000. Given the withdrawal of Mr Ahuja's reference, this notice is drafted in terms that are consistent with the Decision Notice.

2. REASONS FOR THE ACTION

2.1. The FSA has decided to take this action as a result of Mr Ahuja's conduct as an approved person at the London branch of UBS AG ("UBS") from 1 January 2006 to 30 January 2008 (the "Relevant Period").

2.2. Throughout the Relevant Period, Mr Ahuja was an approved person. In particular, from 23 April 2004 to 31 October 2007, Mr Ahuja was approved to perform the 'Investment Adviser' controlled function (CF21). On 1 November 2007, the Investment Adviser controlled function was superseded by the 'Customer' controlled function (CF30). Mr Ahuja held the 'Customer' controlled function until he resigned from UBS on 10 March 2008. UBS had suspended Mr Ahuja on 13 February 2008, and accepted his resignation on 18 March 2008.

2.3. Throughout the Relevant Period Mr Ahuja was a Client Adviser with UBS's international wealth management business in London, providing wealth management services to private banking customers. In performing the Investment Adviser and Customer controlled functions, he had significant contact with UBS's customers and he was able to develop substantial relationships of trust with UBS's international wealth management customers. In addition, he undertook regulated activities and provided services that were substantially connected to regulated activities.

2.4. During the Relevant Period, Mr Ahuja's conduct fell short of the FSA's prescribed regulatory standards for approved persons. Mr Ahuja's conduct demonstrated a lack of honesty and integrity and he is therefore considered not to be fit and proper to perform any controlled function. In particular, Mr Ahuja breached Statement of Principle 1 ("Principle 1") of the Statements of Principle for Approved Persons contained in the High Level Standards part of the FSA's Handbook entitled "Statements of Principle and Code of Practice for Approved Persons" ("APER"), which requires an approved person to act with integrity in carrying out his controlled function.

2.5. In summary, Mr Ahuja:

(1) utilised a pre-existing investment structure to enable an Indian resident customer, via an investment fund incorporated in Mauritius (the "Fund"), to breach Indian law in clear contravention of UBS guidelines. Ultimately, the customer invested over US$250 million in the Fund;

(2) wrongfully took steps to conceal the true nature of the customer's investment, mainly by the deliberate and repeated provision of false and/or misleading information to UBS Legal and Compliance ("Compliance") and other parts of UBS; and

(3) assisted in unauthorised redemption payments out of the Fund knowing, among other things, that the redemptions were not properly authorised by the customer and breached UBS internal compliance rules.

2.6. The FSA regards Mr Ahuja's misconduct as particularly serious in view of the following factors:

(1) Mr Ahuja – a senior Client Advisor with over 10 years experience in the financial services industry - abused his position of responsibility and the trust placed in him;

(2) Mr Ahuja showed a disregard for legal and regulatory requirements by arranging for a customer to use a pre-existing investment structure to breach Indian law;

(3) Mr Ahuja's misconduct in relation to the deliberate concealment of the true nature of the customer's investment (including the provision of false and/or misleading information to Compliance and other parts of UBS) occurred throughout the Relevant Period, and therefore constituted a consistent, deliberate course of misconduct over a period of 2 years;

(4) Mr Ahuja's provision of false and misleading information to Compliance was unacceptable. The information he provided was repeatedly challenged by Compliance and he was explicitly warned by Compliance of the consequences of providing them with false or misleading information. Nevertheless, he continued to maintain that the information he was providing (which he knew to be false and/or misleading) was accurate;

(5) The misconduct concerned customers for whom Mr Ahuja was responsible and, as regards his assistance in the unauthorised redemption payments out of the Fund, resulted in a loss to one of his customers; and

(6) Mr Ahuja's conduct in utilising a pre-existing investment structure to assist his customer to breach Indian law; in deliberately providing Compliance and other parts of UBS with false and/or misleading information; and in assisting in redemption payments that he knew were not properly authorised and breached UBS internal compliance rules, was deliberate.

2.7. The FSA has taken into consideration the fact that Mr Ahuja has not previously been subject to any findings of misconduct by the FSA or any other regulatory body.

3. RELEVANT STATUTORY PROVISIONS, RULES AND GUIDANCE

Relevant Statutory Provisions

3.1. The FSA's statutory objectives, set out in section 2(2) of the Act are the maintenance of confidence in the financial system, promoting public awareness, the protection of consumers, supporting financial stability and the reduction of financial crime.

Prohibition

3.2. 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 the individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person. Such an order may relate to a specified regulated activity, an activity falling within a specified description or all regulated activities.

Financial penalty

3.3. In addition, the FSA has the power, pursuant to section 66 of the Act, to impose a financial penalty on a person of such amount as it considers appropriate where it appears to the FSA that he is guilty of misconduct and it is satisfied that it is appropriate in all the circumstances to take action against him.

3.4. A person is guilty of misconduct if, while an approved person, he, among other things, fails to comply with a statement of principle issued under section 64 of the Act.

FSA Rules

3.5. APER was issued by the FSA pursuant to section 64 of the Act and contains general statements regarding the fundamental obligations of approved persons under the regulatory system.

3.6. APER Principle 1 states "*An approved person must act with integrity in carrying out his controlled function*" (APER 2.1.2 P).

FSA Guidance and Policy

3.7. The FSA guidance and policy relevant to the above statutory provisions and rules are set out in the Annex attached to this Notice.

4. FACTS AND MATTERS RELIED ON

UBS

4.1. UBS is a major global financial group with its headquarters in Zurich. Amongst other businesses, UBS operates an international wealth management business, which focuses on providing wealth management services to individuals. Customers of UBS's international wealth management business may also gain access to the services of UBS's Investment Bank ("UBS IB"), including, amongst other things, services to trade in foreign exchange, precious metals, securities and derivatives.

4.2. UBS conducts its international wealth management business in the United Kingdom through its London branch (the "London Branch").

4.3. The services UBS provides to its international wealth management customers in the UK include, amongst other things: bank account services; investment advisory services; portfolio management (i.e. the discretionary management of a portfolio of cash and investments in accordance with investment guidelines); the execution of trades on customer instructions; and the safekeeping of documents and assets. International wealth management customers are typically non-UK resident individuals who have substantial assets to invest, and are sophisticated, active and performance-driven investors.

4.4. During the Relevant Period, the international wealth management business conducted from the London Branch operated from seven desks, each of which focused on non-UK resident customers from different geographic areas (the "International Business Desks"). Each International Business Desk had its own portfolio of customers and was led and managed by a Desk Head.

4.5. Each international wealth management customer was allocated to a particular Client Adviser. The Client Advisers had day-to-day contact with customers, executed customer orders, provided advice and made recommendations in relation to investments and other products and services where relevant.

Mr Ahuja

4.6. Mr Ahuja has been in the financial services industry since 1994. He joined UBS in August 1999 and, prior to 2003, worked for UBS in India as a stockbroker. In 2003, he transferred to the UK to work for UBS's international wealth management business as a Client Adviser. Throughout the Relevant Period, Mr Ahuja was a senior Client Adviser on one of the International Business Desks, the Asia II desk ("the Desk"). Mr Ahuja was one of the most senior Client Advisers on the Desk.

4.7. Mr Ahuja reported to the Head of the Desk, Sachin Karpe. From around December 2007, Mr Ahuja acted as Deputy Desk Head, (although this was not an official position).

4.8. As an approved person holding the 'Investment Adviser' and 'Customer' controlled functions, Mr Ahuja was able to deal with customers, and their property, in a manner substantially connected to the carrying on of regulated activities by UBS AG.

4.9. As an approved person, Mr Ahuja was expected to comply with APER. In addition, Mr Ahuja was required to act in accordance with UBS's legal and compliance requirements (including money-laundering requirements, UBS Group and local policies and procedures and the UK Compliance Manual), the UBS Client Adviser Manual and the Employee Handbook.

4.10. Mr Ahuja managed a portfolio of customers, and offered a number of services to customers, including:

(1) Advising customers regarding investments;

(2) Making recommendations to customers on financial products;

(3) Marketing or distributing marketing material in respect of regulated products; and

(4) Opening UBS accounts for customers and providing account maintenance.

The Securities and Exchange Board of India (Foreign Institutional Investors) Regulations 1995 (as amended) (the "Regulations")

4.11. As referred to above, Mr Ahuja utilised a pre-existing investment structure to assist his customer to breach Indian law in clear contravention of UBS's formal guidelines.

4.12. Under Indian law (i.e. the Regulations), an Indian investor (whether resident or non-resident in India) is not permitted to invest in Indian securities through a vehicle known as a "Foreign Institutional Investor" ("FII") except in particular circumstances (which are not relevant here). Such vehicles are designed so that non-Indian investors may make investments in Indian securities.

Mr Ahuja's utilisation of pre-existing investment structure to assist an Indian customer to breach Indian law

4.13. The customer in question consisted of a large group of Indian companies ("Customer A") headed by a wealthy Indian individual (the "Customer A Chairman").

4.14. Mr Ahuja initially arranged for the Fund to be set up in February 2006 for another of the Desk's customers using a fund manager (the "Fund Manager") based in France with whom he had had prior dealings.

4.15. The Fund was established as a Protected Cell Company ("PCC"): i.e. a single legal entity comprising a series of self-contained cells. This structure allowed an investor to invest in a particular cell, the assets and liabilities of which were ring fenced from the rest of the company.

4.16. On or around August 2006, Mr Ahuja arranged for the Fund Manager to create a new cell ("Cell X") in the Fund for investment by Customer A. Customer A wanted to invest in an Indian company within its own group. In a bid to assist Customer A in breaching the Regulations, Mr Ahuja utilised an indirect investment route for Customer A into India whereby three Indian companies in Customer A's group (the "Customer A Investors") invested over US$250 million in Cell X which, in turn,

invested in Indian securities including through FII vehicles. The Customer A Investors were the beneficial owners of Cell X.

4.17. Mr Ahuja arranged the structure so that it would appear that it was the Fund Manager who was directing Cell X's investments. In fact, the Fund Manager's role was merely to execute the instructions of Customer A or the Customer A Investors that had been passed to the Fund Manager via Mr Ahuja. In accordance with those instructions, Cell X invested in Indian-listed equities and derivatives of a fourth Indian company in Customer A's group of companies (the "Customer A Target Company"), which is listed on an Indian stock exchange.

4.18. This was done by Mr Ahuja to disguise the fact that the Customer A Investors - Indian resident companies - were, via Cell X, purchasing Indian equities through FII vehicles. In doing so, Mr Ahuja's intention was to assist Customer A in breaching Indian law.

Mr Ahuja's attempts to conceal the true nature of Customer A's investment

4.19. Mr Ahuja's use of Cell X of the Fund was not his first attempt to use an investment structure for Customer A for the purpose of breaching Indian law. His first, unsuccessful, attempt was a proposed investment for the family of the Customer A Chairman to invest in India using an insurance vehicle. To conceal the true nature of that investment, Mr Ahuja deliberately, and over a prolonged period, provided UBS's Legal and Compliance Department in Zurich ("Compliance Zurich") with false and/or misleading information.

4.20. Mr Ahuja subsequently implemented the investment structure for Customer A using Cell X and took the following deliberate steps to conceal the true nature of that investment:

(1) Mr Ahuja withheld information from UBS IB;

(2) Mr Ahuja arranged for Customer A to invest in Cell X indirectly (via the purchase of structured notes by the Customer A investors) rather than directly (by the purchase of shares in Cell X) to conceal the link between the customer and its investment;

(3) Mr Ahuja repeatedly provided UBS Singapore's account opening team and UBS's Legal and Compliance Department in Singapore ("Compliance Singapore") with false and/or misleading information in relation to the Fund;

(4) Mr Ahuja signed payment instructions routing payments from one of the Customer A Investors to Cell X through the account of an unconnected customer in breach of UBS compliance rules. He also created internal notes setting out false reasons for the transfers; and

(5) In order to open an account for Cell X at UBS Zurich, Mr Ahuja signed account opening documentation containing false and/or misleading information.

The details are set out below.

Proposed investment using an insurance vehicle

4.21. In January 2006, and again in June 2006, in the process of unsuccessfully seeking approval of a proposed investment structure using an insurance vehicle for the family of the Customer A Chairman to invest in India, Mr Ahuja deliberately provided false and/or misleading information to Compliance Zurich to conceal the beneficial owner of the investment. As with the Fund, it appears that the purpose of the insurance vehicle was to breach Indian law. Ultimately, this investment did not proceed.

4.22. In an email exchange between Mr Ahuja and Compliance Zurich in January 2006, Mr Ahuja stated that the *"client (the policyholder and the life assured) [were] a foreign entity (non NRI* [Non Resident Indian]*)"*. Mr Ahuja can only have meant that the client was foreign to India (i.e. neither a resident nor a non-resident Indian).

4.23. Mr Ahuja raised the issue with Compliance Zurich again in an email exchange in June 2006, in which:

(1) Mr Ahuja stated that the "*client/policyholder is a French National*", referring to the beneficial owners of the Fund Manager, a French couple; and

(2) When reminded by Compliance Zurich that UBS's policy was to look behind insurance contracts entered into by its clients and deem the client to be the beneficial owner of the policy, it being this that governed whether he could invest through UBS into Indian-related products, Mr Ahuja replied "*…The client/policyholder is a French National – as mentioned in my previous mail…*"

4.24. The statements set out in paragraph 4.22 and 4.23 above were false and/or deliberately misleading because, at the time he made the statements, Mr Ahuja was aware that the beneficial owners of the investments were the Customer A investors.

Investment through Cell X

(1) Deliberate withholding of information from UBS IB

4.25. As referred to in paragraph 4.17 above, Mr Ahuja arranged the investment structure in question such that Cell X (in which Customer A had invested) invested in securities and derivatives relating to the Customer A Target Company, an Indian company. It did so through, amongst others, UBS IB. However, in order for UBS IB to deal with Cell X, Mr Ahuja had to introduce the Fund to UBS IB. During this process, Mr Ahuja deliberately withheld information from UBS IB as regards the investors in Cell X in order to ensure that UBS IB did not refuse to deal with the Fund.

4.26. During the introduction process, around July 2006, Mr Ahuja directed the actions of the Fund Manager, including drafting emails for the Fund Manager to send to UBS IB and preparing the Fund Manager's staff before telephone calls with UBS IB. However, Mr Ahuja deliberately kept from UBS IB the fact that they were dealing with a customer of UBS's international wealth management business and instructed the Fund Manager to do the same. On 2 July 2006, he wrote an email to the Fund Manager stating: *"…PLEASE DO NOT MENTION ANYTHING ABOUT DOING DEALS FOR OUR WEALTH MGMT CLIENTS. THE UBS INVST BANK IS ONLY*

INTERESTED IN DOING INSTITUTIONAL CLIENTS AND THEY ARE ALWAYS AVOIDING PRIVATE CLIENTS…".

4.27. Mr Ahuja withheld information from UBS IB because he understood that, due to the Indian law issues referred to above, exceptional compliance approval was required before any Indian customer of UBS's international wealth management business could put business relating to Indian securities through UBS IB. He thought that, if UBS IB knew that they were dealing with such a customer, there was a risk that they would refuse to deal with the Fund.

4.28. As a result of Mr Ahuja's actions, Cell X was able to enter into equity swaps with UBS IB, most of which referred to underlying shares in the Customer A Target Company, without UBS IB being made aware that the beneficial owner of Cell X was an Indian national. Subsequently, in January 2007, Cell X closed out the equity swaps and acquired Global Depositary Receipts in respect of the shares in the Customer A target Company from UBS IB. As at 31 October 2007, Cell X held Global Depositary Receipts in the Customer A Target Company valued at over US$300 million.

(2) Arranging for Customer A to invest in Cell X indirectly, via structured notes, rather than directly

4.29. Mr Ahuja arranged for the Customer A Investors to invest indirectly in Cell X (rather than directly purchasing shares in Cell X) by subscribing to structured notes (the "Notes") issued by third party banks (the "Note Issuers") which referred to underlying shares in Cell X. The Notes conveyed all of the risk and reward of the shares in Cell X to the Customer A Investors. However, the strict legal ownership of those shares remained with the Note Issuer.

4.30. Between 4 December 2006 and 9 October 2007, Customer A Investors invested over US$250 million in Cell X in this way.

4.31. The structure of Customer A's investment was such that it disguised the link between Customer A and Cell X.

(3) The provision of false and/or misleading information to the UBS Singapore account opening team and Compliance Singapore

4.32. Mr Ahuja unsuccessfully attempted in December 2006 to open an account with UBS Singapore to hold Cell X assets relating to a proposed derivatives transaction (the "Singapore Account"). When he was doing this he repeatedly provided the account opening team at UBS Singapore and Compliance Singapore with false and/or misleading information in order to evade internal compliance controls at UBS.

4.33. In summary:

(1) On 20 December 2006, as part of UBS's account opening documentation, Mr Ahuja completed and signed two Client Profile and Acceptance Checklists (the "Checklists") in which Mr Ahuja:

(i) stated that the account was for the Fund which would be transferring "*proprietory funds*" [sic]. (Mr Ahuja repeated this assertion in the report that he produced on 21 December 2006 to facilitate the opening of the Singapore Account); and

(ii) represented the principal shareholders of the Fund Manager (two French nationals) as being the beneficial owners of the account holder.

(2) On 20 and 21 December 2006, in emails to the account opening team at UBS Singapore, Mr Ahuja:

(i) represented that the principal shareholders of the Fund Manager were the beneficial owners of the account holder; and

(ii) stated that the account opening team was correct in their understanding that the source of funds was proprietary, and belonged to the Fund Manager rather than its underlying clients.

(3) Between 27 December 2006 and 3 January 2007, in various emails to Compliance Singapore, Mr Ahuja:

(i) in response to an email from Compliance Singapore enquiring as to the beneficial owner of the Fund, stated that the Fund was owned by the Fund Manager which was in turn principally owned by two French nationals;

(ii) in response to an email from Compliance Singapore challenging the information provided and warning that it would be a serious compliance breach if Mr Ahuja was aware that the names being provided were merely people fronting for the beneficial owner, stated *"I would like to state quite clearly that the* [beneficial owner] *for this account is as stated on the forms. I am fully aware of the compliance requirement as regards disclosures and have stated the facts in the documentation";*

(iii) in response to Compliance Singapore stating that they would have to withdraw approval for the opening of the account, asserted *"I maintain that the information provided by me regarding this account in terms of their background + source of funds etc is accurate…";*

(iv) represented that the account was for the non-cellular portion of the Fund; and

(v) stated *"the investment in the [derivatives transaction] is proprietory. The funds will be received from them* [i.e. the shareholders of the Fund Manager] *and has no link with any other client of ours…"*.

4.34. Mr Ahuja knew at the time of making the statements set out in paragraph 4.33 above that they were false and/or deliberately misleading. Mr Ahuja was aware that the account was being opened to hold protected cell (Cell X) assets, not non-cellular assets. Furthermore he knew that those assets were customer, not proprietary assets,

and thus he knew that the account should have been designated in the name of Cell X. Therefore he should have referred to the Customer A Investors, not the Fund Manager or its shareholders, as being the beneficial owners.

(4) Signature of instructions to transfer funds between customers in breach of UBS compliance rules and deliberate creation of false internal notes relating to the transfers

4.35. In January 2007 US$68 million was transferred from Customer A Investors to Cell X's account with a third party bank. However, to conceal the link between Customer A and Cell X, the payment was routed via another customer's account ("Customer Y") without that customer's knowledge.

4.36. Mr Ahuja signed payment instructions for the transfer of US$68 million from Customer A to Customer Y in the knowledge that the monies were being transferred to Customer Y to conceal the link between Customer A and Cell X and that the transfers constituted a breach of UBS compliance rules.

4.37. Moreover, Mr Ahuja created a false narrative in various internal notes to mislead Compliance by stating that the sums transferred to Customer Y related to a joint attempted bid by the two parties for a business. Mr Ahuja knew that this was not true.

(5) Deliberate signature of account opening documentation containing false and/or misleading information

4.38. Following his failure to open the Singapore Account, Mr Ahuja submitted a second application, around October 2007, supported by information which he knew to be false and/or misleading, to open a custody account and associated cash account for Cell X at the Zurich Branch of UBS AG (the "Zurich Accounts"). The application was successful. The Zurich Accounts were used, among other things, to hold Global Depositary Receipts (as referred to in paragraph 4.28 above) and other assets which, as at 31 October 2007, were collectively valued at over US$400 million.

4.39. Mr Ahuja, as the Client Advisor, was responsible for the account opening formalities. The account opening documentation submitted to the account opening team at UBS Zurich included various forms signed by Mr Ahuja. The "Client Profile and Acceptance Checklist" stated the "Source of Wealth" as "*Funds invested by 8 institutional investors/banks*", i.e. the Note Issuers. The "Report Summary" stated that the shareholding of the Fund was "*in the hands of*" the Note Issuers. Similarly, the "Due Diligence Form for Sensitive Clients" form stated that the beneficial owners of the assets concerned were the Note Issuers.

4.40. This information was false and/or misleading. At the time he filled in the forms, Mr Ahuja knew that the source of the funds in Cell X and the beneficial owners and shareholders of Cell X were, in fact, the Customer A Investors.

Knowing assistance with unauthorised redemption payments out of Cell X in breach of UBS compliance rules

4.41. At or around the end of 2007, Mr Ahuja assisted the head of the Desk, Sachin Karpe, by liaising with the Fund Manager and organising the documentation required by the

Fund Manager, to arrange unauthorised redemption payments totalling US$8 million from Cell X. He did this despite being aware that:

(1) Customer A and the Customer A Investors were unaware of the redemptions and had not authorised them;

(2) Redemption requests in respect of the Customer A Investors' investments in Cell X should have been made to the Note Issuers, rather then directly to Cell X;

(3) The redemption payments were not made to Customer A or the Customer A Investors as they should have been, but were instead transferred to the account of an unconnected customer; and

(4) The redemptions constituted a breach of UBS compliance rules, and general anti-money laundering principles.

4.42 The redemption payments were used to conceal losses from unauthorised trading conducted by Mr Karpe. The FSA does not allege that Mr Ahuja was either involved in the unauthorised trading, or had knowledge that the redemption payments would be used to conceal losses from unauthorised trading.

5. REPRESENTATIONS, FINDINGS AND CONCLUSION

Representations

5.1. Mr Ahuja made both written and oral representations which addressed the issues of: substantive fairness; procedural fairness and the appropriate sanction in this case. He also made an overarching submission that the case against him had to be considered separately to the allegations made against others.

5.2. Mr Ahuja argued that the proceedings against him should be discontinued because of the profound substantive unfairness inherent within them. It was submitted that it was unfair that Mr Ahuja alone should be pursued for his involvement in breaching Indian law, when there were many others within UBS who were equally culpable. It was said that by pursuing him alone the FSA was acting in a manifestly partial and unequal way. Mr Ahuja asked how it could be fair that he alone was facing regulatory action when it was UBS that had authorised a systematic course of conduct, the effect of which was to breach Indian law, whilst senior staff at UBS had detailed personal knowledge of the relevant investments. He also claimed that more senior staff had knowledge of and condoned the relevant investments.

5.3. It was further submitted that the proceedings against Mr Ahuja should be discontinued as they were procedurally unfair. It was argued that though there was considerable overlap between the alleged substantive and procedural unfairness this latter aspect was a discrete species of unfairness and therefore was properly advanced as a stand alone criticism of the proceedings. It was argued that the "*main investigation is that of UBS, not the FSA, and is biased; KPMG's report is based on UBS's work and therefore suffers from the same defect*s". The FSA had compounded this unfairness

by refusing to explain how it had come to focus upon Mr Ahuja, and how it had conducted its investigation in a way that excised the bias left by the original investigation.

5.4. When arguing that the proceedings were procedurally unfair Mr Ahuja criticised the FSA's decision to "acquit" others at UBS. Mr Ahuja complained that this had resulted in a reduction of *"the scope of this investigation"* which in turn meant that Mr Ahuja's conduct was considered *"in isolation"*. Furthermore Mr Ahuja submitted that the FSA had ignored relevant documents and interviews and that this problem had been exacerbated by the FSA's failure to properly discharge its disclosure obligations.

5.5. In short, it was submitted that for a variety of interrelated reasons the entirety of the regulatory process was infected with both substantive and procedural unfairness and therefore this matter should be discontinued. It was also submitted that though the available material was the product of a biased investigation it was nonetheless still apparent that Mr Ahuja had acted with the connivance of UBS. Therefore there was no breach of Principle 1 of APER, albeit Mr Ahuja accepted that what he had done was wrong. Mr Ahuja added that he would never repeat this behaviour, and he noted that he had a previously unblemished career prior to working in wealth management, the culture of which he claimed was a corrupting influence.

5.6. Notwithstanding his submissions concerning the fairness of the proceedings, and the inappropriateness of the allegation that he lacked honesty and integrity, Mr Ahuja also addressed the appropriate sanction in this case. It was argued that the culture in which Mr Ahuja worked was a mitigating factor to be considered when determining what if any sanction should be imposed. It was further submitted that the misconduct alleged against Mr Ahuja, was not particularly serious, as it merely involved lying to UBS compliance, and therefore any sanction should be restricted in its severity.

5.7. Mr Ahuja suggested that as he alone was facing regulatory action for misconduct that was widespread in UBS it would be inappropriate to prohibit him. Furthermore it was submitted that in any event this misconduct was not sufficiently serious to merit a prohibition. In the alternative Mr Ahuja asked the FSA to consider the imposition of a time limited prohibition. Some reliance was placed upon comparable cases to support these assertions. However it was argued that the precedent cases referred to by the Enforcement team should be disregarded as they were both unhelpful and partial.

5.8. Mr Ahuja noted that he regretted his conduct and stated that he recognised that a financial penalty was inevitable. However he argued that any fine should reflect the limited seriousness of his misconduct. Mr Ahuja also submitted that the level of any financial penalty should take account of his modest means. He submitted that he had net liabilities and that he had relied upon financial support from others including a family friend in the period following his resignation from UBS. Therefore Mr Ahuja claimed that any financial penalty would cause him serious financial hardship.

Findings

5.9. The FSA rejects Mr Ahuja's submissions that for reason of the unfairness inherent within the proceedings, the matter should be discontinued. The FSA finds that there was no substantive unfairness resulting from the fact that Mr Ahuja now faced regulatory action whilst others did not. Mr Ahuja can have had no legitimate expectation that regulatory proceedings would not be brought against him because others were not pursued. Moreover Mr Ahuja has not been hampered in challenging these proceedings by the FSA's decision not to pursue others for any perceived failings. In coming to this conclusion the FSA makes no finding as to the validity or otherwise of Mr Ahuja's various criticisms of others.

5.10. The FSA also rejects his submissions about the procedural unfairness of these proceedings. The FSA is satisfied with the evidential basis for the decision and does not consider that the proceedings have been rendered unfair because of the reliance that was being placed upon the original investigations conducted by UBS and KPMG.

5.11. The FSA finds that there is cogent and compelling evidence to suggest that Mr Ahuja had demonstrated a lack of honesty and integrity and he had breached Principle 1 of APER. The FSA accepted that Mr Ahuja would have been influenced by those with whom he worked. Nonetheless it was felt that this could not excuse misconduct which clearly demonstrated a lack of honesty and integrity.

5.12. The FSA finds that Mr Ahuja's use of a pre-existing investment structure to assist a customer to breach Indian law, demonstrated a lack of honesty and integrity. The seriousness of this aspect of Mr Ahuja's misconduct was compounded by the fact that Mr Ahuja attempted to conceal, from other parts of UBS, the true nature of Customer A's investment. In particular Mr Ahuja withheld information from UBS IB and more generally by arranging for Customer A to invest in Cell X indirectly he concealed the link between the customer and their investment. However, Mr Ahuja's misconduct extended beyond concealing material information, to repeatedly providing various UBS teams in Singapore with false and/or misleading information. He also created internal notes setting out false reasons for the transfers of payments from Customer A to Cell X via an unconnected customer. In addition Mr Ahuja signed account opening documentation containing false and/or misleading information to open an account for Cell X at UBS Zurich.

5.13. Mr Ahuja also demonstrated a lack of integrity by his conduct in arranging unauthorised redemption payments totalling US$8 million to be made from Cell X. Mr Ahuja assisted Sachin Karpe and liaised with the Fund Manager, to arrange the redemption payments, despite being aware that Customer A and the Customer A Investors were unaware of the redemptions and had not authorised them. Moreover the redemption payments were not made to Customer A or the Customer A Investors as they should have been, but were instead transferred to the account of an unconnected customer, and were then used to conceal losses from unauthorised trading conducted by Mr Karpe.

5.14. The FSA finds that a full prohibition order and a significant financial penalty are an appropriate response to this conduct. In determining, whether a time limited

prohibition may be suitable, and the appropriate level of the financial penalty, the FSA took account of the influence upon Mr Ahuja of those with whom he worked.

5.15. The FSA has considered Mr Ahuja's representations concerning the impact upon him of any financial penalty. However Mr Ahuja has not satisfied the FSA that he would suffer serious financial hardship as a result of the imposition of a financial penalty and therefore the FSA has declined to exercise its discretion to reduce the fine. In deciding not to exercise its discretion the FSA has taken into account Mr Ahuja's lifestyle and his access to financial support. The FSA finds that Mr Ahuja has had access to significant sums of money since his resignation from UBS in February 2008. The FSA finds that the financial support has enabled Mr Ahuja to maintain his lifestyle throughout this period. The FSA therefore concludes that the financial penalty should not be reduced because Mr Ahuja has not demonstrated that he would suffer serious financial hardship.

5.16. The FSA is clear that in making these findings they have considered the allegations against Mr Ahuja separately from those against anyone else.

CONCLUSION

5.17. In light of these findings, the FSA concludes that:

(1) Mr Ahuja is not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm;

(2) having regard to its regulatory objectives, including the protection of consumers and the maintenance of confidence in the financial system, it is necessary and desirable for the FSA to exercise its power to make a prohibition order against him; and

(3) in all the circumstances, it is appropriate to impose upon Mr Ahuja a penalty of £150,000.

A further analysis of these sanctions is provided below.

6. ANALYSIS OF THE SANCTIONS

Prohibition order

6.1. The FSA's effective use of the power to prohibit individuals who are not fit and proper from carrying out functions in relation to regulated activities helps the FSA to work towards its regulatory objectives, which include protecting consumers, maintaining confidence in the financial system and reducing financial crime.

6.2. The FSA is satisfied that Mr Ahuja is not a fit and proper person to perform regulated activities and should therefore be prohibited from performing any controlled function under section 56 of the Act. The FSA has had regard to the guidance in Chapter 9 of the FSA's Enforcement Guide ("EG") in deciding that a prohibition order is appropriate in this case. The relevant sections of EG are set out in the Annex to this Notice.

6.3. The FSA considers that Mr Ahuja has contravened requirements and standards of the regulatory system and that he has failed to act with integrity in carrying out his controlled function in breach of Principle 1 of APER. In particular Mr Ahuja lied to UBS Compliance and he was reckless in arranging for the unauthorised redemption payments totalling US$8 million.

6.4. In considering Mr Ahuja's conduct, the FSA has had particular regard to the evidential provisions in APER 4.1.

6.5. Mr Ahuja's failings are aggravated by the following factors:

(1) his abuse of his position of responsibility and the trust placed in him by UBS;

(2) by using an investment structure which was designed to breach Indian law, he showed a disregard for legal and regulatory requirements;

(3) his concealment, of the true nature of Customer A's investment, by various means some involving clear dishonesty, constituted a consistent, deliberate course of misconduct over a period of two years;

(4) his provision of false and misleading information to Compliance was unacceptable;

(5) Mr Ahuja's misconduct concerned customers for whom he was responsible and in one case resulted in a loss to a customer;

(6) Mr Ahuja's misconduct was deliberate; and

(7) Mr Ahuja enjoyed substantial salary payments and bonuses as an indirect result of his conduct.

6.6. By reason of the facts and matters set out above, the FSA has concluded that Mr Ahuja is dishonest and lacking in integrity and therefore he is not a fit and proper person to perform any function in relation to any regulated activity carried out by any authorised or exempt person or exempt professional firm. Therefore the FSA considers that it is right to impose upon Mr Ahuja a full prohibition order.

Financial Penalty

6.7. The principal purpose for which the FSA imposes financial penalties is to promote high standards of regulatory conduct by deterring those who have breached regulatory requirements from committing further breaches, helping to deter others from committing similar breaches and demonstrating, generally, the benefits of compliant behaviour.

6.8. The breaches of Principle 1 of APER are sufficiently serious in this case to merit the imposition of a substantial financial penalty.

6.9. In determining the level of financial penalty, the FSA has had regard to all the relevant circumstances of the case, the factors set out in DEPP 6.5.2G and the

aggravating factors set out under paragraph 6.5 above. The FSA has also taken into account the need to impose a financial penalty which will act as a deterrent to others.

6.10. Additionally, in calculating the appropriate financial penalty, the FSA has had regard to the following mitigating factors:

(1) The FSA has not previously taken any disciplinary action against Mr Ahuja;

(2) Although Mr Ahuja did not bring his misconduct to the FSA's attention, he did co-operate with the FSA by making some admissions when interviewed;

(3) The FSA accepted that Mr Ahuja's misconduct was influenced by others including Sachin Karpe; and

(4) The FSA recognises that the financial penalty imposed upon Mr Ahuja is likely to have a significant impact upon him as an individual.

6.11. Having assessed the appropriate level of any financial penalty the FSA then considered Mr Ahuja's representations as to the serious financial hardship he would suffer were any financial penalty to be imposed upon him. Having considered all of the available evidence Mr Ahuja has not satisfied the FSA that there is verifiable evidence that Mr Ahuja would suffer serious financial hardship were a financial penalty of £150,000 to be imposed upon him.

6.12. Accordingly the FSA considers that it is necessary and proportionate to impose a financial penalty of £150,000 pursuant to section 66 of the Act on the grounds that Mr Ahuja has failed to act with integrity in breach of Principle 1.

7. DECISION MAKER

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

8. IMPORTANT

8.1. This Final Notice is given to you in accordance with section 390 of the Act.

Manner and time for payment

8.2 The financial penalty of £150,000 must be paid in full by Mr Ahuja by no later than 28 December 2011, 14 days from the date of the Final Notice

If the financial penalty is not paid

8.3. If all or any of the financial penalty is outstanding on 29 December 2011, the FSA may recover the outstanding amount as a debt owed by Mr Ahuja and due to the FSA.

Publicity

8.4 Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the 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 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 Mr Ahuja or prejudicial to the interests of consumers.

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

FSA contacts

8.6 For more information concerning this matter generally, please contact Therese Chambers (direct line: 020 7066 1428) or Rosemarie Paul (direct line: 020 7066 4724) at the FSA.

Jamie Symington

Head of Department, FSA Enforcement and Financial Crime Division

ANNEX

REGULATORY GUIDANCE AND POLICY

1. Prohibition

Fit and Proper Test for Approved Persons

1.1. 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.

1.2. 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.

1.3. 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 one of the most important considerations will be the person's honesty, integrity and reputation.

1.4. FIT 2.1.1G provides that, in determining a person's honesty, integrity and reputation, the FSA will have regard to factors including, but not limited to, those set out in FIT 2.1.3G. The factors set out in FIT 2.1.3G include, among other things:

(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).

The FSA's policy in relation to prohibition orders

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

1.6. EG 9.1 states that the FSA's power to make prohibition orders under section 56 of the Act helps it work towards achieving its regulatory objectives. The FSA may exercise this power where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he may perform.

1.7. EG 9.4 sets out the general scope of the FSA's powers in this respect, which include 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.

1.8. EG 9.5 provides that the scope of a prohibition order will depend according to 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 risk posed by him to consumers or the market generally.

1.9. EG 9.8 provides that 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 case 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.

1.10. 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 in terms of honesty, integrity and reputation are set out in 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) the relevance and materiality of any matters indicating unfitness;

(4) the length of time since the occurrence 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;

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

(7) the previous disciplinary record and general compliance history of the individual.

1.11. EG 9.10 provides that the FSA may have regard to the cumulative effect of a number of factors.

1.12. EG 9.11 provides that 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) severe acts of dishonesty, e.g. which may have resulted in financial crime; and

(2) serious breaches of the Statement of Principles set out in APER.

1.13. 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.

2. Imposition of a Financial Penalty

Statements of Principle and Code of Practice for Approved Persons (APER)

2.1. As set out in paragraph 3.6 above, APER Principle 1 states that an approved person must act with integrity in carrying out his controlled function.

2.2. The Code of Practice for Approved Persons contained in APER 3 and 4 sets out guidance for the purpose of determining whether an approved person's conduct complies with a Statement of Principle.

2.3. APER 3.1.4.G states that an approved person will only be in breach of a Statement of Principle where he is personally culpable. Personal culpability arises where an approved person's conduct is deliberate, or where the approved person's standard of conduct is below that which would be reasonable in all the circumstances.

2.4. APER 4.1.2E refers to examples of conduct that, in the opinion of the FSA, does not comply with Principle 1. Such conduct includes:

(1) deliberately misleading (or attempting to mislead) by act or omission a client or the approved person's firm (APER 4.1.3E), including by falsifying documents (APER 4.1.4E(1)), providing false or inaccurate documentation or information (APER 4.1.4E(9)) and misleading others in the firm about the nature of risks being accepted (APER 4.1.4E(14));

(2) deliberately failing to inform, without reasonable cause, a customer or an approved person's firm, of the fact that their understanding of a material issue is incorrect, despite being aware of their misunderstanding (APER 4.1.6(E)), including by deliberately preparing inaccurate or inappropriate records or returns in connection with a controlled function (APER 4.1.8 E); and

(3) deliberately misusing the assets of a client (APER 4.1.2 E), including by using a client's funds for purposes other than those for which they were provided.

The FSA's policy in relation to the imposition of financial penalties

2.5. The FSA's policy on the imposition of penalties as at the date of this Notice is set out in Chapter 6, entitled "Penalties", of the FSA's Decision Procedure and Penalties Manual ("DEPP"), which forms part of the FSA Handbook.

2.6. The FSA has also had regard to Chapter 13 of the Enforcement Manual, the part of the FSA's Handbook setting out the FSA's policy on the imposition of financial penalties which was in force until 27 August 2007, and therefore during part of the Relevant Period.

2.7. 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 (DEPP 6.1.2G).

Deciding whether to take action

2.8. 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 sets out 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) DEPP 6.2.1G (1): The nature, seriousness and impact of the suspected breach;

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

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

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

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

Determining the level of the financial penalty

2.9. 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 a non-exhaustive list of factors that may be of relevance when determining the amount of a financial penalty, which include:

(1) Deterrence (DEPP 6.5.2G (1));

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

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

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

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

(6) The amount of benefit gained or loss avoided (DEPP 6.5.2G(6));

(7) Conduct following the breach (DEPP 6.5.2G(8));

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

(9) Other action taken by the FSA (DEPP 6.5.2G(10)).