Financial Services Authority

FSA

FINAL NOTICE

To: Laurence Warren Finger

Of: 89 New Bond Street, London, W1S 1DA

FSA Reference Number: LWF01008

Date: 13 December 2010

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

1. THE PENALTY

1.1. The FSA gave Mr Laurence Warren Finger ("Mr Finger") a Decision Notice on 7 October 2010 which notified him that the FSA had decided to impose on him:

(1) A prohibition order pursuant to section 56 the Financial Services and Markets Act 2000 (the "Act") prohibiting Mr Finger from performing the function of Money Laundering Reporting ("CF11") carried on by any authorised person, exempt person or exempt professional firm because he has fallen below the minimum regulatory standards in terms of his competence; and

(2) Withdrawal of the approval given to Mr Finger under section 63 of the Act to perform the controlled function of CF11, at Sedley Richard Laurence Voulters ("SRLV"/ "the Firm"); and

(3) A financial penalty of £35,000, pursuant to Section 66 of the Act.

1.2. The action against Mr Finger is in relation to breaches of the Statements of Principle and Code of Practice for Approved Persons which occurred between 1 May 2008 and 11 November 2008 ("the Relevant Period"). Mr Finger failed to exercise due skill, care and diligence in managing the business of the firm for which he is responsible within his controlled function in breach of Statement of Principle 6, and failed to take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled functions complied with the relevant standards of the regulatory system in breach of Statement of Principle 7.

1.3. Mr Finger agreed to settle at an early stage of the FSA's investigation. He therefore qualifies 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 £50,000 on Mr Finger.

2. REASONS FOR THE ACTION

Introduction

2.1. Throughout the Relevant Period, Mr Finger was the managing partner of an authorised firm, SRLV, and performed the Money Laundering Reporting controlled function (CF11). As such he had responsibility for oversight of the Firm's compliance with the FSA's rules on systems and controls to prevent money laundering.

2.2. Mr Finger was the Firm's Money Laundering Reporting Officer ("MLRO") during the Firm's involvement in the promotion, offer for sale and sale of shares in Natrocell Shareholders Limited ("NSL") by unauthorised overseas entities ("share fraud operators").

2.3. The Firm's activities included the making of arrangements which enabled investors to complete transactions to purchase shares. These arrangements included:

(1) The instruction of an affiliated entity, Portland Registrars Limited ("Portland Registrars"), to act as registrar, whereby it issued Stock Purchase Agreements ("SPA") - without which the transactions could not have been concluded - processed share sales and issued share certificates; and

(2) the operation of client bank accounts into which payments for shares were made and without which the transactions could not have been completed. This facilitated the sale of shares by the share fraud operators.

2.4. In addition, the Firm effected payments of funds from these client bank accounts to third parties in accordance with instructions from NSL and Natrocell Technologies Limited ("NTL").

2.5. Mr Finger did not manage SRLV's relationship with NSL and he did not deal directly with the share fraud operators. SRLV performed its role in relation to NSL and NSL's only wholly owned subsidiary, NTL during the Relevant Period, through a former partner of the Firm (the "relationship partner"). However in his role as the MLRO, Mr Finger failed to exercise due skill, care and diligence in managing the business of SRLV and failed to take reasonable steps to ensure that the anti money laundering processes at SRLV complied with the relevant requirements and standards of the regulatory system. In particular, Mr Finger failed to:

(1) identify the potentially suspicious nature of multiple payments effected by SRLV despite being presented with clear indicators;

(2) undertake adequate assessment as to whether the activities could constitute any sort of suspicious activity; and

(3) properly consider his responsibilities in relation to this activity and report it to the necessary authorities on a timely basis.

2.6. These failures were in part due to Mr Finger's failure to recognise that it was both his and SRLV's responsibility to consider and act upon clear indications of suspicious activity.

2.7. The FSA considers these failings to be particularly serious because:

(1) investor funds of at least £2,566,027 were generated as a result of the unauthorised sale of shares and were paid into the client bank accounts operated by the Firm. Most of these funds were then paid out to various third

parties. Investors were therefore exposed to the risk of financial detriment as a substantial amount of the funds raised through share sales was unlikely to have been realised or used for the benefit of NSL, although SRLV did not recognise this; and

(2) While these events continued, investors may have gained comfort to buy shares in NSL given the involvement of SRLV, a firm regulated by the FSA.

2.8. The FSA recognises that since the end of the Relevant Period, Mr Finger has cooperated with the FSA's investigations into the promotion and sale of NSL shares. Mr Finger has also overseen the changes the Firm has made to its procedures and has sought external advice with a view to improving the Firm's systems and controls.

2.9. Mr Finger's failings therefore merit a financial penalty and lead the FSA to conclude that he is not fit and proper to perform the function of Money Laundering Reporting (CF11) carried on by any authorised person, exempt person or exempt professional firm. Accordingly, the FSA proposes to withdraw Mr Finger's approval to perform the Money Laundering Reporting controlled function at the Firm and make an order prohibiting him from performing this function carried on by any authorised person, exempt person or exempt professional firm.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

3.1. The reduction of financial crime is a statutory objective for the FSA under section 2(2) of the Act, and includes reducing the extent to which it is possible for a regulated person to be used for a purpose connected with financial crime.

3.2. Relevant statutory provisions relating to unauthorised business and the carrying on of regulated activities and unauthorised financial promotions, and relevant guidance in relation to approved persons are set out in the Annex to this notice.

3.3. Section 56 of the Act provides the FSA with the power 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 certain functions in relation to a regulated activity carried on by any authorised person, exempt person or exempt professional firm.

3.4. Section 63 of FSMA provides:

"(1) The Authority 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) When considering whether to withdraw its approval, the Authority may take into account any matter which it could take into account if it were considering an application made under section 60 in respect of the performance of the function to which the approval relates.

(3) If the Authority proposes to withdraw its approval, it must give each of the interested parties a warning notice.

(4) If the Authority decides to withdraw its approval, it must give each of the interested parties a decision notice.

(5) If the Authority decides to withdraw its approval, each of the interested parties may refer the matter to the Tribunal.

(6) "The interested parties", in relation to an approval, are—

(a) the person on whose application it was given ("A");

(b) the person in respect of whom it was given ("B"); and

(c) the person by whom B's services are retained, if not A".

3.5. Section 66 of the Act states that:

"(1) The Authority may take action against a person under this section if –

(a) it appears to the Authority that he is guilty of misconduct; and

(b) the Authority is satisfied that it is appropriate in all the circumstances to take action against him.

(2) A person is guilty of misconduct if, while an approved person –

(a) he has failed to comply with a statement of principle issued under section 64; …

(3) If the Authority is entitled to take action under this section against a person, it may

(a) impose a penalty on him of such amount as it considers appropriate; or

(b) publish a statement of his misconduct".

3.5. Pursuant to section 64 of the Act, the FSA has issued the Statements of Principle and Code of Practice for Approved Persons (contained in the part of the FSA Handbook entitled APER). The Statements of Principle most relevant to this matter are Statements of Principle 6 and 7.

3.6. Statement of Principle 6 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*".

3.7. Statement of Principle 7 provides that:

"*An approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system*".

3.8. The Code of Practice for Approved Persons ("APER 4") also sets out descriptions of conduct which, in the opinion of the FSA, does not comply with the Statements of Principle. In determining whether Mr Finger's conduct amounts to a breach of Statements of Principle 6 and 7, the FSA has had regard to the descriptions of conduct in APER 4.6 and 4.7. The relevant provisions are set out in full in the Annex to this notice.

The "Fit and Proper" rules:

3.9. The FSA Handbook also sets out rules and guidance relating to the Fit and Proper Test for Approved Persons ("FIT"). The relevant parts of FIT are set out in the Annex to this Notice.

3.10. The FSA has had regard to the relevant provisions in its Decision Procedure and Penalties Manual (DEPP). In particular, the FSA has had regard to its policy on taking action against approved persons pursuant to section 66 of the Act, contained in DEPP 6.

4. FACTS AND MATTERS RELIED ON

Mr Finger

4.1. Mr Finger was the managing partner of an authorised firm, SRLV, during the Relevant Period. He was also approved to perform the following controlled functions at SRLV:

(1) CF4 (Partner), CF10 (Compliance Oversight) and CF11 (Money Laundering Reporting) from 1 December 2001;

(2) CF30 (Customer) from 1 November 2001; and

(3) CF8 (Apportionment and Oversight) between 1 December 2001 and 31 March 2009.

4.2. CF11 is a "significant influence" function to which Statements of Principle 6 and 7 (among others) apply.

4.3. Mr Finger was also the Director responsible for the work undertaken by Portland Registrars. However he was not the designated partner at SRLV responsible for NSL and he did not have direct dealings with the share fraud operators.

SRLV

4.4. SRLV is a partnership of chartered accountants which is also an "authorised professional firm" under the Act. This means that it practices a profession regulated by a designated professional body, the Institute of Chartered Accountants in England and Wales, is subject to the rules of that body, and is authorised under the Act to the extent that it carries on regulated activities, but its main business of accountancy is not regulated by the FSA.

4.5. In or around May 2008, SRLV was engaged by one of its existing clients, NSL, to assist with fund raising by providing company secretarial and registrar services, and by receiving and dispersing monies through its existing client bank accounts.

4.6. NSL was formed solely as a parent company. It had no operational business and was the holding company of its wholly owned subsidiary, NTL. NTL was concerned with developing, testing, manufacturing and making preliminary sales of its rodenticide products and had been a client of SRLV for a number of years. SRLV viewed NTL as a legitimate business with existing product and distribution contracts. SRLV had confidence in NTL and NSL and its directors.

4.7. In May 2008, NSL embarked on a fund raising exercise purportedly to enable NTL to develop its business.

4.8. SRLV's activities in respect of NSL and NTL stopped on 11 November 2008 when the FSA imposed a requirement on SRLV to cease any activities in respect of the shares of NSL, and preserve the remainder of the proceeds of the sale of shares in their client bank accounts. SRLV also voluntarily took steps to preserve the monies in a second client bank account.

4.9. NSL and NTL went into administration on 24 June 2009 and 17 August 2009 respectively. The proceeds of NTL's client bank accounts have now been released to the administrator of NSL and NTL for distribution. SRLV co-operated fully during this process.

The promotion and sale of shares

4.10. To assist with the fundraising exercise, NSL engaged the services of entities to promote, offer for sale and sell shares in NSL to UK and other investors. These entities were purportedly based overseas and were not authorised by the FSA, nor were they, to the FSA's knowledge, authorised in the respective jurisdictions where they were purportedly based. The entities also referred to as brokers, which the FSA believes to be share fraud operators, commonly known as "boiler rooms", were to be paid 60% of the value of the share sales they generated by way of commission. SRLV was aware of the level of this commission but was not involved in the decision to appoint the unauthorised entities and individuals or in promoting NSL shares to potential investors. SRLV did not advise NSL on its fund raising activity, nor did it provide advice to prospective investors.

4.11. At least 1,262 prospective investors were contacted by the share fraud operators. Of this number, 1,027 prospective investors were based in the UK and at least 433 (from various jurisdictions) paid monies to NTL's client bank account with SRLV in return for NSL shares. Analysis of information provided by consumers who complained to the FSA ("complainants") indicated that most of them had been cold-called by the share fraud operators; none having had any prior contact with their caller.

4.12. The complainants reported that they were told some or all of the following by the share fraud operators; i) the shares on offer were 19p per share; ii) the shares were

intended to form part of an Initial Public Offering; iii) NSL intended shortly to list on the PLUS market and; iv) the share price was expected to rise to over 30p on listing.

4.13. The share fraud operators were therefore communicating an invitation or inducement to engage in investment activity in breach of section 21(1) of the Act. This is a criminal offence in the United Kingdom.

4.14. A number of potential investors also received SPAs bearing the logo of "Natrocell Technologies" from the share fraud operators. This form set out details of the shares of NSL that the consumer had agreed to purchase and the payment instructions. The payment instructions directed consumers to pay the purchase consideration into a bank account "*SRLV Ref: Natrocell Technologies Ltd*". This was a client bank account that was set up and operated by SRLV and which had been in existence for a number of years prior to the Relevant Period. Following payment of the share purchase consideration, consumers usually received an NSL share certificate from the share registrar, Portland Registrars.

4.15. Therefore the share fraud operators were arranging deals in investments as they were directly involved in share purchases by UK investors in a manner which can be distinguished from being mere introducers. On this basis, the share fraud operators contravened section 19 of the Act which is a criminal offence in the United Kingdom.

Portland Registrars Limited ("Portland Registrars")

4.16. Portland Registrars was established by SRLV to provide company secretarial and registrar support to SRLV's clients. Mr Finger was a director of Portland Registrars during the Relevant Period. Although Portland Registrars is a separate legal entity, it did not have a separate engagement contract with any of SRLV's clients including NSL and/or NTL; therefore, in practice it operates as a division of SRLV that provided a service to SRLV's clients.

4.17. Portland Registrars carried out a number of activities which resulted in the bringing about transactions in investments i.e. share sales. In regard to the NSL transactions, these activities included:

(1) sending SPAs to prospective investors;

(2) arranging for share certificates to be issued by the directors of NSL;

(3) maintaining statutory records relating to the amount of shares sold;

(4) passing information to NSL and NTL that facilitated the payment of commissions to the share fraud operators, with NSL and NTL undertaking the actual calculation of the commission and the identification of whom to pay being undertaken by NSL and NTL; and

(5) registering issued shares with Companies House.

4.18. In addition to issuing SPAs, processing share sales and issuing share certificates, Portland Registrars also received regular updates from the share fraud operators. This included unsolicited emails from share fraud operators chasing commissions owed to them, receiving spreadsheets containing a list of trades for that day, receiving email requests for details of whether a particular investor's funds had arrived or cleared in the SRLV client bank accounts, providing and receiving email confirmation of matters such as which investors had received SPAs, and being advised of the investor details that would appear on the SRLV account statements if different to the investor's name. Portland Registrars referred many of the share fraud operators' questions to NSL including those relating to the share fraud operators commissions. It is noted that Portland Registrars were performing a company secretarial function and were not promoting the sale of shares in any way.

Operation of the client bank accounts

4.19. From 2004, SRLV opened, managed and operated two client bank accounts for NTL. Both of these client bank accounts were named "*SRLV Ref: Natrocell Technologies Ltd*" but they had different account numbers. The practicing signatories for these client bank accounts were all partners of SRLV and disbursements from the accounts were made following a set procedure which required the authorisation of two equity partners of SRLV. Mr Finger was one such signatory.

4.20. SRLV operated these client bank accounts on the instructions of NTL and NSL. These client bank accounts were used as part of the process of the sale of shares by share fraud operators as payments for shares were made into these accounts. Without these client bank accounts, the transactions could not have been completed.

4.21. Between December 2004, when the first client bank account was opened, and the end of April 2008, there was some activity in the accounts, however from May 2008, these accounts were used to receive payments for NSL shares from potential investors which enabled SRLV and Portland Registrars to monitor payments in order that share certificates could be issued. Mr Finger should therefore have been aware of the nature and extent of activities on the client bank accounts.

4.22. In at least one instance an investor has stated to the FSA that the use of these client bank accounts to receive monies in consideration for shares gave comfort about the legitimacy of the investment and the safety of the funds because the accounts were in the name of SRLV, an FSA authorised entity.

4.23. Between 30 May 2008 and 31 December 2008, a total of £2,690,119 was credited to the client bank accounts, of which at least £2,566,027 were monies received from investors who purchased shares in NSL. Approximately 80% of these investors are UK residents.

4.24. In the same period, while Mr Finger was signatory to the client bank accounts, and held the Money Laundering Reporting controlled function, and on instruction from NSL and NTL, SRLV effected the payment of £2,403,419 from the client bank accounts to beneficiaries in the UK, Switzerland, Cyprus, Seychelles, Greece, Spain, Turkey, USA, Belgium and South Africa.

4.25. Significant sums were paid out in relation to the commission earned by the share fraud operators and to the former directors of NSL. The monies were not paid to accounts in the names of the share fraud operators. A relatively small proportion of the proceeds of the share sales appears to have been used for the stated purposes for which the monies were raised, although SRLV did not recognise this.

4.26. In total £1,318,270 appears to have been paid to probable associates of the share fraud operators, in comparison to approximately £508,385 that appears to have been directly associated with NSL, £412,177 of which was paid directly to or for the benefit of parties connected to NSL and NTL's former directors.

4.27. On the instructions of NTL and/or NSL, SRLV effected payments from the client bank accounts on many occasions to persons and entities that were, on the face of it, unrelated to NSL and NTL or its business. Some of the recipients were offshore entities, with company names which SLRV did not recognise. As these payments

were authorised by NSL and NTL, they were consequently viewed by SRLV as relating to NSL and NTL's business.

4.28. Mr Finger was the MLRO at SRLV and knew that the accounts operated and managed by the Firm were used to receive the proceeds of the share sales. Mr Finger was also involved in the distribution of monies from these accounts as he authorised the majority of the payments of monies from the accounts. Mr Finger should therefore have been aware that payments from the accounts were being made to recipients who represented a high risk in terms of money laundering as they were unrecognised corporate vehicles banking in offshore jurisdictions.

Warnings given in relation to the share fraud operators

4.29. In no fewer than seven instances dating from 4 June 2008 to 11 November 2008 potential investors raised concerns with SRLV regarding the manner of the promotion of NSL shares by overseas entities during the Relevant Period. These concerns included the purported overseas location of the share fraud operators, reference to their unauthorised status and that they may be share fraud operators. There were also concerns raised over the sales tactics used by the share fraud operators.

4.30. In at least two instances, Mr Finger was directly notified of investor concerns.

4.31. On 14 October 2008, an employee of SRLV notified Mr Finger about a discussion forum on the Motley Fool website which referred to NSL, brokers, boiler rooms and SRLV. The employee expressed concerns about the business, stating *"I knew it was dodgy from the start"*.

4.32. Also, on 3 November 2008, SRLV received an email in relation to a potential investor who reported that the sale of NSL shares was a scam and that the share fraud operator supposedly based in Germany did not exist. The email indicated that concerns had been raised with the "London Fraud Squad". Mr Finger was sent this email and was aware that SRLV had merely notified NSL to warn that the investor may be in contact, rather than the Firm taking any further action itself.

4.33. Mr Finger discussed issues surrounding the sale of NSL shares with the relationship partner and was informed that matters had been raised with NTL/NSL (despite NSL and NTL's involvement in engaging the share fraud operators).

4.34. Mr Finger was therefore aware of investor concerns about the status of the share fraud operators and therefore should have been aware that there was a real risk that the share fraud operators were unauthorised. However, he did not ensure that steps were taken to confirm whether the share fraud operators were appropriately authorised.

Monitoring of unusual transactions

4.35. The unusual nature of the transactions undertaken by SRLV on behalf of NSL during the Relevant Period should have caused Mr Finger to question the basis of SRLV's involvement. In particular, Mr Finger was or should have been aware that:

(1) although NSL was a UK company, potentially seeking a listing on a UK investment exchange, it was employing overseas share fraud operators to sell its shares to UK consumers; and

(2) that monies paid as commission were not paid to accounts in the names of the share fraud operators selling the shares, but to offshore third parties. This should have suggested that there was no corporate substance to the share fraud operators selling the shares and that the Firm may have been used to distribute and launder the proceeds of crime.

4.36. Despite these indicators of unusual activity, Mr Finger did not take reasonable steps to determine whether the activity was suspicious and therefore required reporting.

4.37. Later in the Relevant Period, Mr Finger became aware that:

(1) SRLV was receiving reports from investors in NSL and other third parties that the share fraud operators were employing aggressive sales practices when dealing with UK consumers, some of whom were known by SRLV to be distressed in their dealings with the share fraud operators; and

(2) the share fraud operators were not authorised by the FSA.

4.38. These further indicators should have led Mr Finger to consider the suspicious nature of the transactions and the fact that consumers were at real risk of suffering detriment.

4.39. Mr Finger should have been aware that the activities were indicative of a risk of financial crime and that the Firm was at risk of being used to further money laundering. However, Mr Finger did not consider that the payments he implemented on the instructions of NSL and NTL gave rise to any suspicions of money laundering and he claimed to have no suspicion at the time that SRLV was handling the proceeds of crime. He stated that he believed that NSL was a genuine trading company; however he failed to give any consideration to the nature and manner of NSL's fund raising. When he became aware of concerns that the share fraud operators were not authorised, he considered that SRLV did not need to be concerned about whether or not the share fraud operators needed to be authorised as NSL and not SRLV had employed the share fraud operators.

4.40. It was Mr Finger's responsibility to consider the risk of money laundering when faced with a set of unusual and suspicious transactions. By failing to recognise the need to consider whether the transactions were suspicious and required reporting, Mr Finger considerably weakened SRLV's processes for identifying and mitigating money laundering risks and demonstrated a lack of due skill, care and diligence in performing his controlled function.

4.41. No Suspicious Activity Reports ("SAR") were submitted to the Serious and Organised Crime Agency in relation to the NSL transactions during the Relevant Period. It was not until after the FSA investigation began that SRLV submitted a SAR. Mr Finger stated he did this solely in response to the FSA's interest in the matter.

Money laundering systems and controls

4.42. Money Laundering Regulations place a general obligation on firms to have appropriate systems and controls to forestall and prevent money laundering. They also require that appropriate measures are taken to make all employees aware of their obligations with regard to reporting suspicious transactions. Each firm should appoint an MLRO who is responsible for the establishment and maintenance of the firm's anti-money laundering systems and controls, and their oversight.

4.43. SRLV's money laundering procedures during the Relevant Period were contained in the "SRLV professional procedures manual" and a Money Laundering Compliance Manual. Mr Finger and some of the other SRLV partners, but not the partner

primarily designated to the NSL relationship, attended fraud and money laundering training immediately prior to the Relevant Period.

4.44. The Firm's policies required its employees to have due regard to factors including:

- excessive sales commissions or agents' fees;
- large payments for unspecified services or loans to consultants, related parties, employees or government employees;
- anything which is not rational in the context of the client's businesses or personal activities;
- carrying out transactions with other countries where the client has no obvious commercial reason; and
- where clients use international structures or transmit funds for no obvious reason.

4.45. Some of the above factors were or should have been evident in the transactions which Mr Finger approved, yet he did not pay due regard to these factors.

4.46. SRLV had undertaken client take on procedures in respect of NSL when it was originally engaged by NSL to perform accounting, taxation, company secretarial and consultancy services. However, these procedures were not completed in full as NSL was introduced to SRLV by one of the then directors of NSL, who was himself a pre-existing client of SRLV.

4.47. SRLV also had procedures regarding the ongoing monitoring of business relationships. However, as the MLRO, Mr Finger failed to ensure that these procedures were properly implemented at the Firm, particularly when faced with a series of unusual transactions. This was in part due to Mr Finger's failure to understand his responsibilities and the obligations of the Firm in relation to such transactions.

4.48. There were also deficiencies in how SRLV monitored ongoing transactions. SRLV's partners were required to approve all payments from its client bank accounts, including payments to SRLV. However there was no formal process to request or record the reason or purpose of these payments on the payment forms. As the partners, including Mr Finger, may have been required to approve many

payments each day, there was an increased risk that suspicious payments would not be identified through this process.

5. ANALYSIS OF BREACHES

Breach of Statement of Principle 6

5.1. Mr Finger failed to demonstrate due skill, care and diligence in performing his role as the MLRO. In particular, Mr Finger failed to identify the potentially suspicious nature of multiple transactions effected by SRLV, despite being presented with clear indicators. The indicators included the use of share fraud operators to sell shares in a UK company to UK investors; commissions being paid to offshore companies with no corporate substance; the use by the share fraud operators of aggressive sales tactics; and information from investors that the share fraud operators were not authorised by the FSA.

5.2. He failed to ensure that steps were taken to confirm whether the share fraud operators were appropriately authorised or to check whether the share fraud operators were actually authorised by the FSA.

5.3. Mr Finger also considered that it was not SRLV's responsibility to consider the potential suspicious nature of the activities, but instead relied on SRLV's client for this. He failed to submit a SAR on a timely basis.

Breach of Statement of Principle 7

5.4. Mr Finger failed, in his role as the MLRO to take reasonable steps to ensure that the anti-money laundering processes at SRLV complied with the relevant requirements and standards of the regulatory system. In particular Mr Finger failed to implement adequate processes to monitor unusual transactions in NSL shares and therefore to identify that monies received and paid out by SRLV may have been connected to criminal activity. The failure of these processes was in part due to Mr Finger's failure to recognise that it was both his and SRLV's responsibility to consider and act upon the clear indications of suspicious or illegal activity.

Lack of fitness and propriety

5.5. The FSA considers that in demonstrating a lack of due skill, care and diligence in the manner described and by failing to take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the

relevant requirements and standards of the regulatory system, Mr Finger has demonstrated that he is not competent to perform the Money Laundering Reporting controlled function.

5.6. Whilst performing the role of MLRO, Mr Finger demonstrated a lack of understanding of the requirements of his role. Mr Finger knew of at least two instances when concerns were raised with him, and ought reasonably to have known about all instances where concerns were raised with SRLV. Mr Finger's response to concerns about the share fraud operators demonstrates that he fell below the standard expected of a Money Laundering Reporting controlled function.

5.7. Mr Finger's failure to react appropriately to indicators of unusual activity during the Relevant Period and his approval of suspicious transactions exposed UK consumers to severe risk of loss, and threatened confidence in the financial system.

5.8. Having regard to the provisions of FIT, for all these reasons the FSA concludes that Mr Finger is not a fit and proper person to perform the Money Laundering Reporting function in relation to regulated activities.

6. FACTORS RELEVANT TO DETERMINING THE ACTION

Prohibition Order

6.1. In considering whether to impose a prohibition order, the FSA has had regard to the provisions of the Enforcement Guide ("EG"), and in particular the provisions of EG 9.9. This includes, but is not limited to, whether the individual is fit and proper to perform functions in relation to regulated activities; whether the approved person has failed to comply with the Statements of Principle with respect to the conduct of approved persons; the particular controlled function the approved person was performing; and the severity of the risk the individual poses to consumers.

6.2. By reason of the facts and matters set out above, Mr Finger has demonstrated that he lacks sufficient understanding of the role and responsibilities of the Money Laundering Reporting controlled function and failed to exercise due skill, care and diligence in managing the business of SRLV, in particular in carrying out the role of CF11.

6.3. As MLRO, Mr Finger also failed to consider the risk of financial detriment to which NSL investors were exposed during the Relevant Period.

6.4. As a result Mr Finger has failed to comply with Statements of Principles 6 and 7 and demonstrates that he is not fit and proper to perform the Money Laundering Reporting controlled function, CF11.

6.5. Having regard to the regulatory objectives to maintain confidence in the financial system and to secure the appropriate degree of protection for consumers, the FSA considers it appropriate to make an order prohibiting Mr Finger from performing the Money Laundering Reporting function in relation to any regulated activity carried out by any authorised person, exempt person or exempt professional firm, withdrawing the approval given to Mr Finger to perform CF11 at SRLV, and impose a financial penalty of £35,000.

Financial penalty

6.6. The FSA has considered the disciplinary and other options available to it and has concluded that a financial penalty is the appropriate sanction in the circumstances of this particular case. The principal purpose of a financial penalty is to promote high standards of regulatory conduct. It seeks to do this by deterring individuals who have breached regulatory requirements from committing further contraventions, helping to deter other individuals from committing contraventions and demonstrating generally to individuals the benefit of compliant behaviour.

6.7. In determining the financial penalty proposed, the FSA has had regard to guidance contained in the Decisions Procedure and Penalties manual (DEPP) Chapter 6 which came into force as part of the FSA's Handbook of Rules and Guidance (the FSA Handbook) on 28 August 2007.

6.8. DEPP 6.5 sets out some of the factors that may be of particular relevance in determining the appropriate level of a financial penalty. DEPP 6.5.1 G states that the criteria listed in DEPP 6.5 are not exhaustive and all relevant circumstances of the case will be taken into consideration. In determining whether a financial penalty is appropriate and the amount, the FSA is required therefore to consider all the relevant circumstances of the case.

Deterrence

6.9. The involvement of approved persons in, or with, share fraud operators undermines the integrity of the UK financial services industry. Unless they are prepared to uphold proper standards and do not engage with clients who deal with such entities,

approved persons risk contravening UK and/or overseas laws. The FSA's financial crime statutory objective is endangered by the failures of approved persons in this regard.

The nature, seriousness and impact of the breach

6.10. In determining the appropriate sanction, the FSA has had regard to the seriousness of the contraventions, including the nature of the breaches, the number and duration of the breaches, and the number of consumers who were exposed to risk of loss. For the reasons set out at paragraph 2.7 above the FSA considers that the breaches identified in this case are of a serious nature.

The extent to which the breach was deliberate or reckless

The FSA has considered the extent to which Mr Finger's actions were reckless or deliberate. The FSA has determined that Mr Finger has not deliberately or recklessly contravened regulatory requirements.

Conduct following the breach

6.11. After Mr Finger was informed by the FSA of its concerns he fully co-operated with the FSA.

Disciplinary record and compliance history

6.12. Mr Finger has not previously been the subject of disciplinary action by the FSA.

Other action taken by the FSA

6.13. In determining whether to impose a financial penalty, the FSA has taken into account action taken by the FSA on other approved persons for similar behaviour.

7. CONCLUSION

7.1. The FSA considers that the nature and seriousness of Mr Finger's misconduct demonstrates that he is not a fit and proper person to perform the CF11 function because he has fallen below the minimum regulatory standards in terms of his competence, and it is, therefore, appropriate for the FSA to exercise its powers to withdraw his approval.

7.2. In addition the FSA considers that because of the nature and seriousness of his misconduct, and in order to promote high standards of regulatory conduct by helping

to deter other persons from committing similar breaches, it is appropriate to impose a financial penalty of £35,000 on Mr Finger.

8. DECISION MAKERS

8.1. The decision which gave rise to the obligation to give this Final Notice was made by the Settlement Decision Makers on behalf of the FSA.

9. IMPORTANT

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

Manner of and time for Payment

9.2. The financial penalty of £35,000 is payable on or before 5 January 2011.

If the financial penalty is not paid

9.3. If all or any of the financial penalty is outstanding on 6 January 2011, the FSA may recover the outstanding amount as a debt owed by you and due to the FSA.

Publicity

9.4. 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 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.

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

FSA Contacts

9.6. For more information concerning this matter generally, you should contact Stephen Robinson at the FSA (direct line: 020 7066 1338/ fax: 020 7066 1339).

Georgina Philippou
FSA Enforcement and Financial Crime Division

ANNEX

Unauthorised Business and the Carrying on of Regulated Activities

Section 19(1) FSMA provides that *"no person may carry on a regulated activity in the United Kingdom, or purport to do so, unless he is (a) an authorised person or (b) an exempt person"*. This prohibition is referred to as the "general prohibition" (section 19(2) FSMA).

Section 22(1) FSMA provides that *"an activity is a "regulated activity" for the purposes of FSMA if it is an activity of a specified kind which is carried on by way of business and (a) relates to an investment of a specified kind or (b) in the case of an activity of a kind which is also specified for the purposes of that section, is carried on in relation to property of any kind"*.

Article 25(2) of the Financial Services and Markets Act 2000 (Regulated Activities Order 2001) ("RAO") states:

(1) "Arranging deals in investments

(1)… Making arrangements for another person (whether as principal or agent) to buy, sell, subscribe for or underwrite a particular investment which is—

a) Security

(b) a [relevant investment], or

(c) an investment of the kind specified by article 86, or article 89 so far as relevant to that article,

is a specified kind of activity.

(2)Making arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting investments falling within paragraph 1(a)…(whether as principal or agent) is also a specified kind of activity."

Section 327 of the Act states that:

(1) "The general prohibition does not apply to the carrying on of a regulated activity by a person ("P") if—

(a) the conditions set out in subsections (2) to (7) are satisfied; and

(b) there is not in force—

(i) a direction under section 328, or

(ii) an order under section 329, which prevents this subsection from applying to the carrying on of that activity by him.

(2) P must be—

(a) a member of a profession; or

(b) controlled or managed by one or more such members.

(3) P must not receive from a person other than his client any pecuniary reward or other advantage, for which he does not account to his client, arising out of his carrying on of any of the activities.

(4) The manner of the provision by P of any service in the course of carrying on the activities must be incidental to the provision by him of professional services.

(5) P must not carry on, or hold himself out as carrying on, a regulated activity other than—

(a) one which rules made as a result of section 332(3) allow him to carry on; or

(b) one in relation to which he is an exempt person.

(6) The activities must not be of a description, or relate to an investment of a description, specified in an order made by the Treasury for the purposes of this subsection.

(7) The activities must be the only regulated activities carried on by P (other than regulated activities in relation to which he is an exempt person).

(8) "Professional services" means services—

(a) which do not constitute carrying on a regulated activity, and

(b) the provision of which is supervised and regulated by a designated professional body".

<u>Unauthorised Financial Promotions</u>

Section 21(1) FSMA provides that *"a person must not, in the course of business, communicate an invitation or inducement to engage in investment activity"*.

Section 21(2) FSMA specifies that the restriction does not apply if the person is an authorised person or the content of the communication is approved for the purposes of section 21(1) by an authorised person.

Section 21(3) FSMA specifies that, *"in the case of a communication originating outside the United Kingdom, the restriction applies only if the communication is capable of having an*

effect in the United Kingdom".

"Engaging in investment activity" includes entering or offering to enter into an agreement the making or performance of which by either party constitutes a "controlled activity" (section 21(8)(a) FSMA). *"An activity is a "controlled activity" if (a) it is an activity of a specified kind or one which falls within a specified class of activity; and (b) it relates to an investment of a specified kind, or to one which falls within a specified class of investment (section 21(9) FSMA)".*

Article 4(1) of the Financial Services and Markets Act 2000 (Financial Promotions) Order 2005 (the "FPO") provides that, for the purposes of section 21(9) of FSMA, a "controlled activity" is an activity which falls within any of paragraphs 1 to 11 of Schedule 1 of the FPO. "Advising on investments" and "arranging deals in investments" are both controlled activities listed in Schedule 1 of the FPO (paragraphs 4 and 7 Schedule 1 FPO). Shares are considered to be "controlled investments" (paragraph 14 Schedule 1 FPO).

APER 4.6

(Statement of Principle 6)

APER 4.6.1 G

The Statement of Principle 6 (see APER 2.1.2 P) is in the following terms: "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."

APER 4.6.2 E

In the opinion of the FSA, conduct of the type described in APER 4.6.3 E, APER 4.6.5 E, APER 4.6.6 E or APER 4.6.8 E does not comply with Statement of Principle 6 (APER 2.1.2 P).

APER 4.6.3 E

Failing to take reasonable steps to adequately inform himself about the affairs of the business for which he is responsible falls within APER 4.6.2 E.

APER 4.6.4 E

Behaviour of the type referred to in APER 4.6.3 E includes, but is not limited to:

(1) permitting transactions without a sufficient understanding of the risks involved;

(2) permitting expansion of the business without reasonably assessing the potential risks of that expansion;

(3) inadequately monitoring highly profitable transactions or business practices or unusual transactions or business practices;

(4) accepting implausible or unsatisfactory explanations from subordinates without testing the veracity of those explanations;

(5) failing to obtain independent, expert opinion where appropriate; (see APER 4.6.12 G).

APER 4.6.11 G

An *approved person* performing a *significant influence function* will not always manage the business on a day-to-day basis himself. The extent to which he does so will depend on a number of factors, including the nature, scale and complexity of the business and his position within it. The larger and more complex the business, the greater the need for clear and effective delegation and reporting lines. The *FSA* will look to the *approved person* performing a *significant influence function* to take reasonable steps to ensure that systems are in place which result in issues being addressed at the appropriate level. When issues come to his attention, he should deal with them in an appropriate way.

Knowledge about the business

APER 4.6.12 G

(1) It is important for the *approved person* performing a *significant influence function* to understand the business for which he is responsible (*APER 4.6.4 E*). An *approved person* performing a *significant influence function* is unlikely to be an expert in all aspects of a complex financial services business. However, he should understand and inform himself about the business sufficiently to understand the risks of its trading, credit or other business activities.

(2) It is important for an *approved person* performing a *significant influence function* to understand the risks of expanding the business into new areas and, before approving the expansion, he should investigate and satisfy himself, on reasonable grounds, about the risks, if any, to the business.

(3) Where unusually profitable business is undertaken, or where the profits are particularly volatile or the business involves funding requirements on the *firm* beyond those reasonably anticipated, he should require explanations from those who report to him. Where those explanations are implausible or unsatisfactory, he should take steps to test the veracity of those explanations.

(4) Where the *approved person* performing a *significant influence function* is not an expert in a business area, he should consider whether he or those with whom he works have the necessary expertise to provide him with an adequate explanation of issues within that business area. If not he should seek an independent opinion from elsewhere within or outside the *firm*.

APER 4.7

(Statement of Principle 7)

APER 4.7.1

The Statement of Principle 7 (see APER 2.1.2 P) is in the following terms: *"An approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system."*

APER 4.7.2

In the opinion of the FSA, conduct of the type described in APER 4.7.3 E, APER 4.7.4 E, APER 4.7.7 E, APER 4.7.9 E or APER 4.7.10 E does not comply with Statement of Principle 7 (APER 2.1.2 P).

APER 4.7.3 E

Failing to take reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems of control to comply with the relevant requirements and standards of the regulatory system in respect of its regulated activities falls within APER 4.7.2 E. In the case of an approved person who is responsible, under SYSC 2.1.3 R (2), with overseeing the firm's obligation under SYSC 3.1.1 R , failing to take reasonable care to oversee the establishment and maintenance of appropriate systems and controls falls within APER 4.7.2 E.

APER 4.7.4 E

Failing to take reasonable steps to monitor (either personally or through a compliance department or other departments) compliance with the relevant requirements and standards of the regulatory system in respect of its regulated activities falls within APER 4.7.2 E (see APER 4.7.12 G).

APER 4.7.9 E

In the case of the money laundering reporting officer, failing to discharge the responsibilities imposed on him by the firm in accordance with SYSC 3.2.6I R falls within APER 4.7.2 E.

APER 4.7.11

The FSA expects an approved person performing a significant influence function to take reasonable steps both to ensure his firm's compliance with the relevant requirements and standards of the regulatory system and to ensure that all staff are aware of the need for compliance.

Systems of control

APER 4.7.12

An approved person performing a significant influence function need not himself put in place the systems of control in his business (APER 4.7.4 E). Whether he does this depends on his role and responsibilities. He should, however, take reasonable steps to ensure that the business for which he is responsible has operating procedures and systems which include well-defined steps for complying with the detail of relevant requirements and standards of the regulatory system and for ensuring that the business is run prudently. The nature and extent of the systems of control that are required will depend upon the relevant requirements and standards of the regulatory system, and the nature, scale and complexity of the business (see APER 3.3.2).

Possible breaches of regulatory requirements

APER 4.7.13

Where the approved person performing a significant influence function becomes aware of actual or suspected problems that involve possible breaches of relevant requirements and standards of the regulatory system falling within his area of responsibility, then he should take reasonable steps to ensure that they are dealt with in a timely and appropriate manner (APER 4.7.7 E). This may involve an adequate investigation to find out what systems or

procedures may have failed and why. He may need to obtain expert opinion on the adequacy and efficacy of the systems and procedures.

The "Fit and Proper" rules

FIT 1.1.3 G and 1.3.2 G

"The FSA will have regard to a number of factors when assessing the fitness and propriety of a person to perform a particular controlled function. The most important considerations will be the person's:

(1) honesty, integrity and reputation;

(2) competence and capability; and

(3) financial soundness". (FIT 1.1.3 G)

"In assessing fitness and propriety, the FSA will also take account of the activities of the firm for which the controlled function is or is to be performed, the permission held by that firm and the markets within which it operates." (FIT 1.3.2 G)

FIT 2.2

Competence and capability

FIT 2.2.1G

In determining a person's competence and capability FIT 2.2 provides that the FSA will have regard to matters including, but not limited to, those set out in FIT 2.2.1G. These include:

> (1) whether the person satisfies the relevant FSA training and competence requirements in relation to the controlled function the person performs or is intended to perform (FIT 2.2.1G(1)); and
>
> (2) whether the person has demonstrated by experience and training that the person is able, or will be able if approved, to perform the controlled function (FIT 2.2.1G(2)).