
FINAL NOTICE

To: **Ronald Alan Winton**

Individual Reference No: **RAW 01159**

Address: **Mortgage Healthcare Limited
16 Hamilton Street
Broughty Ferry
Dundee DD5 2NR**

Dated: **27 July 2010**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you, Ronald Alan Winton (“Mr Winton”), final notice about the imposition of a financial penalty and the withdrawal of your individual approval to perform the controlled function of CF1 (Director):

1. ACTION

- 1.1. On 27 July 2010 the FSA gave you, Mr Winton of Mortgage Healthcare Limited (in liquidation) (“the Firm”), a Decision Notice which stated that it had decided to:
- (1) impose on you a financial penalty of £31,500, pursuant to section 66 of the Financial Services and Markets Act 2000 (“the Act”), for failing to comply with Statement of Principle 7 of the FSA’s Statements of Principle and Code of Practice for Approved Persons (“APER”); and
 - (2) to withdraw the approval given to you to perform the significant influence controlled function of CF1 Director at the Firm, pursuant to section 63 of the Act, on the grounds that you are not a fit and proper person to perform significant influence functions at the Firm because you lack the competence and capability to do so.
- 1.2. You agreed to settle at an early stage of the FSA’s investigation and you therefore qualified for a 30% (stage 1) discount under the FSA’s executive settlement procedures. Without this discount, the FSA would have imposed a financial penalty of £45,000 on you.

- 1.3. You also agreed not to apply, for a period of two years from the date of this Notice, to perform any significant influence functions, that is, any of the controlled functions 1 to 12B and 28 and 29 in the table of Controlled Functions in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

2. REASONS FOR THE ACTION

- 2.1. Throughout the period from 18 August 2005 to 2 September 2009 (the “relevant period”), you were approved by the FSA to perform the controlled functions of CF1 (Director) at the Firm. You were also approved to perform the controlled function of CF8 (Apportionment and Oversight) at the Firm between 18 August 2005 and 31 March 2009. Your approval to perform CF8 was withdrawn in accordance with the changes to Senior Management Arrangements, Systems and Controls (“SYSC”) and the approved persons regime which came into effect on 1 April 2009.

- 2.2. As the Firm’s only director, approved person and senior manager, you were solely responsible for:

- (1) managing and monitoring the business activities of the Firm and the conduct of its advisers;
- (2) overseeing the establishment and maintenance of systems and controls appropriate to the Firm’s business; and
- (3) ensuring that the Firm treated its customers fairly.

- 2.3. On the basis of the facts and matters summarised below and set out in more detail in section 4 of this Notice, the FSA concluded that, during the relevant period, you personally failed to take reasonable steps to:

- (1) ensure that the Firm’s advisers obtained and recorded sufficient ‘Know Your Customer’ (“KYC”) information to adequately assess the needs and circumstances of its customers, and failed to undertake and document appropriate affordability assessments with customers and retain appropriate records to demonstrate why mortgage recommendations were considered to be suitable, thereby exposing customers to the risks of receiving unsuitable advice and, based on it, entering into unsuitable mortgage contracts;
- (2) put in place appropriate management controls and take reasonable steps to ensure that in handling complaints, the Firm identified and remedied any recurring/ systemic problems;
- (3) establish adequate compliance monitoring procedures to enable the Firm to monitor its mortgage advisory business effectively;
- (4) establish adequate training and competency procedures to enable the Firm to ensure the competence, knowledge, skills and performance of mortgage advisers and to monitor and review those matters on an ongoing basis, and to control them effectively;

- (5) collect appropriate management information to monitor the business written by the firm's advisers which led to your failure to monitor the buy-to-let mortgage applications submitted by two of the firm's advisers;
 - (6) implement proper systems to counter the risk that the Firm might be used to further financial crime; and
 - (7) identify and take corrective action to remedy any breaches of the requirements and standards of the regulatory system, despite being alerted to some potential breaches by the FSA following its visit in May 2007 and the Firm's external compliance consultant.
- 2.4. These matters constituted a failure to take reasonable steps to ensure that the business of the Firm for which you were responsible in your controlled functions complied with the relevant requirements and standards of the regulatory system in contravention of APER Statement of Principle 7.
- 2.5. The FSA considered the nature and extent of your misconduct and the breaches of APER Statement of Principle 7 to be very serious because your actions may have exposed up to 2,180 customers of the Firm to the risk of being recommended mortgage contracts that may not have been suitable and exposed the Firm to the risk of being used to commit financial crime. As a result of your failures, the Firm potentially failed to treat its customers fairly by the application of its deficient sales process.
- 2.6. The FSA concluded that your conduct during the relevant period demonstrates that you lacked the competence and capability to perform controlled functions at the Firm, and that you were not a fit and proper person to perform significant influence functions at the Firm. Consequently the FSA deemed it necessary and proportionate, to withdraw your individual approval in support of the FSA's consumer protection and market confidence objectives.

3. RELEVANT STATUTORY PROVISIONS

- 3.1. The relevant statutory provisions and regulatory requirements are attached at Annex A.

4. FACTS AND MATTERS RELIED ON

Background

- 4.1. The Firm operated as a mortgage and general insurance intermediary operating in Dundee. With effect from 18 August 2005, the Firm was granted permission by the FSA to carry on the following regulated activities in relation to regulated home finance:
- (1) advising on regulated mortgage contracts;
 - (2) agreeing to carry on a regulated activity;
 - (3) arranging regulated mortgage contracts; and

- (4) making arrangements.
- 4.2. With effect from 18 August 2005, the Firm was granted permission by the FSA to carry on the following regulated activities in relation to insurance mediation:
 - (1) advising (except on pension transfers and pension opt outs);
 - (2) arranging deals in investments; and
 - (3) making arrangements.
 - 4.3. Between 18 August 2005 and 30 June 2009, the Firm recommended approximately 2,180 regulated mortgage contracts to its clients. During this period more than half of the regulated business comprised interest only and/or non-income verified mortgage applications.
 - 4.4. During the relevant period, you were the sole director, approved person and majority shareholder at the Firm. The Firm employed a maximum of 11 advisers during the relevant period and there were no other approved persons at the Firm. You confirmed that you were the controlling mind of the Firm. You were therefore solely responsible for taking reasonable steps to ensure that the business of the Firm, for which you were responsible in your controlled function, was organised so that it complied with the regulatory requirements and standards of the regulatory system.
 - 4.5. The FSA's Small Firms and Contact Division's ("SFCD") first visited the Firm in May 2007 as part of the FSA's thematic review of the sale of self-certification mortgages ("the first visit"). A second visit occurred on 19 and 20 May 2009 to check on progress made since the first visit. During the second visit SFCD identified circumstances suggesting that the Firm may have breached the FSA's Principles for Businesses and that you may have breached APER Statements of Principle.
 - 4.6. For the reasons set out below the FSA concluded that the Firm fell well below the standards expected by the FSA in terms of having appropriate mechanisms in place to enable it to determine that it was complying with the relevant requirements and standards of the regulatory system.

Interest Only/ Self-Certification mortgages

- 4.7. During the first visit, SFCD identified concerns that the Firm was recommending interest only mortgages to customers without fully assessing how the capital would be repaid and relying on self-certification of income where there was no apparent reason for doing so. The visit established that of 145 self-certified cases, 135 were interest only. SFCD expressed concern to you regarding the number of self-certification and interest only sales and the lack of evidence on files to support the plausibility and accuracy of information captured by advisers.
- 4.8. These matters were raised with you again by the FSA during interview on 8 December 2009. The FSA found no evidence that you had taken action to deal with the risks highlighted by SFCD in the first visit. For example, during the interview:

- (1) you expressed concern that 65% of the Firm's business was interest only but stated that you had no control over it. It appears that the Firm's advisers dictated the type of business conducted by the Firm and it is clear that you failed to put in place proper systems to monitor and control the type of business being conducted at the Firm;
- (2) you admitted that upon reviewing some completed cases you noted that the advisers were still failing to check the feasibility of customers' repayment strategies for interest only sales;
- (3) you admitted that the lack of controls at the Firm led to circumstances where the Firm arranged self-certification mortgages for customers even when the customers could provide proof of income;
- (4) you admitted that client files for interest only cases were not properly documented and lacked evidence to support the suitability of the recommendations; and
- (5) you acknowledged that you failed to identify training needs and to assess the ongoing competence of the Firm's mortgage advisers, following the FSA's first visit.

4.9. You also failed to act on the risks repeatedly raised by the Firm's external compliance consultant regarding interest only mortgages. The external compliance consultant visited the firm in February, April and July 2009 and carried out 63 file reviews on cases (including insurance cases) completed between December 2008 and May 2009. They found that eight interest only mortgage files failed to demonstrate suitability, for reasons including the following:

- (1) files did not clearly record the clients' repayment strategies;
- (2) in one file, the rationale in the suitability letter was inconsistent with other information held on file, and there was no clear audit trail for the advice given;
- (3) the reasons why an interest only mortgage was recommended were not recorded on the file;
- (4) a file stated that the client would repay the mortgage using overpayments and a pension but there was no pension recorded on the fact find; and
- (5) in one file, the adviser had failed to check the validity and affordability of the repayment strategy, and there were inconsistencies between the strategy recorded in the fact find and elsewhere on the file.

Suitability of advice

4.10. For the reasons set out below, the FSA concluded that you failed to take reasonable steps to ensure that the Firm gave suitable advice to its customers and to monitor the suitability of its advice.

- 4.11. You failed to take reasonable steps to ensure that the Firm's advisers obtained and recorded sufficient KYC information properly to establish and assess its customers' needs and objectives.
- 4.12. When the FSA spoke to two of the Firm's advisers (Adviser A and Adviser B) on 9 December 2009 regarding customers' files, it was evident that the sales process at the Firm was not adequate and in some instances was not being followed. For example:
- (1) files contained insufficient information regarding customers' needs and circumstances, fact finds were incomplete, and you admitted in interview on 8 December 2009 that advisers would take shortcuts in terms of recording information if they already knew the clients;
 - (2) an adviser stated that affordability assessments were being conducted but admitted that they were not being documented, whilst another adviser admitted that the sales process was inadequate with regard to affordability assessments;
 - (3) the PAs of two advisers produced customers' suitability letters using a standardised template with generic phrases, but these letters were not reviewed by the advisers before they were issued to customers;
 - (4) in one case where two mortgage applications (for a remortgage and a new property) were arranged simultaneously for a couple, the two suitability letters contained conflicting information and inconsistencies regarding the couple's income and insufficient information regarding affordability; and
 - (5) there was no evidence that the Firm had put in place a process for dealing with non-advised sales, and you and Adviser A and Adviser B failed to satisfy the FSA that you understood the distinction between advised and non-advised sales.
- 4.13. The external compliance consultant highlighted similar issues with customer files. The consultant's reports for February, April and July 2009 contained a summary of 63 file reviews: 35% of files failed to demonstrate suitability of advice and only 33% of files were considered fully satisfactory or had minor issues.
- 4.14. Your failure to address the deficiencies in the Firm's record keeping, KYC and affordability assessments exposed customers to the risks of receiving unsuitable advice and entering into unsuitable mortgage contracts.
- 4.15. Notwithstanding the failings outlined in this notice, you were unable to provide satisfactory evidence that the Firm had ever identified and taken corrective action to remedy any breaches of the requirements and standards of the regulatory system.

Management and oversight

- 4.16. The FSA concluded that during the relevant period you failed to take reasonable steps to ensure that the Firm had adequate and appropriate management systems and controls to enable its mortgage advisory business to be controlled effectively in compliance with the FSA's regulatory requirements.

- 4.17. You delegated the day-to-day management of the Firm to Adviser A and Adviser B. You were dependent on their financial services experience as you had no prior experience of working in financial services or, more specifically, as a mortgage intermediary. Many of the substantive decisions about the Firm's sales process, including communications with customers and the recruitment and supervision of the Firm's staff, were undertaken by Adviser A and Adviser B. They were also involved in key business decisions. However, they did not hold controlled functions and were not approved persons. You operated from separate business premises to Adviser A and Adviser B, where you ran another business. You did not take reasonable steps to maintain an appropriate level of understanding about the Firm's day to day business and the way it operated.
- 4.18. You failed to implement a formal reporting structure for Adviser A and Adviser B. You did not adequately supervise or monitor their work or make any arrangements for their training and professional development. During the relevant period, there was no adequate arrangement for testing the ongoing competency of the Firm's other advisers or compliance function. You told the FSA that you had determined the competency of the Firm's in-house compliance officer from your verbal discussions (rather than a formal assessment). You also failed to ensure that the compliance officer's work was adequately monitored and supervised.
- 4.19. You accepted that the level of compliance monitoring at the Firm was insufficient to control the business effectively. For example, you expressed concern that the firm's compliance officer might not have reviewed Adviser A or Adviser B's mortgage advice and/or customer files. When the compliance officer reviewed the mortgage files of other advisers at the Firm who were considered to be experienced, these reviews occurred after the mortgage had completed so there was no opportunity to address any issues prior to completion.
- 4.20. Although an external compliance consultant was engaged by the Firm (to assist the internal compliance officer and generally monitor/review the Firm's systems and controls), you failed to act on the risks regularly and consistently identified by the external compliance consultant and failed to review and improve the Firm's systems of control. There was no process to ensure that advisers reviewed their own files and completed the remedial action recommended by the external compliance consultant following the monthly file reviews. Adviser A, for instance, admitted that action was rarely taken as a result of the comments or recommendations made in external compliance reports.
- 4.21. You failed to collect appropriate management information to monitor the business written at the Firm, which might otherwise have enabled you to review patterns of business and to identify anomalies and risks. In particular, you might have been alerted to the number of buy-to-let mortgage applications that Adviser A and Adviser B submitted in their own names through the Firm. Adviser A and Adviser B confirmed to the FSA that they had submitted at least 36 applications. You admitted that you were aware of ten applications, but only after these mortgages had been set up and only because the paperwork had come through your office.
- 4.22. You failed to ensure you had appropriate systems in place to counter the risk of the Firm being used to commit mortgage fraud. The FSA checked the income

information declared by 19 of the Firm's mortgage customers with Her Majesty's Revenue and Customs ("HMRC"). In 14 of those cases, the information declared by the customers on their mortgage applications was inconsistent with records kept by HMRC. It therefore appears that 14 of the Firm's customers submitted mortgage applications to lenders which contained false or misleading information about their incomes.

Complaint handling

- 4.23. The Firm's complaint handling policy was inadequate. You failed to ensure that all complaints were recorded as such, and that the process was independent. You admitted when you were interviewed by the FSA on 8 December 2009 that the subject of the complaint had the first opportunity to discuss the matter with the complainant and that you would not know if advisers had failed to report complaints to you, being responsible for handling customers' complaints. You admitted that the policy did not state that all complaints should go to you and that you did not review the complaints register to consider the issues that had been raised.
- 4.24. You failed to ensure that the Firm's procedures allowed complaints to be made by any reasonable means. You stated that complaints were not considered to be formal or addressed by you (the Firm) until the complainant put the complaint in writing and addressed it to you. Consequently the FSA concluded that you failed to put in place appropriate management controls and take reasonable steps to ensure that in handling complaints the Firm identified and remedied any recurring/ systemic problems (contrary to DISP 1.3.3R).

5. ANALYSIS OF MISCONDUCT AND SANCTIONS

Your conduct

- 5.1. During the relevant period, you were the sole approved person performing the significant influence functions CF1 and CF8 (the latter until 31 March 2009) at the Firm. For the reasons set out in section 4 above, during that period, you failed to take reasonable steps to ensure that the business of the Firm for which you were responsible in your controlled functions was organised so that it could be controlled effectively and complied with the relevant requirements and standards of the regulatory system. Those failures amounted to breaches of APER Statement of Principle 7.
- 5.2. In summary, in contravention of FIT and APER Statement of Principle 7, you failed to take reasonable steps to implement adequate and appropriate systems of control for:
- (1) monitoring the Firm's sales process and ensuring that it was effective in consistently and accurately obtaining, recording and assessing key information necessary to ensure that the Firm gave suitable mortgage advice and made suitable recommendations to its customers;
 - (2) ensuring that the Firm retained sufficient records to demonstrate why mortgage recommendations were considered to be suitable; and

- (3) ensuring proper and effective compliance monitoring.

FSA policy and guidance regarding financial penalties and its application

- 5.3. The FSA considered that the breaches of FIT and APER Statement of Principle 7 set out above merited the imposition of a financial penalty of £45,000. In determining this level of financial penalty, the FSA had regard to all the relevant circumstances of this case and the factors set out in chapter 6 of DEPP and ENF, extracts of which are set out in Annex A.
- 5.4. The FSA's published policy states that the principal purpose of the imposition of a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour.
- 5.5. Against that backdrop, the FSA considered all the relevant facts and circumstances of this case in determining whether a financial penalty should be imposed on you and what represents an appropriate penalty.
- 5.6. Amongst other things, the FSA considered the extent to which your actions were reckless or deliberate. The FSA concluded that your contraventions were not deliberate. However, the FSA considered that the nature of your actions (and inaction) as set out in section 4 of this Notice evidenced a reckless disregard for the regulatory requirements to which you and the Firm were subject and for the risk thereby posed to the Firm's customers.
- 5.7. As noted above, your failures exposed customers to the risks of receiving unsuitable advice and, based on it, entering into unsuitable mortgage contracts. Due to your failure to take reasonable steps to ensure that the Firm retained appropriate records to demonstrate whether your advisers assessed and, if so, the basis on which your advisers assessed the suitability of the products they recommended, the FSA was unable to satisfy itself that customers were recommended suitable mortgage contracts.

Mitigation

- 5.8. You co-operated with the FSA's investigation.
- 5.9. You were not previously been the subject of disciplinary action by the FSA.

Amount of financial penalty

- 5.10. In conclusion the FSA decided that a financial penalty of £45,000 was appropriate and proportionate in this case before any discount for early settlement.
- 5.11. The FSA had regard to the seriousness of your regulatory misconduct, the nature of the requirements breached, the extent and duration of the breaches, the loss or risk of loss caused to consumers and the risks posed to the FSA's regulatory objectives of

protecting consumers and maintaining confidence in the financial system and factors and developments, including your conduct, following the breaches.

Withdrawal of approval

- 5.12. The FSA also concluded that your conduct demonstrated a lack of competence and capability and that you were not fit and proper to carry out the significant influence function for which you had approval. The FSA therefore decided to withdraw the approval given to you to perform the controlled function of CF1 (Director). You agreed not to apply, for a period of two years from the date of this Notice, to perform any significant influence functions, that is, any of the controlled functions 1 to 12B and 28 and 29 in the table of Controlled Functions in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

6. DECISION MAKER

- 6.1. The decision which gave rise to the obligation to give this notice was made on behalf of the FSA by Settlement Decision Makers for purposes of the FSA's Decision Procedure and Penalties manual ("DEPP").

7. IMPORTANT

- 7.1. This Final Notice is given to you in accordance with section 390(1) of the Act.

Manner of and time of payment

- 7.2. The financial penalty must be paid in full by you to the FSA by no later than 10 August 2010, 14 days after the date of this Final Notice.

If the financial is not paid

- 7.3. If all or any of the financial penalty is outstanding on 10 August 2010 the FSA may recover the outstanding amount as a debt owed by you and due to the FSA.

Publicity

- 7.4. Sections 391(4), 392(6) and 391(7) of the Act apply to the publication of information about the matter to which this Final 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.
- 7.5. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA Contacts

- 7.6. For more information concerning this matter generally, you should contact Chris Walmsley of the Enforcement and Financial Crime Division at the FSA (direct line: 020 7066 5894).

Tom Spender
Head of Department
FSA Enforcement and Financial Crime Division

ANNEX A

1. Statutory provisions

- 1.1. The FSA's statutory objectives, set out in section 2(2) of the Act, are: market confidence; public awareness; the protection of consumers and the reduction of financial crime.
- 1.2. The FSA has the power, by virtue of section 66 of the Act, to impose a financial penalty on you of such amount as it considers appropriate where it appears to the FSA that you are guilty of misconduct and it is satisfied that it is appropriate in all the circumstances to take action against you.
- 1.3. You are guilty of misconduct if, while an approved person, you fail to comply with a statement of principle issued under section 64 or have been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under the Act.
- 1.4. Pursuant to section 63 of the Act, the FSA has the power to withdraw the approval given to you under section 59 of the Act - to perform the controlled functions of CF1 Director – if it considers that you are not a fit and proper person to perform them.

2. APER Statements of Principle for Approved Persons

- 2.1. APER is issued pursuant to section 64 of the Act. It sets out Statements of Principle with which approved persons are required to comply when performing a controlled function for which approval has been sought and granted. They are general statements of the fundamental obligations of approved persons under the regulatory system. APER also contains descriptions of conduct which, in the opinion of the FSA, constitutes a failure to comply with a particular Statement of Principle and describes factors which the FSA will take into account in determining whether an approved person's conduct complies with it.
- 2.2. APER 3.1.3 G states that, when establishing compliance with, or breach of, a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, the circumstances of the individual case, the characteristics of the particular controlled function and the behaviour expected in that function.
- 2.3. In this case, the FSA considers the most relevant APER Statement of Principle to be Statement of Principle 7.
- 2.4. APER 3.1.4 G states that an approved person will only be in breach of a Statement of Principle when he is personally culpable. Personal culpability arises where an approved person's conduct was deliberate or where the approved person's standard of conduct was below that which would be reasonable in all the circumstances.

Statement of Principle 7

- 2.5. 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.

- 2.6. APER 3.3 sets out factors relevant to an assessment of compliance with Statements of Principle 5 to 7. APER 3.3.1 E provides that in determining whether or not the conduct of an approved person performing a significant influence function complies with Statements of Principle 5 to 7, the following are factors which, in the opinion of the FSA, are to be taken into account:
- (1) whether he exercised reasonable care when considering the information available to him;
 - (2) whether he reached a reasonable conclusion which he acted on;
 - (3) the nature, scale and complexity of the firm's business;
 - (4) his role and responsibility as an approved person performing a significant influence function; and
 - (5) the knowledge he had, or should have had, of regulatory concerns, if any, arising in the business under his control.
- 2.8. APER 4.7.11 G provides that 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.
- 2.9. APER 4.7.2 E to 4.7.10 E provides examples of the types of behaviour that, in the opinion of the FSA, do not comply with and constitute breaches of Principle 7. We consider the following provisions to be particularly relevant to the misconduct by you and your breaches of Principle 7 as set out in section 4 below:
- (1) 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 standards of the regulatory system in respect of its regulated activities;
 - (2) 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;
 - (3) APER 4.7.5 E - failing to take reasonable steps adequately to inform himself about the reason why significant breaches (whether suspected or actual) of the relevant requirements and standards of the regulatory system in respect of its regulated activities;
 - (4) APER 4.7.6 E - behaviour of this kind (APER 4.7.5 E) includes, but is not limited to, failing to investigate what systems or procedures may have failed including, where appropriate, failing to obtain expert opinion on the adequacy of systems and procedures; and

- (5) APER 4.7.7 E - failing to take reasonable steps to ensure that procedures and systems of control are reviewed and, if appropriate, improved, following the identification of significant breaches (whether suspected or actual) of the relevant requirements and standards of the regulatory system relating to its regulated activities.

3. FSA's policy on exercising its power to impose a financial penalty

- 3.1. The FSA's statement of policy with respect to the imposition and amount of penalties under the Act, as required by sections 69(1), 93(1), 124(1) and 210(1) of the Act, and guidance on those matters is provided in Chapter 6 of the FSA's Decision Procedure and Penalties Manual ("DEPP"), entitled "Penalties", which is part of the FSA's Handbook. In summary, chapter 6 of DEPP states that the FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty, and sets out a non-exhaustive list of factors that may be relevant for this purpose.
- 3.2. In determining the appropriate level of financial penalty in this case, the FSA has also had regard to Chapter 13 of the Enforcement Manual ("ENF"), the part of the FSA's Handbook setting out the FSA's policy on the imposition of financial penalties in force until 27 August 2007, and therefore during part of the relevant period.
- 3.3. The principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour.
- 3.4. The FSA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty. DEPP6.2.1G sets out guidance on a non-exhaustive list of factors that may be of relevance in determining whether to take action for a financial penalty, which include the following.
 - (1) 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.
 - (5) DEPP 6.2.1G(5): Action taken by the FSA in previous similar cases.

4. Determining the level of the financial penalty

- 4.1. The FSA will consider all the relevant circumstances of a case when it determines the level of financial penalty. DEPP 6.5.2G, and previously ENF 13.3.3G, sets out guidance on a non exhaustive list of factors that may be of relevance when determining the amount of a financial penalty.

- 4.2. Factors that may be relevant to determining the appropriate level of financial penalty include:
- (1) whether the breach revealed serious or systematic weaknesses in the person's procedures or of the management systems or internal controls relating to all or part of a person's business (DEPP 6.5.2G(2)(b)); and
 - (2) the general compliance history of the person, including whether the FSA has previously brought to the person's attention, issues similar or related to the conduct that constitutes the breach in respect of which the penalty is imposed (DEPP 6.5.2(9)(d)).
- 4.3. Corresponding provisions are set out in ENF 13.3.3G, which sets out factors that may be relevant when determining the appropriate level of financial penalty for a firm including the following:
- (1) whether the misconduct or contravention revealed serious or systematic weaknesses of the management systems or internal controls relating to all or part of the firm's business (ENF 13.3.3G(1)(c)); and
 - (2) disciplinary record and compliance history. This will include whether the FSA has previously requested the firm to take remedial action, and the extent to which that action has been taken (ENF 13.3.3G(6)).

5. Fit and Proper Test for Approved Persons

- 5.1. The part of the FSA Handbook entitled "FIT" sets out the Fit and Proper Test for Approved Persons. 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.
- 5.2. FIT 1.3.1G provides that the FSA will have regard to a number of factors when assessing a person's fitness and propriety. One of the considerations will be the person's competence and capability.
- 5.3. As set out in FIT 2.2, in determining a person's competence and capability, the FSA will have regard to matters including but not limited to:
- (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; 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.

6. FSA's policy for exercising its power to make a prohibition order and withdraw a person's approval

- 6.1. The FSA's approach to exercising its powers to make prohibition orders and withdraw approvals is set out at Chapter 9 of the Enforcement Guide ("EG").

- 6.2. 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.
- 6.3. 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. EG 9.5 provides that the scope of a prohibition order will vary 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.
- 6.4. In circumstances where the FSA has concerns about the fitness and propriety of an approved person, EG 9.8 to 9.14 provides guidance. In particular, EG 9.8 states that the FSA may consider whether it should prohibit that person from performing functions in relation to regulated activities, withdraw that person's approval or both. In deciding whether to withdraw approval and/or make a prohibition order, the FSA will consider whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions.
- 6.5. EG 9.9 states that the FSA will consider all the relevant circumstances when deciding whether to make a prohibition order against an approved person and/or to withdraw that person's approval. Such circumstances 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, including in relation to the criteria for assessing the fitness and propriety of an approved person in terms of competence and capability as set out in FIT 2.2;
 - (2) the relevance and materiality of any matters indicating unfitness;
 - (3) the length of time since the occurrence of any matters indicating unfitness;
 - (4) 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;
 - (5) the severity of the risk which the individual poses to consumers and to confidence in the financial system; and
 - (6) the previous disciplinary record and general compliance history of the individual.
- 6.6. EG 9.12 provides a number of examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order or withdraw the approval of an approved person. The examples include serious lack of competence.