Financial Services Authority

FINAL NOTICE

To:	Sedley Richard Laurence Voulters
Of:	89 New Bond Street, London, W1S 1DA
FSA Reference Number:	103410
Date:	13 December 2010

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives Sedley Richard Laurence Voulters final notice about the imposition of a financial penalty:

1. THE PENALTY

1.1. The FSA gave Sedley Richard Laurence Voulters ("SRLV"/"the Firm") a Decision Notice on 7 October 2010 which notified SRLV that pursuant to section 206 of the Financial Services and Markets Act 2000 (the "Act"), the FSA had decided to impose a financial penalty of £163,140 on SRLV in respect of breaches of Principles 1 and 3 of the FSA's Principles for Businesses which occurred between 1 May 2008 and 11 November 2008 ("the Relevant Period").

1.2. SRLV agreed to settle at an early stage of the FSA's investigation. It 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 £229,140 on SRLV.

1.3. The penalty also includes the disgorgement of £9,140 in fees generated by the Firm over the period of the activity.

2. REASONS FOR THE ACTION

2.1. During the Relevant Period, SRLV acted without integrity by its involvement in the promotion, offer for sale and sale of shares in Natrocell Shareholders Limited ("NSL") by various unauthorised overseas entities which the FSA believes to be share fraud operators commonly known as boiler rooms, in that it should have known that the promotion and sale of the shares were being carried out by such entities in breach of the provisions of the Act.

2.2. SRLV'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.

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

2.4. SRLV should have known that share fraud operators were involved in the promotion and sale of shares, and therefore that it could be handling the proceeds of crime. However, it continued to make arrangements to bring about the sale by NSL of its shares and the purchase of those shares by investors. SRLV should have known that its involvement might have reassured potential investors about the legitimacy of the sale of NSL shares.

2.5. SRLV performed its role in relation to NSL and NSL's wholly-owned subsidiary NTL, during the Relevant Period, through a former partner of the Firm ("the relationship partner").

2.6. Despite the warning signs of possible financial crime by the share fraud operators, that were available to the relationship partner and some others at the Firm, SRLV failed to act or respond appropriately. Rather than accepting its own responsibility to counter the risk of financial crime by the share fraud operators, it recklessly, through its relationship partner, sought to place those responsibilities on NTL and NSL. Consequently, after relying on the relationship partner to raise and resolve matters with NTL and NSL, SRLV paid insufficient attention to its responsibility to deal with the alerts appropriately and continued the arrangements and the disbursement of monies to the share fraud operators and their associates.

2.7. Therefore, SRLV breached Principle 1 by acting recklessly and thereby failing to act with integrity**.**

2.8. Further, SRLV did not take reasonable steps to organise and control its affairs responsibly and effectively, with adequate risk management systems for countering the risk of being used to further financial crime. The Firm failed to put in place and operate systems in order to properly assess the risks to which it was exposed. The profile of a number of the recipients of monies from the client bank accounts operated and managed by SRLV represented a high risk in terms of money laundering as they were corporate vehicles incorporated in offshore jurisdictions with bank accounts in jurisdictions which may have not had anti-money laundering controls that are equivalent to those operating in the UK. SRLV failed properly to consider the indicators of share fraud activity namely that the entities concerned were unauthorised, based overseas, utilised non-corporate email accounts and employed inappropriate sales tactics, and the Firm failed to report the activity or respond appropriately.

2.9. 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 accounts operated by SRLV, most of which were paid out to various third parties. Investors were 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;

(2) the involvement of SRLV, an FSA authorised firm, may have, and on at least one occasion, did provide reassurance to investors about the legitimacy of the share scheme, in a manner which could be taken as implying that funds would be safe. Although SRLV did not intend to provide legitimacy to the promotion and sale of NSL shares, it should have realised that its role would have resulted in this; and

(3) in addition, the failings continued without SRLV addressing them, even after SRLV was alerted to concerns about the sales tactics and the unauthorised status of the overseas entities.

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

2.11. The FSA does not allege that SRLV acted dishonestly in its role with respect to NSL and notes that SRLV was not involved in promoting NSL shares or providing advice on NSL's fund raising to clients or potential investors.

2.12. However, SRLV's failings merit the imposition of a significant financial penalty.

3. RELEVANT STATUTORY AND REGULATORY PROVISIONS

Statutory provisions

3.1. Market confidence and the reduction of financial crime are statutory objectives for the FSA under section 2(2) of the Act.

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.

Imposition of Financial Penalties

3.3. Section 206(1) of the Act provides that:

"*If the FSA considers that an authorised person has contravened a requirement imposed on him by or under this Act … it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate.*"

FSA Principles

3.4. The FSA's Principles for Businesses ("PRIN") are general statements of the fundamental obligations of firms under the regulatory system. They derive their authority from the FSA's rule making powers as set out in the Act and reflect the FSA's regulatory objectives.

Principle 1

A firm must conduct its business with integrity.

Principle 3

A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

4. FACTS AND MATTERS RELIED ON

Background

SRLV

4.1. 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 ("ICAEW"), is subject to the rules of that body, and is authorised under the Act to the extent that it carries on regulated activities. However, its main business of accountancy is not regulated by the FSA.

4.2. SRLV has a number of permissions to conduct regulated activities as an authorised professional firm, however these are subject to a number of material restrictions, namely:

(1) Corporate finance only (except managing investments) - In respect of each regulated activity for which the firm holds a Part IV permission, excluding

managing investments, the activity is limited to corporate finance business only;

(2) May hold/control client money if rebated commission - The general requirement not to hold or control client money does not apply if the client money arises from an agreement under which commission is rebated to the client; and

(3) Regulated activities incidental only - The firm must not carry on the specified regulated activities otherwise than in an incidental manner in the course of the provision by it of professional services (that is, services which do not consist of regulated activities).

4.3. 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.

4.4. SRLV then instructed Portland Registrars to provide company secretarial and registrar services to NSL. Portland Registrars, although a separate legal entity, is in practice a division of SRLV, formed solely to provide a service to SRLV's clients.

4.5. NSL was formed solely as a parent company and it acquired the entire issued share capital of Natrocell Technologies Limited ("NTL") on a share-for-share basis. 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 NSL and NTL's directors.

4.6. In May 2008, NSL embarked on a fund raising exercise purportedly with the intention of raising up to £5 million from the issue of shares in NSL to enable NTL to develop its business.

4.7. 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 to preserve the remainder of the proceeds of the sale of shares in

their client bank accounts. SRLV also took voluntary steps to preserve the monies in a second client account.

4.8. NSL and NTL went into administration on 24 June 2009 and 17 August 2009 respectively. The proceeds of NTL's client 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

4.9. To assist with the fundraising exercise, NSL engaged the services of other entities and individuals 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, are share fraud operators or "boiler rooms" who 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 nor in promoting NSL shares to potential investors. SRLV did not advise NSL on its fundraising activity, nor did it provide advice to prospective investors.

4.10. At least 1,262 prospective investors were contacted by a number of 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 the client bank accounts operated by SRLV, in return for NSL shares.

4.11. 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. Various explanations were provided as to how the caller had obtained the complainant's details including a reference to a marketing list and an assertion that the complainants had completed a form permitting contact. No such form has been identified during the FSA's investigation. There is no evidence that SRLV was aware of these arrangements.

4.12. Evidence from emails indicates that some complainants were distressed as a result of the persistent and pressurised nature of the calls.

4.13. 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. Although none of the complainants could recall being told exactly what the fundraising was intended to finance, a number referred to being informed that the subsidiary company, NTL, was seeking a patent in India.

4.14. Some complainants were sent documents by the share fraud operators which included a copy of a PowerPoint presentation about NTL containing a reference to the fact that NTL was '*seeking a listing on PLUS markets as soon as possible in order to provide additional working capital for [its distribution contract in India] and other contracts*'. The documents also included a share circular which indicated that the proceeds from the sale of shares would be used for a number of other purposes which included enhancing NTL's "management team".

4.15. 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 in a manner in which none of the exemptions in sections 21(2) and 21(3) of the Act, or Articles 19 or 30 of the Financial Services and Markets Act 2000 (Financial Promotions) Order 2005 (the "FPO") apply. This is a criminal offence in the United Kingdom.

4.16. A number of potential investors received SPAs bearing the name and 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 client bank account *"SRLV Ref: Natrocell Technologies Ltd"*. This was a 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.

4.17. The SPA also required potential investors to complete the form and return it to Portland Registrars. Following payment of the share purchase consideration, consumers usually received an NSL share certificate from the share registrar signed by one of the then directors of NSL. In some instances, share certificates were sent directly by NSL.

4.18. 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, they contravened section 19 of the Act which is a criminal offence in the United Kingdom.

Portland Registrars Limited ("Portland Registrars")

4.19. Portland Registrars was established by SRLV to provide company secretarial and registrar support to SRLV's clients. Some of SRLV's senior partners and their spouses were directors Portland Registrars. Although Portland Registrars is a separate legal entity, it does not have a separate agreement with any of SRLV's clients including NSL and/or NTL, therefore in practice it is simply a division of SRLV that provided a service to SRLV's clients.

4.20. Under the direction and instruction of SRLV, Portland Registrars carried on a number of activities which resulted in 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.

4.21. Portland Registrars, having received details of investors who the share fraud operators had contacted, sent them a covering letter and issued an SPA which detailed the number of shares that they had agreed to purchase, the amount due, and requested that the investor signed and return the SPA to Portland Registrars at their postal address or care of a fax number shared by SRLV and Portland Registrars.

4.22. Once the signed SPA was received and Portland Registrars had confirmed that payment had been received into the nominated SRLV account, Portland Registrars would update an internal spreadsheet with the details of the confirmed purchase;

prepare share certificates and forms for the notification of Companies House of the share allotment; and send confirmation to NSL who would sign the certificates and requisite forms.

4.23. Portland Registrars issued SPAs to the majority of investors and the SPA created a binding contract between the investor and NSL, without which the transactions could not have been concluded. It is noted that Portland Registrars were performing a company secretarial function and were not promoting the sale of shares in any way.

4.24. In addition to issuing SPAs, processing share sales and issuing share certificates, Portland Registrars also received regular updates from the share fraud operators and had frequent contact with them. This included receiving 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 principally relating to 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.

The client bank accounts

4.25. From 2004, SRLV opened, managed and operated two client bank accounts for NTL; a primary and a secondary account. 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 at the Firm, which required the authorisation of two equity partners of SRLV.

4.26. SRLV operated these client bank accounts on the instructions of NTL and NSL. These client 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.

4.27. SRLV provided a service in relation to the sale of the shares by holding the funds for NTL and NSL as the beneficial owners of the funds and it provided a service in passing on the funds to other parties as directed by NTL and NSL.

4.28. SRLV considered that these accounts were client bank accounts and that the monies held in the accounts were at all times client monies.

4.29. SRLV stated that using these client bank accounts to receive share sales made the process more efficient and enabled SRLV and Portland Registrars to monitor payments in order that share certificates could be issued.

4.30. The use of these client bank accounts to receive monies paid by investors in consideration for shares may have given comfort to investors about the legitimacy of the fundraising exercise and the safety of the funds, because the client bank accounts were in the name of SRLV, an FSA authorised entity. In at least one instance, an investor stated to the FSA that he took comfort from the fact that he was paying money into a well known bank and also that SRLV, an FSA registered accountancy firm, was involved.

4.31. 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 were UK residents.

4.32. In the same period, and on instruction from NSL and NTL, SRLV effected the payment of £2,403,419 from the client accounts to beneficiaries in the UK, Switzerland, Cyprus, Seychelles, Greece, Spain, Turkey, USA, Belgium and South Africa.

4.33. Significant sums were paid out in relation to the commission earned by the share fraud operators and to the directors of NSL. 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.

4.34. 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 NTL and NSL, £412,177 of which was paid directly to or for the benefit of parties connected to NTL and NSL's former directors.

4.35. On the instructions of NTL and/or NSL, SRLV effected payments from the client bank accounts on occasions to persons and entities that, SRLV accepts, were, on the face of it, unrelated to NTL and/or NSL or its business. Some of the recipients were offshore entities, with company names which SRLV did not recognise. As these payments were authorised by NTL and NSL, they were consequently viewed by SRLV as relating to NTL and NSL's business.

SRLV's conduct

4.36. SRLV should have considered that financial promotions were being made and shares were being sold to UK and other investors by entities that exhibited all of the characteristics of share fraud operators. SRLV operated client accounts that were used to receive the proceeds of share sales, and effected instructions from NTL and NSL to distribute monies from these accounts to specific bank accounts of various entities. SRLV should therefore have been aware that payments from the client 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.

4.37. In particular SRLV, through the relationship partner also became aware, during the Relevant Period, that a number of share fraud operators were engaged to promote and sell the shares of NSL, that the share fraud operators were being paid commission of approximately 60%, that the share fraud operators were based outside the UK and that UK consumers who were being targeted by these share fraud operators were being cold called and subjected to inappropriate selling tactics.

4.38. The share fraud operators that were involved in the sale of NSL shares included Steinberg Investment Research AG, Goodman Stern, Hunter Rowe Financial, Clean Planet Investments, Edenbourg Advisory Services, and Kensington Capital.

Commission and location overseas

4.39. SRLV, through the relationship partner was made aware by NSL during the Relevant Period that the entities involved in promoting and selling the shares were based overseas and that the overseas share fraud operators would be taking 60% of the monies raised from investors as commission.

4.40. In addition, in no fewer than seven instances dating from 4 June 2008, potential investors raised concerns by email with SRLV regarding the nature of the promotion of NSL shares by overseas entities during the Relevant Period.

4.41. SRLV was also responsible for effecting payments, which included commission payments to the entities, from the accounts it operated, once it had received instructions from NTL and/or NSL. SRLV was therefore aware that substantial sums of money from the amounts paid by UK investors were going overseas.

Unauthorised status of entities and warnings by regulators

4.42. In addition to concerns raised by investors, the FSA added the names of a number of the unauthorised overseas entities concerned to its list of unauthorised firms between 6 May 2008 and 16 October 2008, as follows:

(1) on 6 May 2008, Steinberg Investment Research AG;

(2) on 22 August 2008, Goodman Stern;

(3) on 16 September 2008, Hunter Rowe Financial;

(4) between 16 and 26 September 2008, Clean Planet Investments; and

(5) on 16 October 2008, Kensington Capital.

4.43. SRLV was aware of the names of some of the overseas entities who were engaged in the promotion and sale of NSL shares. It was also aware that some of these entities corresponded using personal internet-based email accounts hosted by gmail and hotmail. SRLV did not appreciate the significance of this as a potential indicator of the entities lack of corporate or legal substance.

4.44. In addition, on 28 July 2008, SRLV received the first of a number of emails from investors questioning the authorisation status of the overseas entities. These were directed to NSL/NTL.

4.45. Subsequently, SRLV was specifically alerted that at least two of the entities were not authorised, and to warnings by regulators in respect of their activities. On 29 September 2008, a potential investor wrote to one of the former directors of NSL attaching a copy of the FSA list of "unauthorised overseas firms operating in the UK" published on the FSA website. The potential investor had asterisked the name

of Hunter Rowe Financial and indicated that he had decided not to proceed with his purchase.

4.46. Despite the alerts and warning signs set out above, SRLV did not take any steps to ascertain whether the entities were conducting unauthorised business.

4.47. On 7 October 2008, a potential investor telephoned an SRLV employee to inform them that he had heard a lot of bad press about Natrocell. This is the first time the FSA has identified the term 'boiler room' being used by a potential investor. The potential investor also stated that the FSA had informed him that Goodman Stern was an unauthorised company. Whilst SRLV, through the relationship partner, raised this concern with NSL/NTL, it continued to accept investor monies and issue shares.

4.48. On 13 October 2008, another potential investor telephoned an SRLV employee to explain that she had seen some adverse reporting on the FSA website about another overseas entity which promoted and sold NSL shares, Edenbourg Advisory Services ("Edenbourg"). She provided details of an alert about Edenbourg Advisory that had been published by the Belgian Banking, Finance and Insurance Commission (CBFA).

4.49. However, SRLV did not conduct any checks to confirm who Edenbourg were, or visit the FSA website to see if any information had been published about it on the FSA list of unauthorised overseas firms operating in the UK. Instead SRLV, through the relationship partner, raised concerns directly with NTL and NSL.

Inappropriate sales tactics

4.50. SRLV was also aware of calls by investors about the cold calls and pressurised sales tactics employed by the share fraud operators and adverse press reports relating to some of the share fraud operators.

4.51. On 10 July 2008, SRLV was alerted to an 89 year old man who was distressed about being contacted by share fraud operators.

4.52. On 1 August 2008 a bank manager telephoned in respect of his client, a 90 year old lady who had been cold called by share fraud operators, and who was not in a reasonable state to make a decision about the purchase of shares.

4.53. In an email dated 18 August 2008, an employee of SRLV stated that an elderly investor had telephoned to state he did not want to invest, and that he was barely able to "*get the words out*". Another employee who had spoken to the same investor stated *"this man is elderly and vulnerable and the brokers are trying to bully him back into buying these shares. It's absolutely disgraceful and sickening"*. SRLV, through the relationship partner, raised these issues with NTL/NSL and they were informed that they would be addressed with the share fraud operators concerned.

4.54. However, SRLV continued to accept investor monies and issue shares.

Reassurance given to investors

4.55. On occasion SRLV, through the relationship partner played a role by liaising with some investors to explain the remit and involvement of SRLV. Although SRLV did not seek to provide legitimacy to the sale of NSL shares, it should have known that these explanations may have reassured potential investors about the legitimacy of the scheme in a manner which could be taken as implying that their funds would be safe.

4.56. In an email dated 8 September 2008 a potential investor, stated "*Hunter Rowe Financial are offering to sell me shares in Natrocell but I do not know the firm, other that* (sic) *from an unsolicited phone call. Could you please confirm that your firm's* (sic) *acts for Natrocell and that I can safely buy their shares through Hunter Rowe by sending the funds to your firm*".

4.57. In response, the relationship partner stated by email, "*We do indeed act for Natrocell and as the Registrars for this particular issue of shares. While we cannot offer any investment advice in respect of Natrocell or any other company or business, I can point out that we are acting as Registrar for the issue of share certificates and are currently issuing shares on Hunter Rowe's and the Director's instructions. Once the funds and the contact (sic) note have (sic) been received, we issue the share certificate within ten da*ys".

4.58. On 15 October 2008, SRLV received another email from another potential investor, questioning the legitimacy of NSL and the relationship partner replied by email, *"we act as registrars for the group and cannot guarantee the shares*".

4.59. This investor has since informed the FSA that he took comfort from the fact that he was paying money into a well known UK bank and also that SRLV, an FSA registered accountancy firm, was involved.

SRLV's actions in light of its knowledge

4.60. All of the information above taken in isolation or as a whole demonstrates that SRLV should have known that share fraud operators were promoting and selling NSL shares. However, SRLV took wholly inadequate steps to address the concerns.

4.61. SRLV did not confirm whether the entities were appropriately authorised nor did it check the FSA list of unauthorised firms to see if the entities with whom they were dealing were published on it. Emails from investors highlighting concerns were merely forwarded to NTL and NSL to be dealt with, on one occasion stating that *"it is not appropriate that [SRLV] staff deal with these calls and [we are] not happy that SRLV's reputation is being sullied in this way"*. Despite threatening to cease its activities for NSL, SRLV did not stop or even reduce its arrangements in respect of the fund raising.

4.62. 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". Again, SRLV merely notified NSL to warn that the investor may be in contact. NSL later indicated that it had been in touch with the "London Fraud Squad" but SRLV took no steps to confirm this.

4.63. The above matters indicate that SRLV did not sufficiently consider the risk of detriment to investors. SRLV persisted with the provision of services even after it became aware of the unauthorised nature of the share fraud operators and investor complaints because it considered that it knew NSL, NTL and its product well and that the history of interaction between SRLV and NSL gave comfort that everything was genuine, and not a scam. SRLV also believed that it did not have any obligation

to consider the status or behaviour of these share fraud operators. Rather, it considered that issues surrounding the raising of funds by NSL were solely a matter for NSL, and that, by forwarding details of these issues to NSL, it was discharging any responsibilities it might have had. This was despite its own responsibilities in relation to financial crime and the possible involvement of NSL in the issues of concern.

Systems and controls

4.64. 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 a Money Laundering Reporting Officer (MLRO) who is responsible for the establishment and maintenance of the firm's anti-money laundering systems and controls, and their oversight.

4.65. SRLV's procedures in relation to anti-money laundering ("AML") are contained in the "SRLV professional procedures manual" and a Money Laundering Compliance Manual.

4.66. These procedures required it and its employees to have due regard to:

- 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; or
- transactions with other countries which have no obvious commercial reason.

4.67. The Firm's Money Laundering Compliance Manual expressly dealt with Risk Assessment and covered areas such as Purpose and Nature of the Business Relationship, High Risk Engagements, Precautions to Mitigate Risk, and Understanding Risk.

4.68. Some of the above factors were or should have been evident in the transactions approved by SRLV, yet it did not pay due regard to these factors.

4.69. 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. SRLV also had procedures regarding the ongoing monitoring of business relationships.

4.70. However, SRLV did not operate its systems and controls adequately or effectively to address the risk of financial crime, particularly when faced with a set of unusual transactions. In addition, SRLV failed to take cognisance of its own procedures, which contributed to the risks to which it was exposed.

4.71. SRLV was aware that shares were sold by unauthorised entities and that they were being paid 60% commission. SRLV, through the relationship partner, queried the level of commission with NSL and were informed that it represented the cost of raising finance. SRLV ought to have considered that the rate of commission may have been excessive and that the monies generated from the sales were the proceeds of unauthorised activity and therefore indicative of share fraud.

4.72. SRLV was also aware that the share fraud operators communicated by way of a variety of apparently personal email accounts hosted by gmail and hotmail in a variety of names that differed from those of the share fraud operators These should have raised SRLV's suspicions particularly given the scale of the funds being raised. However, SRLV did not enquire about these warning signs.

4.73. In addition, the manner in which SRLV operated the two client bank accounts that were used indicates that SRLV did not give sufficient regard to:

(1) customer, product and activity profiles;

(2) nature of the recipients and distribution channels; and

(3) the complexity and volume of its transactions.

4.74. SRLV should have been aware that the profile of a number of the recipients of monies from the accounts represented a high risk in terms of money laundering as they are corporate vehicles incorporated in offshore jurisdictions, several of which may have not had anti-money laundering controls that are equivalent to those operating in the UK.

4.75. These matters demonstrate that SRLV did not do any proper risk assessment given the nature of the investment, marketing strategy, type of investors targeted and the destination of the funds that were generated from share sales. Such an assessment is likely to have identified concerns that would have prompted SRLV to take steps, such as the submission of Suspicious Activity Reports. No Suspicious Activity Reports in relation to the sale of NSL shares were submitted during the relevant period.

5. ANALYSIS OF BREACHES

Integrity

5.1. By reason of the facts and matters above SRLV breached Principle 1 by acting recklessly and thereby failing to act with integrity. The activities of SRLV constitute the making of arrangements within the scope of article 25(2). The effect of these arrangements was to bring about transactions in NSL shares and without them the transactions would not have completed. SRLV should have known that share fraud operators were involved in the promotion and sale of shares, and therefore that it could be handling the proceeds of crime. However, it continued to make arrangements to bring about the sale of shares in NSL and the purchase of those shares by investors. SRLV should have known that its involvement may have reassured potential investors about the legitimacy of the sale of NSL shares.

5.2. Despite the warning signs of possible financial crime by the share fraud operators, that were available to the relationship partner and some others at the Firm, SRLV failed to act or respond appropriately. Rather than accepting its own responsibility to counter the risk of financial crime by the share fraud operators, it recklessly, through its relationship partner, sought to place those responsibilities on NTL and NSL. Consequently, after relying on the relationship partner to raise and resolve matters with NTL and NSL, SRLV paid insufficient attention to its responsibility to deal with the alerts appropriately and continued the arrangements and the disbursement of monies to the share fraud operators and their associates.

5.3. On the basis of the matters stated in paragraphs 5.1 to 5.2 above, SRLV acted recklessly and therefore without integrity in contravention of Principle 1 of the Principles for Businesses.

Taking reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

5.4. The facts and matters above demonstrate that SRLV did not take adequate steps to establish, maintain and operate its systems and controls in a way that enabled it to identify, assess, monitor and manage money laundering risk and the risk of financial crime.

5.5. SRLV continued to provide services which facilitated the payment of substantial sums of monies by investors, and continued to disburse significant sums to third parties, without due regard to the risks to the investors in the circumstances.

5.6. These failures also contravened SRLV's own anti-money laundering procedures.

5.7. By its actions, SRLV contravened the requirements of Principle 3 of the Principles for Businesses.

6. FACTORS RELEVANT TO DETERMINING THE ACTION

Relevant guidance on sanction

6.1. 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 firms who have breached regulatory requirements from committing further contraventions, helping to deter other firms from committing contraventions and demonstrating generally to firms the benefit of compliant behaviour.

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

6.3. 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

6.4. The involvement of UK regulated firms in share scams or the activities of share fraud operators undermines the integrity of the UK financial services sector. Unless regulated firms have in place robust systems and controls which enable the proper identification, assessment and mitigation of risk and do not engage with clients who deal with such entities, UK regulated firms that provide professional support services risk contravening UK and/or overseas laws. The FSA's consumer protection, financial crime and market confidence statutory objectives are all endangered by the failure of UK regulated firms in this regard.

6.5. The FSA considers that the financial penalty imposed will promote high standards of regulatory conduct in SRLV and deter it from committing further breaches. The FSA also considers that the financial penalty will help deter other firms from committing similar breaches as well as demonstrating generally the benefits of being compliant.

The nature, seriousness and impact of the breach in question

6.6. The FSA has had regard to the seriousness of the breaches, including the nature of the requirements breached, the number and duration of the breaches and whether the breaches revealed serious or systemic weakness of the management systems or internal controls.

6.7. The FSA considers that SRLV's breaches are of a particularly serious nature given the overall loss suffered by investors. Investors paid approximately £2,566,000 for the shares of NSL as a result of the activities of the share fraud operators and it is unlikely that investors will recover the full extent of the monies they paid for these shares, as the balance of funds in the client bank accounts at the end of the Relevant Period totalled approximately £361,000. In addition, the failings continued and did not result in any significant action by SRLV, even after it was alerted to concerns about the sales tactics used by the share fraud operators. If the FSA had not identified these failings and the breaches of the FSA's regulatory requirements, it is likely they would have continued, resulting in further customer detriment.

6.8. The FSA has also had regard to the value of the payments made to the share fraud operators and associated persons which is in excess of £1.3 million.

The extent to which the breach was deliberate or reckless

6.9. SRLV is an authorised professional firm which is required to uphold high standards of behaviour. The FSA considers that SRLV's misconduct was reckless. It should have known that its activities facilitated those of share fraud operators. Even after concerns had been drawn to its attention, SRLV did not take the concerns seriously enough, nor did it reconsider the services it was providing.

The size, financial resources and other circumstances of the person on whom the penalty is to be imposed

6.10. The FSA has taken into account SRLV's size and financial resources. SRLV is a medium sized chartered accountancy firm based in London. In the year ending 31 December 2008, its total turnover was £7,544,136 and its net profits were £2,469,081. Portland Registrar's turnover was £151,693 in the 12 months to 30 June 2008.

The amount of benefit gained or loss avoided

6.11. SRLV earned approximately £9,140 (net) for services provided to NSL during 2008. In the same period Portland Registrars earned £5,725 (net).

Disciplinary record and compliance history

6.12. SRLV has not been subject to any previous disciplinary action.

Other action taken by the FSA (or a previous regulator)

6.13. The FSA has had regard to past cases.

7. CONCLUSION

7.1. Taking into account the seriousness of the breaches and the risks they posed to the FSA's statutory objectives of market confidence and the protection of consumers, the FSA has imposed a financial penalty of £163,140 on the Firm.

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 SRLV in accordance with section 390 of the Act.

Manner of and time for Payment

9.2. The financial penalty of £163,140 is payable within 14 days from the date of the Final Notice.

If the financial penalty is not paid

9.3. If all or any of the financial penalty is outstanding on 28 December 2010, 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".

Unauthorised Financial Promotions

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).

Article 8 of the FPO defines solicited and unsolicited real time communications:

Interpretation: solicited and unsolicited real time communications

8. *(1) A real time communication is solicited where it is made in the course of a personal visit, telephone call or other interactive dialogue if that call, visit or dialogue -*

(a) was initiated by the recipient of the communication; or

(b) takes place in response to an express request from the recipient of the communication.

(2) A real time communication is unsolicited where it is made otherwise than as described in paragraph (1).

(3) For the purposes of paragraph (1) -

(a) a person is not to be treated as expressly requesting a call, visit or dialogue -

(i) because he omits to indicate that he does not wish to receive any or any further visits or calls or to engage in any or any further dialogue;

(ii) because he agrees to standard terms that state that such visits, calls or dialogue will take place, unless he has signified clearly that, in addition to agreeing to the terms, he is willing for them to take place;

(b) a communication is solicited only if it is clear from all the circumstances when the call, visit or dialogue is initiated or requested that during the course of the visit, call or dialogue communications will be made concerning the kind of controlled activities or investments to which the communications in fact relate.