FINAL NOTICE

To: **Stephen Herbert Danner**

Address: **34 Village Farm**
Bonvilston
Cardiff
CF5 6TY

FSA
Ref No.: **SHD00008**

Date: **4 March 2013**

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

ACTION

1. The FSA gave Stephen Herbert Danner ("Mr Danner") a Decision Notice on 21 December 2012, which notified him that the FSA had decided to:

   (1) publish a statement, pursuant to section 66(2)(b) of Act stating that Mr Danner has breached Statements of Principle 1, 2 and 7. Were it not for Mr Danner's financial position, the FSA would have decided to impose on him a financial penalty of £90,000; and

   (2) make an order pursuant to section 56(2) of the Act prohibiting Mr Danner from performing any function in relation to any regulated activity carried on by any authorised or exempt person, or exempt professional firm.

2. Mr Danner has not referred the matter to the Upper Tribunal (Tax and Chancery Chamber) within 28 days of the date on which the Decision Notice was given to him.

3. Accordingly for the reasons set out below, the FSA hereby:

   (1) publishes a statement, pursuant to section 66(2)(b) of the Act, stating that Mr Danner has contravened regulatory requirements and breached Statements of Principle 1, 2 and 7; and

   (2) makes an order pursuant to section 56(2), with effect from the date of this Notice, prohibiting Mr Danner from performing any function in relation to any regulated activity carried on by any authorised or exempt person, or exempt professional firm, because he is not a fit and proper person to perform such functions.

4. The FSA considered that Mr Danner's conduct also merited a substantial financial penalty pursuant to section 66 of the Act. However, because Mr Danner produced verifiable evidence showing that any penalty imposed by the FSA would have caused him serious financial hardship, which the FSA accepted, this amount has been reduced to nil.

5. But for the verifiable evidence the FSA would have imposed a penalty of £90,000 on Mr Danner for his breaches of Statements of Principle 1, 2 and 7.

6. The public statement will take the form of this Final Notice, which will be published on the FSA's website.

SUMMARY OF REASONS FOR THE ACTION

7. The FSA considers that Mr Danner's conduct fell significantly below the standards required of an approved person and a holder of significant influence functions CF1 (Director) and CF10 (Compliance oversight), and controlled function CF30 (Customer).

8. Specifically, when carrying out his controlled functions at SDAM during the relevant period, Mr Danner breached:

   (1) Statement of Principle 1 in that he failed to act with integrity in carrying out his controlled functions. In this regard the FSA relies on the findings of the Upper Tribunal (Tax and Chancery Chamber) ("the Tribunal") in its decision dated 21 June 2012, which relates to a reference to the Tribunal of the FSA's decision not to approve an application for Mr Danner to perform a CF30 (Customer) role at another IFA firm;

   (2) Statement of Principle 2 in that as a holder of controlled function CF30 (Customer) he failed to act with due skill, care and diligence in carrying out his controlled function. In this regard the FSA again relies on the findings of the Tribunal; and

(3) Statement of Principle 7 in that as a holder of significant influence functions he failed to take reasonable steps to ensure that SDAM complied with the relevant requirements and standards of the regulatory regime because he failed to ensure that:

(a) SDAM had adequate arrangements to check before appointment that its ARs were solvent, otherwise fit and proper, and suitable to act on behalf of SDAM; and had adequate arrangements to carry out monitoring of its ARs after appointment to ensure their compliance with regulatory requirements;

(b) SDAM had procedures in place to identify and manage conflicts of interest; and

(c) SDAM's RMARs were complete, accurate and not misleading when submitted to the FSA.

9. The decision of the Tribunal demonstrates that Mr Danner failed to act with integrity in carrying out his controlled functions. Furthermore Mr Danner demonstrated a lack of competence and capability as an approved person. Overall, his conduct was well below the standards reasonably expected of an approved person in his position. In all the circumstances the FSA considers that Mr Danner is not fit and proper to perform any controlled function and that he should be prohibited from doing so because he lacks the requisite integrity as well as competence and capability.

10. The FSA views Mr Danner's failures as serious because:

(1) he failed to act with integrity in discharging his controlled functions;

(2) the FSA places a great deal of emphasis on the responsibilities of senior management as senior managers are responsible for the standards and conduct of the businesses they run;

(3) he personally made the decision that SDAM should take on ARs without considering adequately or at all the additional compliance burden and risks that they would pose to SDAM and to clients, and he did not take reasonable steps to mitigate such risks;

(4) he permitted SDAM to appoint ARs without carrying out proper checks to ensure they were fit and proper and suitable;

(5) his failure to ensure SDAM took reasonable steps to put in place procedures to monitor its ARs to ensure their compliance with regulatory requirements put clients at risk of receiving unsuitable investment advice and meant that financial promotions used by Cru to promote the Arch Cru funds may not have been approved or monitored by an authorised firm;

(6) he failed to ensure that SDAM had policies and procedures in place to identify and manage fairly the risk of conflicts of interest with its clients;

(7) the FSA relies on the information submitted by firms in their regulatory returns to assist it in discharging its functions as a regulator but SDAM's RMARs, for which Mr Danner was responsible, were incomplete, factually inaccurate or misleading over a period of several years;

(8) he advised clients to invest in the Arch Cru funds while he gained an indirect financial benefit as a director and shareholder of Cru, the promoter of the Arch Cru funds, without disclosing that fact to clients;

(9) he relied on an external compliance consultancy to provide ad hoc advice to SDAM on compliance matters but he failed to seek advice and assistance when he should have done so; and

(10) when a second external compliance consultancy made a number of recommendations to SDAM in relation to compliance matters, Mr Danner failed to implement those recommendations.

DEFINITIONS

11. The following definitions are used in this Final Notice:

"AR" means appointed representative

"Arch Cru funds" means the CF Arch Cru investment funds

"Cru" means Cru Investment Management Limited

"DEPP" means the FSA's Decision Procedure and Penalties Manual

"EG" means the FSA's Enforcement Guide

"IFA" means independent financial advisor

"PII" means professional indemnity insurance

"RMAR" means Retail Mediation Activities Return

"SDAM" means S D Asset Management Limited

"SIF" means significant influence function

"Statement of Principle" means one of the FSA's Statements of Principle for Approved Persons

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

"the FOS" means the Financial Ombudsman Service

"the FSA" means the Financial Services Authority

"the FSA Handbook" means the FSA Handbook of rules and guidance

"the relevant period" means the period from 8 March 2005 until 20 October 2010

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

FACTS AND MATTERS

SDAM

12. Mr Danner established SDAM, a small IFA based in Cardiff, and it was incorporated on 29 June 1999. It became authorised by the FSA on 1 December 2001 and had permission to carry on the following regulated activities:

    (1) From 1 December 2001-
        (a) Advising (excluding pension transfers / opt outs);
        (b) Agreeing to carry on a regulated activity;
        (c) Arranging deals in investments; and
        (d) Making arrangements (designated investment business).

    (2) From 31 October 2004-
        (a) Advising on regulated mortgage contracts;
        (b) Arranging regulated mortgage contracts; and
        (c) Making arrangements (regulated home finance).

    (3) From 1 June 2009-
        (a) Advising on pension transfers / opt outs.

13. SDAM had a number of ARs between 2004 and 2010, including:

    (1) Cru from 8 March 2005 until 23 April 2008;

    (2) Firm Y;

    (3) Firm Z.

14. Mr Danner stated that SDAM initially started as a '*one man band'* and for a long time he was the sole director in day-to-day control of managing the firm. From time to time other individuals joined SDAM and were approved to hold controlled functions, including SIFs. One SIF holder joined SDAM in October 2007 but left in December 2007, while three others (including one individual who held both CF1 (Director) and CF3 (Chief executive) functions) joined SDAM in 2008 but left the same year. During the period when the majority of the misconduct occurred, Mr Danner was the only SIF holder at SDAM.

15. The FSA considers that Mr Danner was the controller of SDAM and was the person who ultimately made business decisions on behalf of SDAM.

16. SDAM went into creditors' voluntary liquidation on 24 August 2010 and ceased to be an authorised firm on 20 October 2010.

Mr Danner

17. Mr Danner entered the financial services industry in 1979. He held a number of posts before starting SDAM in 1999.

18. From the time of SDAM's authorisation on 1 December 2001, Mr Danner held the following controlled functions at SDAM:

(1) CF1 (Director), until 20 October 2010;
(2) CF8 (Apportionment and oversight), until 4 January 2007;
(3) CF10 (Compliance oversight), until 23 June 2008;
(4) CF11 (Money laundering reporting), until 20 October 2010;
(5) CF21 (Investment adviser), until 31 October 2007.

19. In addition, Mr Danner held the following controlled functions at SDAM:

(1) CF30 (Customer) from 1 November 2007 until 20 October 2010;
(2) CF1 (Director) (AR) from 6 November 2008 to 20 October 2010.

20. On 14 April 2010 an IFA firm ("IFA firm A") sought approval from the FSA for Mr Danner to perform a CF30 (Customer) role. The FSA decided to refuse the application by a Decision Notice dated 3 November 2010 on the grounds that it could not be satisfied that Mr Danner was a fit and proper person.

21. IFA firm A referred the matter to the Tribunal and the reference was heard in March 2012. The case before the Tribunal concerned Mr Danner's integrity and reputation, his competence and capability, and his financial soundness. The Tribunal considered evidence relating to:

(1) Mr Danner's position as a director and shareholder of Cru while advising clients of SDAM to invest in the Arch Cru funds;

(2) SDAM's use of a matrix, devised by Mr Danner and a technical adviser, setting out portfolio recommendations for investment clients with varying appetites for risk and its use, in conjunction with the matrix, of 'Model Allocation and Risk Profiles' which also set out recommended investments according to risk appetite and other factors;

(3) The risk rating of the Arch Cru funds;

(4) Mr Danner's knowledge and understanding of investment risk, particularly in relation to the Arch Cru funds; and

(5) Retirement planning advice given by Mr Danner to one of his customers, who had a low/cautious attitude to risk, to invest in the Arch Cru funds.

22. The Tribunal published its decision (which is available on the Tribunal's website) on 21 June 2012. The decision is discussed further below.

Compliance arrangements at SDAM

Mr Danner

23. Mr Danner held the CF10 (Compliance oversight) role at SDAM from 1 December 2001 to 23 June 2008.

24. When asked about his understanding of the responsibilities of the CF10 (Compliance oversight) function, Mr Danner said that he was responsible *'in terms of suitability and the normal process of fact finding, risk assessment and everything else'*. He said that responsibility for compliance had to rest with him at the beginning as SDAM could not pay someone else to do it then. It does not appear that Mr Danner carried out any structured oversight of SDAM at the time when there were just two other advisers as he said he had mainly *'ad hoc'* meetings with them.

25. Mr Danner employed the services of an external compliance consultancy. He stated that it was necessary to pay for external compliance advice because he '*wasn't entirely confident*' in the Compliance Oversight role and he '*knew very well [he] didn't know enough to carry that off on [his] own*'.

Consultancy M

26. From 2001 until February 2008 SDAM employed the services of an external compliance consultancy, Consultancy M, seeking advice from it on an ad hoc basis via a telephone service. Consultancy M was run by Anthony Davies who assumed the CF10 (Compliance oversight) role at SDAM in 2008.

27. Mr Danner said that in addition to the telephone service, Consultancy M provided templates and regulatory updates to SDAM by email. It also carried out a number of compliance visits to SDAM between 2002 and 2005.

28. Mr Danner confirmed that the engagement of Consultancy M was to satisfy himself that he was discharging his responsibility for the CF10 (Compliance oversight) function. The advice service provided by Consultancy M relied on Mr Danner identifying compliance issues and pro-actively seeking advice from Consultancy M but Mr Danner acknowledged that there may have been matters on which he should have sought advice but did not.

Consultancy N

29. In addition to Consultancy M's compliance visits, another external firm, Consultancy N, carried out a visit to SDAM in 2005 and another in 2006.

30. The purpose of Consultancy N's initial compliance visit to SDAM on 6 October 2005 was *'to provide an overview of the procedures [SDAM] will need to adopt now they are directly regulated by the [FSA]'.*

31. Following that visit, Consultancy N provided SDAM with advice across a range of matters, including template documents and compliance documents tailored to SDAM's needs. Among the things it provided were:

    (1) A list of registers that SDAM was required to keep;

    (2) A compliance plan written for SDAM, and advice regarding the need to adopt the procedures contained in that plan;

(3) A compliance monitoring plan and advice that the monitoring plan needed to include details of the monitoring activity to be undertaken, including how often and by whom file checks would be conducted. Consultancy N informed SDAM that the monitoring activity had to be carried out by the Compliance Officer without fail, or delegated to someone with the appropriate experience;

(4) Templates of annual reports that the Compliance Officer and Money Laundering Reporting Officer would have to produce;

(5) A bespoke training and competence plan for staff documenting, among other things, how supervisors and advisers were to be trained and assessed;

(6) Templates for individuals' training and competence records. It also reminded SDAM of the need to keep adequate training and competence records for all its advisers; and

(7) Templates for fit and proper declarations to be completed by staff on an annual basis.

32. Although in October 2005 SDAM had two ARs, there is no reference to ARs in Consultancy N's 2005 report.

33. On 11 December 2006 Consultancy N visited SDAM again to conduct a compliance audit and identified, despite the advice and documents it provided to SDAM in October 2005, that action was required in a wide variety of areas to ensure compliance with regulatory requirements:

(1) SDAM did not have in place a number of the required registers; it did not have a rule breach register and there were no procedures in place in relation to rule breaches;

(2) The Compliance Officer and Money Laundering Reporting Officer (Mr Danner held both roles) had not completed annual reports;

(3) Job descriptions had not been issued to all approved persons;

(4) SDAM's costs 'menu' was not compliant with FSA requirements;

(5) Advisers had not completed annual fit and proper declarations;

(6) SDAM had procedures in place for personal account dealings in accordance with the FSA's Conduct of Business Sourcebook but no declarations had been issued, signed or returned in accordance with those procedures;

(7) SDAM used introducers but did not have introducer agreements in place and did not have an introducers register in place; and

(8) SDAM had a financial promotions folder which was out of date.

34. Consultancy N's 2006 report also suggested that there had been failures in a number of other areas. It stated that:

(1) SDAM should maintain a register for all advisory staff;

(2) the compliance plan must be regularly reviewed and all staff must have a good understanding of it and sign a declaration to this effect;

(3) SDAM should have a robust compliance monitoring plan in place which accurately reflected SDAM's activity;

(4) SDAM was reminded of the need to meet the standards expected in the FSA's Principles for Businesses;

(5) SDAM was reminded that money laundering documents should be obtained no later than the date of a client's application form and the money laundering verification form should be dated no later than the date of the application form;

(6) SDAM should record receipt of any client assets (for example, share certificates, policy documents);

(7) SDAM was reminded of the need to maintain the training and competence plan and was reminded of the need to ensure it implemented its training and competence scheme;

(8) it was recommended that SDAM carried out some form of check on the introducers it used, to confirm they were able to act as such; and

(9) SDAM should adopt a formal procedure for approving advertisements.

35. Despite all of the issues identified above, Consultancy N concluded that SDAM's compliance regime appeared '*satisfactory'* and that there appeared to be *'no major "compliance" issues'.*

SDAM's Administrative Staff

36. Mr Danner stated that all of the administrative staff were qualified, or part-qualified, as financial advisers. As such, he relied on them in terms of monitoring the business that SDAM's advisers put through: *'it was down to admin to make sure that everything was right so that everything that should have been in place was in place.'* He explained that he had worked with SDAM's administrative staff for a long time and they would alert him *'if anything was awry'* with an adviser's recommendations and draw attention to anything that was *'in any way out of the ordinary.'* He did not know if the administrative staff's contracts of employment stated that they were responsible for highlighting problems, but he said they knew they had to do so.

Mr Anthony Davies

37. From February 2008, Mr Davies was paid for the compliance oversight role at SDAM. Mr Danner remained on the FSA Register as holding the CF10 role until

23 June 2008 but Mr Davies took responsibility for compliance matters from February 2008.

38. Mr Davies informed the FSA that before he was involved (when Mr Danner was responsible for compliance oversight) '*there clearly hadn't been all that much compliance work going on'* and there had been no review of client files, no financial promotions register and no agreements with SDAM's ARs.

39. On assuming the compliance oversight role, Mr Davies stated that he had seen Consultancy N's report from December 2006 and its conclusions then seemed similar to his own conclusions in February 2008. He carried out a compliance audit of SDAM in February 2008 and identified a number of problems, including:

    (1) Failure to inform the FSA of facts for inclusion in the FSA's Register, such as the fact that certain individuals were directors of SDAM or its ARs;

    (2) Questions as to whether the FSA was aware who the controllers of SDAM were;

    (3) Lack of written contracts with ARs;

    (4) Lack of an anti-money laundering risk assessment; and

    (5) Lack of a training and competence scheme for staff.

SDAM's online office system

40. In May 2008 SDAM began using an online 'back office' system on which it logged new business, stored client files going forward and recorded income and commission. In addition, SDAM used the system to assist with compliance checks.

41. The administrative staff oversaw the online system and advisers (both SDAM's advisers and its ARs) were required to enter any business that needed to be transacted, or anything else material, onto the system. Mr Davies could then remotely carry out compliance checks on the advisers' work. The system was programmed so that a percentage of certain advisers' work was identified for compliance checking by Mr Davies.

42. As well as expecting that the administrative staff would identify any issues with advisers' recommendations, Mr Danner said that he thought that there were safeguards built into the online system which would also identify any problems with the advisers' work.

SDAM's ARs

Cru

43. Cru was an AR of SDAM from March 2005 until April 2008, when it became authorised by the FSA. It ran SDAM's in-house portfolio of collective investment funds for clients which was named the 'Cru Portfolio'. The Cru Portfolio formed

the basis of one of the constituents of what became the Arch Cru funds. Cru became the exclusive promoter of the Arch Cru funds to IFAs and produced a large volume of promotional material for this purpose. Cru acted only as a distributor, it did not advise retail clients. Mr Danner was a director and shareholder of Cru.

44. For the first 18 months of its existence, Cru shared office premises with SDAM in Cardiff before moving to other premises in Cardiff. Despite Cru's proximity to SDAM, Mr Danner accepted that there had been minimal supervision of Cru by SDAM for the first year and almost no supervision at all subsequently. The FSA was unable to find a written contract between SDAM and Cru.

45. According to Mr Danner the lack of supervision was not an oversight, but was because he did not see a need to supervise Cru as it did not have retail clients and did not give advice:

'My starting point, unfortunately, was that it didn't require the same kind of oversight on compliance because in my view…it couldn't have gone that badly wrong because it didn't deal with clients…so it wasn't hands-on…'

46. Mr Danner was unable to explain the process for approval of the financial promotions used by Cru to promote the Arch Cru funds to IFAs. During interview he said this was his responsibility although he did not remember personally approving any financial promotions. At another point in the same interview he said he thought that all Cru's financial promotions were approved by Mr Davies, including before he became SDAM's compliance officer (when he was advising SDAM through Consultancy M). Mr Davies, however, said he only began to approve Cru's financial promotions when he assumed responsibility for compliance oversight at SDAM in February 2008. He also said that Cru had issued financial promotions in 2007 without approval from any authorised firm.

47. Mr Danner did not know if SDAM had maintained a record of Cru's financial promotions or which authorised firm had approved them. Mr Davies said at interview that he had been unable to find any such record and he began to compile one on behalf of SDAM when he took responsibility for compliance oversight.

Firm Y

48. Firm Y consisted of one individual, Mr P, who carried out a governing function at Firm Y but was not approved to do so until 2008 when Mr Davies took over the CF10 (Compliance oversight) role from Mr Danner.

49. Mr Danner said he could not remember what pre-appointment checks he had done on Firm Y but he said he had worked through a checklist, including credit and reference checks. In terms of checking whether Firm Y was fit and proper, Mr Danner said that he knew Mr P's history and that he would have discussed Mr P's client bank, the type of work he did and his qualifications. When asked if SDAM had ever requested Firm Y's management accounts to gauge its solvency, Mr Danner said that SDAM's financial checks on Firm Y involved monitoring its commission figures.

50. Mr Davies informed the FSA that he had noted when he took over compliance oversight at SDAM that there did not seem to be any pre-appointment checks in place in relation to Firm Y. The FSA found no evidence of any pre-appointment checks on Firm Y.

51. Mr Danner said that SDAM's monitoring of Firm Y took the form of monthly meetings between him and Mr P. Mr Danner said that at these meetings he would look at the business Firm Y had done, what prospective business there was and the inflow of business to the firm. In relation to issues such as Mr P's training and competence, Mr Danner, when asked about this, stated only that they would '*have come up*' in the monthly meetings. The FSA found no record of these monthly meetings.

52. Mr Danner told the FSA that Firm Y was easy to monitor because it did very little business and he doubted that there was a case at Firm Y that he was not aware of or had not looked at. He said he knew what was going on at Firm Y and that SDAM's monitoring of Firm Y was *'entirely appropriate.'* By contrast, Mr Davies said that it did not appear that SDAM had checked any of Firm Y's files before he became responsible for compliance oversight.

53. Mr Davies informed the FSA that, before he became SDAM's compliance officer (when he was advising SDAM through Consultancy M), he had not provided any compliance services in relation to Firm Y. It therefore appears that Mr Danner did not seek external compliance advice in relation to Firm Y either before or after appointing Firm Y as an AR of SDAM.

54. Mr Davies arranged for a compliance visit to Firm Y to be carried out on 27 March 2008 and a number of problems were identified, including the following:

    (1) It was unclear where client files were stored as Firm Y held certain documents but not others;

    (2) The relationship between SDAM and Firm Y was '*informal*' and there was no written contract in place between the two;

    (3) SDAM had never previously visited Firm Y nor had it requested information on Firm Y's financial position;

    (4) There was no evidence of any formal systems and controls in place to regulate the relationship between SDAM and Firm Y;

    (5) There were no written compliance procedures provided from SDAM to Firm Y; and

    (6) remedial action was required in relation to two client files which were reviewed.

55. When these problems were put to Mr Danner at interview, he accepted that the findings were a fair assessment of SDAM's monitoring of Firm Y. He also said that he was unaware of the requirement for a written contract between a principal and its AR.

56. Mr Davies drafted a contract between SDAM and Firm Y, in consultation with Mr Danner. Although the contact was drafted in 2008, it stated that it was effective from the date when Firm Y became an AR of SDAM, and it authorised Firm Y in its capacity as an AR:

"to seek clients, advise clients, and invite clients to enter into agreements with [SDAM] for financial business in the following categories (for which [SDAM] is authorised): investment and insurance."

Firm Z

57. Firm Z consisted of one individual, Mr Q, whom Mr Danner had known for around 25 years. Mr Q held controlled functions including CF1 (Director) (AR) and CF30 (Customer).

58. Mr Q was from South Africa and returned there before Firm Z became an AR of SDAM, visiting the United Kingdom periodically.

59. Mr Danner submitted an AR notification form to the FSA in November 2005 on behalf of SDAM. He stated in the form that Firm Z would undertake designated investment business from SDAM's address. Despite this, Mr Danner said during interview that Firm Z did not undertake new investment business and he had agreed to appoint it as an AR of SDAM so that it could continue to collect trail commission from previously written business. Mr Danner agreed that this trail commission (or '*renewal'*) could be paid directly from product providers into Mr Q's bank account, without requiring Firm Z to provide SDAM with details of it. The result of this was that SDAM had no way to monitor the commission received by Firm Z and therefore to use that as one way of gauging what Firm Z was doing.

60. Mr Danner said that the AR arrangement was to accommodate Mr Q, as he was a friend who was going through a hard time. According to Mr Danner, the arrangement was to be temporary but went on for much longer than intended and SDAM did not expect, or receive, any income from Firm Z.

61. Mr Danner stated he had very little involvement with Mr Q because, as far as he was aware, Firm Z was not transacting any new business and therefore there was no need for structured meetings with Mr Q when he was in the United Kingdom as there was nothing to audit or scrutinise. Mr Danner's contact with Mr Q appears to have been on an informal, social basis when Mr Q was visiting the UK.

62. Despite his belief that Firm Z was not writing new business, Mr Danner admitted in interview that he was not, in fact, aware of what Firm Z or Mr Q were doing and SDAM's monitoring of both was minimal.

63. Mr Davies informed the FSA that, before he became SDAM's compliance officer (when he was advising SDAM through Consultancy M), he had never provided any compliance services to SDAM in relation to Firm Z. It therefore appears that Mr Danner did not seek external compliance advice in relation to Firm Z either before or after appointing Firm Z as an AR of SDAM.

64. SDAM did not have a written contract with Firm Z until Mr Davies drafted a contract in 2008 in consultation with Mr Danner. Although the contract was drafted in 2008, it stated that it took effect from the date when Firm Z became an AR of SDAM some years before, and it authorised Firm Z in its capacity as an AR:

"to seek clients, advise clients and invite clients to enter into agreements with [SDAM] for financial business in the following categories (or which [SDAM] is authorised): investment and insurance."

65. Mr Davies said that the words *'investment and insurance'* were inserted into the contract on Mr Danner's instruction. This is consistent with the notification form submitted to the FSA by Mr Danner when Firm Z was appointed as an AR of SDAM.

66. From May 2008, when SDAM began using the online office system, it was programmed so that any recommendations made by Mr Q through the system would be identified for compliance checking. The fact that the system did not identify anything from Firm Z seems to have led Mr Danner to conclude that Firm Z was not writing any new business. However, the FSA found a suitability report on the system from Firm Z to a client in June 2008 recommending an investment into the Arch Cru funds, demonstrating that Firm Z was in fact writing new business. Further, the system recorded a split of Firm Z's commission with SDAM, suggesting that SDAM had in fact received a share of the commission Firm Z was paid as a result of the investment.

67. Mr Danner was unaware of the suitability report on the system and of the fact that SDAM may have received commission. He was not able to explain how the system had failed to identify this report for compliance checking or why SDAM's administrative staff had failed to alert him to the fact that Firm Z was writing business.

68. The suitability report on the system was not the only new recommendation that Firm Z made. In 2010 SDAM received a number of letters of complaint from clients of Firm Z alleging that they had suffered losses as a result of advice from Mr Q to invest in unsuitable Arch Cru funds (this advice pre-dated the introduction of the system in 2008). Mr Danner spoke to a number of these clients and they informed him that they had not received suitability reports from Firm Z; neither had they received terms of business, business cards nor any other documents. Mr Danner said that a client had been unable to contact Mr Q and had been unaware that Firm Z was an AR of SDAM until she sought advice from the FSA.

69. SDAM concluded that Firm Z had not been acting in its capacity as an AR of SDAM when it advised these clients and, therefore, SDAM was not responsible for Firm Z's advice. SDAM informed Firm Z's clients that it had no record of the transactions complained of, it had received no commission from the transactions and therefore was not responsible for advice given by Mr Q and Firm Z.

Conflicts of Interest

70. While Mr Danner held the CF10 (Compliance oversight) role, SDAM did not have in place a conflicts of interest policy to ensure that any potential or actual conflicts of interest between SDAM and its clients were identified and managed fairly.

71. The majority of SDAM's advisers, including Mr Danner, advised clients to invest in the Arch Cru funds. Information available to the FSA suggests that SDAM invested £39 million from 390 clients into the Arch Cru funds.

72. As an investment adviser at SDAM Mr Danner had the potential to gain a direct financial benefit in the form of commission payments arising from his clients' investments in the Arch Cru funds (although in fact he chose not to take commission paid directly as a result of his clients' investments in the Arch Cru funds).

73. Mr Danner also gained an indirect benefit as a result of investments in the Arch Cru funds by his clients and by other advisers' clients. He gained this benefit because Cru, the promoter of the Arch Cru funds, had an agreement with the manager of the Arch Cru funds whereby Cru would receive commission when anyone invested in the Arch Cru funds. Mr Danner, as a director and shareholder of Cru, would therefore also benefit indirectly from all investments in the Arch Cru funds.

74. Mr Danner earned approximately £55,000 from SDAM between 2005 and 2010 and approximately £553,000 as a director and shareholder of Cru during the same period.

75. The FSA considers that Mr Danner's position at Cru and his financial interest, through Cru, in the success of the Arch Cru funds gave rise to a conflict of interest between SDAM and clients whom both he and others advised to invest in the Arch Cru funds. This conflict of interest was not identified or managed by SDAM and neither SDAM nor Mr Danner informed clients, as a matter of course, of Mr Danner's financial and managing interest in Cru until 2008. The FSA considers that the potential conflict of interest was a material factor which should have been disclosed to clients.

76. Mr Danner stated during interview that he did not think his relationship with Cru gave rise to any conflict of interest between SDAM and its clients, that he did not consider conflicts of interest and that he was unaware that there were regulatory requirements around conflicts of interest.

77. In written responses to clients' complaints about investments in the Arch Cru funds, Mr Davies stated that when he became SDAM's compliance officer early in 2008 he had insisted that the *"common interests"* between Mr Danner and the Arch Cru funds were declared in client documentation and although it had not been SDAM's practice to do so before then, he thought that it should have been.

RMARs

78. From June 2005 until February 2008 Mr Danner was responsible for completing and submitting SDAM's RMARs to the FSA twice yearly. The RMAR includes a section on ARs and a firm is required to state the number of ARs it has and to confirm that it has appropriate systems and controls to monitor and control effectively its ARs. In addition, the firm must state how many of its ARs have been subject to monitoring visits, file checking and financial checks in the preceding six months.

79. The RMARs submitted to the FSA by Mr Danner on behalf of SDAM contained the following information:

(1) The RMAR for the period ending 30 June 2005 stated that SDAM had two ARs and that monitoring visits, file reviews and financial checks had been carried out in relation to both. In fact, SDAM had three ARs at that time and the FSA did not find, and Mr Danner did not produce, evidence of any checks on these ARs;

(2) The RMAR for the period ending 31 December 2005 stated that SDAM had three ARs and monitoring visits, file reviews and financial checks had been carried out in relation to all three. The FSA did not find, and Mr Danner did not produce, evidence that visits, file reviews or financial checks had been carried out;

(3) The section on ARs in the RMARs for the periods ending 30 June 2006 and 31 December 2006 was not completed at all although SDAM had three ARs in 2006;

(4) The RMAR for the period ending 30 June 2007 stated that SDAM had one AR and monitoring visits, file checks and financial checks had been carried out. SDAM had three ARs during the period. The FSA did not find, and Mr Danner did not produce, evidence of visits, file checks or financial checks; and

(5) The RMAR for the period ending 31 December 2007 stated that SDAM had three ARs and monitoring visits, file checks and financial checks had been carried out on all of them. The FSA did not find, and Mr Danner did not produce, evidence of visits, file checks or financial checks on the ARs.

FAILINGS

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

Statement of Principle 1

81. For the purposes of determining whether Mr Danner was a fit and proper person to perform a CF30 (Customer) role in the future, the Tribunal considered his past conduct as an approved person at SDAM and concluded that he lacked integrity.

82. The Tribunal considered Mr Danner's position at Cru and his recommendations to clients of SDAM to invest in the Arch Cru funds and concluded that this gave rise to '*an obvious conflict of interest'* (paragraph 95 of the Tribunal's decision). The Tribunal also took the view that Mr Danner should have been aware of it and should have properly disclosed it to SDAM's clients.

83. The Tribunal expressed concern that even in the proceedings before it Mr Danner was not prepared to acknowledge the real conflict of interest that arose. The Tribunal thought that it was more than just a question of disclosure (of Mr Danner's relationship with Cru) as SDAM's clients were unaware of the financial benefit accruing to Mr Danner through Cru when he was recommending investment in the Arch Cru funds to them.

84. The risk classification of the Arch Cru funds was a significant factor in the Tribunal's consideration of Mr Danner's judgment and his knowledge and understanding of the investments that were being recommended to SDAM's clients. The Tribunal found that the Arch Cru funds should not have been regarded at the relevant time as low risk.

85. The Tribunal found that Mr Danner was '*one of the prime movers in the establishment of the [Arch Cru] Funds'* (paragraph 102 of the Tribunal's decision), and this placed him in a special position in relation to his own access to the funds and the fund managers and in relation to his responsibility when recommending the funds to clients.

86. The Tribunal concluded that Mr Danner's assessment of the risks of the Arch Cru funds was flawed, relying too heavily on the comparative volatility of the funds. The Tribunal found that '*a competent and capable IFA, including one with little or no experience of private equity of (sic) private finance, would have understood that volatility was not the most indicative measure of risk, and would have considered other measures or indicators of risk'* (paragraph 106 of the Tribunal's decision). The Tribunal found that *'Mr Danner was aware that volatility was only one measure of risk'* but that he appeared *'to have overlooked or inadequately considered the risks of the underlying investments'* (paragraph 106 of the Tribunal's decision).

87. The Tribunal found that Mr Danner should have made further enquiries and sought further information in relation to a number of matters relating to the Arch Cru funds and risk assessment, including the liquidity of the Arch Cru funds.

88. The Tribunal concluded that Mr Danner had a flawed approach to concentration risk. This was demonstrated by the advice he gave to Mr A who had a low/cautious attitude to risk and wished to invest to provide for his retirement. Mr Danner advised Mr A to put his pension investment into funds within the Arch Cru funds which were, the Tribunal found, *'wholly inappropriate for a pension*

investment' (paragraph 113 of the Tribunal's decision). The Tribunal found that Mr Danner's failure to give proper consideration to concentration risk was compounded by his failure to understand or question the risks of the Arch Cru funds and their underlying investments. A competent and capable IFA who had done so would have adopted *'a very much more cautious approach to making recommendations to Mr A'* (paragraph 113 of the Tribunal's decision).

89. The Tribunal found Mr Danner to be guilty of a serious failing of competence and capability. It pointed to his espousal of the Arch Cru funds, his tailoring of the matrix and portfolio and his advice to Mr A to invest in the Arch Cru funds as falling short of what the public is entitled to expect from a competent and capable adviser.

90. The Tribunal found that Mr Danner failed to recognise or acknowledge his errors of judgment in relation to the risks of the Arch Cru funds, the construction of the matrix and portfolio used by SDAM and his advice to Mr A.

91. Taking all of the above into account, the Tribunal found that Mr Danner lacked integrity as follows:

'Having regard to Mr Danner's position as a director and shareholder of CruIM, his continuing failure to appreciate or understand the conflict of interest between that and his responsibility in making investment recommendations to SDAM's clients, his lack of knowledge, understanding and competence in relation to the CF Arch cru Funds, his espousal of a matrix and portfolio heavily weighted in favour of those Funds, and his recommendation to Mr A to invest almost all his available funds for pension investment into the CF Arch cru Funds, demonstrates such a poorly-directed ethical compass in the case of Mr Danner as to amount to a lack of integrity on his part.' (paragraph 120 of the Tribunal's decision).

92. Accordingly, the FSA concludes that Mr Danner has breached Statement of Principle 1 as he failed to act with integrity in carrying out his controlled functions at SDAM.

Statement of Principle 2

93. Additionally the FSA also concludes that Mr Danner breached Statement of Principle 2 in that as an approved person he failed to act with due skill, care and diligence in carrying out his controlled function, CF30 (Customer). The FSA has reached this conclusion having taken into account the matters referred to in this notice in addition to the decision of the Tribunal.

94. As set out above the Tribunal noted a number of areas in which Mr Danner's behaviour demonstrated a serious failing of competence and capability. The Tribunal found in conclusion on this issue (at paragraph 114) that *'His conduct in espousing the CF Arch cru Funds in the way he did, in tailoring the matrix and portfolio towards such investments, and in recommending investments in the Funds to a Low/Cautious pension investor in the case of Mr A, all fall short of what the investing public are entitled to expect from a competent and capable IFA.'*

Statement of Principle 7

95. Mr Danner breached Statement of Principle 7 in that as an approved person performing significant influence functions he failed to take reasonable steps to ensure that the business of SDAM, for which he was responsible in his controlled functions, complied with the relevant requirements and standards of the regulatory system.

96. The activities of ARs are an integral part of the business for which a firm's senior management has responsibility and therefore responsibility for the control and monitoring of ARs' activities rests with senior management. Mr Danner held a CF1 (Director) function at SDAM and it was he who made the decision to appoint ARs. Mr Danner also held the CF10 (Compliance oversight) function when the ARs were appointed and for a further three years after that. The responsibility for ensuring that SDAM complied with regulatory requirements on the appointment and monitoring of ARs rested with Mr Danner and he fell far short of his obligations in this regard.

97. Mr Danner failed to ensure that SDAM had adequate arrangements to check before appointment that ARs were solvent, otherwise fit and proper, and suitable to act on behalf of SDAM. He also failed to ensure that SDAM implemented and maintained adequate monitoring arrangements after appointment to ensure the ARs complied with regulatory requirements. Mr Danner failed to ensure that SDAM sought approval for Mr P to perform a governing function at Firm Y and he failed to ensure that SDAM had written contracts with its ARs. Mr Danner was unaware of the requirement for SDAM to have written contracts with its ARs.

98. Mr Danner's failures meant that SDAM's ARs were able to conduct regulated business without SDAM's knowledge, potentially putting clients at risk of receiving unsuitable advice, and to issue financial promotions without sufficient oversight, potentially putting others at risk of receiving unauthorised financial promotions.

99. The FSA would have expected Mr Danner to have ensured that he fully understood the relevant regulatory requirements relating to ARs, including SDAM's responsibilities for the conduct and activities of its ARs, and to have ensured that SDAM complied with those requirements.

100. From 2005 until 2009 Mr Danner was a director and shareholder of Cru. Mr Danner, and other advisers at SDAM, advised clients to invest in the Arch Cru funds which were promoted by Cru. Mr Danner gained a direct financial benefit through commission (although he chose not to withdraw it from SDAM). He also gained an indirect financial benefit from Cru as a result of investments in the Arch Cru funds. This gave rise to the risk of a conflict of interest between SDAM and its clients.

101. Mr Danner failed to ensure that SDAM had in place systems and policies to identify and manage potential or actual conflicts of interest between SDAM and its clients. Mr Danner was at all material times unaware of the FSA's rules concerning conflicts of interest.

102. The FSA would have expected Mr Danner to have ensured that SDAM had in place a procedure for identifying potential and actual conflicts of interest and a policy for dealing with such conflicts to avoid any actual or potential detriment to clients by, for example, disclosing the position to clients before providing investment advice to them to ensure they were fully informed before making investment decisions.

103. Mr Danner was responsible for completing SDAM's RMARs and submitting them to the FSA. The RMARs submitted to the FSA for the period from June 2005 to December 2007 were incomplete, inaccurate and misleading in a number of respects.

104. The FSA would have expected Mr Danner to have ensured that SDAM took reasonable steps to ensure that the information it gave to the FSA in its RMARs was factually accurate, in accordance with regulatory requirements.

105. The FSA considers that Mr Danner's attitude and approach in relation to SDAM's compliance with regulatory requirements was seriously inadequate. He failed to inform himself adequately about the obligations on SDAM as an authorised firm and he failed to discharge properly his obligations as a holder of SIFs at SDAM. In addition, Mr Danner failed to seek appropriate compliance advice when he should have done so, and when he did receive compliance advice from Consultancy N he did not pay adequate regard to it.

Fitness and propriety

106. The failures described above demonstrate that Mr Danner was ignorant of, or chose to disregard, a number of material requirements of the regulatory regime. In particular, Mr Danner:

(1) Was found by the Tribunal to lack integrity, and competence and capability, in carrying out his controlled functions at SDAM;

(2) Was aware of the limitation of his skills and knowledge in compliance matters but did not seek external compliance advice or support in relation to SDAM's ARs or ensure that SDAM had sufficient resources to enable it to monitor its ARs adequately;

(3) Failed to appreciate the fact that SDAM's ARs were subject to regulatory requirements, irrespective of whether they gave advice to retail clients;

(4) Appears to have used the regulatory regime to give a longstanding friend, Mr Q, AR status with little consideration, if any, for applicable regulatory requirements, with the result that Mr Q gave potentially unsuitable advice to clients;

(5) Failed to appreciate or act on the existence of an obvious risk of a conflict of interest between SDAM and its clients as a direct result of his relationship with Cru; and

(6) Failed to complete SDAM's RMARs correctly and accurately.

107. The FSA therefore considers that Mr Danner is not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm as he lacks the requisite integrity, competence and capability.

SANCTION

Financial Penalty

108. As Mr Danner has breached Statements of Principle 1, 2 and 7, the FSA may impose a financial penalty on him pursuant to section 66 of the Act. The FSA's policy on the imposition of a financial penalty is set out in Chapter 6 of DEPP, which forms part of the FSA Handbook. On 6 March 2010, the FSA adopted a new penalty-setting regime. As Mr Danner's misconduct occurred for the most part before the adoption of the new penalty regime the FSA considered this case under the regime which applied before 6 March 2010.

109. The FSA has also had regard to the corresponding provisions of Chapter 7 of EG and to Chapter 13 of the Enforcement Manual which was in force during part of Mr Danner's misconduct.

110. 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. A financial penalty is a tool that the FSA may employ to help it achieve its regulatory objectives.

111. In determining whether a financial penalty is appropriate, the FSA is required to consider all of the relevant circumstances of a case. Applying the criteria set out in DEPP 6.2.1G (regarding whether or not to take action for a financial penalty or public censure) and 6.4.2G (regarding whether to impose a financial penalty or a public censure), the FSA considers that a financial penalty would be an appropriate sanction, given the serious nature of the breaches, were it not for Mr Danner's financial position. The FSA therefore considers that a public censure is an appropriate sanction

112. DEPP 6.5.2G sets out a non-exhaustive list of factors which may be relevant to determining the appropriate level of financial penalty. The FSA considers that the following factors are particularly relevant in this case.

Deterrence DEPP 6.5.2G(1)

113. The FSA considers that a financial penalty should be imposed to demonstrate to Mr Danner and others the seriousness with which the FSA regards his behaviour.

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

114. Mr Danner failed to act with integrity in discharging his controlled functions. He was responsible for management decisions at SDAM over a considerable period of time and failed to discharge his regulatory duties or engage adequately or properly

with the requirements of the regulatory regime during that period. Further, he failed to act with due skill, care and diligence when advising his own clients. A number of clients of ARs may have received potentially unsuitable investment advice and unauthorised, and therefore potentially non-compliant, financial promotions may have been issued.

Whether the person on whom the penalty is to be imposed is an individual (DEPP 6.5.2G(4)) and the financial resources of the person on whom the penalty is to be imposed (DEPP 6.5.2G(5))

115. The FSA has taken into account in determining the amount of penalty to be imposed that Mr Danner is an individual and that the imposition of a financial penalty would cause him serious financial hardship.

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

116. Mr Danner has co-operated fully with the FSA's investigation.

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

117. In determining the level of financial penalty the FSA has taken into account penalties imposed by the FSA on other approved persons for similar behaviour. This was considered together with the deterrent purpose for which the FSA imposes sanctions.

Conclusion on financial penalty

118. In conclusion, having regard to all the circumstances, the FSA considers the appropriate level of financial penalty to be £90,000. However, taking into account Mr Danner's financial position, the FSA has decided to publish a statement that Mr Danner has contravened regulatory requirements.

Prohibition Order

119. Mr Danner has demonstrated a serious lack of integrity, competence and capability as an approved person over a period of a number of years. The FSA considers this lack of integrity, competence and capability to be such that it calls into question Mr Danner's ability and willingness to comply with the requirements of the regulatory regime in any function and the FSA is therefore of the view that he is not a fit and proper person to perform any function. The FSA has therefore decided to make an order pursuant to section 56 of the Act prohibiting Mr Danner from performing any function in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm.

REPRESENTATIONS AND FINDINGS

120. Below is a brief summary of the key written representations made by Mr Danner and how they have been dealt with. In making the decision which gave rise to the obligation to give this notice, the FSA has taken into account all of Mr Danner's representations, whether or not set out below.

The Tribunal's findings

121. Mr Danner made representations in relation to the Tribunal's decision dated 21 June 2012. He disputed the findings set out by the Tribunal, in relation to matters relevant to both his competence and integrity.

122. The FSA has found that Mr Danner has provided no new evidence in relation to the matters considered and determined by the Tribunal, and the FSA considers it entirely appropriate to rely on the Tribunal's findings.

Compliance arrangements at SDAM

123. Mr Danner made representations that:

(1) with regard to SDAM's reliance on its administrative staff in the manner set out in this notice, he did not see how a small practice operating on pre-approved template reports and standard documents and procedures could operate effectively in any other way;

(2) SDAM's compliance consultants did not raise conflicts of interest as an area of concern;

(3) he relied, entirely reasonably, on Consultancy N's conclusions that SDAM's compliance regime appeared "*satisfactory*" and that there appeared to be "*no major compliance issues*"; and

(4) it is entirely reasonable for a practitioner to assume, given the complexity of current compliance obligations, that a specialist compliance consultancy would be far better to advise on, and more competent to manage, compliance matters within a regulated firm. Mr Danner reasonably relied on independent third party expertise.

124. The FSA has found that:

(1) it is not satisfactory for an IFA firm to rely on its support staff to carry out checks on advisers' sales on an informal basis rather than having a documented, systematic approach to ensuring its advisers are giving compliant advice. Mr Danner, in his CF1 (Director) and CF10 (Compliance oversight) roles, should have implemented, monitored and enforced a formal method for such checks but he failed to do so;

(2) regardless of the role played by any external compliance consultancy, the Tribunal concluded (at paragraph 95) that Mr Danner failed to "*appreciate at all what we consider to be an obvious conflict of interest arising out of his interests in SDAM on the one hand and CruIM on the other…*". Mr Danner demonstrated a lack of awareness of the regulatory requirements around conflicts of interest (and appointed representatives) and had this not been the case, he might have been in a position to specifically direct SDAM's compliance consultants' attention to those areas for advice;

(3) the conclusions of Consultancy N's report are at odds with the substantive content of the report which highlights a number of compliance failures requiring attention. It appears to the FSA that at the time of the report Mr Danner chose to focus on these conclusions rather than to take steps to address the underlying compliance issues in any meaningful way. The FSA considers that this was an inadequate response to the report on Mr Danner's part and that he failed in his duties as SDAM's CF1 and CF10; and

(4) a regulated firm may seek advice from a specialist compliance consultancy on compliance matters and may reasonably rely on that advice. However, as the regulated firm remains ultimately responsible for ensuring compliance with regulatory requirements, the FSA does not consider it reasonable for a regulated firm to rely entirely on an external consultancy to manage its internal compliance processes without oversight or supervision from the regulated firm itself. In any event, in the case of the two external consultancies referred to in this notice, in neither case does it appear that the consultancy concerned was responsible for managing compliance within Mr Danner's firm or did so on an ongoing basis. The first consultancy, Consultancy M, provided advice on an ad hoc basis and when Mr Danner proactively sought its input; the second consultancy, Consultancy N, carried out two visits, a year apart, to assess compliance within Mr Danner's firm. Mr Danner held the CF10 (Compliance oversight) function within his firm and was therefore responsible for acting upon compliance advice he received and monitoring compliance matters on an ongoing basis. As the CF10 (Compliance oversight) officer, compliance was Mr Danner's responsibility and delegation to or reliance without sufficient oversight on an external compliance consultancy is not, in the FSA's view, an acceptable discharge of that responsibility. The FSA considers that, in his CF1 (Director) and CF10 (Compliance oversight) roles, Mr Danner took little personal responsibility for compliance (including compliant advice) at SDAM. He took few, if any, steps to familiarise himself with compliance matters, or to identify or manage compliance problems. Instead he placed undue reliance, without sufficient oversight, on external compliance consultancies but it appears that once he had sought their advice, he considered he had delegated responsibility for compliance matters to them. The FSA considers that he failed to ensure that the consultancies' advice was sufficiently rigorous and he failed to implement the advice that was provided to him.

SDAM's ARs

125. Mr Danner made representations that:

(1) Firm Y had no office and Mr P worked from home, so there was nothing in particular to visit. In any event Firm Y would have been subject to SDAM's online 'back office' system;

(2) he disagreed that that there was no way of gauging what Firm Z was doing. Mr Danner had seen the level of renewal at the outset, and since there

appeared to be no new business undertaken it was unlikely that this would increase greatly; and

(3) if an adviser, whether an appointed representative or otherwise, undertakes business without issuing any recommendations or in any way identifying himself with the firm with which he is associated, there is clearly no way of that firm becoming aware of such activity.

126. The FSA has found that:

(1) notwithstanding Mr Danner's assertion that *"there was nothing in particular to visit"*, Mr Davies, when he assumed responsibility for compliance at SDAM in 2008, ensured that a compliance visit was carried out. This was almost 3 years after Firm Y became SDAM's appointed representative. The FSA does not accept that the fact that Firm Y was supposed to put its business through SDAM's back office system is a substitute for prescribed, formal and robust monitoring procedures. Further, SDAM did not begin using its online 'back office' system until May 2008; from May 2005, when Firm Y became an appointed representative, until May 2008 there were therefore no formal compliance procedures in place and no formal systems or controls in place to monitor Firm Y;

(2) the FSA has seen no evidence that SDAM actively monitored Firm Z. Mr Danner admitted during interview that he had not been aware of what Firm Z was doing and that SDAM's monitoring of Firm Z was minimal. It is not acceptable for a firm's approach to monitoring its appointed representative to be based solely on the level of business being carried out by the appointed representative at the outset; and

(3) the FSA considers that if SDAM had had adequate and robust monitoring procedures in place for its appointed representatives then Firm Z would not have been able to undertake business or issue recommendations without SDAM's knowledge and oversight.

Conflicts of Interest

127. Mr Danner made representations that:

(1) SDAM's "clients" were always the clients of, and owned by, each adviser - as stipulated in their contracts - and not of the company;

(2) he gained no benefit "indirectly" as a result of his clients, or clients of SDAM, investing in the Arch Cru Funds; and

(3) SDAM's clients were fully aware of his involvement in Cru. Investors in the Cru Portfolio were all sent a booklet on the portfolio, and that literature made specific reference to Mr Danner's involvement with, and shareholding in, Cru.

128. The FSA has found that:

(1) it is correct that the clients referred to were clients of the individual advisers. The advisers, however, worked under the auspices of SDAM, and SDAM was responsible for the quality of their advice to clients;

(2) Mr Danner did gain an indirect benefit. In this regard the FSA refers to the Tribunal's decision (at paragraph 95), which states:

"We turn first to our findings in relation to conflicts of interest. In that regard, we have two concerns. The first is the failure by Mr Danner to appreciate at all what we consider to be an obvious conflict of interest arising out of his interests in SDAM on the one hand and CruIM on the other. We have rejected the argument that this was not an actual, but potential, conflict. ***We have likewise rejected the submission that Mr Danner did not benefit from the investments made at the outset by SDAM clients into the Funds, because the marketing allowance was used to meet set-up costs.*** *In our judgment, in his position, Mr Danner should have been aware of the conflict of interest and sought to give proper disclosure of it to SDAM clients."* [emphasis added]; and

(3) the FSA has seen no evidence that Mr Danner or SDAM actively disclosed Mr Danner's relationship with Cru to SDAM's clients or managed the conflict of interest which arose; a fact supported by the action taken by SDAM's compliance officer Mr Davies, on taking up that role in 2008.

PROCEDURAL MATTERS

Decision maker

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

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

Publicity

131. Section 391(4), 391(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 Final Notice relates as the FSA considers appropriate. The information may be published in such a manner as the FSA considers appropriate. However, the FSA may not publish such information if such publication would, in the opinion of the FSA, be unfair to Mr Danner or prejudicial to the interests of consumers.

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

Third party rights

133. A copy of this Final Notice is being given to Mr Davies as a third party identified in the reasons above and to whom, in the opinion of the FSA, the matter is prejudicial.

FSA contacts

134. If you have other questions on this matter, you should contact Paul Howick (Tel: 020 7066 7954 / Email: paul.howick@fsa.gov.uk) in the Enforcement and Financial Crime Division of the FSA.

Bill Sillett
Head of Department
FSA Enforcement and Financial Crime Division

ANNEX A

RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE

1. **Statutory provisions**

Financial Penalty / Public Censure

1.1. The FSA has the power, pursuant to section 66 of the Act, to impose a financial penalty of such amount as it considers appropriate, or to publish a statement of misconduct, where it considers an approved person is guilty of misconduct and it is satisfied that it is appropriate in all the circumstances to take action against him.

Prohibition Order

1.2. The FSA has the power, pursuant to section 56 of the Act, to make an order prohibiting an individual from performing a specified function, any function falling within a specified description, or any function, if it appears to the FSA that that individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or exempt professional person. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description or all regulated activities.

The General Prohibition

1.3. Section 19 of the Act states that no person may carry on a regulated activity in the United Kingdom (or purport to do so) unless he is an authorised or exempt person ("the general prohibition").

ARs

1.4. Section 39(1) of the Act provides that an AR is exempt from the general prohibition in relation to any regulated activity for which an authorised firm, the principal, has accepted responsibility in writing.

1.5. Section 39(3) of the Act provides that an AR's principal is responsible, to the same extent as if he had expressly permitted it, for the AR's activities for which the principal has accepted responsibility.

Financial Promotions

1.6. Section 21 of the Act provides that an unauthorised person may not communicate a financial promotion relating to investment activity unless its content has been approved by an authorised person.

2. **The Handbook – relevant rules and guidance**

Statements of Principle and Code of Practice for Approved Persons

2.1. The FSA's Statements of Principle and Code of Practice for Approved Persons (together "APER") are issued under section 64 of the Act. APER sets out descriptions of conduct which, in the opinion of the FSA, does not comply with a Statement of Principle.

2.2. When establishing compliance with, or a breach of, a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour expected in that function (APER 3.1.3G).

2.3. An approved person will only be in breach of a Statement of Principle if they are personally culpable, that is, in a situation where their conduct was deliberate or where their standard of conduct was below that which would be reasonable in all the circumstances (APER 3.1.4G).

2.4. In determining whether an approved person's conduct was in breach of a Statement of Principle, the FSA will take into account the extent to which the approved person acted in a way that is stated to be in breach of a Statement of Principle (APER 3.1.5G).

2.5. APER (and in particular the specific examples of behaviour which may be in breach of a generic description of conduct in the code) is not an exhaustive list of types of conduct that may contravene the Statements of Principle (APER 3.1.6G).

2.6. In determining whether or not the conduct of an approved person performing a significant influence function complies with Statement of Principle 7, the following are factors which, in the opinion of the FSA, are to be taken into account:

(a) whether he exercised reasonable care when considering the information available to him;

(b) whether he reached a reasonable conclusion which he acted on;

(c) the nature, scale and complexity of the firm's business;

(d) his role and responsibility as an approved person performing a significant influence function;

(e) the knowledge he had, or should have had, of regulatory concerns, if any, arising in the business under his control (APER 3.3.1E).

Statement of Principle 1 [APER 4.1]

2.7. APER 4.1.1G reiterates Statement of Principle 1: An approved person must act with integrity in carrying out his controlled function.

2.8. APER 4.1.3E states that the following conduct does not, in the FSA's opinion, comply with Statement of Principle 1: deliberately misleading (or attempting to mislead) a client by act or omission. APER 4.1.4E states that such conduct includes deliberately misleading a client about the risks of an investment and/or misleading a client about the likely performance of investment products by providing inappropriate projections of future investment returns.

2.9. APER 4.1.6E states that the following conduct does not, in the FSA's opinion, comply with Statement of Principle 1: deliberately failing to inform a customer, without reasonable cause, of the fact that their understanding of a material issue is incorrect, despite being aware of their misunderstanding.

2.10. APER 4.1.14E states that the following conduct does not, in the FSA's opinion, comply with Statement of Principle 1: deliberately not paying due regard to the interests of a customer.

2.11. APER 4.1.15E states that the following conduct does not, in the FSA's opinion, comply with Statement of Principle 1: deliberate acts, omissions or business practices that could be reasonably expected to cause consumer detriment.

Statement of Principle 2 [APER 4.2]

2.12. APER 4.2.1G reiterates Statement of Principle 2: An approved person must act with due skill, care and diligence in carrying out his controlled function.

2.13. APER 4.2.3E states that the following conduct does not, in the FSA's opinion, comply with Statement of Principle 2: failing to inform a customer of material information in circumstances where he was aware, or ought to have been aware, of such information, and of the fact that he should provide it.

Statement of Principle 7 [APER4.7]

2.14. APER 4.7.1G reiterates Statement of Principle 7: 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.

2.15. APER 4.7.3E states that the following conduct does not, in the FSA's opinion, comply with Statement of Principle 7: failing to take reasonable steps to implement adequate and appropriate systems of control to comply with the relevant requirements and standards of the regulatory system in respect of its regulated activities; in overseeing the firm's obligations under SYSC 3.1.1R or SYSC 4.1.1R, failing to take reasonable care to oversee the establishment and maintenance of appropriate systems and controls.

2.16. APER 4.7.4E states that the following conduct does not, in the FSA's opinion, comply with Statement of Principle 7: failing to take reasonable steps to monitor compliance with the relevant requirements and standards of the regulatory system in respect of its regulated activities.

2.17. APER 4.7.11G states 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 standards and requirements of the regulatory system and to ensure that all staff are aware of the need for compliance.

2.18. APER 4.7.12G states that, depending on his role and responsibilities, an approved person performing a significant influence function need not himself put in place the systems of control in his business but he should take reasonable steps to ensure there are operating procedures and systems including well-defined steps for complying with regulatory requirements.

ARs

Supervision Manual ("SUP")

2.19. SUP 12.3.2G reflects section 39(3) of the Act (set out above) and states that the firm is responsible, to the same extent as if it had expressly permitted it, for anything the AR does or omits to do, in carrying on the business for which the firm has accepted responsibility.

Appointment of an AR

2.20. SUP 12.4.2R requires that before a firm appoints an AR, and on a continuing basis, it must establish on reasonable grounds that: the appointment does not prevent the firm from satisfying the threshold conditions, the AR is solvent and otherwise suitable to act for the firm in that capacity.

2.21. SUP 12.4.2R(3) states that the firm should have adequate controls over the AR's regulated activities for which the firm has responsibility and adequate resources to monitor and enforce compliance by the AR with the relevant regulatory requirements.

2.22. SUP 12.4.4G specifies that in assessing whether an AR is suitable to act for the firm in that capacity, the principal firm should consider whether the AR is fit and proper and also consider the fitness and propriety (including good character and competence) and financial standing of the controllers, directors, partners, proprietors and managers of the AR. SUP 12.4.4G(2) further states that the information which firms should take reasonable steps to obtain and verify is set out in FIT.

Supervision of an AR

2.23. SUP 12.6.1R(1) requires that if a firm has reasonable grounds to believe that the conditions in SUP 12.4.2R, SUP 12.4.6R or SUP 12.4.8AR (as applicable) are not satisfied, or are likely not to be satisfied, in relation to any of its ARs, the firm must take immediate steps to rectify the matter or terminate its contract with the AR.

2.24. SUP 12.6.7G states that the senior management of a firm should be aware that the activities of appointed representatives are an integral part of the business that they

manage. The responsibility for the control and monitoring of the activities of appointed representatives rests with the senior management of the firm.

Conflicts of Interest

Conduct of Business Sourcebook ("COB") & Senior Management Arrangements Systems and Controls ("SYSC")

2.25. The FSA's rules and guidance on conflicts of interest were set out in COB 7 which applied until 31 October 2007; and subsequently in SYSC 10 which took effect on 1 January 2007 for common platform firms.

2.26. COB 7.1.3R(2) requires that when a firm has or may have a relationship that gives or may give rise to a conflict of interest in relation to a transaction to be entered into with or for a customer, the firm must not knowingly advise in relation to that transaction unless it takes reasonable steps to ensure fair treatment for the customer.

2.27. SYSC 10.1.3R provides that a firm to which SYSC 10 applies must take all reasonable steps to identify any conflict of interest between the firm, including its managers, employees and appointed representatives, or any person directly or indirectly linked to them by control, and a client of the firm that arise or may arise in the course of providing a relevant service.

2.28. SYSC 10.1.4R provides that a firm should consider as a minimum whether the firm (or a relevant person or a person directly or indirectly linked by control to the firm): is likely to make a financial gain or avoid a financial loss at the expense of the client; has an interest in the outcome of a service provided to, or transaction carried out for, the client which is distinct from the client's interest in that outcome; receives or will receive from a person other than the client an inducement in relation to a service provided to the client in the form of monies, goods or services, other than the standard commission or fee for that service.

RMARs

2.29. Under the Integrated Regulatory Reporting regime, firms authorised by the FSA are required to submit periodic reports to the FSA online. One such report is the RMAR which all retail mediation firms (including mortgage and general insurance intermediaries and personal investment firms) are required to submit.

2.30. The RMAR contains important information about the regulated firm and the FSA relies on this information to fulfil its regulatory objectives and to conduct effective risk-based regulation. Reporting requirements for mortgage/insurance intermediaries and personal investment firms are set out in SUP 16.12.3R and SUP16.12.4R as well as SUP 15.

2.31. SUP 15.6.1R states that a firm must take reasonable steps to ensure that all information it gives to the FSA in accordance with reporting requirements is:

(a) factually accurate or, in the case of estimates and judgments, fairly and properly based after appropriate enquiries have been made by the firm; and

(b) complete, in that it should include anything of which the FSA would reasonably expect notice.

3. The Handbook - guidance on exercise of disciplinary powers

3.1. When exercising its powers, the FSA seeks to act in a way it considers most appropriate for the purpose of meeting its regulatory objectives.

The Enforcement Guide ("EG")

3.2. The FSA's policy on exercising its enforcement power is set out in EG, which came into effect on 28 August 2007. EG 2.2(2) states that the FSA will seek to exercise its enforcement powers in a manner that is transparent, proportionate and consistent with its publicly stated policies.

Exercising the power to make a prohibition order under section 56 of the Act – EG 9

3.3. EG 9.1 states that the FSA's power under section 56 of the Act to prohibit individuals who are not fit and proper from carrying out controlled functions in relation to regulated activities helps the FSA to work towards achieving its regulatory objectives. The FSA may exercise this power to make a prohibition order 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.

3.4. EG 9.4 sets out the general scope of the FSA's power in this respect. The FSA has the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant. Depending on the circumstances of each case, it may seek to prohibit individuals from performing any class of function in relation to any class of regulated activity, or it may limit the prohibition order to specific functions in relation to specific regulated activities.

3.5. EG 9.5 provides that the scope of the prohibition order will depend on the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk which he poses to consumers or the market generally.

3.6. EG 9.9 provides that when deciding whether to make a prohibition order, the FSA will consider all the relevant circumstances of the case. These may include, but are not limited to, the following:

(a) whether the individual is fit and proper to perform the functions in relation to regulated activities. The criteria for assessing fitness and propriety are set out in the Fit and Proper Test for Approved Persons ("FIT");

(b) the relevance and materiality of any matters including unfitness;

(c) the length of time since the occurrence of any matters indicating unfitness; and

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

3.7. EG 9.11 provides that due to the diverse nature of the activities and functions which the FSA regulates, it is not possible to produce a definitive list of matters which the FSA might take into account when considering whether an individual is not a fit and proper person to perform a particular, or any, function in relation to a particular, or any firm. However, EG 9.12 gives examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order, and one such example is a serious lack of competence.

3.8. EG 9.23 provides that in appropriate cases the FSA may take other action against an individual in addition to making a prohibition order, including the use of its power to impose a financial penalty.

The Fit and Proper Test for Approved Persons ("FIT")

3.9. The FSA has issued specific guidance on the fitness and propriety of individuals in FIT. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function and FIT is also relevant in assessing the continuing fitness and propriety of approved persons.

3.10. FIT identifies three criteria as being the most important considerations, namely:

(a) FIT 2.1 (honesty, integrity and reputation): This includes an individual's openness and honesty in dealing with customers, market participants and regulators and willingness to comply with requirements placed on him by or under the Act as well as other legal and professional obligations and ethical standards;

(b) FIT 2.2 (competence and capability): This includes an assessment of the individual's skills in carrying out the controlled function that he is performing; and

(c) FIT 2.3 (financial soundness): This includes an assessment of the individual's financial soundness.

3.11. FIT 2.2.1G provides that in determining a person's competence and capability the FSA will have regard to all relevant matters including, but not limited to, whether the person satisfies the relevant FSA training and competence requirements in relation to the controlled function the person performs; whether the person has demonstrated by experience and training that the person is suitable to perform the controlled function; whether the person has adequate time to perform the controlled function and meet the responsibilities associated with that function.