



Financial Services Authority

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**FINAL NOTICE**

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To:            **Stewart Wallace Domke**      **City Gate Money Managers Limited**

Address:      **5 Eastwood Avenue**            **1 Park Circus**  
                 **Glasgow**                            **Glasgow**  
                 **G46 6LS**                           **Lanarkshire**  
                                                   **G3 6AX**

Date:           **6 August 2012**

**1. ACTION**

1.1. For the reasons given in this Notice, the FSA:

- (1) pursuant to section 66 of the Act, hereby publishes a statement of the misconduct of Mr Domke for breaches of Statements of Principle 6 and 7 in his capacity as an approved person at City Gate during the relevant period;
- (2) pursuant to section 63 of the Act, hereby withdraws the approval given to Mr Domke to perform the controlled functions of CF1 and CF10 at City Gate. The withdrawal of Mr Domke's approval takes effect from the date of this notice; and
- (3) pursuant to section 56 of the Act, hereby makes the Prohibition Order prohibiting Mr Domke from performing any significant influence

function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm because he is not currently a fit and proper person for such a role in terms of his competence and capability. The Prohibition Order takes effect from the date of this Notice.

1.2. The FSA has found that Mr Domke's misconduct in this case warrants a financial penalty of £70,000. However, he has provided verifiable evidence that imposing any financial penalty would cause him serious financial hardship. Therefore, taking into account all of the circumstances, the FSA hereby publishes a statement of Mr Domke's misconduct.

1.3. The public censure will be issued on 6 August 2012 and will take the form of this Final Notice, which will be published on the FSA's website.

## **2. SUMMARY OF REASONS**

2.1. On the basis of the facts and matters described below, the FSA sanctions Mr Domke for breaches of Statements of Principle 6 and 7 in performing the significant influence controlled functions of CF1 and CF10 at City Gate during the relevant period.

2.2. In summary, the FSA has concluded that Mr Domke failed to exercise due skill, care and diligence in managing the business of the firm for which he was responsible in his controlled functions, in breach of Statement of Principle 6, by failing to ensure that a financial promotion issued by City Gate as agent for another company complied with FSA rules by (a) giving a balanced picture of the risks involved in the investment being promoted and (b) not containing material which created an inappropriately positive impression of the nature of the investment.

2.3. The FSA has also concluded that Mr Domke failed to take reasonable steps to ensure that the business of City Gate, for which he was responsible in his controlled functions, complied with the relevant requirements and standards of the regulatory system, in breach of Statement of Principle 7, by failing to:

- (a) ensure that adequate systems and controls were implemented to ensure that City Gate did not breach section 20 of the Act;
- (b) ensure that City Gate had adequate systems and controls in place to monitor the advising and selling practices of its advisers and/or appointed representatives relating to regulated business;
- (c) ensure that City Gate had adequate procedures in place to review and monitor its advisers' and/or appointed representatives' competence, knowledge, skills, and training; and
- (d) ensure that City Gate had adequate systems and controls in place to review and approve financial promotions.

2.4. The FSA has concluded that the nature and seriousness of the breaches outlined above warrant the imposition of a financial penalty of £70,000, taking into account that the FSA has considered as a mitigating factor Mr Domke's co-operation with its investigation. However, as the imposition of any financial penalty would cause Mr Domke serious financial hardship, the FSA hereby publishes a statement of Mr Domke's misconduct, rather than imposing a financial penalty.

2.5. This action follows previous Enforcement action taken against City Gate in July 2009 for materially similar systems and controls failings in relation to the approval of financial promotions and monitoring of appointed representatives. Although no action was taken against Mr Domke as a result of the first investigation, he was also a director, and responsible for compliance oversight at City Gate during the period relevant to that investigation. Mr Domke was therefore personally responsible for addressing the failures identified and for ensuring that City Gate complied with the regulatory requirements imposed as a result of that action. He failed to do so. The FSA considers that this seriously aggravates the matters set out in this Notice.

2.6. By virtue of the breaches outlined above, the FSA has concluded that Mr Domke has failed to meet minimum regulatory standards in terms of competence and capability and that he is not fit and proper to perform significant influence functions at any authorised person, exempt person or

exempt professional firm. Accordingly, the FSA withdraws Mr Domke's approval as CF1 and CF10 at City Gate and imposes the Prohibition Order on him.

- 2.7. This action supports the FSA's regulatory objectives of maintaining confidence in the financial system and the protection of consumers.

### **3. DEFINITIONS**

- 3.1. The definitions below are used in this Notice:

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

"APER" or "the Statements of Principle" means the Statements of Principle and Code of Conduct for Approved Persons set out in the FSA Handbook;

"City Gate" means "City Gate Money Managers Limited";

"CF1" means the FSA controlled function of Director;

"CF10" means the FSA controlled function of Compliance Oversight;

"CF11" means the FSA controlled function of Money Laundering Reporting

"CF30" means the FSA controlled function of Customer;

"COBS" means the Conduct of Business Sourcebook in the FSA Handbook;

"DEPP" means the Decision Procedures and Penalties Manual in the FSA Handbook;

"EG" means the Enforcement Guide;

"the financial promotion" means a financial promotion issued by City Gate on 18 January 2009 as agent for the Issuing Company;

"the FSA" means the Financial Services Authority;

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

“the Issuing Company” means the company for which City Gate made the financial promotion in which an offer of investment was being promoted;

“Mr Domke” means Stewart Wallace Domke;

“Offer Letter 1” means the letter introducing the offer of investment to recipients of the financial promotion who were existing City Gate customers;

“Offer Letter 2” means the letter introducing the offer of investment to recipients of the financial promotion who were not City Gate customers and whose details City Gate had acquired by purchasing a client bank from another company;

“Offer Document” means the document entitled “Offer for Sale of Shares” which formed part of the financial promotion;

“the partner companies” means the companies which were held out in the financial promotion by City Gate as being in partnership with the Issuing Company;

“Principles” means the FSA’s Principles for Businesses;

“the Prohibition Order” means the order to be made pursuant to section 56 of the Act prohibiting Mr Domke from performing any significant influence function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm;

“relevant period” means the period between 1 January 2009 and 12 July 2010;

“SIPP” means a self-invested personal pension plan;

“the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber); and

“the variation” means the variation of City Gate’s Part IV permission applied for by City Gate on 13 July 2009, as granted by the FSA on 21 July 2009 with effect from 13 July 2009.

#### **4. RELEVANT STATUTORY AND REGULATORY PROVISIONS**

- 4.1. The relevant statutory provisions and regulatory requirements are set out at Annex A to this Notice.

#### **5. FACTS AND MATTERS**

##### **Background**

- 5.1. Mr Domke was approved by the FSA to perform the controlled functions of CF1, CF10 and CF11 from 1 December 2001. Mr Domke was also approved to perform the controlled function of CF30 from 1 November 2007, and was responsible for insurance mediation from 14 January 2005.
- 5.2. On 2 November 2010, City Gate entered into voluntary liquidation. Prior to this, City Gate operated as a personal investment firm authorised to advise on and arrange investments, mortgages and insurance. City Gate operated from an office in Glasgow and, immediately prior to its liquidation, had nine appointed representatives throughout the United Kingdom.
- 5.3. Until 12 July 2009, City Gate had permission to carry on the following regulated activities:
- (1) advising on investments (excluding pension transfers and pension opt outs);
  - (2) advising on pension transfers and pension opt outs;
  - (3) advising on regulated mortgage contracts;
  - (4) agreeing to carry on a regulated activity;
  - (5) arranging (bringing about) deals in investments;
  - (6) arranging (bringing about) regulated mortgage contracts;
  - (7) assisting in the administration and performance of a contract of insurance;

(8) making arrangements with a view to regulated mortgage contracts;  
and

(9) making arrangements with a view to transactions in investments.

5.4. City Gate was previously referred to Enforcement for inadequate systems and controls in relation to its approval of financial promotions and monitoring of its appointed representatives. On 20 July 2009, as a result of that investigation, City Gate was fined £60,000 (reduced to £42,000 after application of the stage one discount) for breaches of Principles 2, 3 and 7 and associated FSA rules.

5.5. On 21 July 2009, as a result of the first Enforcement investigation and concerns raised contemporaneously by the FSA's Small Firms and Contact Division, City Gate voluntarily varied its permission so that with effect from 13 July 2009:

- (i) it would not take on as principal any new appointed representatives;
- (ii) it would not carry out any new business advising on or arranging a pension transfer, a new income drawdown contract, or switching from an existing pension contract into a new contract; and
- (iii) its appointed representatives would not carry out any pension transfer or income drawdown business or switching from an existing pension contract into a new contract.

5.6. During the relevant period, City Gate had one other individual approved as CF1 and 14 other individuals approved to perform the controlled function of CF30.

#### **Business conducted outside the scope of City Gate's permission**

5.7. On 13 July 2009, at the FSA's request and during the investigation referred to at paragraph 5.4 above, City Gate applied to vary its permission voluntarily in the terms set out at paragraph 5.5 above. The application, signed by Mr

Domke, was accepted by the FSA on 21 July 2009.

- 5.8. However, between 13 July 2009 and 26 January 2010, City Gate advised, either directly or through one of its appointed representatives, on four new cases of pension transfer or income drawdown business in breach of the variation, and therefore beyond the scope of its permission.

#### ***Customer 1***

- 5.9. On 26 January 2010, six months after the variation, one of City Gate's appointed representatives submitted an application to the product provider for an income drawdown pension policy for Customer 1. The policy commenced on 18 February 2010.
- 5.10. Customer 1 did not sign the application form until 26 January 2010, and her customer file shows that no advice had been given, nor arrangements made in relation to the income drawdown prior to 15 January 2010, when one of City Gate's appointed representatives obtained a Key Facts Illustration.
- 5.11. There is no record on the customer file of any contact with the customer prior to the variation, and the first contact was not made until almost six months after the date of the variation.

#### ***Customer 2***

- 5.12. On 11 November 2009, four months after the variation, one of City Gate's appointed representatives submitted an application to the product provider for an income drawdown pension policy for Customer 2, on an execution-only basis. The policy commenced on 4 January 2010.
- 5.13. Customer 2 did not sign the application form until 11 November 2009, and the customer file shows that no arrangements had been made in relation to the income drawdown prior to 10 September 2009, when City Gate's appointed representative requested existing policy information from the provider.
- 5.14. There is no record of any contact with the customer prior to the variation, and



the first contact was not made until almost two months after the date of the variation.

### ***Customer 3***

- 5.15. On 12 August 2009, one month after the variation, one of City Gate's own advisers submitted an application to the product provider for an income drawdown pension policy for Customer 3, on an execution-only basis. The policy commenced on 14 September 2009.
- 5.16. Customer 3 did not sign the application form until 10 August 2009, and her customer file shows that no arrangements had been made in relation to the income drawdown prior to 15 July 2009, two days after the variation, when Customer 3 contacted City Gate by letter to request arrangement of an income drawdown. The customer file also shows that City Gate did not receive a transfer valuation from Customer 3's existing provider until 29 July 2009.

### ***Customer 4***

- 5.17. On 17 December 2009, five months after the variation, another of City Gate's appointed representatives submitted an application to the product provider for a SIPP for Customer 4. The SIPP commenced on 23 December 2009.
- 5.18. Customer 4 did not sign the SIPP application form until 17 September 2009, and the customer file shows that no advice had been given, nor arrangements made in relation to the pension transfer prior to 23 July 2009, ten days after the variation, when City Gate held its first meeting with Customer 4.
- 5.19. There is no record of any material contact with the customer prior to the variation, and the first meeting with the client was held ten days after the date of the variation.

### ***Failure to monitor adequately the business of City Gate and its appointed representatives to ensure compliance with the variation***

- 5.20. Mr Domke failed to implement any procedures which would have prevented business being written at City Gate in breach of the variation. Mr Domke also

failed to take reasonable steps to ensure that City Gate's advisers and appointed representatives fully understood its application and effect and ceased to carry out new pensions business of the excluded kind.

- 5.21. On 14 July 2009, Mr Domke sent an email to City Gate's advisers and appointed representatives which set out the conditions of the variation. He did not provide any further information subsequent to the email, nor take any steps to ensure that all advisers and appointed representatives had received his message and properly understood the effect of the variation.
- 5.22. City Gate had only a small number of advisers and appointed representatives who were writing only a small amount of pensions business. In light of this, Mr Domke should have ensured that each and every case was reviewed before it was written, by doing so personally or arranging for an appropriate delegate to undertake this review.
- 5.23. Instead, new business was submitted directly to the product providers by the appointed representatives without going through City Gate, and Mr Domke reviewed the new business register only after the business had been written. He then reviewed only a very small proportion of City Gate's new business.
- 5.24. Mr Domke thereby failed in his role as CF1 and CF10 at City Gate to ensure that adequate systems and controls were put in place at City Gate after the variation took effect, to ensure that no business was conducted by City Gate or its appointed representatives which was beyond the scope of its permission.

### **Financial promotion**

- 5.25. On 18 January 2010, City Gate approved the financial promotion which was an offer of shares issued by the Issuing Company, for which City Gate was acting as agent. The financial promotion comprised the following documentation:
  - (1) Offer Letter 1;
  - (2) Offer Letter 2;

- (3) a letter to recipients of the financial promotion who were customers of a company acquired by the Issuing Company, introducing the offer;
- (4) the Offer Document;
- (5) an application form for requesting a copy of the Offer Document; and
- (6) an application form for taking up the offer of shares.

***Unauthorised use of company names in the financial promotion***

- 5.26. Incorporated into the Offer Document were the names, trademarks and logos of the partner companies, which were held out in the Offer Document as being in partnership with the Issuing Company. The references to these high profile companies bolstered the impression created by the Offer Document that the Issuing Company was a robust investment opportunity. However, Mr Domke took no steps to ensure that the Issuing Company was entitled to use the partner companies' names, trademarks and/or logos in the Offer Document, or that it had sought any approval that might be required. In relation to at least three of the partner companies, use of such material was specifically prohibited without express permission pursuant to the agency agreements that the Issuing Company had entered into with those partner companies.
- 5.27. Offer Letters 1 and 2 also each referred to the Issuing Company being in partnership with three of the partner companies. Mr Domke did not ensure that the Issuing Company was entitled to use the partner companies' names in Offer Letters 1 and 2, or that it had sought any approval that might be required.

***Failure to emphasise risks of investment***

- 5.28. Offer Letters 1 and 2 described the benefits of investment in the Issuing Company by emphasising the strength of its management and assets, and providing a description of its recent and forecast asset growth and expansion. However, neither letter made reference to any risks involved in the investment being promoted. COBS 4.5.2R(2) dictates that a firm must ensure that a communication with retail clients "does not emphasise any potential benefits

of relevant business or a relevant investment without also giving a fair and prominent indication of any relevant risks.”

***Approval of the financial promotions by Mr Domke***

5.29. As the compliance officer, Mr Domke was responsible for ensuring that financial promotions approved by the firm complied with the FSA’s rules. To discharge this obligation he chose to delegate the review to a third party. However, despite having seen evidence of the steps taken by that third party to ensure that the financial promotion was compliant, Mr Domke failed to adequately review those steps in order to satisfy himself that the financial promotion was compliant before approving it. Had he adequately reviewed those steps it would have been clear to him that it was not.

5.30. The failure of Mr Domke to take reasonable steps is aggravated by the following:

- (a) that concerns had been raised with him specifically by the Issuing Company as to whether the relevant permission had been obtained from the partner companies to associate them with the financial promotion; and
- (b) the FSA’s concerns relating to the approval of financial promotions by City Gate in the past. Specifically, as the ongoing CF10 and CF1 he was aware that City Gate had previously been fined by the FSA for failing to ensure a financial promotion was compliant. This arose from the failure of the firm to check that a bank guarantee that was fundamental to the investment offer being promoted was actually in place.

5.31. Mr Domke also failed to appreciate the particular degree of care necessitated by the financial promotion, which as an offer to subscribe for shares was of a more complex nature than those previously made by City Gate and approved by him.

**Inadequate systems and controls relating to City Gate’s advisers and appointed representatives**

5.32. As CF10 at City Gate, Mr Domke’s practice was to delegate responsibility for compliance to other individuals, with the intention that he would oversee their compliance work. However, Mr Domke’s oversight of those individuals was inadequate, resulting during the relevant period in serious compliance failures at City Gate. City Gate’s advisers and appointed representatives were inadequately monitored and assessed, they received little management or network support, and City Gate’s training and competence regime was not applied or reviewed.

5.33. Mr Domke failed to ensure that systems and controls set out in the compliance manual were adhered to. In particular, the following procedures in the compliance manual were neglected or entirely abandoned by Mr Domke during the relevant period:

- (1) specific monitoring of sales of high-risk products;
- (2) regular one-to-one meetings with and assessment of advisers and appointed representatives;
- (3) regular collation and analysis of management information and review of the systems and controls used by appointed representatives; and
- (4) regular file reviews and feedback discussions with advisers.

5.34. As with City Gate’s compliance manual, the following procedures in City Gate’s training and competence manual were neglected or entirely abandoned by Mr Domke during the relevant period:

- (1) provision of Continuing Professional Development training for advisers;
- (2) peer reviews of customer files; and

(3) annual assessments and testing of adviser knowledge.

5.35. Both the compliance and the training and competence regimes in place at City Gate were first implemented in 2005 and were never reviewed or revised during the relevant period. Mr Domke allowed these procedures to remain in place despite the FSA raising concerns with him about the adequacy of City Gate's arrangements at the time of the previous Enforcement action and requiring City Gate, through Mr Domke, to review its procedures to address these concerns.

## **6. FAILINGS**

### **Breach of Statement of Principle 6**

6.1. The FSA has concluded that Mr Domke has breached Statement of Principle 6 by failing to exercise due skill, care and diligence in managing the business of City Gate, for which he was responsible in his controlled functions, by failing to ensure that a financial promotion he approved was balanced and complied with FSA rules, because he:

- (1) failed to ensure that Offer Letters 1 and 2 explained adequately the risks of investing in the offer being promoted. The FSA considers that as a result potential investors were not able to make a fully-informed decision as to whether to invest; and
- (2) used high-profile partner companies' brands without ensuring that such use was allowed by those companies. The FSA considers that the unauthorised use of this intellectual property may have unduly enhanced the impression formed by recipients of the financial promotion as to the quality of the investment opportunity being promoted.

### **Breach of Statement of Principle 7**

6.2. The FSA has concluded that Mr Domke has breached Statement of Principle 7 by failing to take reasonable steps to ensure that the business of City Gate, for which he was responsible in his controlled functions, complied with the relevant

requirements and standards of the regulatory system on the basis of the specific failings detailed below.

***Failure to ensure that adequate systems and controls were implemented so that City Gate did not breach section 20 of FSMA***

- 6.3. Mr Domke failed to put in place any systems and controls, as CF1 and CF10 at City Gate, to prevent pensions business being written in breach of the variation. Mr Domke's failure resulted in new pensions business being written by City Gate and its appointed representatives on at least four occasions, which was beyond the scope of City Gate's permission.

***Failure to ensure that City Gate had adequate systems and procedures in place to monitor the advising and selling practices of its advisers and/or appointed representatives relating to regulated business or to review their competence, knowledge, skills, training and ongoing performance***

- 6.4. Mr Domke delegated his compliance responsibilities as CF10 to other individuals within City Gate, and then failed to oversee those individuals to ensure that they discharged those responsibilities properly. He devoted a minimum of time and attention to compliance matters, effectively abrogating his responsibilities, such that the implementation of City Gate's systems and controls was incomplete and the application inconsistent and inadequate. Advisers and appointed representatives were therefore inadequately and ineffectively monitored.
- 6.5. Mr Domke also failed to review City Gate's training and competence and general compliance procedures, in contravention of regulatory requirements to do so. Mr Domke was made aware of suspected breaches relating to the selling practices of City Gate's advisers and/or appointed representatives following concerns raised during the first Enforcement investigation. These suspected breaches fell within Mr Domke's responsibility as CF10. Mr Domke should therefore have taken reasonable steps to ensure that these systems and procedures were reviewed and improved. Similarly, as CF1 and CF10, Mr Domke should have taken steps to review and improve the competence, knowledge, skills, training and ongoing performance monitoring of City Gate's advisers and/or appointed representatives to ensure that previous failings were not repeated.

***Failure to ensure that City Gate had adequate systems and procedures in place to review and approve financial promotions***

- 6.6. Mr Domke failed to take reasonable steps to ensure that the process for reviewing and approving financial promotions was correctly followed, or that it was adequate to ensure that any financial promotion approved by City Gate complied with the requirements of COBS.

**7. REPRESENTATIONS AND FINDINGS**

- 7.1. Below is a brief summary of the key written and oral representations made by Mr Domke 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 Domke's representations, whether or not set out below.

**Background, mitigating factors and admissions**

- 7.2. Mr Domke made representations that:
- (a) during the relevant period City Gate faced difficulties, at least in part as a result of having grown too fast and being undercapitalised. City Gate had tried to cut costs in order to meet its liabilities, which led to staffing issues. In June 2007 City Gate had had to make redundant the CF10 compliance director who had held the position since November 2004;
  - (b) the situation had become worse when Mr Domke's co-director was involved in a road traffic accident in November 2008, after which time Mr Domke had to run all aspects of the business himself. However, although he was very busy he did not feel that he had abandoned the compliance aspects of the business. He had brought in a compliance consultant to install a new compliance regime;
  - (c) overall Mr Domke accepted that the compliance aspects of his function had not been performed to the required standards. His fundamental error had been to allow the previous CF10 holder to be made redundant. Mr Domke had, at the time, believed that he had the skills, competence and time to



manage the compliance function of the business himself. However, with hindsight, he fully accepted that, while he had done his best to keep the firm running, he lacked competence and capability in his role as Compliance Director, and the compliance regime at City Gate was fundamentally weak;

- (d) in mitigation of his failings, Mr Domke noted that there had been no consumer complaints, loss or detriment arising from his failings; and
- (e) Mr Domke was not the only senior individual at the firm during the relevant period. Other individuals at the firm at that time also bore responsibility and it was not fair to single out Mr Domke.

7.3. The FSA has found that:

- (a) while City Gate may have faced difficulties, Mr Domke either knew or should have known that he would not be able to perform the CF10 role adequately in the circumstances;
- (b) if the absence of Mr Domke's co-director affected City Gate's ability to operate in compliance with FSA rules, then Mr Domke should have taken steps to seek additional assistance. The FSA notes the pressures on Mr Domke but considers that he failed to manage such pressures properly, having due regard to the need to ensure that City Gate met the minimum regulatory standards. Although he was entitled to delegate certain tasks to other individuals, responsibility for City Gate's compliance with regulatory requirements lay with him as the significant influence holder. He did not take adequate steps to ensure that City Gate's regulatory obligations were met after delegating the performance of certain tasks to others;
- (c) Mr Domke's admissions are noted;
- (d) the points raised by Mr Domke do not mitigate the seriousness of his behaviour. The absence of complaints does not demonstrate compliance with regulatory requirements. Further, Mr Domke's breaches were very serious, even where there was no consumer loss or detriment; and

- (e) irrespective of any failings by other individuals, as CF1 and CF10 of City Gate during the relevant period, Mr Domke was aware of and responsible for the breaches set out in this notice.

#### **Business conducted outside the scope of City Gate's permission**

- 7.4. Mr Domke made representations that, in respect of the variation to City Gate's permission, and the advisers' understanding of it, he had advised them to look at the FSA website and they had all done so.
- 7.5. The FSA has found that there is no evidence to support Mr Domke's claim that he advised the firm's advisers to visit the FSA website. However, in any event the information on the FSA's website would not have assisted the advisers in understanding the specific provisions of the variation.

#### **Financial Promotion**

- 7.6. Mr Domke made representations that:
  - (a) in relation to the previous FSA enforcement action taken against City Gate, it had been the previous compliance officer who was involved in the relevant matters. Mr Domke was not involved at the relevant time. In any event Mr Domke had learned from the firm's previous mistakes, which was why he had brought in a compliance officer;
  - (b) he specifically denied that he had not checked that the partner companies' names, trademarks and logos were approved by the Issuing Company. The Issuing Company had approved these and signed off on their use;
  - (c) no documents were sent out without a full prospectus accompanying them; and
  - (d) he did not accept that the Issuing Company had raised concerns with him about permission from the partner companies. He noted that the FSA was in possession of an email from the Issuing Company dated 3 February 2010, copied to Mr Domke, in which the issue was raised. However, he did not

accept that he had received it and further stated that, if he had, he had not read it.

7.7. The FSA has found that:

- (a) Both Mr Domke and the other compliance officer at City Gate were approved to perform the CF10 function for the first 18 months of the period relevant to the previous FSA action. For the remaining 13 months of the relevant period Mr Domke alone performed the CF10 function. Mr Domke also performed the CF1 function throughout that period. As such, he had actual and detailed knowledge of the nature and extent of the FSA's concerns but failed to respond adequately to those concerns by preventing further failings of the same or a similar nature. As set out above, employing a compliance officer was not sufficient. Mr Domke had delegated tasks to him but did not take adequate steps to ensure that City Gate's regulatory obligations were met;
- (b) there is no evidence that Mr Domke took steps to ensure that the Issuing Company was entitled to use the partner companies' intellectual property. Mr Domke's responsibility as CF10 in approving the financial promotion was not to obtain approval from the Issuing Company for City Gate's use of the intellectual property, but rather to obtain evidence from the Issuing Company that the partner companies themselves, as owners of that intellectual property, had specifically approved the use of it by the Issuing Company in the financial promotion issued on its behalf by City Gate;
- (c) no formal prospectus was issued as part of the financial promotion. In any event, any document which constitutes a financial promotion (i.e. a document which constitutes an invitation to engage in investment activity) must be compliant in isolation; and
- (d) the evidence shows that Mr Domke was copied in to an email from the Issuing Company raising concerns about permission from the partner companies. The FSA does not accept that Mr Domke did not read the email.

**Inadequate systems and controls relating to City Gate’s advisers and appointed representatives**

7.8. Mr Domke made representations that:

- (a) although during the relevant period the firm’s procedures were inadequate, the firm was only following those procedures while it carried out remedial work to put better procedures in place. Mr Domke did not ignore the inadequacies but tried to fix them; and
- (b) during the relevant period the FSA, through its Supervision Division, was aware of the firm’s issues with its procedures.

7.9. The FSA has found that:

- (a) although work was being carried out to improve City Gate’s procedures, none of the remedial work undertaken by City Gate during the relevant period was sufficient to mitigate Mr Domke’s failure to ensure that adequate systems and controls were in place; and
- (b) Mr Domke was personally responsible for meeting the standards required of him under the regulatory system. His failings are not mitigated by the FSA’s knowledge of the firm’s issues. Further, the FSA raised concerns which Mr Domke failed to respond to promptly and adequately.

**Prohibition**

7.10. Mr Domke made representations that, although he accepted that he had failed as a CF10 and should have put in more robust systems, he did not accept that this necessarily affected his CF1 position. He should only be banned from performing the CF10 function. In this regard he noted the case of Julian Harris (Final Notice dated 4 November 2011), who was only prohibited from performing CF10 and other compliance oversight-related functions. Mr Domke further requested that the FSA confirm that he was not being banned from performing the CF30 function.

7.11. The FSA has found that as CF1, Mr Domke's role in directing the business included ensuring that City Gate could comply with its regulatory requirements – he failed to take adequate steps to ensure that it could do so, and it is therefore appropriate to withdraw his approval to perform the CF1 director function and to prohibit him from performing any significant influence function. In this regard his failings were more serious than those in the Harris case. However, the FSA confirms that Mr Domke is not being prohibited from performing the CF30 Customer function.

## **8. SANCTIONS**

### **Financial penalty / public censure**

- 8.1. The FSA's policy on the imposition of financial penalties and public censures is set out in Chapter 6 of DEPP. The relevant sections of DEPP are set out in more detail in Annex A. Since the majority of Mr Domke's failings occurred before the change in the regulatory provisions governing the determination of financial penalties on 6 March 2010, the FSA has applied the provisions that were in place before that date. All references to DEPP in this Notice are references to the version that was in force prior to 6 March 2010.
- 8.2. In addition, the FSA has had regard to the corresponding provisions of Chapter 13 of EG in force during the relevant period.
- 8.3. The principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour. A financial penalty is a tool that the FSA may employ to help it achieve its regulatory objectives.

8.4. In determining whether a financial penalty is appropriate, the FSA is required to consider all 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 has concluded that a financial penalty would be an appropriate sanction, given the serious nature of the breaches, were it not for the fact that imposing any penalty on Mr Domke would cause him serious financial hardship.

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

***Deterrence (DEPP 6.5.2(1))***

8.6. In determining whether to impose a financial penalty or public censure, the FSA has had regard to the need to ensure those who are approved persons must act with the appropriate levels of competence and capability and in accordance with regulatory requirements and standards.

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

8.7. In determining the appropriate sanction, the FSA has had regard to the seriousness of the breaches, including the nature of the requirements breached and the duration of the breach. The FSA has concluded that Mr Domke's failures are particularly serious, given that they resulted in City Gate having breached section 20 of the Act by conducting activity which was beyond the scope of its permission on numerous occasions, making a non-compliant and potentially misleading financial promotion, and conducting regulated activity for at least a year with seriously inadequate systems and controls.

- 8.8. Additionally, Mr Domke's failures are particularly serious in light of previous enforcement action already taken against City Gate while he was CF1 and CF10, for systems and controls failings relating to financial promotions, and also for City Gate's monitoring arrangements in relation to appointed representatives. The fact that City Gate had previously been penalised for these failings should have heightened Mr Domke's personal awareness of the need to ensure that the failings identified in that action be addressed and of his responsibility for doing so. The FSA is particularly concerned that Mr Domke's failure to verify the accuracy of information contained in the financial promotion was a direct repeat of the misconduct for which City Gate was penalised in July 2009.
- 8.9. In the context of the knowledge that Mr Domke had regarding City Gate's previous failings, and given his demonstrated disregard for the seriousness of the FSA's concerns by failing to put in place appropriate systems and controls to ensure that City Gate complied with its regulatory requirements, the FSA has concluded that Mr Domke's misconduct as set out in this Notice is particularly serious.

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

- 8.10. The FSA has concluded that Mr Domke's contraventions were not deliberate or reckless.

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

- 8.11. The FSA recognises that a financial penalty imposed on Mr Domke would be likely to have a significant impact on him as an individual.

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

- 8.12. The FSA has taken into account Mr Domke's co-operation with the FSA's investigation.

***Previous action taken by the FSA (DEPP 6.5.2G(10))***

- 8.13. In determining the appropriate sanction, the FSA has taken into account sanctions imposed by the FSA on other approved persons for similar behaviour. This was considered alongside the deterrent purpose for which the FSA imposes sanctions.

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

- 8.14. The FSA has taken into account the fact that there is verifiable evidence of serious financial hardship if Mr Domke were to pay the appropriate level of penalty (or any penalty). The FSA therefore publishes this statement of Mr Domke's misconduct.
- 8.15. Were this not the case the FSA would have imposed on Mr Domke a financial penalty of £70,000.

**Withdrawal of approval and prohibition**

- 8.16. The FSA has had regard to the guidance in Chapter 9 of EG in concluding that Mr Domke's approval be withdrawn and that the Prohibition Order be imposed on him. The relevant provisions of EG are set out in Annex A of this Notice.
- 8.17. Given the nature and seriousness of the failures outlined above, the FSA has concluded that Mr Domke's conduct demonstrated a lack of competence and capability such that he is not fit and proper to perform significant influence functions at any authorised person, exempt person or exempt professional firm. The FSA therefore concludes it appropriate and proportionate in all the circumstances to withdraw the approval given to Mr Domke to perform the controlled functions of CF1 and CF10 at City Gate, and to make an order prohibiting Mr Domke from performing any significant influence function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm.



**9. PROCEDURAL MATTERS**

**Decision maker**

- 9.1. The decision which gave rise to the obligation to give this Notice was made by the Regulatory Decisions Committee.
- 9.2. This Final Notice is given under, and in accordance with, section 390 of the Act.

**Publicity**

- 9.3. 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.
- 9.4. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

**FSA contacts**

- 9.5. For more information concerning this matter generally, contact Rachel West (direct line: 020 7066 0142/fax: 020 7066 0143) of the Enforcement and Financial Crime Division of the FSA.

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**Bill Sillett**  
**Head of Department – Retail 3**  
**Enforcement and Financial Crime Division**  
**Financial Services Authority**

## **STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY**

### **1. STATUTORY PROVISIONS**

- 1.1. The FSA's regulatory objectives are set out in section 2(2) of the Act and include maintaining confidence in the financial system and the protection of consumers.
- 1.2. Section 56 of the Act provides that the FSA may make a Prohibition Order if it appears to the FSA that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person. Such an order may relate to a specific regulated activity, an activity falling within a specified description or all regulated activities.
- 1.3. Section 63 of the Act provides that the FSA may withdraw an approval given under section 59 of the Act if it considers that the person in respect of whom it was given is not a fit and proper person to perform the function to which the approval relates.
- 1.4. Section 66 of the Act provides that the FSA may take action to impose a penalty on an individual of such amount as it considers appropriate, or to publish a statement of his misconduct, where it appears to the FSA that the individual is guilty of misconduct and it is satisfied that it is appropriate in all the circumstances to take action. Misconduct includes failure, while an approved person, to comply with a statement of principle issued under section 64 of the Act or being knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under the Act.

### **2. REGULATORY PROVISIONS**

- 2.1. In exercising its power to impose a financial penalty or public censure, the FSA must have regard to relevant provisions in the FSA Handbook.
- 2.2. The FSA's Enforcement Guide ("EG") and Decision Procedure and Penalties Manual ("DEPP") came into effect on 28 August 2007.

- 2.3. The guidance and policy that the FSA considers relevant to this case is set out below.

**Statements of Principle and the Code of Practice for Approved Persons (“APER”)**

- 2.4. APER sets out the Statements of Principle as they relate to approved persons and descriptions of conduct which, in the opinion of the FSA, do not comply with a Statement of Principle. It further describes factors which, in the opinion of the FSA, are to be taken into account in determining whether or not an approved person’s conduct complies with a Statement of Principle.
- 2.5. APER 3.1.3G states that 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, including the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour to be expected in that function.
- 2.6. APER 3.1.4G provides that an approved person will only be in breach of a Statement of Principle where he is personally culpable; that is, in a situation where his conduct was deliberate or where his standard of conduct was below that which would be reasonable in all the circumstances.
- 2.7. APER 3.1.6G provides that 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 exhaustive of the kind of conduct that may contravene the Statements of Principle.
- 2.8. The Statements of Principle relevant to this matter are:
- (i) Statement of Principle 6, which provides that an approved person performing a significant influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his controlled function; and
  - (ii) Statement of Principle 7, which provides that an approved person performing a significant influence function must take reasonable steps to

ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system.

- 2.9. APER 3.1.8G states that in applying Statements of Principle 5 to 7, the nature, scale and complexity of the business under management and the role and responsibility of the individual performing a significant influence function within the firm will be relevant in assessing whether an approved person's conduct was reasonable.
- 2.10. APER 3.3.1E states that in determining whether or not the conduct of an approved person performing a significant influence function complies with Statement of Principles 5 to 7, the following are factors are to be taken into account:
- (1) whether he exercised reasonable care when considering the information available to him;
  - (2) whether he reached a reasonable conclusion which he acted on;
  - (3) the nature, scale and complexity of the firm's business;
  - (4) his role and responsibility as an approved person performing a significant influence function; and
  - (5) the knowledge he had, or should have had, of regulatory concerns, if any, arising in the business under his control.
- 2.11. APER 4.6 lists types of conduct which, in the opinion of the FSA, do not comply with Statement of Principle 6.
- 2.12. APER 4.6.3E states that failing to take reasonable steps to adequately inform himself about the affairs of the business for which he is responsible is conduct that does not comply with Statement of Principle 6.
- 2.13. APER 4.6.4E states that permitting transactions without a sufficient understanding of the risks involved or inadequately monitoring highly profitable transactions or

business practices or unusual transactions is conduct that does not comply with Statement of Principle 6.

- 2.14. APER 4.6.6E states that failing to take reasonable steps to maintain an appropriate level of understanding about an issue or part of the business that he has delegated to an individual or individuals (whether in-house or outside contractors) is conduct that does not comply with Statement of Principle 6.
- 2.15. APER 4.6.8E states that failing to supervise and monitor adequately the individual or individuals (whether in-house or outside contractors) to whom responsibility for dealing with an issue or authority for dealing with a part of the business has been delegated is conduct that does not comply with Statement of Principle 6.
- 2.16. APER 4.6.14 states that although an approved person performing a significant influence function may delegate the resolution of an issue or authority for dealing with a part of the business, he cannot delegate responsibility for it.
- 2.17. APER 4.7 lists types of conduct which, in the opinion of the FSA, do not comply with Statement of Principle 7.
- 2.18. APER 4.7.3E states that failing to take reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems of control to comply with the relevant requirements and standards of the regulatory system in respect of its regulated activities is conduct that does not comply with Statement of Principle 7.
- 2.19. APER 4.7.4E states that failing to take reasonable steps to monitor (either personally or through a compliance department or other departments) compliance with the relevant requirements and standards of the regulated system in respect of its regulated activities is conduct that does not comply with Statement of Principle 7.
- 2.20. APER 4.7.7E provides that failing to take steps to ensure that procedures and systems of control are reviewed and, if appropriate, improved, following the identification of significant breaches (whether suspected or actual) of the relevant

requirements and standards of the regulatory system relating to its regulated activities is conduct that does not comply with Statement of Principle 7.

- 2.21. APER 4.7.10E provides that failing to take reasonable steps to ensure that appropriate compliance systems and procedures are in place, where the approved person performing a significant influence function is responsible for compliance, is conduct that does not comply with Statement of Principle 7.

### **Enforcement Guide (“EG”)**

- 2.22. The FSA’s approach to exercising its powers to withdraw approval under section 63 of the Act and make a Prohibition Order under section 56 of the Act is set out in Chapter 9 of EG.
- 2.23. 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.
- 2.24. EG 9.2 states that the FSA’s effective use of the power under section 63 of the Act to withdraw approval from an approved person will also help to ensure high standards of regulatory conduct by preventing an approved person from continuing to perform the controlled function to which the approval relates if he is not a fit and proper person to perform that function. Where it considers this is appropriate, the FSA may prohibit an approved person, in addition to withdrawing their approval.
- 2.25. 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.

- 2.26. 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.
- 2.27. In circumstances where the FSA has concerns about the fitness and propriety of an approved person, EG 9.8 to 9.14 provides guidance. In particular, EG 9.8 states that the FSA may consider whether it should prohibit that person from performing functions in relation to regulated activities, withdraw that person's approval or both. In deciding whether to withdraw approval and/or make a prohibition order, the FSA will consider whether its regulatory objectives can be achieved adequately by imposing disciplinary sanctions.
- 2.28. EG 9.9 provides that when deciding whether to make a prohibition order against an approved person and/or withdraw approval, the FSA will consider all the relevant circumstances of the case. These may include, but are not limited to, the following:
- (1) whether the individual is fit and proper to perform the functions in relation to regulated activities. The criteria for assessing the fitness and propriety of approved persons in terms of competence and capability is set out in FIT 2.2;
  - (2) whether, and to what extent, the approved person has failed to comply with the Statements of Principle issued by the FSA with respect to the conduct of approved persons, or been knowingly involved in a contravention by the relevant firm of a requirement imposed on the firm by or under the Act (including the Principles and other rules (EG 9.9(3)(a) and (b)));
  - (3) the relevance and materiality of any matters indicating unfitness (EG 9.9(5));
  - (4) the length of time since the occurrence of any matters indicating unfitness (EG 9.9(6));

- (5) the particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates or operated (EG 9.9(7)); and
  - (6) the severity of the risk which the individual poses to consumers and to confidence in the financial system (EG 9.9(8)).
- 2.29. EG 9.12 provides a number of examples of types of behaviour which have previously resulted in the FSA deciding to issue a prohibition order or withdraw the approval of an approved person. The examples include serious lack of competence and serious breaches of the Statements of Principle, including by failing to ensure that a firm acted within the scope of its permissions.
- 2.30. EG 9.23 provides that in appropriate cases the FSA may take other action against an individual in addition to making a prohibition order and/or withdrawing its approval, including the use of its power to impose a financial penalty.

#### **Decision Procedure and Penalties Manual (“DEPP”)**

- 2.31. Guidance on the imposition and amount of penalties, and on public censures, is set out in Chapter 6 of DEPP. Changes to DEPP 6 were introduced on 6 March 2010. The FSA has had regard to the appropriate provisions of DEPP that applied during the relevant period. Where the majority of the relevant conduct occurred before 6 March 2010, the FSA considers that the provisions of DEPP which applied before that date should apply.
- 2.32. DEPP 6.1.2G provides that the principal purpose of imposing a financial penalty or public censure is to promote high standards of regulatory and/or market 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. Financial penalties and public censures are therefore tools that the FSA may employ to help it to achieve its regulatory objectives.



2.33. DEPP 6.5.1G(1) provides that the FSA will consider all the relevant circumstances of a case when it determines the level of financial penalty (if any) that is appropriate and in proportion to the breach concerned.

2.34. DEPP 6.5.2G sets out a non-exhaustive list of factors that may be relevant to determining the appropriate level of financial penalty to be imposed on a person under the Act. The following factors are relevant to this case:

***Deterrence: DEPP 6.5.2G(1)***

2.35. When determining the appropriate level of financial penalty, the FSA will have regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business.

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

2.36. The FSA will consider the seriousness of the breach in relation to the nature of the rule, requirement or provision breached, which can include considerations such as the duration and frequency of the breach, whether the breach revealed serious or systemic weaknesses in the person's procedures or of the management systems or internal controls relating to all or part of a person's business and the loss or risk of loss caused to consumers, investors or other market users.

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

2.37. The FSA will regard as more serious a breach which is deliberately or recklessly committed, giving consideration to factors such as whether the breach was intentional, in that the person intended or foresaw the potential or actual consequences of its actions. If the FSA decides that the breach was deliberate or reckless, it is more likely to impose a higher penalty on a person than would otherwise be the case.

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

- 2.38. When determining the amount of penalty to be imposed on an individual, the FSA will take into account that individuals will not always have the resources of a body corporate, that enforcement action may have a greater impact on an individual, and further, that it may be possible to achieve effective deterrence by imposing a smaller penalty on an individual than on a body corporate. The FSA will also consider whether the status, position and/or responsibilities of the individual are such as to make a breach committed by the individual more serious and whether the penalty should therefore be set at a higher level.

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

- 2.39. The FSA may take into account whether there is verifiable evidence of serious financial hardship or financial difficulties if the person were to pay the level of penalty appropriate for the particular breach. The FSA regards these factors as matters to be taken into account in determining the level of a penalty, but not to the extent that there is a direct correlation between those factors and the level of penalty.

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

- 2.40. The FSA may take into account the degree of co-operation the person showed during the investigation of the breach by the FSA.

***Other action taken by the FSA (or a previous regulator): DEPP 6.5.2G(10)***

- 2.41. The FSA seeks to apply a consistent approach to determining the appropriate level of penalty. The FSA may take into account previous decisions made in relation to similar misconduct.