
FINAL NOTICE

To: **Jeffrey Simon Bennett**

Individual ref: JSB00004

Address: 11 Cranleigh Gardens, Harrow, HA3 0UP

Date: 12 July 2013

1. ACTION

1.1. For the reasons given in this Notice, the Authority hereby:

- (a) imposes on Mr Bennett a financial penalty of £28,000;
- (b) withdraws Mr Bennett's approval to perform CF1 (Director) at Burlington; and
- (c) makes an order prohibiting Mr Bennett from performing any significant influence function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

1.2. Mr Bennett agreed to settle at an early stage of the Authority's investigation. He therefore qualified for a 30% stage 1 discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £40,000 on Mr Bennett.

2. SUMMARY OF REASONS

2.1 The Authority sanctions Mr Bennett for breaches of Statement of Principle 6 in performing the significant influence function CF1 (Director (AR)) during the relevant period.

2.2 Mr Bennett breached Statement of Principle 6 because he failed to exercise due skill, care and diligence in managing the business of Burlington for which he was responsible in his controlled function. In particular, he failed to monitor Burlington's involvement in the promotion and arrangement of investments in three UCISs to retail customers. Burlington became concerned in these activities through the actions of Director A. As a result of Director A's actions, Burlington was at risk of breaching its AR agreement. Mr Bennett ought to have identified this risk and taken steps to mitigate it and ensure that retail customers were protected.

2.3 Mr Bennett, as a CF1 (Director (AR)) of Burlington, had a responsibility to manage the firm's business and ensure that it complied with regulatory requirements. He also assumed, on an internal basis, responsibility for ensuring that it complied with its AR agreement. Mr Bennett should have been aware of the higher risk nature of UCISs and the stringent statutory requirements around how they could be promoted. These requirements are in place to prevent ordinary retail consumers from being exposed to such complex, high risk investments.

2.4 However, Mr Bennett took no steps to check or examine the role that Director A caused Burlington to play in promoting and arranging investments in the three UCISs. He did not take reasonable steps to ensure that Burlington was acting within the bounds of its AR agreement or the wider regulatory regime.

2.5 Burlington's actions risked breaching section 19 of the Act which prohibits non-authorised and non-exempt persons from carrying out regulated activity and section 21 of the Act which places restrictions on financial promotions from non-authorised persons.

2.6 Mr Bennett's failure to oversee adequately Burlington's activities allowed Director A to involve the firm in promoting and arranging investments in the three UCISs, in breach of its AR agreement and possibly the Act and to the detriment of retail

consumers. These activities, together with the activities of another IFA and two non-authorised companies, resulted in unsolicited mailshots being sent by email to approximately 15,000 potential investors, prospectuses being sent to approximately 2,900 retail consumers and investments being made without an adequate assessment of potential investors' eligibility.

- 2.7 In total, approximately 880 investors invested €38 million in the three UCISs on a non-advised basis. The three UCISs fell into financial difficulties from 2006 and the investors' original investments may now be virtually worthless.
- 2.8 Mr Bennett has therefore failed to meet the minimum regulatory standards in terms of performing significant influence functions with competence and capability. He is not fit and proper to perform significant influence functions at any authorised person, exempt person or exempt professional firm. Accordingly, the Authority has decided to impose the Prohibition Order on him.
- 2.9 This action supports the Authority's regulatory objectives of protecting consumers and enhancing the integrity of the financial system.

3. DEFINITIONS

- 3.1 The definitions below are used in this Final Notice.
- (a) "Act" means the Financial Services and Markets Act 2000;
 - (b) "AdminCo" means the non-Authority authorised management services company owned by Director A which facilitated sales of the three UCISs;
 - (c) "APER" or the "Statements of Principle" means the Authority's Statements of Principle and Code of Practice for Approved Persons;
 - (d) "AR" means appointed representative;
 - (e) "Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;
 - (f) "Authority's Handbook" means the Authority's Handbook of Rules and Guidance;
 - (g) "Burlington" means Burlington Associates Limited;
 - (h) "CF" means controlled function;

- (i) "COB" or the "Conduct of Business rules" means the Conduct of Business rules set out in the Authority's Handbook in force between 1 December 2004 and 31 October 2007;
- (j) "Director A" means another director of Burlington during the relevant period, who orchestrated Burlington's involvement in promoting and arranging the three UCISs;
- (k) "EG" means the Authority's Enforcement Guide;
- (l) "ENF" means the Authority's Enforcement Manual which was in force between 1 December 2004 and 27 August 2007;
- (m) "FIT" means the Authority's Fit and Proper Test for Approved Persons;
- (n) "IFA" means independent financial advisor;
- (o) "Leslie & Nuding" means the small IFA partnership which took nominal responsibility for certifying potential investors as eligible to receive UCIS promotions, and issuing prospectuses to them;
- (p) "MarketingCo" means the non-Authority authorised property marketing company which sent out mailshots and held seminars to market the three UCISs;
- (q) "Mr Bennett" means Mr Jeffrey Simon Bennett;
- (r) "PCIS Order" means the Promotion of Collective Investment Schemes (Exemptions) Order 2001;
- (s) "Prohibition Order" means the order to be made pursuant to section 56 of the Act prohibiting Mr Bennett from performing any significant influence function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm;
- (t) "relevant period" means the period between 1 January 2005 and 2 January 2006;
- (u) "significant influence function" means a controlled function which is likely to result in the person responsible for its performance exercising a significant influence on the conduct of a firm's affairs in relation to a regulated activity of that firm;

- (v) "Tribunal" means the Upper Tribunal (Tax and Chancery Chamber);
- (w) "UCIS" means unregulated collective investment scheme; and
- (x) "three UCISs" means the three unregulated collective investment schemes which Burlington and Leslie & Nuding promoted, which invested in property developments in Croatia, Bulgaria and Montenegro.

4. FACTS AND MATTERS

Background

- 4.1 Throughout the relevant period Mr Bennett was a director of Burlington, a small IFA firm. Between 12 May 2003 and 2 January 2006, Burlington was an AR acting under the terms of an AR agreement with its principal. During this period Mr Bennett was approved to perform CF1 (Director (AR)) and CF21 (Investment Adviser). He also took on an informal compliance responsibility for ensuring that Burlington met the requirements of its AR agreement.
- 4.2 Burlington's principal did not permit Burlington to conduct UCIS business. In late 2004, Director A was approached by MarketingCo, a non-authorized property marketing company which was aiming to generate money to invest in property developments in Croatia, Bulgaria and Montenegro. Three UCISs were set up for this purpose, with the help of Director A. By early 2005, Director A had identified an opportunity for Burlington to become involved in selling the three UCISs.

Burlington's involvement in promoting and arranging the three UCISs

- 4.3 Burlington made two attempts to find out whether its principal would allow Burlington to promote UCISs. On both occasions Burlington's principal made it clear that it would not allow Burlington to be involved in UCIS sales.
- 4.4 Director A told Mr Bennett that he would seek legal advice on behalf of Burlington about this issue. He told Mr Bennett that the advice that he had received was that Burlington could remain involved in conducting UCIS business if the firm carried out a purely administrative function. Mr Bennett took Director A's assurances at face value, as he did not liaise directly with any lawyers or recall seeing any advice himself.
- 4.5 Director A devised a process which aimed to circumvent the regulatory and statutory restrictions by allowing a number of businesses to come together to sell

the three UCISs without Burlington appearing to carry on any regulated activity. The process was intended to be that:

- (a) MarketingCo marketed the investment opportunity to their client base via unsolicited email mailshots and seminars;
- (b) Director A arranged for Leslie & Nuding to take responsibility for certifying potential investors as eligible to receive UCIS promotions, and issue prospectuses to them under the name "Burlington Funds" (although in reality most of the administrative aspects of Leslie & Nuding's duties were to be outsourced to administrators at AdminCo, a non-Authority authorised management services company. Director A was a director and controller of AdminCo and AdminCo operated out of the same building as Burlington); and
- (c) Burlington collated investors' applications and passed them to a Jersey based firm, with whom Director A already had a business relationship, which effected the investments.

4.6 While it appeared at the outset that Burlington's role in connection to the three UCISs would be limited to administrative tasks, in fact, Director A extended this role beyond a purely administrative function into promoting and arranging investments in the UCISs, in breach of its AR agreement and in a manner which risked breaching the Act. Burlington received substantial income for its role in selling the three UCISs.

Failure to engage with the UCIS sales process

4.7 Mr Bennett knew that Burlington had a role in the sale of the three UCISs. However, he did not seek to increase his understanding of how the process of selling the three UCISs worked. He dealt with matters on a personal ad hoc basis with Director A and took what Director A told him at face value. Mr Bennett did not engage with MarketingCo or AdminCo to establish how the three UCISs would be structured and sold or what Burlington's role would be.

4.8 Mr Bennett did not take any steps to monitor Burlington's involvement in marketing and bringing about investment in the three UCISs. For example, Mr Bennett did not familiarise himself with MarketingCo's marketing materials or know that:

- (a) Burlington received and collated prospectus request forms;

- (b) Burlington was integral to the process of eligibility certification and assessed eligibility using a questionnaire that was inadequate for the purpose;
 - (c) Burlington received completed application forms and issued prospectuses to potential investors; and
 - (d) MarketingCo issued marketing materials directing potential investors' queries to Burlington.
- 4.9 Mr Bennett's lack of oversight, checking and monitoring enabled Director A to involve Burlington heavily in every stage of the sales process, despite the complete prohibition on Burlington conducting UCIS business in the AR agreement.

5. FAILINGS

- 5.1 The relevant regulatory provisions are referred to in the Annex to this Notice.

Breach of Statement of Principle 6

- 5.2 Mr Bennett, as a CF1 (Director (AR)) of Burlington, had a responsibility to manage the firm's business and ensure that it complied with regulatory requirements, which included ensuring that it met its requirements under its AR agreement and the Act. However, he failed to prevent Burlington becoming and remaining involved in promoting and arranging UCISs, which was explicitly prohibited by its principal.
- 5.3 Mr Bennett should have looked closely into the way that UCIS sales were made in practice and how Director A had actually involved Burlington. He should then have taken whatever steps were necessary to ensure that Burlington did not breach its obligations under its AR agreement and/or the Act, including exerting influence as a director to stop Burlington's involvement. However, Mr Bennett failed to do this. Instead he took Director A's assurances and explanations at face value and allowed the promotion, arranging and sale of the three UCISs to continue unchecked, putting hundreds of customers at risk. This was incompetent.
- 5.4 Mr Bennett failed to realise that there was a risk that Burlington's involvement in the promotion and arrangement of the three UCISs breached the Act. His failure to oversee Burlington's involvement in the three UCISs perpetuated that risk.
- 5.5 In adopting such a negligent approach to his regulatory responsibilities as a director of Burlington Mr Bennett has acted without due skill, care and diligence and has therefore breached Statement of Principle 6.

Impact of Mr Bennett's misconduct

- 5.6 Mr Bennett's oversight failure allowed Burlington to promote UCISs in breach of its AR agreement and in possible breach of the Act. The activities of Director A and other Burlington employees, together with Leslie & Nuding, AdminCo and MarketingCo, resulted in unsolicited email mailshots being sent to approximately 15,000 potential investors and prospectuses being sent to approximately 2,900 retail consumers without an adequate assessment of eligibility having been made, in breach of statutory requirements.
- 5.7 In total, approximately 880 investors invested €38 million in the three UCISs on a non-advised basis. The three UCISs fell into financial difficulties from 2006 and the investors' original investments may now be virtually worthless.

Not fit and proper

- 5.8 Mr Bennett's conduct has demonstrated a lack of competence and capability such that he is not fit and proper to perform any significant influence function in relation to regulated activities carried on at any authorised person, exempt person or exempt professional firm.

6. SANCTION

Financial penalty

- 6.1 The Authority hereby imposes a financial penalty on Mr Bennett for the breach of Statement of Principle 6.
- 6.2 The Authority's policy on the imposition of financial penalties for the misconduct in this case is set out in Chapter 13 of ENF, which was in force between 1 December 2004 and 27 August 2007 and formed part of the Authority's Handbook. The relevant sections of ENF are set out in more detail in the Annex to this Notice.
- 6.3 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.
- 6.4 In determining whether a financial penalty is appropriate the Authority is required to consider all the relevant circumstances of a case. Applying the criteria set out in Chapter 13 of ENF, a financial penalty is an appropriate sanction in this case, given

the serious nature of the breach and the need to send out a strong message of deterrence to others.

- 6.5 ENF 13.3.3G set 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.

The seriousness of the misconduct or contravention – ENF13.3.3G(1)

- 6.6 In determining the appropriate sanction, the Authority has had regard to the seriousness of the contravention in question, including the duration of the contravention, the number of retail consumers affected, the risks to which those investors were exposed and the significant sums they have lost. Hundreds of retail investors invested in the three UCISs and their investments may now be virtually worthless. Mr Bennett's negligent approach to his regulatory responsibilities played a part in this.

The extent to which the breach was deliberate or reckless – ENF13.3.3G(2)

- 6.7 Mr Bennett did not act recklessly or deliberately.

Whether the person on whom the penalty is to be imposed is an individual, and the financial resources and other circumstances of the individual – ENF13.3.3G(3)

- 6.8 The Authority recognises that the financial penalty imposed on Mr Bennett is likely to have a significant impact on him as an individual, but it is considered to be proportionate in relation to the seriousness of the misconduct and to Mr Bennett's position as an approved person performing significant influence functions at Burlington.

- 6.9 The financial penalty is appropriate, having taken account of all relevant factors, including the impact such a penalty might have on Mr Bennett's financial resources and the need for credible deterrence.

Conduct following the contravention – ENF13.3.3G(5)

- 6.10 In 2010 Mr Bennett put in place a policy to impose more control on UCISs sales. However, as Mr Bennett did not subsequently take steps to remedy customer detriment, his actions are not sufficient to merit a reduction in the penalty.

Disciplinary record and compliance history – ENF13.3.3G(6)

6.11 There has been no previous disciplinary action against Mr Bennett.

Previous action taken by the Authority – ENF13.3.3G(7)

6.12 In determining the level of financial penalty, the Authority has taken into account penalties imposed by the Authority on other approved persons for similar misconduct.

6.13 Having considered all the circumstances set out above, £40,000 is an appropriate financial penalty to impose on Mr Bennett for the breach of Statement of Principle 6. After applying the 30% discount for early settlement, the penalty to be paid is £28,000.

Prohibition

6.14 It is appropriate and proportionate in all the circumstances to prohibit Mr Bennett from performing any significant influence function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm, because he is not a fit and proper person in terms of his competence and capability.

6.15 The Authority has had regard to the guidance in Chapter 9 of EG in proposing that Mr Bennett be prohibited from performing functions involving the exercise of significant influence. The relevant provisions of EG are set out in the Annex to this Notice.

6.16 Given the nature and seriousness of the failures outlined above, Mr Bennett's conduct demonstrated a serious lack of competence such that he is not fit and proper to perform any significant influence function in relation to regulated activities carried on at any authorised person, exempt person or exempt professional firm. In the interests of consumer protection, it is appropriate and proportionate in all the circumstances to impose the Prohibition Order on Mr Bennett in the terms set out above.

Conclusion

6.17 Mr Bennett's conduct at Burlington fell short of the minimum regulatory standards required of an approved person. He has breached Statement of Principle 6 and is not fit and proper to hold any significant influence function.

6.18 It is appropriate and proportionate to impose a financial penalty of £28,000 on Mr Bennett and to make the Prohibition Order against him.

7. PROCEDURAL MATTERS

Decision maker

7.1 The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.

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

Manner of and time for payment

7.3 Mr Bennett must make the following payments to the Authority:

- a) a payment of £10,000 within 14 days of the date of this Final Notice;
- b) a payment of £9,000 within six months of the date of this Final Notice; and
- c) a final payment of £9,000 within 12 months of the date of this Final Notice.

If the financial penalty is not paid

7.4 If all or any of the financial penalty becomes overdue for payment, the Authority may recover the outstanding amount as a debt owed by Mr Bennett and due to the Authority.

Publicity

7.5 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 Authority must publish such information about the matter to which this Notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to Mr Bennett or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

7.6 The Authority will publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contact

- 7.7 For more information concerning this matter generally, contact Rachel West at the Authority (direct line: 020 7066 0142 / fax: 020 7066 0143).

Bill Sillett

Head of Department – Enforcement and Financial Crime Division

for and on behalf of the Authority

ANNEX

STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY

Statutory provisions

The Act

1. Section 1A of the Act provides that the body corporate previously known as the Financial Services Authority is renamed the Financial Conduct Authority.
2. The Financial Conduct Authority's regulatory objectives are set out in section 1B to 1L of the Act and include protecting and enhancing confidence in the financial system and securing an appropriate degree of protection for consumers.
3. Section 19 of the Act provides that no person may carry on a regulated activity in the United Kingdom unless he is – (a) an authorised person; or (b) an exempt person.
4. Section 21 of the Act provides that a person ("A") must not, in the course of business, communicate an invitation or inducement to engage in investment activity unless:
 - (a) A is an authorised person; or
 - (b) the content of the communication is approved for the purposes of this section by an authorised person.
5. Section 56 of the Act provides that the Authority may make a prohibition order if it appears to the Authority 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.
6. Section 63 of the Act provides that the Authority may withdraw an individual's approval to carry out a controlled function if it considers that the person in respect of whom the approval was given is not a fit and proper person to perform the function to which the approval relates.
7. Section 66 of the Act provides that the Authority may take action to impose a penalty on an individual of such amount as it considers appropriate where it appears to the Authority 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 to have been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under the Act.

8. Section 390 of the Act provides that a final notice about a penalty must state the amount of the penalty and the matter and period in which the penalty is to be paid. A final notice about an order must set out the terms of the order and the date from which the order has effect.
9. Section 238 of the Act states that an authorised person must not communicate an invitation or inducement to participate in collective investment schemes.

The PCIS Order

10. The PCIS Order provides for authorised firms to promote UCIS to individuals if they fall within a particular category of exemption set out in the order. The exemptions tend to be narrow in scope and subject to specific requirements including reasonable checks, disclosure of appropriate warnings, the structure of the underlying fund and the certification of the investor's status.
11. Article 21 of the PCIS Order provides that in certain circumstances the restriction on promoting UCIS does not apply if the relevant communication is made to an individual whom the person making the communication believes on reasonable grounds to be a certified high net worth individual.
12. Article 23A of the PCIS Order provides that in certain circumstances the restriction on promoting UCIS does not apply if the relevant communication is made to an individual whom the person making the communication believes on reasonable grounds to be a self-certified sophisticated investor.

Handbook provisions

13. In exercising its power to impose a financial penalty, the Authority must have regard to relevant provisions in the Authority's Handbook of rules and guidance (the "Authority's Handbook"). The main provisions relevant to the action specified above are set out below.

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

14. APER sets out the Statements of Principle as they relate to approved persons and descriptions of conduct which, in the opinion of the Authority, do not comply with a Statement of Principle. APER further describes factors which, in the opinion of the Authority, are to be taken into account in determining whether or not an approved person’s conduct complies with a Statement of Principle.
15. 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.
16. 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.
17. 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.
18. The Statement of Principle relevant to this matter is 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.

Conduct of Business rules (“COB”)

19. Between 1 December 2004 and 31 October 2007 the Authority’s rules in relation to financial promotions were set out in Chapter 3 of COB.
20. COB 3.11.2 provided that a firm may communicate an invitation or inducement to participate in a UCIS if the communication falls within the exceptions set out in COB 3 Annex 5R.
21. COB 3 Annex 5R provided that a firm may communicate an invitation or inducement to participate in a UCIS if the communication is made to a person for whom the firm has taken reasonable steps to ensure that investment in the

collective investment scheme is suitable and who is an established or newly accepted customer of the firm or of a person in the same group as the firm.

Fit and Proper Test for Approved Persons (“FIT”)

22. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
23. FIT 1.3.1G provides that the Authority will have regard to a number of factors when assessing a person’s fitness and propriety. One of the considerations will be the person’s competence and capability.

The Enforcement Manual (“ENF”) and Enforcement Guide (“EG”)

Prohibition orders

24. EG 9.1 states that the Authority’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 Authority to work towards achieving its regulatory objectives. The Authority 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.
25. EG 9.3 states that in deciding whether to make a prohibition order the Authority will consider all the relevant circumstances.
26. EG 9.4 sets out the general scope of the Authority’s power in this respect. The Authority 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.
27. 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.
28. EG 9.9 provides that when deciding whether to make a prohibition order against an approved person, the Authority 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 the fitness and propriety of approved persons are set out in FIT 2.1 (honesty, integrity and reputation), FIT 2.2 (competence and capability) and FIT 2.3 (financial soundness) (EG 9.9(2));
 - (b) whether, and to what extent, the approved person has:
 - (i) failed to comply with the Statement of Principle issued by the Authority with respect to the conduct of approved persons; or
 - (ii) been knowingly concerned 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));
 - (c) the relevance and materiality of any matters indicating unfitness (EG 9.9(5));
 - (d) the length of time since the occurrence of any matters indicating unfitness (EG 9.9(6));
 - (e) 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 (EG 9.9(7)); and
 - (f) the severity of the risk which the individual poses to consumers and to confidence in the financial system (EG 9.9(8)).
29. EG 9.12 provides a number of examples of types of behaviour which have previously resulted in the Authority deciding to issue a prohibition order. The examples include a serious lack of competence (EG 9.12(3)).
30. EG 9.23 provides that in appropriate cases the Authority 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.
31. In summary, the relevant considerations are whether, in terms of honesty, integrity, competence and capability, the relevant individual is fit and proper to perform functions in relation to regulated activities and, if not, the severity of the risk posed by him. Having established these matters, it can be determined whether prohibition will be necessary to achieve the Authority's regulatory

objectives and what degree of prohibition would best serve the achievement of those objectives in each case.

Financial penalties

32. Section 69 of the Act requires the Authority to issue a statement of its policy with respect to the imposition of penalties on approved persons. Between 1 December 2004 and 27 August 2007, the Authority's policy in this regard was contained in ENF 13. In deciding whether to exercise its power under section 66 in the case of any particular act of misconduct, the Authority had regard to this statement.
33. ENF 13 stated that the principal purpose of financial penalties is to promote high standards of regulatory conduct by deterring firms and approved persons who have breached regulatory requirements from committing further contraventions, helping to deter other firms and approved persons from committing contraventions, and demonstrating generally to firms and approved persons the benefits of compliant behaviour.
34. ENF 13.3.1G provided that the Authority would 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.
35. ENF 13.3.3G set 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:

The seriousness of the misconduct or contravention – ENF13.3.3G(1)

36. The Authority recognises the need for a financial penalty to be proportionate to the nature and seriousness of the misconduct or contravention in question. Relevant factors include the duration, frequency and impact of the misconduct, and the loss or risk of loss caused to consumers.

The extent to which the breach was deliberate or reckless – ENF13.3.3G(2)

37. In determining whether a contravention or misconduct was deliberate, the Authority may have regard to whether an approved person's behaviour was intentional, in that they intended or foresaw the consequences of their actions. If the Authority decides that behaviour was deliberate or reckless, it may be more likely to impose a higher penalty on a firm or approved person than would otherwise be the case.

Whether the person on whom the penalty is to be imposed is an individual, and the financial resources and other circumstances of the individual – ENF13.3.3G(3)

38. The Authority may take into account whether there is verifiable evidence of serious financial hardship or financial difficulties if the firm or approved person were to pay the level of penalty associated with the particular contravention or misconduct. The Authority 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 contravention – ENF13.3.3G(5)

39. The Authority may take into account the conduct of the approved person, including the degree of co-operation the person showed during the Authority's investigation and any remedial steps the person took after the contravention was identified.

Disciplinary record and compliance history – ENF13.3.3G(6)

40. The previous disciplinary record and general compliance history of the approved person may be taken into account. This will include whether the Authority (or any previous regulator) has taken any previous formal disciplinary action resulting in adverse findings against the approved person, or whether the Authority has previously required the person to take remedial action.

Previous action taken by the Authority– ENF13.3.3G(7)

41. The action that the Authority has taken previously in relation to similar behaviour by other approved persons may be taken into account. The Authority will seek to ensure consistency when it determines the appropriate level of penalty. If it has taken disciplinary action previously in relation to a similar contravention or misconduct, this will clearly be a relevant factor.