
FINAL NOTICE

To: **Mark Bentley-Leek**

Individual
Reference
Number: **MAB00041**

Address: **9/51 Moo 4, B9
T Bophut
Koh Samui
Surat Thani
84320
Thailand**

Date: **18 October 2013**

1. ACTION

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

- (1) imposes on Mr Bentley-Leek a financial penalty of £525,000;
- (2) makes an order prohibiting Mr Bentley-Leek from performing any function in relation to any regulated activities carried on by any authorised or exempt persons, or exempt professional firm, which takes effect from 18 October 2013; and

(3) withdraws withdraw the approvals given to Mr Bentley-Leek to perform the controlled functions CF1 (Director), CF10 (Compliance oversight), CF11 (Money laundering reporting) and CF30 (Customer).

1.2. Mr Bentley-Leek agreed to settle at an early stage of the Authority's investigation. Mr Bentley-Leek 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 £750,000 on Mr Bentley-Leek.

2. SUMMARY OF REASONS

2.1. Mr Bentley-Leek was a director of BLFM, a company based in Guildford offering financial advice.

2.2. During the Relevant Period, Mr Bentley-Leek advised a minimum of 300 clients to invest approximately £35 million in a number of property developments in the UK and abroad. The UK investments were made through property investment companies (BLPL and the SPVs) of which Mr Bentley-Leek was a director and shareholder.

2.3. Mr Bentley-Leek advised clients to invest in the property developments via BLPL and the SPVs without informing them that, because he was a director and substantial owner of the companies in which his clients invested, he would financially benefit from both the advice provided by BLFM, and from the investment into BLPL and the SPVs. In these circumstances, it was not appropriate for Mr Bentley-Leek to advise any clients to invest in these companies without adequately disclosing the nature of the conflict to clients or taking sufficient action to manage the conflict.

2.4. Many clients were promised very high guaranteed rates of return of between 6% and 18% on their investments. Further, some clients were told by Mr Bentley-Leek that their capital was guaranteed to be returned when this was not the case. The investments recommended by Mr Bentley-Leek were high risk property developments and, although Mr Bentley-Leek considered that the high returns would be achieved in all cases, they were not.

2.5. Further, from at least June 2009, Mr Bentley-Leek continued to advise clients to invest in the companies, despite being aware (by virtue of his ownership and control of those companies) that they were unable to meet their liabilities and were

in serious financial difficulties at the time of giving advice. Over the following 17 months, BLFM's clients were advised to invest approximately £4.4 million in these companies.

- 2.6. Mr Bentley-Leek has made representations that he acted in all times in his clients' best interests and in good faith. However a substantial amount of the sums invested in the UK and the overseas companies has not been returned to clients (despite in some of those cases the capital having been guaranteed). Due to the financially precarious nature of the property development projects in which the funds are invested, and the exceptional circumstances affecting the market in general, the prospect of recovering these funds is remote. Furthermore, due to the inadequacy of the Firm's accounting records, the Authority has not been able to establish an exact figure for the losses expected to be incurred by clients. The main company through which investments were made, BLPL, was placed into administration on 29 September 2011. The Firm was placed into voluntary liquidation on 16 November 2011.
- 2.7. As a consequence of his actions outlined above, Mr Bentley-Leek has breached Statements of Principle 1 and 7 and in doing so has demonstrated a lack of integrity and competence. As such he is not fit and proper to perform any function in relation to any regulated activities carried on by any authorised or exempt persons, or exempt professional firm.

3. DEFINITIONS

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

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

"the Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;

"the Authority's Handbook" means the Authority's Handbook of rules and guidance;

"BLPI" means Bentley-Leek Properties International Limited;

"BLPL" means Bentley-Leek Properties Limited;

"DEPP" means the Authority's Decision Procedures and Penalties Manual;

"EG" means the Authority's Enforcement Guide;

"BLFM" or "the Firm" means Bentley-Leek Financial Management Limited;

"GIO" means Global Investment Opportunities Limited;

"JV1" means Bentley-Leek Properties (JV1) Limited;

"JV2" means Bentley-Leek Properties (JV2) Limited;

"JV3" means Bentley-Leek Properties (JV3) Limited;

"Mr Bentley-Leek" means Mark Bentley-Leek;

"the Relevant Period" means the period from 5 March 2004 to 23 November 2010 inclusive;

"the Schemes" means the property related investment schemes (in the UK and abroad) promoted to customers by BLFM;

"SIPP" means Self Invested Personal Pension;

"SPVs" means Special Purpose Vehicles, including JV1, JV2, JV3, BLPI and GIO;

"Statements of Principle" means the Authority's Statements of Principle and Code of Practice for Approved Persons; and

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

4. FACTS AND MATTERS

Background

Firm and Directors

- 4.1. The Firm has provided independent financial advice since its incorporation in 2000 and was authorised on 1 December 2001 to conduct business with the following permissions:

- (i) advising on investments (except on Pension Transfers and Pension Opt Outs);
- (ii) advising on Pension Transfers and Pension Opt Outs;
- (iii) agreeing to carry on a regulated activity;
- (iv) arranging (bringing about) deals in investments; and
- (v) making arrangements with a view to transactions in investments.

4.2. This financial advice was given across a range of products and services including investments and pensions. The Firm's income was derived from commissions earned on the investments its clients made.

4.3. Mr Bentley-Leek was a director of the Firm. He held 51% of the shares and his wife held 25% of the shares.

4.4. Mr Bentley-Leek is an approved person holding from 1 December 2001 the controlled functions CF1 (Director), CF10 (Compliance oversight), CF11 (Money laundering reporting) and CF21, which became CF30 (Customer) on 1 November 2007.

4.5. Mr Bentley-Leek made management decisions for BLFM and was responsible for ensuring the Firm's compliance with the Authority's rules and regulations throughout the whole of the Relevant Period.

Non-regulated companies set up by the directors

4.6. From 2004 onwards, Mr Bentley-Leek formed BLPL and five other SPVs with the objective of creating an additional asset class of investments for the Firm's clients to invest in. These six companies are set out in the table below. None of them are authorised firms regulated by the Authority.

4.7. BLPL was a company that raised finance from investors and commercial lenders to invest in the purchase of land in the UK for the building and sale of residential properties. The aim was to do this at a profit to provide a return on the investors' capital.

Name of company	Date of incorporation	Percentage of shares held
BLPL	10 July 2003	50% of shares held by Mr Bentley-Leek
BLPI	6 June 2006	50% of shares held by Mr Bentley-Leek
JV1	21 September 2006	45% of shares held by BLPL 55% of shares held by third parties
JV2	11 March 2005	100% of ordinary A shares held by BLPL 260 ordinary B shares held by investment clients 1169 ordinary B shares held jointly by investment clients and the SIPP management company
JV3	28 February 2007	50% of shares held by Mr Bentley-Leek
GIO	16 January 2007	50% of shares held by Mr Bentley-Leek

4.8. JV1, JV2 and JV3 were separate companies incorporated by Mr Bentley-Leek as investment vehicles. These companies were funded by a combination of bank borrowing and private investment. They were set up as property development companies that purchased land in the UK and, in conjunction with a building company, built residential properties with a view to making a profit from their subsequent onward sale. The building company that worked on many of the property development projects in conjunction with the SPVs was Lusso Homes Limited, which was 50% owned by BLPL. As an owner of BLPL, Mr Bentley-Leek was therefore an indirect owner of half of Lusso Homes Limited. Mr Bentley-Leek was also a director of Lusso Homes.

4.9. BLPI was an investment company that identified opportunities to invest in property development projects overseas. Unlike the UK based projects, the overseas property developments were carried out by independent businesses unconnected to Mr Bentley-Leek.

4.10. GIO was an investment company that identified non-property investment opportunities and acted as a conduit for clients to invest in those opportunities on the advice of BLFM.

4.11. The operation of the regulated business of BLFM should have been separate and distinct from the operation of BLPL and the SPVs. Similarly, the role of Mr Bentley-Leek as a director of BLPL and the SPVs should have been separate and distinct from his role in BLFM where he was a director and financial adviser authorised by the Authority. However, in practice this was not the case.

Investments in the companies

4.12. The Firm marketed, and advised clients to invest in a number of property based schemes through BLPL and the SPVs. During the Relevant Period, the Firm advised more than 300 clients to invest a total of approximately £35 million in various Schemes in the UK and abroad in this way.

4.13. In the region of £18 million was invested through BLPL and BLPI and in the region of £17 million was directly invested by clients, mostly in overseas projects. The estimate of the number of clients and the amount invested is uncertain due to the lack of detail and poor quality of records maintained by the Firm.

4.14. The property development schemes in the UK were funded through BLPL and the SPVs, which provided money as and when it was requested by the developers of the building projects. The overseas property development schemes were initially funded through BLPI, and then later through BLPL.

4.15. The investments were made through various mediums including but not limited to third party loans via a SIPP to a limited company, or as a purchase of unlisted shares in an SPV, either directly by or via BLPL.

4.16. The clients invested for a fixed term in each case, usually two years. Some clients withdrew their funds at the completion of the fixed term of the investment and obtained the promised return on their investment. Many clients rolled over their investments at maturity. However the Authority has not seen evidence from the records kept by the Firm that clients who had their funds rolled over were contacted in each and every case in order to obtain their consent to roll their investment over. The Authority is aware of at least one instance where such consent was not obtained. The client confirmed that he was not aware that his

investment had been rolled over and that, had he been asked, he would have objected to making this further investment.

4.17. In rolling over their investments, the clients were subject to a condition not to withdraw the funds but to enter into a further fixed period investment in the same development project. The funds rolled over comprised the initial capital amount invested by the client and any return earned on their initial investment which had not been withdrawn by the client as at that date.

4.18. Between 2009 and 2011 BLPL, many of the SPVs and the companies running the overseas property developments, through no fault of Mr Bentley-Leek, found themselves in financial difficulties arising from inadequate liquidity caused by the exceptional slow-down in the property market which resulted in property taking longer to sell. The contraction in the bank lending market also made it more difficult for BLPL and the SPVs to obtain bank funding. As a result, the SPVs, BLPL and Mr Bentley-Leek were unable to redeem investments or to pay the promised returns despite Mr Bentley-Leek's wishes to make such payments to clients. The financial difficulties arising from this resulted in BLPL being placed into administration on 29 September 2011 and the Firm being placed into voluntary liquidation on 16 November 2011. Both have now ceased trading.

4.19. The amount of funds likely to be returned by BLPL and the SPVs to customers will not be known with any certainty until the completion of the insolvency process. However, at the date of this Notice there appears to be little prospect of significant funds being returned to investors due to the financially precarious position of many of the property development projects.

4.20. With regard to client funds which were invested through a SIPP, the SIPP operator has assumed a nominal value of £1 for the investments made through BLPL and each of the SPVs.

Conduct in Issue

Conflict of interest

4.21. Mr Bentley-Leek, in his role at the Firm, advised a significant number of his clients to invest in BLPL and the SPVs. However, Mr Bentley-Leek was both a director and owner of these companies in which he advised his clients to invest. He therefore benefitted financially from both the fees paid by clients for the advice given by

BLFM to invest in BLPL and the SPVs, and from the money ultimately invested by those clients in BLPL and the SPVs. This also created a conflict of interest, in that Mr Bentley-Leek was advising clients to invest in a company in which he held a financial interest.

4.22. This conflict of interest should have been disclosed in full to clients prior to them investing in BLPL or the SPVs. However, Mr Bentley-Leek did not adequately disclose the existence and nature of the conflict to clients, nor did he take adequate action to manage the conflict. Although Mr Bentley-Leek acknowledged that there existed a conflict of interest, he considered that the conflict was resolved by the fact that the documents sent to clients broadly highlighted that the SPVs, BLFM and BLPL were associated by virtue of common directorships. He also considered that the conflict was fully disclosed because BLPL had his name (Bentley-Leek) in its title, it was based in the same building and had the same address.

4.23. The Authority has reviewed the correspondence between the Firm and several clients. The letters do not adequately disclose the conflict of interest, nor do they refer to the common directorships (or indeed the shareholdings) held by Mr Bentley-Leek. The Authority has also reviewed the Firm's standard document provided to clients that provides information about the two companies, as well as the investor and the standard client agreements with BLFM. None of these documents adequately disclose the conflict of interest.

Information given to clients

4.24. The original expected rate of return on investments, as detailed in the client literature issued by Mr Bentley-Leek, was often stated to be conditional on the commerciality of the underlying property investments. However, some of the correspondence and agreements provided to the Firm's clients by Mr Bentley-Leek in relation to BLPL at various times during the Relevant Period expressed both a capital guarantee, and a guaranteed rate of return on the investments. The promised rates varied from 6% per annum to 18% p.a. Mr Bentley-Leek knew at the time of making these statements that the investments were speculative and that the capital could not be guaranteed in all cases. In this regard and at the time of these statements, Mr Bentley-Leek did not disclose in full all the risks associated with their investments.

4.25. Mr Bentley-Leek later changed the nature and description of the investment to clients to a priority return of 12% per annum. He states that he tried to protect the interests of his clients over those of the shareholders of the investment companies by giving them a priority over the distribution of profits to shareholders. The 12% return was however always dependent on the profitability of the investments and ultimately, these promised rates were not met for clients whose funds remained invested after 2009 due to an underperformance of the underlying investments.

4.26. Further, the promotional material for the investments lacked balance, making prominent statements such as "we would expect an investor to see a 30% - 50% return on capital over an 18 month period". These projections were based on figures provided by the property development companies. However, there is no evidence that detailed information about the calculation for the projections were given to the clients and there was inadequate information setting out the risks attaching to the investments in relation to:

- (i) the illiquidity of the investments;
- (ii) the risk of investing in unlisted private companies rather than directly in the underlying properties purchased by those companies for the development projects; and
- (iii) the risk of investing in overseas development projects.

Knowledge of financial difficulties of investments

4.27. Mr Bentley-Leek knew by June 2009 at the latest in his capacity as director of BLPL and the SPVs, as well as the adviser to clients who had invested through those companies, that BLPL and the SPVs were experiencing financial difficulties and were unable to pay clients the sums falling due at the maturity of their fixed period investments.

4.28. For example, several emails in the months from January to March 2009 to and from Mr Bentley-Leek show that he knew of the requests for repayment of capital from clients and that these requests could not be met. For example, in an email dated 14 January 2009, a client requested the repayment of his capital invested in a UK property development in order to repay his interest only mortgage as he was at risk of losing his home. In the course of email correspondence with the client, Mr

Bentley-Leek admitted that he was due to have a meeting to discuss "our cashflow needs at this time" and that the property market in the UK was very slow. He confirmed by email on 21 January 2009 that the Firm did not have the liquidity to repay the client's capital immediately. He admitted that this was a "tricky time" although he confirmed to the client that "your funds are of course totally secure on assets in the company." However, when the client emailed Mr Bentley-Leek in response to suggest staged payments of £110,000 per month for three months, Mr Bentley-Leek failed to respond.

- 4.29. Similarly, on 20 February 2009, a member of staff at BLFM emailed Mr Bentley-Leek to say a client had requested the return of her capital. Mr Bentley-Leek replied the same day saying: "This is not good as it puts further pressure on our cashflow so it would be a good idea for... (an employee) to talk to her to at least delay for as long as possible" [sic].
- 4.30. Mr Bentley-Leek was also aware that a number of BLPL's and the SPV's debtors, including inter-company loan debtors, had defaulted on their loans and that BLPL and the SPVs were reliant on various inter-company loans to continue to service their own financial commitments. Mr Bentley-Leek knew this would cause the Firm difficulties in meeting its own commitments. A series of emails sent to Mr Bentley-Leek between January and June 2009 clearly brought to his attention the Firm's financial difficulties.
- 4.31. For example, an email dated 16 January 2009 from a member of BLFM's staff stated that the bank account was overdrawn and about to exceed the overdraft limit. However, further payments were still due from the Firm to various third parties and therefore the Firm could not afford the payment requested.
- 4.32. Emails on 24 and 25 February 2009 from a member of staff at BLFM to Mr Bentley-Leek show that she was extremely concerned about the management of the investments on behalf of the clients. Her email on 25 February states: "My concern is entirely made up of the fact that there appears to be a large amount of funds not invested in profit making projects", "What I don't have confidence in is the figures. Currently the numbers just don't add up", "I don't feel comfortable taking a salary while ever there is a possibility that it is from money that should be going towards investments".

4.33. An email dated 20 May 2009 from a member of the Firm's staff to Mr Bentley-Leek in relation to a request for payment from a third party states "Before you agree to pay anything, please bear in mind the usual problem". Referring to the Firm he states: "We are currently £30,000 overdrawn and the end of the month is only next week. Also, I don't think BLP should make any further payments because 1) They've already paid £8,000, which BLFM won't be able to repay and 2) BLP funds are supposed to be invested and not used for this kind of purpose. In short we have no spare cash. Please also remember that BLFM needs to pay £35,000 corporation tax."

4.34. Despite this knowledge, Mr Bentley-Leek continued to advise clients to invest in BLPL and the SPVs without adequately disclosing the companies' financial difficulties to those clients prior to investment. Mr Bentley-Leek has stated that he relied on assurances from some of the underlying overseas property developers that funds from these developments would soon become available with which to repay customers and service the Firm's debtors. However, in fact the financial difficulties faced by BLPL and the SPVs continued and worsened until late 2011 when BLPL went into administration on 29 September 2011. BLFM went into liquidation on 16 November 2011.

4.35. An analysis of the Firm's New Business Register identifies that despite the financial difficulties being experienced by the Firm, BLPL and the SPVs from at least 30 June 2009, Mr Bentley-Leek continued to advise clients to invest into BLPL and the SPVs after that date to a total of approximately £4.4 million.

4.36. At the time of an Authority's visit to the Firm on 18 June 2011, approximately 100 clients had requested or were due the return of their capital from BLPL or the SPVs. However, the Firm has been financially unable to repay these funds.

5. FAILINGS

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

5.2. On the basis of facts and matters described in this Final Notice, the Authority considers that, during the Relevant Period, Mr Bentley-Leek breached Statement of Principle 1 in that he failed as an approved person to act with integrity in carrying out his controlled functions in the following ways:

- (i) at various times during the Relevant Period, he told clients that the capital invested and the promised return on their investment were guaranteed, when he knew that the investments were in fact highly speculative;
- (ii) he continued to advise clients to invest in companies which he knew, by virtue of his ownership and control of those companies, to be unable to meet their liabilities at the time of giving the advice. Mr Bentley-Leek was aware of this from at least June 2009. Nevertheless, over the following 17 months, Mr Bentley-Leek continued to advise clients to invest approximately £4.4 million in these companies and without apparently forewarning them of the companies' financial difficulties; and
- (iii) he advised clients to invest in companies of which he was an owner and director. He therefore benefitted financially from both the fees paid by clients for the advice given by BLFM to invest in the companies, and from the money ultimately invested by clients in those companies. This created a conflict of interest, in that Mr Bentley-Leek was advising clients to invest in companies in which he held a financial interest. However, Mr Bentley-Leek did not adequately disclose the nature of the conflict to clients or take sufficient action to manage the conflict. Instead, Mr Bentley-Leek advised clients to invest in excess of £18 million in these companies.

5.3. The Authority considers that, from 5 March 2004 to 23 November 2010, Mr Bentley-Leek breached Statement of Principle 7 in that he failed to ensure that the business of the firm for which he was responsible complied with the relevant requirements and standards of the regulatory system. In particular, Mr Bentley-Leek failed to ensure that the information provided to clients in relation to their investments was clear, fair and not misleading. In particular, Mr Bentley-Leek issued misleading documentation to clients in relation to the expected returns clients could expect to see from their investments and failed to highlight the risks of investing in such high risk investments.

5.4. Mr Bentley-Leek's breaches of Statements of Principle 1 and 7 demonstrate a lack of integrity and competence and as such he is not fit and proper to perform any function in relation to any regulated activities carried on by any authorised or exempt persons, or exempt professional firm.

6. SANCTION

- 6.1. The Authority hereby imposes a financial penalty on Mr Bentley-Leek of £750,000 (before stage 1 discount).
- 6.2. The Authority's policy on the imposition of financial penalties is set out in Chapter 6 of DEPP, which forms part of the Authority's Handbook. On 6 March 2010, the Authority adopted a new penalty-setting regime. As the overwhelming majority of Mr Bentley-Leek's misconduct took place before the adoption of the new regime, the Authority has considered this case under the regime which applied before 6 March 2010, and all references to DEPP are to the version that was in force up to 5 March 2010. The Authority has also had regard to the relevant sections of EG in force during the Relevant Period.
- 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. A financial penalty is a tool that the Authority may employ to help it achieve its regulatory objectives.
- 6.4. The Authority will consider the full circumstances of each case when determining whether it is appropriate to impose a financial penalty. Applying the criteria set out in DEPP 6.2.1 G and DEPP 6.4.2 G, the Authority considers that a financial penalty is an appropriate sanction in this case, given the serious nature of the breaches, the significant crystallised losses to clients and need for credible deterrence.
- 6.5. DEPP 6.5.2 G sets out a non-exhaustive list of factors that may be relevant in determining the level of a financial penalty. The Authority considers that the following factors are particularly relevant in this case.

Deterrence (DEPP 6.5.2 G(1))

- 6.6. The Authority considers that a financial penalty should be imposed on Mr Bentley-Leek to demonstrate to him and others the seriousness with which the Authority regards such behaviour.

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

- 6.7. Mr Bentley-Leek's misconduct was serious and occurred over a long period of time. It also resulted in significant losses for his clients.

The extent to which the breaches were deliberate or reckless (DEPP 6.5.2 G(3))

- 6.8. Mr Bentley-Leek was reckless in that he advised clients to invest in companies of which he was a director and owner. The money received by Mr Bentley-Leek in his roles as both adviser and owner of those companies meant that it was not appropriate for Mr Bentley-Leek to advise any clients to invest in those companies without adequately disclosing and managing the conflict of interest.
- 6.9. Mr Bentley-Leek knew when he encouraged clients to invest in BLPL and the SPVs after June 2009 that these companies were experiencing financial difficulties. He also told clients that the capital invested and the promised return on their investment were guaranteed to be returned, when he knew that the investments were in fact highly speculative.

Whether the person is an individual (DEPP 6.5.2 G(4))

- 6.10. The Authority recognises that the financial penalty imposed on Mr Bentley-Leek may have a greater impact on him as an individual than a financial penalty imposed on a Firm. However, the Authority considers that the seriousness of Mr Bentley-Leek's misconduct warrants the imposition of a significant financial penalty.

The amount of benefit gained or loss avoided (DEPP 6.5.2 G(6))

- 6.11. The 300 plus clients who invested more than £35 million in a number of property related schemes in the UK and abroad via BLPL and the SPVs set up by Mr Bentley-Leek have suffered an estimated loss of at least that sum. Mr Bentley-Leek personally benefitted from these investments through his personal drawings during the three year period from 2008 to 2011 totalling £673,222, comprising £374,722 from BLFM, £295,500 from BLPL and £3,000 from BLPI. These drawings relate to part, not the whole of the Relevant Period.

Prohibition order and withdrawal of approval

6.12. The Authority's effective use of its power to prohibit individuals who are not fit and proper from carrying out functions related to regulated activities helps the Authority to work towards its regulatory objectives. As a consequence of Mr Bentley-Leek's failings, the Authority considers that he has demonstrated a lack of integrity and competence and is therefore not a fit and proper person to perform any function in relation to any regulated activities carried on by any authorised or exempt persons, or exempt professional firm under section 56 of the Act. Therefore the Authority has decided to impose a prohibition order on Mr Bentley-Leek and withdrawn his controlled function approvals.

6.13. The Authority has had regard to the guidance in Chapter 9 of EG in deciding that a prohibition order and a withdrawal of Mr Bentley-Leek's approval pursuant to sections 56 and 63 of the Act is appropriate in this case.

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. The financial penalty must be paid in full by Mr Bentley-Leek to the Authority by no later than 1 November 2013, 14 days from the date of this Final Notice.

If the financial penalty is not paid

7.4. If all or any of the financial penalty is outstanding on 2 November 2013 the Authority may recover the outstanding amount as a debt owed by Mr Bentley Leek 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 you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

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

Authority contacts

7.7. For more information concerning this matter generally, contact Kate Tuckley (direct line: 020 7066 7086 /email: kate.tuckley@fca.org.uk) of the Enforcement and Financial Crime Division of the Authority.

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Tom Spender

Financial Conduct Authority, Enforcement and Financial Crime Division

ANNEX A

RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE

1. STATUTORY PROVISIONS

- 1.1 The Authority's regulatory objectives were set out in section 2(2) of the Act and included the protection of consumers and the reduction of financial crime.
- 1.2 However, from 1 April 2013, the Authority's operational objectives are set out in section 1B of the Act and include consumer protection and protecting and enhancing the integrity of the UK financial system.
- 1.3 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. The Authority may make an order prohibiting the individual from performing a specified function, any function falling within a specified description or any function.
- 1.4 Section 66 of the Act provides that the Authority may take action against a person if it appears to the Authority that he is guilty of misconduct and the Authority is satisfied that it is appropriate in all the circumstances to take action against him. Misconduct includes failure, while an approved person, to comply with a statement of principle issued under section 64 of the Act. The action that may be taken by the Authority pursuant to section 66 of the Act includes the imposition of a penalty on the approved person of such amount as it considers appropriate.

2. FIT AND PROPER TEST FOR APPROVED PERSONS ("FIT")

- 2.1 The section of the Authority's Handbook entitled "FIT" sets out the Fit and Proper Test for Approved Persons. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
- 2.2 FIT 1.3.1 G provides that the Authority will have regard to a number of factors when assessing a person's fitness and propriety. One of the most important considerations includes a person's honesty, integrity and reputation.

2.3 In determining a person's honesty, integrity and reputation, FIT 2.1.1 provides that the Authority will have regard to all relevant matters including, but not limited to, those set out in FIT 2.1.3 G. FIT 2.1.3 G includes:

(1) whether the person has contravened any of the requirements and standards of the regulatory system (FIT 2.1.3 G (5)); and

(2) whether the person has been a director, partner or concerned in the management, of a business that has gone into insolvency, liquidation or administration while the person has been connected with the organisation or within one year of that connection (FIT 2.1.3(9)).

3. THE AUTHORITY'S POLICY FOR EXERCISING ITS POWER TO MAKE A PROHIBITION ORDER

3.1 The Authority's approach to exercising its powers to make prohibition orders is set out in EG.

3.2 EG 9.1 provides that the Authority has 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, which 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 function in relation to regulated activities, or to restrict the functions which he may perform.

3.3 EG 9.4 sets out the general scope of the Authority's powers in respect of prohibition orders, which include the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant. EG 9.5 provides that the scope of a prohibition order will depend on the range of functions that the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper, and the severity of risk which he poses to consumers or the market generally.

3.4 EG 9.9 states that, when deciding whether to make a prohibition order against an approved person and/or withdraw his approval, the Authority will consider all the

relevant circumstances of the case which may include, but are not limited to, the following factors (among others):

- (1) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of an approved person are contained in FIT 2.1 (Honesty, integrity and reputation); FIT 2.2 (Competence and capability); and FIT 2.3 (Financial soundness);
- (2) whether, and to what extent the approved person has failed to comply with the Statements of Principle;
- (3) the relevance and materiality of any matters indicating unfitness; and
- (4) the severity of the risk which the individual poses to consumers and to confidence in the financial system.

3.5 EG 9.23 provides that in appropriate cases the Authority may take other action against an individual in addition to making a prohibition order and/or withdrawing his approval, including the use of its power to impose a financial penalty.

4. STATEMENTS OF PRINCIPLE AND THE CODE OF PRACTICE FOR APPROVED PERSONS (“APER”)

4.1 The APER in force at the time of the misconduct set out the fundamental obligations of approved persons and set out examples of conduct which, in the opinion of the Authority, did not comply with the Statements of Principle. They further describe factors which, in the opinion of the Authority, were to be taken into account in determining whether or not an approved person’s conduct complies with a Statement of Principle.

4.2 APER 3.1.3 G provides 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.

4.3 APER 3.1.4 G provides that an approved person will only be in breach of a Statement of Principle where he is personally culpable. Personal culpability arises

where an approved person's conduct was deliberate or where his standard of conduct was below that which would be reasonable in all the circumstances.

4.4 The Statement of Principles relevant to this matter are Statement of Principle 1 which provides that "*an approved person must act with integrity in carrying out his controlled function*", and 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*" (APER 2.1.2 P).

4.5 APER 4.1.2 E sets out examples of behaviour which the Authority considers does not comply with Statement of Principle 1. Examples of such conduct are:

- (1) deliberately misleading a client about the risks of an investment (APER 4.1.4 E(2));
- (2) deliberately misleading a client about the likely performance of investment products by providing inappropriate projections of future investment returns (APER 4.1.4 E (4);
- (3) deliberately failing to disclose the existence of a conflict of interest in connection with dealings with a client (APER 4.1.13 E);
- (4) deliberately not paying due regard to the interests of a customer (APER 4.1.14 E); and
- (5) deliberate acts, omissions or business practices that could be reasonably expected to cause consumer detriment (APER 4.1.15 E).

4.6 APER 4.7.2 E refers to the conduct of the type described in APER 4.7.3, APER 4.7.4, APER 4.7.5 and APER 4.7.10. Examples of the failings which the Authority considers do not comply with Statement of Principle 7 include:

- (1) 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 (APER 4.7.3); and

- (2) failing to take reasonable steps adequately to inform himself about the reason why significant breaches (whether suspected or actual) of the relevant requirements and standards of the regulatory system in respect of its regulated activities may have arisen (taking account of the systems and procedures in place) (APER 4.7.5).

5. THE AUTHORITY'S POLICY ON THE IMPOSITION OF FINANCIAL PENALTIES

- 5.1 In considering the appropriate sanction, the Authority has had regard to its published guidance in force at the time. The Authority's policy in relation to the imposition of financial penalties is set out in Chapter 6 of DEPP which forms part of the Handbook. The Authority has also had regard to the provisions of the Enforcement Manual, which were in force for the early part of the Relevant Period.
- 5.2 The Decision Procedure and Penalties Manual (Financial Penalties) Instrument 2010, which came into force on 6 March 2010, made changes to DEPP. As the misconduct described in this notice occurred predominantly prior to March 2010, the Authority has had regard to the provisions of DEPP prior to 6 March 2010.
- 5.3 The principal purpose of imposing a financial penalty or issuing a public censure 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 (DEPP 6.1.2 G).
- 5.4 The Authority will consider the full circumstances of each case when determining whether or not to take action for a financial penalty or public censure. DEPP 6.2.1 G sets out guidance on a non-exhaustive list of factors that may be of relevance in determining whether to take action, which include the following:
 - (1) DEPP 6.2.1 G(1): The nature, seriousness and impact of the suspected breach, including whether the breach was deliberate or reckless, the duration and frequency of the breach, the amount of any benefit gained or loss avoided as a result of the breach, and the loss or risk of loss caused to consumers or other market users;
 - (2) DEPP 6.2.1 G(2): The conduct of the person after the breach, including how quickly, effectively and completely the person brought the breach to the

attention of the Authority, and the degree of co-operation the person showed during the investigation of the breach; and

(3) DEPP 6.2.1 G(5): Action taken by the Authority in previous similar cases.

5.6 DEPP 6.5.1 G (1) provides that the Authority 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.

5.7 DEPP 6.5.2 G 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 6.5.2 G(1)

5.8 When determining whether to impose a financial penalty, the Authority 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 6.5.2 G(2)

5.9 The Authority will consider the seriousness of the breach in relation to the nature of the rule, requirement or provision breached. Relevant considerations include 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 6.5.2 G(3)

5.10 The Authority 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, and/or whether the person has given no apparent consideration to the consequences of the behaviour that constitutes the breach. If

the Authority 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 6.5.2 G(4)

- 5.11 The Authority 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 Authority 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 G(5)

- 5.12 The Authority 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 Authority regards these factors as matters to be taken into account in determining the level of penalty, but not to the extent that there is a direct correlation between those factors and the level of penalty.
- 5.13 The purpose of a penalty is not to render a person insolvent or to threaten the person's solvency. Where this would be a material consideration, the Authority will consider, having regard to all other factors, whether a lower penalty would be appropriate. This is most likely to be relevant to a person with lower financial resources; but if a person reduces its solvency with the purpose of reducing its ability to pay a financial penalty, for example by transferring assets to third parties, the Authority will take account of those assets when determining the amount of penalty.

The amount of benefit gained or loss avoided: DEPP 6.5.2 G(6)

- 5.14 The Authority may have regard to the amount of benefit gained or loss avoided as a result of the breach, for example: (a) the Authority will propose a penalty which is consistent with the principle that a person should not benefit from the breach;

and (b) the penalty should also act as an incentive to the person (and others) to comply with regulatory standards and required standards of market conduct.

Previous action taken by the Authority: DEPP 6.5.2 G(10)

5.15 The Authority seeks to apply a consistent approach to determining the appropriate level of penalty. The Authority may take into account previous decisions made in relation to similar misconduct. This was considered alongside the deterrent purposes for which the Authority imposes sanctions.