Financial Conduct Authority

FINAL NOTICE

To: **Sesame Limited**

Reference Number: **150427**

Address: Independence House,
Holly Bank Road
Huddersfield
HD3 3HN

29 October 2014

1. ACTION

1.1. For the reasons given in this notice, the Authority hereby imposes on Sesame a financial penalty of £1,598,000.

1.2. Sesame agreed to settle at an early stage of the Authority's investigation. Sesame 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 £2,282,902 on Sesame.

2. SUMMARY OF REASONS

2.1. Sesame is the largest network of financial advisers in the UK. As at 31 December 2012, Sesame had approximately 2,100 advisers advising customers on a wide range of retail investment products, including pensions, annuities, and savings and investments. Sesame distributes these products on behalf of investment product providers.

2.2. One of the central objectives of the Authority's Retail Distribution Review was to remove the potential for commission payments to advisers to distort the advice

consumers receive. The RDR banned commission payments (save in certain limited circumstances) from providers to advisory firms to help ensure that:

(1) providers compete on the price and quality of their products to secure distribution rather than on commission levels; and

(2) advisory firms are not inappropriately influenced by the payment of commission when providing advice to their customers.

2.3. However, the Authority is concerned that, following RDR, some advisory firms have sought to circumvent this ban on commission payments by seeking other payments from providers which, while they do not look like traditional commission, are intended to achieve the same outcome of securing distribution. The Authority communicated this concern to the industry on a number of occasions in the Relevant Period.

2.4. The Authority has found that during the Relevant Period (namely 1 January 2012 to 31 January 2014) Sesame told certain providers that it expected them to purchase additional services from companies in the Sesame group in order to secure distribution of their products through Sesame's new Restricted Advice Proposition. Sesame effectively set up a 'pay to play' arrangement. Payments were made by a number of the providers on Sesame's Restricted Advice Panels for services throughout the Relevant Period.

2.5. Sesame acted in pursuit of its own commercial interests by selecting providers (wholly or in part) on the sums the Sesame group would receive from those providers for additional services. This was not in its clients' best interests and had the potential to distort the advice Sesame's customers received.

2.6. These 'pay to play' arrangements coincided with the Authority's ban on provider commission payments. The arrangements undermined the RDR's underlying objectives of improving transparency in the retail investment market and securing an appropriate degree of protection for consumers.

2.7. This misconduct amounts to breaches of Principle 8 and COBS 2.3.1R.

2.8. Sesame breached Principle 8 because it failed to manage fairly a conflict of interest between its commercial interests and its customers' best interests. In constructing its Restricted Advice Panels, Sesame was influenced by whether providers would enter into service agreements with entities in the Sesame group

and the benefit that Sesame expected to accrue to it. The nature of these arrangements (and the benefits Sesame expected to receive) conflicted with Sesame's duty to act in the best interests of its clients.

2.9. Sesame breached COBS 2.3.1R because:

(1) Sesame did not conduct its selection process for its Restricted Advice Panels in accordance with its duty to act in its clients' best interests. Sesame only allowed providers who had already purchased services to tender for a place on a Restricted Advice Panel. Sesame then expected those providers to agree to purchase additional services in order to gain a place on a Restricted Advice Panel, and Sesame's selection criteria for its Panels included the value of additional services a provider was willing to purchase; and

(2) the payments made for services to entities in the Sesame group were not disclosed to Sesame's customers in the manner required by COBS 2.3.1R(2)(b), when required. Such disclosure would have assisted Sesame's customers in making their own judgement about the nature of the payments and how this could influence the advice they receive (although Sesame would still have been required to manage the above conflict fairly).

2.10. This is the fourth time that Sesame has been subject to enforcement action by the Authority, the most recent being in June 2013. The Authority views Sesame's conduct as more serious as a result of its previous disciplinary history and failure to improve its record of compliance.

2.11. The Authority therefore imposes a financial penalty on Sesame in the amount of £1,598,000.

2.12. The Authority has made no findings in relation to whether the providers selected for the Restricted Advice Proposition were or were not the most appropriate for Sesame's customers.

3. DEFINITIONS

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

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

“AR” means Appointed Representative

“At Retirement” means Sesame’s product range referred to as At Retirement

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

“2004 Dear CEO Letter” means the “Dear CEO” letter sent to all groups supervised by the Major Retail Groups Division and Insurance Undertakings, Fund Managers, Banks, Buildings Societies and Networks supervised by Retail Firms Division, published on the Authority’s website on 25 June 2004

“DEPP” means the Decision Procedure and Penalties Manual

“ITT” means the Invitation to Tender for the Restricted Advice Proposition sent by Sesame to providers

“PIA Rules” means Personal Investment Authority Rules

“PIA Adopted FIMBRA Rules” means the Personal Investment Authority Adopted The Financial Intermediaries, Managers and Brokers Regulatory Association Rules

“June 2012 RDR Newsletter” means the RDR newsletter issued by the Authority in June 2012

“August 2012 RDR Newsletter” means the RDR newsletter issued by the Authority in August 2012

“Relevant Period” means 1 January 2012 to 31 January 2014

“Restricted Advice Panels” means the panels of providers that formed Sesame’s Restricted Advice Proposition

“Restricted Advice Proposition” means the restricted advice channel which Sesame launched in July 2012

“RFI” means the Request for Information for the Restricted Advice Proposition sent by Sesame to providers

“SCARP” means Structured Capital at Risk Products

"SIB Principles" means the Statements of Principle of the Securities and Investments Board

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

4. FACTS AND MATTERS

Background

Sesame's business

4.1. Sesame is the largest network of financial advisers in the UK. As at 31 December 2012, Sesame had approximately 2,100 advisers advising customers on a wide range of retail investment products, including pensions, annuities, and savings and investments. Sesame distributes these products on behalf of providers.

4.2. Sesame is part of a wider group of companies. Within the Sesame group are a number of companies that sell services to providers, including services relating to:

(1) marketing providers' products to advisers;

(2) participation at seminars and conferences aimed at advisers;

(3) hospitality events aimed at facilitating business discussions between advisers and providers;

(4) development of IT systems; and

(5) access to data and research on products sold by Sesame.

4.3. Sesame has, for a number of years, built up strategic relationships with various providers who purchase services from these companies on a regular basis.

Communications from the Authority

4.4. In June 2004, the Authority sent a "Dear CEO" letter to relevant regulated firms (the "2004 Dear CEO Letter"). This letter was published on the Authority's website on 25 June 2004.

4.5. The 2004 Dear CEO Letter warned that up-front payments as a pre-condition for appointment to an advisory firm's panel were inconsistent with the Authority's standards of conduct.

4.6. The 2004 Dear CEO Letter states, amongst other things, that:

"*We have been told that in some instances product providers and intermediaries (which are not in the same corporate group) may be contemplating significant up-front payments (in some cases upwards of £1m) as a condition for the provider's products being placed on, or even considered for, the intermediary's panel or recommended list. These payments would be unconnected with, and additional to, conventional commission which would be paid on the sale of particular products.*

We consider such payments would not be consistent with the standards of conduct for firms – irrespective of whether they will be "whole of market" or "multi-tied." Such introductory payments would be incompatible with the fundamental principle that firms must not conduct business arrangements that might give rise to a conflict with its duty to customers."

Retail Distribution Review

4.7. In June 2006, the Authority launched the RDR, looking at how investments are distributed to retail customers in the UK. The RDR was set up with the aim of improving clarity for people who are looking to invest, raise the professional standards of advisers and reduce the conflict of interest which is found in remuneration for adviser services.

4.8. The RDR made extensive changes to advice in the retail investment market. These changes came into effect on 31 December 2012 and apply to all advisers in the retail investment market.

4.9. One of the central objectives of the RDR was to remove the potential for adviser remuneration to distort the advice that customers receive. By ending commission payments from providers to advisory firms, the Authority wanted to help ensure that:

(1) providers compete on the price and quality of their products to secure distribution rather than on commission levels; and

(2) advisory firms are not inappropriately influenced by the payment of commission when providing advice to their customers.

4.10. The RDR also sought to improve the clarity with which firms providing retail investment advice describe their services to consumers. The resulting changes required firms to describe their services as either independent or restricted advice. The commission ban and the Authority's rules on inducements apply equally to independent and restricted advice.

Communications on RDR

4.11. The Authority has frequently communicated to firms its objectives in relation to the RDR and the expected changes in firms' behaviour.

4.12. In June 2012, the Authority published an online newsletter with advice for retail investment firms affected by the RDR (the "June 2012 RDR Newsletter"). The June 2012 RDR Newsletter referred to the Authority's concerns that firms were looking to circumvent the advisor charging rules and warned that the Authority would take the necessary action to prevent this.

4.13. The June 2012 RDR Newsletter said, amongst other things, that:

"Unfortunately we have found a number of firms that seem to be looking for ways to circumvent the adviser charging rules. This includes soliciting or providing payments that do not look like traditional commission but are generally intended to achieve the same outcome – to secure distribution. Clearly such arrangements are not in the spirit of what we're all working so hard to achieve.

We are concerned that non-commission payments and benefits may be indicative of firms seeking alternative ways to preserve features of the market that RDR is trying to address. We have always said that we would take any necessary action to deter firms from frustrating the intended market outcomes. We are considering ways to reinforce our expectation that firms can only be remunerated by adviser charges in relation to their new advisory business."

4.14. This message was repeated in the August 2012 RDR Newsletter.

4.15. Starting in late 2012, the Authority undertook a thematic project into payments made by providers to advisory firms under service agreements to determine whether these agreements were being used to pass sizeable payments to advisory firms to secure distribution. Sesame was included within this project, and the Authority sent a number of communications to Sesame in 2012 and 2013 expressing concerns that the service agreements with providers may have

influenced Sesame's selection process for its Restricted Advice Panels, in breach of the Authority's rules.

4.16. In September 2013, the Authority issued a guidance consultation on inducements and conflicts of interest. Finalised guidance was then issued in January 2014, which states: "[w]*here an advisory firm operates a panel of providers, the inclusion of providers on the panel should not be influenced by the provider's willingness and ability to purchase significant services from, or provide other benefits to, the advisory firm*".

Sesame's Restricted Advice Proposition

4.17. Prior to the RDR coming into effect, there was speculation in the retail investment industry around the number of advisers that would offer either independent or restricted advice. Sesame predicted that once the RDR came into effect, the number of advisers acting on a restricted advice basis would increase and the number of advisers acting on an independent advice basis would decrease. As part of its strategy in response to RDR, Sesame decided to launch the Restricted Advice Proposition, in addition to the whole of market proposition it had previously offered. Under the Restricted Advice Proposition, Sesame's advisers would only advise on a restricted number of products from pre-selected providers, instead of offering products from across the whole market.

4.18. Sesame launched the Restricted Advice Proposition in July 2012. Sesame set up panels for different product markets, including pensions, At Retirement, and investment product ranges.

Entry onto the Restricted Advice Panels

4.19. Sesame expected providers on its Restricted Advice Panels to support the development of the Restricted Advice Proposition by purchasing services. This would broadly involve paying for the training of advisers, development of a new IT system, and promotion of the Restricted Advice Proposition to advisers. Sesame expected providers to commit to these service agreements for a five year term and levels of payments for these services were agreed. Sesame communicated these expectations to providers during the selection process for the Restricted Advice Panels.

4.20. Sesame began the selection process for the Restricted Advice Panels by sending a Request for Information ("RFI") to providers. The RFI was only sent to providers

with whom Sesame had a strategic relationship and who already purchased services from entities in the Sesame group.

4.21. The stated purpose of the RFI sent to providers was for Sesame "*to gain a better understanding of your appetite to participate in a new restricted advice proposition and for the products you believe are most suitable for inclusion*."

4.22. The RFI contained a section "*Sales and Marketing support*." This section included the question: "*What sales and marketing support (over and above normal activity) would you offer to ensure the benefits of* [sic] *this proposition can bring are maximised?*" This section invited responses from providers to include information about what additional services they were prepared to purchase from companies within the Sesame group to support the Restricted Advice Proposition (over and above their existing service agreements).

4.23. Sesame then sent an Invitation to Tender ("ITT") for the Restricted Advice Proposition to providers. The ITT similarly contained questions that invited providers to include information about the additional level of services they would purchase to support the Restricted Advice Proposition, including:

(1) "*What ability do you have within the value chain to make payments to* [the Sesame group] *for the provision of certain services traditionally supplied by the Provider?"*

(2) *"We anticipate entering into long term agreements with selected partners (at least 5 years). Please indicate the key contractual obligations and benefits envisaged.*"

4.24. Sesame used a scoring methodology for evaluating the responses to the ITT. The responses to these questions were included within the score.

4.25. The responses from a number of providers to the RFI and ITT included details of the additional services the providers were willing to purchase from entities in the Sesame group as part of their application for the Restricted Advice Proposition.

4.26. During the selection process, Sesame communicated to a number of providers that it expected the provider to spend an extra £250,000 per annum on services for each position on a Restricted Advice Panel.

4.27. In one case, a provider included its budget for services from Sesame, for the years 2012 to 2016, in its response to the ITT. Sesame reviewed the response and a senior person within the firm requested that the provider increase its budget for services by £750,000 per annum for the years 2014 to 2016.

4.28. There is no evidence to suggest that non-executive members of the Board were aware of the discussions described at paragraphs 4.26 and 4.27.

4.29. Payments were made by a number of the providers on Sesame's Restricted Advice Panels under those service agreements throughout the Relevant Period.

4.30. Sesame's expectation that providers enter into agreements to purchase additional services from entities in the Sesame group had the potential to distort the advice Sesame's customers received. This is because the selection of providers for the Restricted Advice Proposition was influenced by the willingness of those providers to purchase additional services.

4.31. Sesame's expectation that providers increase their service spend in order to secure distribution on its Restricted Advice Panels coincided with the Authority's ban on provider commission payments. Sesame's conduct effectively undermined the ban on commission and the RDR's objective of securing a greater degree of protection for consumers.

4.32. Instead of ensuring that it paid due regard to its clients' interests, Sesame acted in favour of its own commercial interests and did not manage (fairly or at all) the conflict of interest between its commercial interests and its customers' best interests. Sesame was influenced by whether providers would enter into service agreements with entities in the Sesame group when selecting which providers to appoint to the Restricted Advice Proposition.

4.33. The long term multi-year nature of the service agreements between Sesame and providers extended the effect of the conflict of interest. Sesame's stated intention was to rely on providers' commitment to support and develop the Restricted Advice Proposition through the purchase of services throughout the five year term of the service agreements. Given this reliance, there was therefore a risk that Sesame would be less likely to re-evaluate whether the providers and products selected for the Restricted Advice Panels continued to be in its customers' best interests because it was committed to these providers being on the Restricted Advice Panels over the five year term.

4.34. Sesame also failed to inform its customers (when required by the Authority's rules) that certain providers had made substantial payments for services to entities in the Sesame group. Such disclosure would have assisted Sesame's customers in making their own judgement about the nature of the payments and how this could influence the advice they receive (although Sesame would still have been required to manage the above conflict fairly).

4.35. The Authority conducted a review of service agreements between advisory firms and providers in 2012. Through this project, the Authority was alerted at an early stage to Sesame's non-compliance with our rules and engaged with the firm to prevent any further breaches. The Sesame group service companies have since ceased providing a number of services.

5. FAILINGS

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

Principle 8

5.2. Principle 8 requires firms to manage their conflicts of interest fairly, both between itself and its customers and between a customer and another client.

5.3. By reasons of the facts and matters set out above, Sesame breached Principle 8 because it acted in favour of its own commercial interests and did not manage fairly a conflict of interest between its commercial interests and its customers' best interests. Sesame was influenced by whether providers would enter into service agreements with the entities in the Sesame group when selecting which providers to appoint to the Restricted Advice Proposition.

COBS 2.3.1R

5.4. COBS 2.3.1R requires that a firm must not pay or accept any fee or commission, or provide or receive any non-monetary benefit, in relation to designated investment business or, in the case of its MiFID or equivalent third country business, another ancillary service, carried on for a client other than:

(1) a fee, commission or non-monetary benefit paid or provided to or by the client or a person on behalf of the client; or

(2) a fee, commission or non-monetary benefit paid or provided to or by a third party, if:

(a) it does not impair compliance with the firm's duty to act in the best interests of the client; and

(b) the existence, nature and amount of the fee, commission or benefit has been disclosed to the client (in those circumstances where disclosure is required under COBS 2.3.1); and

(c) in relation to MiFID or equivalent third country business, or when carrying on a regulated activity in relation to a retail investment product, the payment of the fee or commission or the provision of the non-monetary benefit is designed to enhance the quality of the service to the client; or

(3) proper fees which enable or are necessary for the provision of designated investment business or ancillary services, and which cannot give rise to conflicts with the firms' duties to act honestly, fairly and professionally in accordance with the best interests of its clients.

5.5. Sesame breached COBS 2.3.1R because:

(1) The payments made by providers (i.e. third parties) for services to entities in the Sesame group impaired Sesame's compliance with its duty to act in the best interests of its customers as its selection process for its Restricted Advice Panel was influenced by the volume of services that providers would purchase. Sesame:

(a) only allowed providers who had already purchased services to tender for a place on a Restricted Advice Panel; and

(b) then expected those providers to agree to purchase additional services in order to gain a place on a Restricted Advice Panel.

Sesame's selection criteria for its Panels included the value of additional services a provider was willing to purchase. Taking these payments into account when constituting its Restricted Advice Panels impaired Sesame's compliance with its duty to act in the best interests of its clients.

(2) The payments made for services to entities in the Sesame group were not disclosed to Sesame's customers, when required. Such disclosure would have assisted Sesame's customers in making their own judgement about

the nature of the payments and how this could influence the advice they receive.

6. SANCTION

6.1. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In respect of conduct occurring on or after 6 March 2010, the Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5A sets out the details of the five-step framework that applies in respect of financial penalties imposed on firms.

Step 1: disgorgement

6.2. Pursuant to DEPP 6.5A.1G, at Step 1 the Authority seeks to deprive a firm of the financial benefit derived directly from the breach where it is practicable to quantify this.

6.3. The Authority does not consider this to be an appropriate case for disgorgement.

6.4. Step 1 is therefore £0.

Step 2: the seriousness of the breach

6.5. Pursuant to DEPP 6.5A.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. Where the amount of revenue generated by a firm from a particular product line or business area is indicative of the harm or potential harm that its breach may cause, that figure will be based on a percentage of the firm's revenue from the relevant products or business area.

6.6. The Authority considers that the revenue generated by Sesame through the Restricted Advice Proposition is indicative of the harm or potential harm caused by its breach. In addition to revenue generated by Sesame, the Authority considers that the revenue generated under the service agreements (entered into with providers on Sesame's Restricted Advice Panels) by companies in the Sesame group is also indicative of the harm or potential harm caused by Sesame's breach. The period of Sesame's breach was from 1 January 2012 to 31 January 2014. The Authority considers the total revenue for this period to be £16,306,444.

6.7. In deciding on the percentage of the revenue that forms the basis of the step 2 figure, the Authority considers the seriousness of the breach and chooses a

percentage between 0% and 20%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on firms there are the following five levels:

Level 1 – 0%

Level 2 – 5%

Level 3 – 10%

Level 4 – 15%

Level 5 – 20%

6.8. In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach.

6.9. The Authority considers that the following factors are relevant:

(1) The nature of the breach: Sesame promoted its own interests over the interests of its customers in direct contravention of its duty to manage conflicts of interest fairly under Principle 8;

(2) The level of benefit gained by the firm from the breach (DEPP 6.5A.2G(6)(a)): in relation to Sesame's breaches of Principle 8 and COBS 2.3.1R, Sesame gained from the sale of services by entities in the Sesame group.

(3) The frequency of the breach (DEPP 6.5A.2G(7)(b)): in relation to Sesame's breaches of Principle 8 and COBS 2.3.1R, Sesame told a number of providers that it expected them to purchase additional services from the Sesame group in order to secure distribution of their products through the Restricted Advice Proposition and payments were made by a number of providers on the Restricted Advice Panels.

(4) Whether the breach had an adverse effect on markets and, if so, how serious that effect was (DEPP 6.5A.2G(6)(f)): in relation to Sesame's breaches of Principle 8 and COBS 2.3.1R, the breach had the effect of undermining the RDR's underlying objective of improving transparency in the retail investment market and securing an appropriate degree of

protection for consumers. Sesame's 'pay to play' arrangement coincided with the ban on provider commission introduced by the RDR. By asking providers to purchase additional services from Sesame group companies in order to secure distribution, Sesame effectively circumvented the ban on provider commission.

6.10. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 3 and so the Step 2 figure is 10% of £16,306,444.

6.11. Step 2 is therefore £1,630,644.

Step 3: mitigating and aggravating factors

6.12. Pursuant to DEPP 6.5A.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breach.

6.13. The Authority considers that the following factors aggravate the breach:

(1) The previous disciplinary record and general compliance history of the firm:

(a) In June 2013, the Authority imposed a financial penalty of £8,616,000 on Sesame for: failing to take reasonable care to ensure the suitability of its advice for customers; and failing to take sufficient steps to improve its systems and controls directed at achieving effective oversight of its ARs. These failings resulted in breaches of Principles 3 and 9.

(b) In April 2007, the Authority imposed a financial penalty of £330,000 on Sesame for failures in relation to its complaints handling of SCARPs. These failings resulted in breaches of Principles 2 and 6 and the Authority's rules.

(c) In October 2004, the Authority imposed a financial penalty of £290,000 on Sesame for: failing to adequately monitor the selling practices of an AR; failure to keep sufficient records; and failure of compliance oversight. These failings resulted in breaches of PIA

Rules; PIA Adopted FIMBRA Rules; and Principle 2 of the SIB Principles.

(2) Whether FCA guidance or other published materials had already raised relevant concerns, and the nature and accessibility of such materials:

(a) the Authority published the 2004 Dear CEO Letter prior to the period of the breach.

(b) The RDR and its objectives were well-publicised. The Authority also published the June 2012 RDR Newsletter, August 2012 RDR Newsletter and guidance on inducements and conflicts of interest during the period of the breach.

(c) Further, the Authority communicated its specific concerns to Sesame regarding the compliance of Sesame's service agreements on numerous occasions in late 2012 and 2013 as part of its thematic project in relation to service agreements between advisory firms and providers.

6.14. The Authority considers that the following factor mitigates the breach:

(1) In July 2013, Sesame engaged an independent third party to undertake a review of the services that were offered by the Sesame group. Following that review, Sesame voluntarily withdrew certain of the services that were offered to providers.

6.15. Having taken into account these aggravating and mitigating factors, the Authority considers that the Step 2 figure should be increased by 40%.

6.16. Step 3 is therefore £2,282,902.

Step 4: adjustment for deterrence

6.17. Pursuant to DEPP 6.5A.4G, if the FCA considers the figure arrived at after Step 3 is insufficient to deter the firm who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.

6.18. The Authority considers that the Step 3 figure of £2,282,902 represents a sufficient deterrent to Sesame and others, and so has not increased the penalty at Step 4.

6.19. Step 4 is therefore £2,282,902.

6.20. Step 5: settlement discount

6.21. Pursuant to DEPP 6.5A.5G, if the Authority and the firm on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the firm reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

6.22. The Authority and Sesame reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.

6.23. Step 5 is therefore £1,598,000.

Penalty

6.24. The Authority therefore imposes a total financial penalty of £1,598,000 on Sesame for breaching Principle 8 and COBS 2.3.1R.

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 of Payment

7.3. The financial penalty must be paid in full by Sesame to the Authority by no later than 3 December 2014, 35 days from the date of the Final Notice.

If the financial penalty is not paid

7.4. If all or any of the financial penalty is outstanding on 4 December 2014, the Authority may recover the outstanding amount as a debt owed by Sesame 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 Anthony Monaghan at the Authority (direct line: 020 7066 6772), Allegra Bell (020 7066 8110) or Anne Cosserat (direct line: 020 7066 8748).

Megan Forbes
Project Sponsor
Financial Conduct Authority, Enforcement and Financial Crime Division

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. RELEVANT STATUTORY PROVISIONS

1.1. The Authority's operational objectives, set out in section 1B(3) of the Act, include the consumer protection and integrity objectives.

1.2. Section 1C of the Act is the consumer protection objective: "securing an appropriate degree of protection for consumers."

1.3. Section 1D of the Act is the integrity objective: "protecting and enhancing the integrity of the UK financial system."

1.4. Section 206(1) of the Act provides:

> "If the appropriate regulator considers that an authorised person has contravened a relevant requirement imposed on the person it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate."

2. RELEVANT REGULATORY PROVISIONS

Principles for Businesses

2.1. The Principles are a general statement of the fundamental obligations of firms under the regulatory system and are set out in the Authority's Handbook. They derive their authority from the Authority's rule-making powers set out in the Act. The relevant Principles are as follows.

2.2. Principle 8 provides:

> "A firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client."

COBS

2.3. COBS 2.3.1R provides (and has since 31 December 2012 provided):

> "A firm must not pay or accept any fee or commission, or provide or receive any non-monetary benefit, in relation to designated investment business or, in the case of its MiFID or equivalent third country business, another ancillary service, carried on for a client other than:

(1) a fee, commission or non-monetary benefit paid or provided to or by the client or a person on behalf of the client; or

(2) a fee, commission or non-monetary benefit paid or provided to or by a third party or a person acting on behalf of a third party, if:

(a) the payment of the fee or commission, or the provision of the non-monetary benefit does not impair compliance with the firm's duty to act in the best interests of the client; and

(b) the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, is clearly disclosed to the client, in a manner that is comprehensive, accurate and understandable, before the provision of the service;

(i) this requirement only applies to business other than MiFID or equivalent third country business if it includes giving a personal recommendation in relation to a retail investment product, or giving advice or providing services to an employer in connection with a group personal pension scheme or group stakeholder pension scheme;

(ii) where this requirement applies to business other than MiFID or equivalent third country business, a firm is not required to make a disclosure to the client in relation to a non-monetary benefit permitted under (a) and which falls within the table of reasonable non-monetary benefits in COBS 2.3.15G as though that table were part of this rule for this purpose only;

(iii) this requirement does not apply to a firm giving basic advice; and

(c) in relation to MiFID or equivalent third country business, or when carrying on a regulated activity in relation to a retail investment product, the payment of the fee or commission, or the provision of the non-monetary benefit is designed to enhance the quality of the service to the client; or

(3) proper fees which enable or are necessary for the provision of designated investment business or ancillary services, such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and which, by their nature, cannot give rise to conflicts with the firm's duties to act honestly, fairly and professionally in accordance with the best interests of its clients."

2.4. In the portion of the Relevant Period prior to 31 December 2012, COBS 2.3.1 provided:

"A firm must not pay or accept any fee or commission, or provide or receive any non-monetary benefit, in relation to designated investment business or, in the case of its MiFID or equivalent third country business, another ancillary service, carried on for a client other than:

(1) a fee, commission or non-monetary benefit paid or provided to or by the client or a person on behalf of the client; or

(2) a fee, commission or non-monetary benefit paid or provided to or by a third party or a person acting on behalf of a third party, if:

(a) the payment of the fee or commission, or the provision of the non-monetary benefit does not impair compliance with the firm's duty to act in the best interests of the client; and

(b) the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, is clearly disclosed to the client, in a manner that is comprehensive, accurate and understandable, before the provision of the service;

(i) this requirement only applies to business other than MiFID or equivalent third country business if it includes giving a personal recommendation in relation to a packaged product;

(ii) where this requirement applies to business other than MiFID or equivalent third country business, a firm is not required to make a disclosure to the client in relation to a non-monetary benefit permitted under (a) and which falls within the table

of reasonable non-monetary benefits in COBS 2.3.15G as though that table were part of this rule for this purpose only;

(iii) this requirement does not apply to a firm giving basic advice; and

(c) in relation to MiFID or equivalent third country business, the payment of the fee or commission, or the provision of the non-monetary benefit is designed to enhance the quality of the service to the client; or

(3) proper fees which enable or are necessary for the provision of designated investment business or ancillary services, such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and which, by their nature, cannot give rise to conflicts with the firm's duties to act honestly, fairly and professionally in accordance with the best interests of its clients."

DEPP

2.5. Chapter 6 of DEPP, which forms part of the Authority's Handbook, sets out the Authority's statement of policy with respect to the imposition and amount of financial penalties under the Act.

The Enforcement Guide

2.6. The Enforcement Guide sets out the Authority's approach to exercising its main enforcement powers under the Act.

2.7. Chapter 7 of the Enforcement Guide sets out the Authority's approach to exercising its power to impose a financial penalty.