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## FINAL NOTICE

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To: Charles Richard Francis Weston

Date of Birth: 21 September 1951

Date: 31 July 2008

**TAKE NOTICE: the Financial Services Authority of 25 the North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you final notice about a decision to make a prohibition order against you, and a requirement to pay a financial penalty:**

### 1. THE PENALTY

1.1 The FSA gave Mr Charles Richard Francis Weston (“Mr Weston”) a Decision Notice on 20 June 2008 which notified him that pursuant to sections 56 and 66 of the Financial Services and Markets Act 2000 (“FSMA”), the FSA had decided to take the following action:

1.1.1 a prohibition order prohibiting Mr Weston from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm; and

1.1.2 a financial penalty of £95,000.

1.2 Mr Weston agreed to settle at an early stage of the FSA's investigation. He therefore qualified for a 30% (stage 1) reduction in penalty, pursuant to the FSA's executive settlement procedures. Were it not for this discount, the FSA would have imposed a financial penalty of £137,000 on Mr Weston.

1.3 Mr Weston confirmed that he will not be referring the matter to the Financial Services and Markets Tribunal.

1.4 Accordingly, for the reasons listed below, and having agreed with Mr Weston the facts and matters relied on, the FSA hereby makes an order pursuant to section 56 of the Act prohibiting him from performing any regulated activity carried out by an authorised person, exempt person or exempt professional firm. The Prohibition Order takes effect from 31 July 2008.

## **2. REASONS FOR THE ACTION**

### **Background**

- 2.1 The FSA has decided to impose the prohibition order and penalty on Mr Weston in respect of a breach of the FSA's Statements of Principles and Code of Conduct for Approved Persons ("APER") in relation to his role as a director of a retail stockbroker, Pacific Continental Securities UK Limited ("PCS"/"the Firm").
- 2.2 In particular between 1 April 2005 and 20 June 2007 ("the Relevant Period"), Mr Weston:
  - 2.2.1 failed to act with integrity in carrying out his controlled functions, in breach of APER 1; and
  - 2.2.2 failed to take reasonable steps to ensure that the business of the firm for which he was responsible in his controlled functions was organised so that it could be controlled effectively, in breach of APER 5.
- 2.3 These breaches relate to a number of serious failures committed by Mr Weston while a director and senior manager of PCS, whose business during the Relevant Period was advising on and arranging for customers to purchase higher risk securities issued by new or emerging smaller capitalised companies ("the securities").
- 2.4 Mr Weston failed to act with integrity in carrying out his controlled functions in that he:
  - 2.4.1 knew that at least one individual about whom the FSA had concerns was involved in the Firm's business, but misled the FSA about the involvement of this individual and the true basis upon which the Firm was sourcing the securities;
  - 2.4.2 knew that PCS misled customers as to the extent of its research into the securities it promoted and knew that it was possible that customers were being given incomplete or biased information as part of PCS' research reports or sales pitches;
  - 2.4.3 knew that PCS recommended that customers switch their existing holdings in securities into others to further the Firm's own interests and without regard for suitability;
  - 2.4.4 knew that PCS misled customers about the availability of evidence relevant to complaints; and
  - 2.4.5 failed to act upon internal reports on failings, poor practices and other inadequacies at PCS.
- 2.5 Mr Weston failed to take reasonable care to organise and control PCS' affairs responsibly and effectively. In particular, he failed to:

- 2.5.1 implement systems to manage information relating to the availability of stock to ensure that PCS did not create short positions;
  - 2.5.2 implement systems to ensure that PCS did not sell securities to customers in excess of their agreed risk limits;
  - 2.5.3 implement an effective compliance monitoring system;
  - 2.5.4 implement an effective penalty regime; and
  - 2.5.5 implement effective training arrangements.
- 2.6 Mr Weston's failings are particularly serious in view of the following:
- 2.6.1 Mr Weston was aware that PCS operated a high pressure sales business recommending higher risk securities, and he knowingly allowed the use of unacceptable practices and methods that undermined the requirements of the regulatory system;
  - 2.6.2 customers of PCS were entitled to rely on its senior management to take reasonable steps to ensure the Firm met its regulatory requirements, and that they would be treated fairly;
  - 2.6.3 the consequences of the failures by Mr Weston are serious. Customers were at risk of not having sufficient information to enable them to make fully informed judgements about their investments, including not receiving clarity about the level of commission that was generated by PCS from the sale of securities; having the basis on which stock was selected and recommended by PCS misrepresented; being advised to sell existing shares and buy other securities to further the interests of PCS and without regard to suitability; and being subjected to sales practices which did not comply with the regulatory requirements;
  - 2.6.4 the consequences of the breaches for customers who purchased the securities were serious. During the Relevant Period the customers in 46 transactions reviewed by the FSA lost an average of 69% of their investment; and
  - 2.6.5 Mr Weston's failings were widespread in that they impacted all stages of the Firm's systems and controls for which he was responsible, both in terms of the Controlled Functions that he held and his responsibilities as a co-director of the Firm, and as one of its senior managers. His failures affected the Firm's compliance processes, complaints handling, back office operation, and disciplinary and training procedures. The cumulative impact of Mr Weston's failings represented a significant risk to the FSA's objectives of securing the appropriate degree of protection for consumers and maintaining confidence in the financial system.

## RELEVANT STATUTORY PROVISIONS

- 2.7 The FSA's statutory objectives, as set out in section 2(2) of FSMA, include maintaining market confidence in the financial system and the protection of consumers.
- 2.8 The FSA has the power pursuant to section 56 of FSMA to make an order prohibiting an individual from performing a specified function, any function falling within a specified description, or any function, if it appears to the FSA that that individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by any authorised person, exempt person or exempt professional person.
- 2.9 Section 66 of FSMA provides:
- (1) *The Authority may take action against a person under this section if –*
- (a) *it appears to the Authority that he is guilty of misconduct; and*
- (b) *the Authority is satisfied that it is appropriate in the circumstances to take action against him.*
- (2) *A person is guilty of misconduct if, while an approved person –*
- (a) *he has failed to comply with a statement of principle issued under section 64...*
- (3) *If the Authority is entitled to take action under this section against a person, it may –*
- (a) *impose a penalty on him of such amount as it considers appropriate...*
- 2.10 The Statement of Principles and Code of Conduct for Approved Persons are issued under section 64 of FSMA.
- 2.10.1 APER 1 states *“An approved person must act with integrity in carrying out his controlled function.”*
- 2.10.2 APER 5 states *“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 is organised so that it can be controlled effectively.”*
- 2.11 The FSA's general approach to determining whether to impose a financial penalty and the appropriate level of any such penalty is set out in the Decision Procedures and Penalties Guide (“DEPP”), which is part of the Handbook of Rules and Guidance. The principal purpose of imposing a financial penalty 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 benefit of compliant behaviour (DEPP 6.1.2G). DEPP 6.5.2G sets out a non-exhaustive list of thirteen factors that may be relevant to determining the appropriate level of financial penalty. In considering whether to impose a financial penalty and the amount of the penalty to impose, the FSA has also had regard to the provisions of the Enforcement Manual (“ENF”) which were in force during the Relevant Period.

2.12 Guidance relating to prohibition orders is contained in the Enforcement Guide (“EG”) at EG 9. This states that the FSA may exercise its power to prohibit individuals where it considers that, to achieve any of its regulatory objectives, it is appropriate either to prevent an individual from performing any function in relation to regulated activities (EG 9.1).

2.12.1 *“In deciding whether to make a prohibition order the FSA will consider all the relevant circumstances including whether other enforcement action should be taken”* (EG 9.3). A non-exhaustive list of nine relevant circumstances is given, including:

“(2) *whether the individual is fit and proper to perform functions in relation to regulated activities.*” The criteria for assessing this are set out in FIT 2.1, 2.2 and 2.3;

(3) *whether and to what extent the approved person has:*

*(a) failed to comply with the Statements of Principle issued by the FSA with respect to the conduct of approved persons;*

(5) *The relevance and materiality of any matters indicating unfitness;*

(7) *The particular controlled functions the approved person is performing, the nature and activities of the firm concerned and the markets in which he operates; and*

(8) *The severity of the risk which the individual poses to consumers and to confidence in the financial system”.*

2.12.2 *“The scope of a 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 of the market generally”* (EG 9.5).

2.13 The FSA Handbook also sets out rules and guidance relating to the Fit and Proper Test for Approved Persons (“FIT”). FIT 1.1.3 G and 1.3.2 G provide as follows:

*“The FSA will have regard to a number of factors when assessing the fitness and propriety of a person to perform a particular controlled function. The most important considerations will be the person’s:*

*honesty, integrity and reputation;*

*competence and capability; and*

*financial soundness*". (FIT 1.1.3 G)

*"In assessing fitness and propriety, the FSA will also take account of the activities of the firm for which the controlled function is or is to be performed, the permission held by that firm and the markets within which it operates."* (FIT 1.3.2 G)

- 2.14 FIT 2.1.1 G provides that in determining a person's honesty, integrity and reputation, the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3 G. FIT 2.1.3 G (13) provides that a relevant factor is "*whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards*".
- 2.15 FIT 2.2.1 G provides that in determining a person's competence and capability, the FSA will have regard to matters including whether the person has demonstrated by experience and training that they are able to perform their controlled function.

#### **FACTS AND MATTERS RELIED ON**

- 2.16 PCS was incorporated on 13 February 2001 and has been authorised by the FSA since 1 December 2001. Prior to 15 June 2007, PCS was permitted to undertake the regulated activities of advising on investments as agent, arranging deals in investments, arranging safeguarding and administration of assets, dealing in investments as agent and making arrangements. On 15 June 2007, PCS voluntarily varied its permissions to not undertake any regulated activity except to the extent necessary to close and settle existing client positions. On 20 June 2007, PCS ceased trading and went into administration. PCS is now in insolvent liquidation.
- 2.17 PCS was a stockbroking firm specialising in the Relevant Period in recommending to retail customers and dealing as agent in securities that had been admitted to trading on the Alternative Investment Market ("AIM"). This market specialises in providing primary and secondary trading services for smaller capitalised and/or emerging companies.
- 2.18 The management accounts and transactions figures supplied by PCS show that in the period from January to June 2006 PCS generated AIM sales to value of £7,349,859.65 and from this earned commission of £1,819,560.28. Assuming that these trading levels were representative this would suggest customer investment in AIM stock of some £14,000,000 per year and earnings to PCS from this of over £3,600,000. As an indicator of the performance of these transactions, the value of a sample of 46 of the 822 AIM transactions that took place between 7 July and 6 September 2006 decreased on average by 69% over a nine month period, so that the original £180,045.68 invested across those transactions was worth just £54,947.62 by the end of that period.

- 2.19 Mr Weston trained as an accountant, and started working in the financial services industry in 1986. After 14 years as Financial Controller and Compliance Officer for a Japanese securities house he joined PCS in February 2001. He was one of two directors of the Firm.
- 2.20 Mr Weston held Controlled Functions CF1 (Director), CF8 (Apportionment and Oversight), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting), CF13 (Finance) and CF21 (Investment Advisor). CF1, CF8, CF10 and CF11 are significant influence functions. As the Finance and Compliance Oversight Director he supervised the back office (finance and administration).
- 2.21 Mr Weston's responsibilities within PCS included preparing monthly management accounts for his co-director, and having ultimate responsibility for various areas within PCS, including compliance, in particular for the compliance element of PCS' sales, PCS' complaints handling, PCS' compliance training of staff and the operation of PCS' back office.

*Misleading the FSA as to individuals' roles and PCS' source of income*

- 2.22 Emails sent or received by PCS senior management suggest that two individuals ("A" and "B") played a role in the operations of PCS and another entity within the same overall group of companies. The FSA has particular concerns about those individuals as both have been linked in press reports and by another FSA investigation to boiler room operations and B has been convicted overseas of failing to comply with an overseas regulator's summons relating to an investigation into a boiler room.
- 2.23 In interview Mr Weston stated that B was not involved in PCS business but was involved with the entity referred to in paragraph 2.22. However, emails sent or received by Mr Weston suggest that B played a role in the business of PCS, in that he was informed of and enquired about particular stock transactions. Therefore the FSA does not consider Mr Weston to have been candid and truthful about B's involvement.
- 2.24 In interview Mr Weston stated that PCS did not hold a position in any of the securities it promoted but that, in the majority, these stocks were sourced through and owned by the entity referred to at paragraph 2.22 above. The relationship between PCS and the entity is not supported by any documented agreement and the investigation has been given conflicting accounts in interview as to whether the entity in question sourced stock that was subsequently promoted by PCS.
- 2.25 Mr Weston stated that PCS normally charged the entity 25% of the sale price achieved as fees and commission for selling these securities on behalf of the entity. This created a clear conflict of interest between PCS and the customers to whom it sold the stocks. Mr Weston was aware that neither the fact nor the extent of those charges was revealed to customers to whom the securities were promoted. Customers were told that they were charged 0.5% commission on transactions, and on occasion that this charge was waived.

### *Misleading customers about the extent of research into securities*

- 2.26 Mr Weston was aware that PCS emphasised its research and careful stock selection and used this as a promotional tool when contacting customers and selling securities to them. PCS' brochures and promotional material describe its advisory service as including free detailed market analysis and research.
- 2.27 Mr Weston was not responsible for research and due diligence conducted by the Firm but was aware that the consultant engaged to conduct the research was paid only £600 for each report he produced. This consultant did not have specific expertise in the type of securities promoted by PCS. In addition he did not subscribe to any specialist sources of financial information but relied primarily on information provided by external broking firms. Once reports had been produced and turned into sales scripts they were checked by the Compliance function for which Mr Weston was responsible. In having this done Mr Weston appears to have given no consideration to warnings that the reports from which the consultant worked carried that they should not be used for private clients or to the fact that these reports had been commissioned by the companies whose securities were being promoted or was produced by brokers promoting the securities.
- 2.28 In addition, Mr Weston was supposed to sit on an investment committee responsible for discussing stock selection but allowed this involvement to lapse without ensuring that adequate testing of the recommendations continued. There is no evidence that he made any attempt to ensure that adequate due diligence was performed.

### *Switching of securities*

- 2.29 PCS engaged in a practice known as switching whereby customers were encouraged to sell their existing shareholdings and to use the funds raised and more, in some cases, to purchase other securities from PCS.
- 2.30 PCS instructed staff to switch securities either where PCS had oversold securities to customers, and therefore had a shortfall of stocks, or when it needed to generate sales in respect of other securities of which it had an allocation. Mr Weston was aware that PCS made no arrangements for sourcing any stock shortfalls in the securities that were oversold from the market.
- 2.31 Mr Weston claimed that switching was simply customers agreeing to sell out of one stock and buy into another, and was unwilling to accept that these were decisions made on the advice of PCS.
- 2.32 Mr Weston was aware that PCS' management pre-determined the specific stock that was to be switched and set targets in relation to the amount of switching to be conducted. The recommendations to sell were made to address PCS' overselling of stock and without regard for customers' interests.
- 2.33 In an extract from a telephone conversation between Mr Weston and an associate he stated, "*...but APT is a different thing...Because that was just switching back to reduce the number of shortfalls of shares....*". Later in the same conversation, he stated,



*“...And you know the best thing is if we limit the switches – [A director’s] talking about doing a maximum 25% of our monthly sales being switches”.*

- 2.34 In another example, Mr Weston was aware of an email which instructed advisers to recommend that customers should sell their holding in a stock for 60p when there was an expected news flow which was likely to push the price of that stock above 60p. The same email instructed advisers to recommend that those customers should buy another stock at 14p when that same stock was being sold to other customers for 12.5p.
- 2.35 An illustration of this process is set out in the timeline chart attached as Appendix 1.

*Misleading customers about the availability of evidence relevant to complaints*

- 2.36 Mr Weston had ultimate responsibility for complaints handling at PCS. Customers were not given accurate information about the possible retention of sales call recordings which might be relevant to their complaint. Customers were informed that recordings of sales calls were not retained beyond three months. However Mr Weston was aware that tapes dating back at least two years were available.
- 2.37 There was no effort to investigate whether relevant tapes existed or to retrieve them for most complaints. Mr Weston confirmed that PCS would normally not look to see if they had tapes relating to a complaint more than 3 months old, even if the customer could give them the specific dates when the advice was given. Mr Weston stated that he had no confidence that recordings would be able to be located, and pointed to the level of administration that would be involved in the search as reasons why the Firm did not check for them.

*Failure to take action in respect of known inadequacies at the Firm*

- 2.38 Due to his responsibility for compliance and complaints handling, Mr Weston was aware of serious inadequacies at the Firm. He received monthly compliance reports which included the results of transaction calls monitoring and monthly reports from an external compliance consultant engaged by the Firm for some of the Relevant Period. Those highlighted a number of compliance issues from call monitoring exercises such as:

- “(1) calling in unsuitable circumstances;*
- (2) poor or lack of investment arithmetic abilities on the part of advisers;*
- (3) switching;*
- (4) misleading statements about securities prices and trends;*
- (5) a lack of understanding of investment ratios and gearing on the part of advisers; and*

(6) *use of unstructured sales presentations by advisers.*”

- 2.39 In addition, Mr Weston was informed about the lack of clarity of PCS’ sales scripts and how further information should be added; that the Compliance function was short staffed specifically in relation to the call monitoring function; and of the risks associated with recruiting poor quality staff with little trading experience, poor financial knowledge and a lack of investment arithmetic abilities.
- 2.40 Mr Weston was also provided with reports highlighting the fact that senior advisors had a dismissive and cold attitude towards Compliance. This attitude was demonstrated by instances when sales adviser team leaders wrote their own sales scripts without prior review by Compliance. Mr Weston however took no action.
- 2.41 Mr Weston did not accept that the issues raised in compliance reports indicated areas of concern within the Firm. He believed that compliance was a relatively strong part of the Firm. The FSA considers this untenable given Mr Weston’s awareness of the number of complaints received by the Firm and the fact that overall compliance performance did not improve over time.

*Lack of adequate systems to manage stock availability*

- 2.42 Mr Weston knew that PCS had no system for keeping a real time tally of the securities that were being sold by the advisers, and that they had no access to complete and accurate stock information. The Back Office, for which Mr Weston was responsible, was in charge of monitoring the levels of stock available but it appears that there were widespread failings in stock reconciliation and accounting systems and processes. As a result, and to Mr Weston’s knowledge, there were in many instances insufficient shares to satisfy demands in the event of customer claims.
- 2.43 On 19 June 2007, a day before the Firm went into administration, Mr Weston acknowledged this problem when he sent an email stating that PCS had requested that the in-house reconciliation system should include “*a check to ensure that [the entity from which PCS sourced shares] or equivalent cannot oversell a position (no short positions)*”. Given the timing, the FSA considers that this email cannot have been intended to achieve any real improvement in the Firm’s systems, however it demonstrates that Mr Weston was aware of the issue that the Firm’s systems were inadequate to manage stock availability.

*Lack of adequate systems to ensure that customer trading limits were adhered to*

- 2.44 Within the customer information form completed and signed for each customer, PCS was meant to agree a trading limit for each customer based on their liquid assets and risk appetite before any trade was conducted. Once a customer’s agreed trading limit had been reached, any subsequent amendment to the trading limit was supposed to be justified by a demonstrated change in the customer’s financial circumstances or risk appetite and recorded on a customer update form.
- 2.45 A review of the 46 trades forming part of the FSA’s sample indicated that:

- 2.45.1 80% (37 out of 46 transactions) conducted their first trade before a signed Customer Information Form or Customer Update Form was received. The Firm's internal procedure required these documents to have been received prior to any transaction being carried out; and
- 2.45.2 44% of customers (20 out of 46) were traded in excess of their agreed limits.
- 2.46 In at least one instance, a customer's agreed trading limit was exceeded to enable PCS to switch the customer into different stocks.
- 2.47 It appears that PCS increased trading limit levels merely to accommodate further trading and breached customers' limits in order to switch customers into other securities to meet its internal sales targets.
- 2.48 The Firm's records did not make it clear whether customers were aware that they may have been trading over their stated limit, whether that limit was updated to reflect an increase in assets, or whether advisers were looking at agreed limits plus any profit showing on the customer's account.
- 2.49 Mr Weston accepted that such overtrading was a breakdown in compliance, but stated that he was confident that it did not take place, and that if it did, he would know about it. The evidence however does not support that position.

*Lack of adequate compliance monitoring*

- 2.50 While PCS had systems in place for reporting and recording compliance risks, the information produced by them was inconsistent and internal reports were contradicted by the monitoring conducted by the Firm's external consultant. Despite his responsibility for this area, Mr Weston took no action to address any of these issues.
- 2.51 More importantly, the compliance systems did not identify the true extent of the failings at the Firm. The FSA's review of calls made to 15 randomly selected clients between 7 July 2006 and 6 September 2006 revealed that the most senior advisers scored markedly less well than they did in the Firm's monitoring results.
- 2.52 Mr Weston believed that "*that compliance, whilst [it] wasn't perfect, was of a reasonably robust nature*" and that it was a relatively strong part of the Firm. Given the Firm's compliance difficulties and the number of complaints received, this belief seems untenable and demonstrates that Mr Weston did not take reasonable steps to ensure that PCS' business was organised so that it could be controlled effectively.

*Lack of adequate penalty regime*

- 2.53 Mr Weston was responsible, through the Compliance Department, for monitoring sales practices at the Firm. Mr Weston was aware of the need for the penalty regime to bring about a change in behaviours by some of PCS' advisers. In May 2005 PCS' external compliance consultant warned Mr Weston that "*the quality of the small cap sales is unacceptable*", that he planned training sessions but seriously doubted whether these would "*be effective for the old hands...certain of [whom] have lapsed*

*into their old and unacceptable ways” and that “a few dismissals for non-compliance might have a good effect on those that remained”.* A further warning, in similar terms, was given to Mr Weston in July 2005.

- 2.54 PCS established a penalty regime based on call monitoring designed to reduce the incidence of poor and non adherence to compliance requirements. The regime was designed to target poor performers by way of a “Watch List”. Adverse findings from the assessment resulted in staff being placed on a “Penalty Ladder”, ranging from verbal warning to dismissal. Although commission was on occasion withheld as a result of a complaint or compliance failings, the penalty regime was not applied uniformly, or taken seriously by senior management. The investigation found no evidence to show that compliance failings were reflected in staff appraisals or that staff were dismissed for serious failings.
- 2.55 PCS’ internal call monitoring system, as reported in the monthly compliance reports to the Firm’s senior management, showed that in a number of cases advisers were either penalised ineffectually for failings or not penalised at all. In any event, the system only reviewed a very small number of the calls made each month. The levels of non-compliance did not improve over the Relevant Period, and that the main areas of concern stayed the same. Also, some advisers were recorded as being fully compliant over various months despite evidence that demonstrated that the Firm had identified failings in the sales of some of these advisers.
- 2.56 Mr Weston did not accept that the penalty regime operated by PCS was inadequate to deal with the issues raised by the Firm’s external compliance consultant, and the repeated non-compliant behaviour of PCS’ advisers. His view was that PCS had a system which worked and which was adhered to.

#### *Lack of appropriate training*

- 2.57 New joiners had little trading experience and had noticeable gaps in their financial knowledge. Staff lacked or had poor investment arithmetic abilities, no understanding of gearing and investment ratios and other financial fundamentals which made the advisers’ presentations to clients potentially misleading.
- 2.58 It appears however that training was very limited, and that which did take place was focussed on sales techniques rather than the skills that would enable advisers to take assess the strengths and weaknesses of the recommendations or their suitability to individual customers.

#### **Analysis of breaches**

##### APER 1

- 2.59 By reason of the facts and matters set out in paragraphs 2.22-2.41 above, the FSA considers that Mr Weston breached APER 1.

*Misleading customers about the extent of research into securities*

- 2.60 Mr Weston knew that PCS operated a business that specialised in recommending higher risk securities, and that such securities presented particular and higher risks for customers. Mr Weston also knew that the Firm's customers would rely upon its judgement and recommendations when deciding to purchase high risk securities. Regardless, Mr Weston failed to ensure that the research that PCS commissioned on the securities that were recommended was either thorough or complete, or such as the customers had been led to expect. Furthermore Mr Weston failed to ensure that PCS undertook adequate due diligence in respect of the securities it promoted.
- 2.61 Mr Weston therefore knew that PCS exposed its customers to the risk of being given inadequate and misleading information.
- 2.62 PCS' exaggerated claims would have given customers more confidence than was warranted in the statements made by advisers about the potential performance and prospects of the securities. The FSA considers that exaggerating the extent of research was intended to persuade customers to use PCS' services and to purchase the securities the Firm recommended. In allowing PCS to promote its business on this false basis Mr Weston showed a lack of regard for proper standards and hence a lack of integrity.

*Switching of securities*

- 2.63 Switching was undertaken without any regard for suitability. The seriousness of this conduct was exacerbated by the fact that, in many instances, the securities that customers were persuaded to sell continued to perform better than the securities they subsequently bought.
- 2.64 Switching was primarily done to further the Firm's own interests, and without regard for the suitability of the transaction for PCS' customers. In addition to providing a way to rectify stock shortfalls PCS was paid 25% commission on each transaction involving the purchase of securities.
- 2.65 Mr Weston knew the practice occurred, and allowed PCS to engage in it deliberately to further the Firm's own interests, as a way to rectify stock shortfalls and so that PCS received the 25% commission it earned on customer purchases. Such conduct demonstrates a deliberate flouting of the standards appropriate to the performance of Mr Weston's controlled functions.

*Misleading customers about the availability of evidence relevant to complaints*

- 2.66 To Mr Weston's knowledge PCS misled customers about the availability of evidence which could potentially enable a customer's complaint to succeed. This demonstrates a lack of integrity that is particularly serious in that it takes place in circumstances where customers may have been mistreated.

*Failure to take action in respect of known inadequacies at the Firm*

- 2.67 Mr Weston was aware of serious inadequacies at the Firm as a result of PCS' internal monitoring systems. Despite this, Mr Weston failed to take action in respect of failings that were identified as continuing over time.
- 2.68 From this the FSA concludes that Mr Weston knew that PCS' business was not being conducted in accordance with applicable regulatory standards. He therefore demonstrated a lack of willingness to comply with those standards in the performance of his controlled functions, and hence a lack of integrity.

*Misleading the FSA as to individuals' roles and PCS' source of income*

- 2.69 Mr Weston was not candid and truthful about Individual B's involvement in PCS when directly questioned about it in the course of this investigation. In deliberately seeking to conceal these matters from the FSA, the FSA considers Mr Weston to have demonstrated a lack of integrity.
- 2.70 Mr Weston was aware that PCS was paid 25% of the price it charged to customers for sales of stock it sold on behalf of another group entity. This created a clear conflict of interest but no steps were taken to manage that conflict or to inform customers of it. Mr Weston's failure to deal with this conflict adequately or at all demonstrates a disregard for proper standards and hence a lack of integrity.

APER 5

- 2.71 By reason of the facts and matters set out in paragraphs 2.42-2.58 above, Mr Weston breached APER 5.
- 2.72 Mr Weston supervised the back office, compliance and complaints handling at the Firm. In those roles Mr Weston failed to take reasonable steps to ensure that PCS' business was organised so it could be controlled effectively. In particular, Mr Weston:
- 2.72.1 failed to ensure that the Firm had adequate systems to manage information relating to the availability of stock;
  - 2.72.2 failed to ensure that the Firm had adequate systems to ensure that customers' agreed trading limits were adhered to, as the Firm's systems failed to prevent overtrading;
  - 2.72.3 failed to implement a compliance monitoring system which consistently and effectively highlighted matters of serious concern to senior management, in that systems provided inconsistent results and the call monitoring process was inadequate to produce improvement over time;
  - 2.72.4 failed to implement a penalty regime which reliably identified non-compliant sales practices and was consistently used to penalise those falling below the proper standards so as to bring about an improvement in practices; and

- 2.72.5 failed to ensure that the Firm had an adequate training and competence programme. Although Mr Weston was alerted to the fact that PCS' advisers did not all have requisite knowledge, skills and understanding to carry out their roles and claimed to recognise the importance of training, he failed to take reasonable steps to ensure that PCS implemented a training programme that was planned and appropriately structured and evaluated, or that focussed on regulatory and compliance requirements.
- 2.73 Mr Weston did not take reasonable care to deal with the regulatory requirements in all the circumstances. He knew that reasonable steps had not been taken to organise and control PCS' affairs responsibly and effectively, and to operate appropriate systems, controls and procedures to manage its risks. As a result, PCS' business could not be controlled effectively, in that it could not adequately monitor, identify and manage the regulatory risks facing its business and its customers as and when they arose.
- 2.74 Despite these weak systems and controls and inadequate training, as Mr Weston was aware, PCS relied on its advisers to ensure that recommendations made to customers complied with the regulatory requirements. This reliance was inappropriate, and unwarranted, with the consequence that customers continued to be exposed to unacceptable sales practices and the risk of unsuitable recommendations.

#### **Analysis of proposed sanction**

- 2.75 Mr Weston was a co-director of PCS and held senior management responsibilities for the Firm. As such, he understood that PCS' business specialised in recommending higher risk securities, and knew that such securities presented particular and higher risks for customers. Mr Weston also knew that PCS' customers would rely upon its judgement and recommendations when deciding to purchase high risk securities.
- 2.76 All the breaches described occurred within the context of Mr Weston's knowledge of the risks PCS was taking. Key risks were or should have been evident from the internal reports generated by PCS' compliance and settlements units to senior management and by virtue of specific interest in these areas by the FSA dating back to 2002.
- 2.77 Mr Weston knew that PCS' business was not being conducted in compliance with regulatory standards and that there was a risk that its customers were not being treated fairly, that due regard was not being paid to their information needs and that PCS' recommendations may not have been suitable. Mr Weston knew that the Firm had not taken reasonable care to address the regulatory requirements in all aspects of its business, and that reasonable steps had not been taken to organise and control the Firm's affairs responsibly and effectively and to implement appropriate systems, controls and procedures to manage the risks in respect of the sale of small cap securities. Regardless, Mr Weston continued to allow PCS to operate its business in the manner that it did and neglected to implement adequate systems and controls.
- 2.78 For the above reasons, Mr Weston did not demonstrate the degree of integrity or competence expected under the regulatory system in carrying out his controlled functions. He did not demonstrate a readiness and willingness to comply with the

regulatory requirements. Such failings seriously undermined the protection and fair treatment of PCS' customers and confidence in the financial services industry.

*Prohibition order*

- 2.79 In considering whether to impose a prohibition order, the FSA has had regard to the provisions of the FSA's Enforcement Guide ("EG") and in particular the provisions of EG 9.9. The FSA has also had regard to the provisions of its Handbook in force during the Relevant Period.
- 2.80 The FSA considers that in breaching APER 1 and 5 in the manner described Mr Weston has:
- 2.80.1 demonstrated that he lacks integrity;
  - 2.80.2 demonstrated a serious lack of competence in relation to the performance of his controlled functions; and
  - 2.80.3 failed to be candid and truthful in his dealings with the FSA and has failed to demonstrate a readiness and willingness to comply with all the requirements and standards of the regulatory system.
- 2.81 Having regard to the provisions of FIT, for all these reasons the FSA concludes that Mr Weston is not a fit and proper person.
- 2.82 These failings continued throughout the Relevant Period of over two years up until the collapse of PCS' business, permeated every aspect of the controlled functions performed by Mr Weston, and exposed customers to severe risk of loss.
- 2.83 Having regard to its regulatory objectives, including the need to maintain confidence in the financial system and to secure the appropriate degree of protection for consumers, the FSA considers it necessary to impose a prohibition order prohibiting Mr Weston from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

*Financial penalty*

- 2.84 In determining that a financial penalty is appropriate and proportionate in this case, the FSA has considered all the relevant circumstances of the case. The FSA considers the following factors to be particularly important:
- 2.85 Deterrence: DEPP 6.5.2G (1): In determining the appropriate level of penalty, the FSA has had regard to the need to promote high standards of regulatory conduct by deterring those who have committed breaches from committing further breaches and to help to deter others from committing similar breaches.
- 2.86 The nature, seriousness and impact of the breach: DEPP 6.5.2G (2): The FSA has considered the nature and seriousness of the contraventions and considers the following to be relevant in this regard:



- 2.86.1 the breaches occurred over a protracted period of more than two years; and
- 2.86.2 Mr Weston's conduct caused both significant actual loss and the risk of loss to consumers.
- 2.87 The extent to which the breach was deliberate or reckless: DEPP 6.5.2G (3): The FSA considers that Mr Weston knew the risks to consumers that PCS' business posed, and was aware of significant failings in many areas of the business, each of which had the potential to cause consumer detriment, yet he took no effective action to remedy the Firm's failings. The FSA considers that this was deliberate on the part of Mr Weston.
- 2.88 Whether the person on whom the penalty is to be imposed is an individual: DEPP 6.5.2G (4): The FSA recognises that the financial penalty imposed on Mr Weston is likely to have a significant impact on him as an individual.
- 2.89 The size, financial resources and other circumstances of the person on whom the penalty is to be imposed: DEPP 6.5.2G (5): The FSA has delayed payment of part of the financial penalty imposed on Mr Weston to enable this part of the payment to be drawn down from his pension funds without penalty.
- 2.90 The amount of benefit gained or loss avoided: DEPP 6.5.2G (6): The FSA has had regard to the fact that Mr Weston earned an annual salary and bonus from PCS in the region of £100,000 – £115,000. The amount of penalty equates to the full amount of his entire earnings, net tax, from PCS during the Relevant Period.
- 2.91 Conduct following the breach: DEPP 6.5.2G (8): Mr Weston attended the FSA for interview but did not bring the failings to the FSA's attention and denied any misconduct in interview.
- 2.92 Disciplinary record and compliance history: DEPP 6.5.2G (9): The FSA has not previously taken any disciplinary action against Mr Weston.
- 2.93 In light of these factors but especially the seriousness of the misconduct, the length of time over which it took place, and the losses to which customers were exposed as a result, the FSA considers that a financial penalty of £95,000 (£137,000 before 30% discount) is appropriate in this case.

## **Conclusion**

- 2.94 For the reasons set out above, the FSA considers that Mr Weston has breached APER 1 and 5. As a result the FSA proposes to impose a financial penalty of £95,000 on Mr Weston and, having regard to its regulatory objectives, including the need to maintain confidence in the financial system and to secure the appropriate degree of protection for consumers, to prohibit him from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

### **3. DECISION MAKERS**

- 3.1 The decision which gave rise to the obligation to give this Final Notice was made by the Settlement Decision Makers on behalf of the FSA.

### **4. IMPORTANT**

- 4.1 This Final Notice is given to Mr Weston in accordance with section 390 of the Act.

#### **Manner of and time for Payment**

- 4.2 The financial penalty must be paid in full by Mr Weston to the FSA by no later than 21 October 2011 and by way of two instalments as follows:

- (1) £13,656 within 28 days of the date of the Final Notice;
- (2) £81,344 by 21 October 2011.

#### **If the financial penalty is not paid**

- 4.3 If all or any of the financial penalty is outstanding on 22 October 2011, the FSA may recover the outstanding amount as a debt owed by Mr Weston and due to the FSA.

#### **Publicity**

- 4.4 Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.
- 4.6 The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

#### **FSA contacts**

- 4.7 For more information concerning this matter generally, you should contact Suzanne Burt at the FSA (direct line: 020 7066 1062 /fax: 020 7066 1063).

Georgina Philippou  
Head of Department  
FSA Enforcement Division