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## FINAL NOTICE

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To: Pacific Continental Securities (UK) Limited (in liquidation)

Of: c/o Smith & Williamson Limited  
Prospect House  
2 Athenaeum Road  
London  
N20 9YU

Date: 27 January 2009

**TAKE NOTICE: the Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you final notice about the issue of a public censure:**

### **1. THE PENALTY**

- 1.1. The FSA gave Pacific Continental Securities (UK) Limited (“PCS”/“the Firm”) a Decision Notice on 23 December 2008 that pursuant to Section 205 of the Financial Services and Markets Act 2000 (“FSMA”), the FSA had decided to issue a public censure in relation to the Firm.
- 1.2. Accordingly, for the reasons set out below, the FSA imposes a public censure against the Firm.

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

#### **Summary**

- 2.1. The FSA has decided to impose a public censure on the Firm for breaches of the Principles for Businesses (“the Principles”) in connection with advising on and arranging the sale of certain higher risk securities to customers between 1 April 2005 and 20 June 2007 (“the Relevant Period”). In particular, PCS failed to:

- (1) conduct its business with integrity in breach of Principle 1;
  - (2) take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems in breach of Principle 3;
  - (3) pay due regard to the interests of its customers and treat them fairly in breach of Principle 6; and
  - (4) deal with the FSA in an open and cooperative way in breach of Principle 11.
- 2.2. The breaches of the Principles outlined above relate to a number of serious failures by PCS when advising on and arranging for customers to purchase higher risk securities issued by new or emerging smaller capitalised companies (“the securities”) during the Relevant Period.
- 2.3. During this period, PCS’ conduct fell below the standards expected under the regulatory system for the following reasons:
- (1) In operating its business, PCS also deliberately or recklessly:
    - (a) misled customers as to the extent of its research;
    - (b) permitted its advisers to continue to engage in inappropriate selling practices despite awareness of those failings;
  - (2) PCS failed to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems by failing to establish and operate adequate compliance monitoring systems;
  - (3) The failings referred to at paragraphs (2) demonstrate a disregard for the interests of customers. In addition, by conducting trades in excess of customers’ agreed trading limits, PCS also failed to treat its customers fairly.
  - (4) PCS also failed to be open and co-operative with the FSA by not co-operating with the FSA’s investigation.
- 2.4. PCS’ failings are serious in view of the following:
- (1) PCS operated a high pressure sales business, recommending higher risk securities, and knowingly allowed the use of unacceptable sales practices and methods that undermined the requirements of the regulatory system; and
  - (2) PCS’ customers were entitled to rely on the Firm to take reasonable steps to ensure the suitability of its advice, and to be treated fairly. Its customers should not have been subjected to inappropriate sales techniques which pressured them to make immediate investment decisions about higher risk securities based on information that was inaccurate, incomplete and misleading. The use of such techniques presented a real and significant risk of customers being mis-sold the securities.

- 2.5. The serious nature of the breaches identified in the Notice would have led the FSA to impose a financial penalty of £2,000,000 were it not for the fact that the firm went into administration and is now in liquidation.

### **Relevant statutory and regulatory provisions**

- 2.6. 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.

- 2.7. To enable the appropriate discharge of its functions, FSMA provides the FSA with certain powers. Section 205 of FSMA provides:

“If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act, the Authority may publish a statement to that effect”.

- 2.8. The Principles for Businesses are a general statement of the fundamental obligations of firms under the regulatory system. They derive their authority from the FSA's rule-making powers as set out in FSMA and reflect the regulatory objectives:

- (1) Principle 1 states that a firm must conduct its business with integrity;
- (2) Principle 3 states that a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems;
- (3) Principle 6 states that a firm must pay due regard to the interests of its customers and treat them fairly; and
- (4) Principle 11 states that a firm must deal with its regulators in an open and cooperative way, and must disclose to the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice.

- 2.9. The FSA published extensive guidance on the issue of the fair treatment of customers. Between July 2004 and July 2006, the FSA issued a number of papers setting out its approach to improving the fair treatment of customers by focusing on senior management responsibility for embedding this into their corporate strategy, culture and day-to-day operations; examples of key risks, indicators and questions to enable firms to understand the types of issues the FSA may investigate; and the outcomes that it was looking to achieve for consumers through the Treating Customers Fairly (“TCF”) initiative.

- 2.10. The FSA's statement of policy on the issue of public censure is set out in Chapter 6 of the Decision Procedures and Penalties Manual (“DEPP 6”), which is part of the Handbook of Rules and Guidance. The principal purpose of imposing a public censure is to promote high standards of regulatory conduct by deterring firms who have breached regulatory requirements from committing further contraventions, helping to deter other firms from committing contraventions and demonstrating, generally the benefit of compliant behaviour (DEPP 6.1.2G). DEPP 6.4.2G sets out

some particular considerations that may be relevant when the FSA determines whether to issue a public censure rather than impose a financial penalty.

- 2.11. In exceptional circumstances if the person has inadequate means to pay the level of financial penalty which their breach would otherwise attract, this may be a factor in a lower level of penalty or public censure (DEPP 6.4.2G(8)).

### **Facts and matters relied upon in the Warning Notice**

- 2.12. PCS was a stockbroking firm incorporated on 13 February 2001 that specialised in recommending to retail customers and dealing in securities that had been admitted to trading on the Alternative Investment Market (“AIM”) in the Relevant Period. This market specialises in providing primary and secondary trading services for smaller capitalised and/or emerging companies.
- 2.13. 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.
- 2.14. PCS began advising and dealing in the securities in March 2005. PCS’ strategy for generating customers involved the use of focussed mail shots and financial promotions. The mail shots and financial promotions purported to offer free independent research reports. Once customers had returned a consent form included with the mail shot, a research report was sent and customers were then telephoned with a view to opening a trading account. The customers would then be referred to a more senior adviser or broker who would recommend that they buy particular securities. Contact with customers was conducted almost exclusively by telephone.
- 2.15. The staff turnover at the Firm was high and this resulted in the number of staff holding controlled function approval varying from month to month. In December 2005, the Firm’s compliance reports showed that there were 56 staff holding controlled functions, however by September 2006 there were only 24. These numbers included individuals who held significant influence functions, Controlled Function 21 (investment adviser) and Controlled Function 22 (trainee investment adviser).
- 2.16. PCS had two Directors, Mr Griggs and Mr Weston. All of the other companies in the group of companies of which PCS is a member are based outside the UK.
- 2.17. 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. In May 2007, the FSA became concerned about PCS’ ability to remain adequately capitalised as a result of the level of customer complaints that were referred to the Financial Services Ombudsman (“FOS”) for which PCS was advised by its accountants to make a £2,000,000 provision. On 15 June 2007, PCS voluntarily varied its permissions with the effect that it would not subsequently undertake any regulated activity except to the extent necessary to close and settle existing customer

positions. On 20 June 2007, PCS ceased trading and went into administration. PCS is now in insolvent liquidation.

*Close links*

- 2.18. The FSA has particular concerns about an individual (“A”), have been linked in press reports to boiler room operations.
- 2.19. The FSA’s concerns about the level of involvement of A in the business of PCS and whether he was in fact a shadow director of PCS first arose in 2002/2003. At that time, PCS denied that A was involved in the management and/or control of PCS and that he was the owner or controller of PCS.
- 2.20. During the course of the FSA’s investigation, PCS also stated that A did not have any involvement in the running of PCS nor did he provide any stock to PCS directly. The directors of PCS gave different accounts of the role of this individual. Generally, PCS claimed that he was only acting as consultant to the ultimate controller of the group and was an introducer of potential stock investment opportunities, but never directly to London.
- 2.21. A review of company emails shows that A was engaged in the selection of stock to be promoted to customers, were provided with information about the financial position of the Firm and were either notified of or had involvement in management decisions. As such Mr A appeared to be involved in some of the decisions of the Firm, including those that impacted customers directly.
- 2.22. PCS placed considerable emphasis on its research in calls to customers and also used its research as a promotional tool when contacting and promoting securities to customers. The Firm’s brochures and promotional material described its advisory service as including free detailed market analysis and research.
- 2.23. A promotion letter sent generally to prospective customers produced by PCS, stated:

“Why Pacific Continental Securities? We keep a close eye on the world’s markets. I know of no other company that bases its recommendations on such rigorous research. Every one of our selections is the product of detailed investigation and our team’s experience”.
- 2.24. In a sales pitch given by a PCS sales adviser to a customer, the adviser claimed that PCS studied the companies it sold:

“Our analysts go in there, they’ll look at these companies for three months, basically, and they’ll literally find out who their MD is, who the CEO is, who they’re working with, who basically, who their big contracts are, which other blue-chip companies they’re dealing with. Everything, basically, we can possibly find out about the company...then literally follow it for a couple more months...we’ll do a bit more due diligence on it.”
- 2.25. The only research was done by an external consultant who was paid £600 for each report he produced and who was only instructed to produce a report once PCS had decided that it would promote a particular stock. PCS was therefore aware that no

“detailed investigation” and “rigorous research” was undertaken before PCS recommended securities to its customers, as otherwise advised.

*Selling practices and awareness of senior management*

- 2.26. By May 2006, FOS’s records indicate that PCS the most complained about firm within the Portfolio Management team, which deals with complaints against securities brokers, IFAs and spread betting firms etcetera.
- 2.27. The majority of those complaints related to the purchase of Regulation S (“Reg S”) stocks, the unregistered stocks of US companies that must be sold to offshore or non-US residents, and which are subject to the restriction that they cannot be sold back into the United States for one year. The promotion of Reg S stocks are outside the scope of the current action, however the issues raised were frequently based on the Firm’s sales practices and its research and were largely similar to those identified with regard to the sale of AIM securities.
- 2.28. PCS provided instructions to advisers in the form of a manual containing details of what was expected of advisers in terms of their sales tactics, and a series of recommended responses designed to undermine and eventually overcome a customer’s objections to a sale. This manual was known as the “*bible*” by advisers and was relied upon in promoting the securities to customers. In specific calls to customers, advisers used phrases to describe the securities and on occasions made statements that were verbatim extracts from “*the bible*”. These phrases included comparisons with other financial institutions, reference to a specific number of recommendations made per year, and use of the term ‘*cherry picking*’ to describe the manner in which the Firm selected its securities.
- 2.29. Examples of the objections covered are:
- (1) Customer wants to think about it. One of the suggested ways to address this issue was, “*I’m at a loss...what is there to think about, you agreed you like the sound of it, we have the same goal, all we want to do is make money, remember the performance of the stock I recommended is directly linked to my commission, the better this stock does the more likely you’ll invest in another idea and be honest with me... if we get a decent level of profit from this company you’ll probably do a bigger trade size anyway right?*”;
  - (2) Customer wants to talk to wife. One of the suggested ways to address this issue was to state “*If you want me to call you back so you can ask your wife if you can buy the stock, I’ll ring mine and see if I can sell it to you, in all seriousness...*”;
  - (3) Customer is unsure. A suggested way to handle this was, “*If you don’t do this small trade we’re never going to get into the position of making the real money*”;
  - (4) Customer wants to watch the stock. A suggested way to deal with this was, “*I bet you don’t watch half the stocks you own let alone stocks you don’t....No one ever made money watching stocks...*” ; and

- (5) No money. A suggested way to address this was, *“I’m sure if I’d been your broker for the last six months and more importantly I’d been making you money, you’d probably be able to find a couple of grand for this idea, you’d probably be asking me what to move around to free up liquidity, correct”*.
- 2.30. Senior management stated that they were unaware of the sales manual or that the advisers were using it. However, a review of the sales calls highlighted that advisers made statements which directly correlated to those set out in the ‘bible’ to no less than 6 out of the 15 customers in the sample and on no less than 7 separate occasions. In addition, senior management were located very closely to the dealing floor at the Firm and a director confirmed that he *“..tends to walk around the dealing room, I listen to business that’s being transacted. I regularly interact with the team leaders to find out what’s going on. And, you know, tend to allow them to come into my office at any time when they have any specific issues they want to discuss”*.
- 2.31. Advisers encouraged customers to purchase the securities despite customers’ expressions of hesitation, reluctance or uncertainty regarding the purchase. For example:
- (1) In one instance, a customer showed some reluctance and indicated that he would rather not invest, however the adviser offered an extended settlement period to persuade the customer to invest;
  - (2) A compliance report in relation to an adviser dated 30 November 2005 highlighted that he *“should not persist on the trade after the customer objected 10 times, and not use extended settlement as an inducement for the trade”*;
- 2.32. Advisers at the Firm made multiple telephone calls over consecutive days to particular customers applying pressure on them to invest with PCS, when the same customers had indicated they had no available funds and/or they were not in a position to invest. For example:
- (1) In one case, a customer was pressured to invest £25,000 in a particular security, after stating that he did not have the money, and he had to ask his son to pay for the order.
  - (2) In another call, the customer protested that he only had £900 in the bank and that he was on pension. On a previous occasion the customer had emphasised that he could only afford a few hundred pounds. The adviser persisted in using the sales technique of false alternatives i.e. asking whether the customer would buy 75,000 or 85,000 shares, claiming that 75,000 was the minimum. A few hours later he proposed 65,000 shares, contradicting his earlier assertion. A further few hours later on that same day the customer said that he did not know how he was going to finance buying 65,000 shares for £3,900. In another call that evening the customer repeated that statement after the trade had been confirmed by the adviser. In that same call, the adviser offered extended settlement to persuade the customer to trade; and
  - (3) a review of the taped calls and PCS compliance monitoring records indicate that on no less than five additional occasions, advisers persisted in trying to

Speak to the customers and to persuade them to invest regardless of the inconvenience to the customer.

2.33. PCS' Board of Directors was provided with monthly compliance reports which included the results of trade calls monitoring conducted by the Firm's internal compliance function and with monthly reports by the external consultant /Compliance Officer. A report highlighted a number of continuing non-compliant issues from call monitoring exercises, which were listed:

- (1) "calling in unsuitable circumstances;
- (2) poor or lack of investment arithmetic abilities;
- (3) switching (profit take and re-invest);
- (4) misleading statements about securities prices and trends;
- (5) a lack of understanding of investment ratios and gearing; and
- (6) unstructured presentations".

2.34. These issues were repeated over a number of other compliance reports. In particular, senior management were made aware:

- (1) that there was a lack of clarity of the sales scripts and that further information should be added;
- (2) that the Compliance function was short-staffed specifically in relation to the call monitoring function and that this resulted in very few calls being monitored; and
- (3) of the risks associated with recruiting poor quality staff with little trading experience, poor financial knowledge and a lack of investment arithmetic abilities.

2.35. The reports produced by Compliance Department and the external consultant between April 2005 and September 2006, highlighted concerns about poor sales practices and non-compliant behaviour. These reports did not show an improvement in these areas over time.

2.36. The reports also highlighted the fact that senior advisers had a poor attitude towards Compliance. This attitude was demonstrated by instances when advisers and team leaders included information in sales scripts, and on at least one occasion drafted their own scripts, without prior review or approval by Compliance.

2.37. PCS was aware of the recurring nature of advisers' failings highlighted by the Firm's trade calls monitoring system. In particular, between 1 October 2005 and 1 October 2006, the results of the monitoring consistently highlighted three key areas of failings. These focussed on whether the advisers:



- (1) gave all the risk warnings for a small capitalisation stock. The Firm's monitoring exercises over the year indicated that advisers were 44.4% non compliant in this regard.
  - (2) appropriately characterised the stock, giving both positive and negative points (risk factors) in a balanced presentation so that the client had a fair basis for deciding whether to invest. The Firm's results showed a 35% non compliance; and
  - (3) refrained from saying anything that was untrue, unfair or misleading. The results showed that advisers failed to comply in 29.8% of the calls, over the year.
- 2.38. Overall, senior management did not accept that the statistics in the compliance reports were a true reflection of the quality of sales calls or that these reports indicated areas of concerns within the Firm. In particular, they were of the view that a high percentage of transgressions by an adviser did not necessarily mean that customers were subject to a biased or unfair recommendation.

*Compliance monitoring systems*

- 2.39. Senior management also stated that some of the transgressions were not "very serious" and that the measures in place were in excess of what was needed to explain to a customer that they might lose money.
- 2.40. The data produced by the compliance team was inconsistent and often contradicted by the monitoring conducted by the Firm's external consultant. However there was no indication that senior management recognised those inconsistencies or acted to address them.
- 2.41. More importantly, the compliance systems did not identify the true extent of the failings of the Firm. A review of tape-recorded sales calls which focused on 15 customers to whom calls were made between 7 July 2006 and 6 September 2006, revealed that the most senior advisers scored markedly lower than was identified in the Firm's monitoring results.

*Monitoring of customers' agreed trading limits*

- 2.42. PCS procedures required that a trading limit for each customer based on their liquid assets and risk appetite was agreed 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.
- 2.43. A review of the 46 customers forming part of the FSA's sample indicated that:
- (1) 80% (37 out of 46 customers) 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) 44% of customers (20 out of 46) were at some point traded in excess of their agreed limits.

2.44. Two particularly egregious examples are:

- (1) One customer's trading limit was increased from £5,000 to £84,000 on 17 July 2005. There was no explanation in the Customer Update Form for such a large increase, particularly in light of the 10% decrease in the customer's stated attitude to high-risk investment. The customer's assets were shown to have increased from £25,000 to £210,000, again with no evidence on file; and
- (2) One customer's limit was revised from £16,000 to £42,000 on 7 June 2005, and agreed by him on 9 June 2005; and then revised again from £42,000 to £120,000 on 22 June 2005, and agreed by him on 8 July 2005. On 11 July 2005, there was an attempt to revise the limit from £120,000 to £140,000, however the records stated that there were "*not enough funds, await new update*". On 25 July 2006 the customer's limit was increased from £120,000 to £135,000. Even so, PCS exceeded his trading limit by approximately £46,000.

2.45. One email, in April 2007, discussed the complaint of a customer who had borrowed money to invest in a security. After an investigation by PCS, it transpired that the account opener had consciously included false information about the client's experience and liquidity on the CIF Form and automatically placed her on a trading level higher than £25,000 without waiting for her confirmation. Furthermore, when an adviser subsequently called her to make a recommendation, he ignored her when she said she lived off a disability allowance, she could not work and did not have any savings. She clearly stated she would have to borrow the money for the investment yet the adviser guaranteed that she would not lose her investment.

2.46. 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. In at least one instance, a customer's agreed risk capital level was exceeded to enable PCS to switch the customer into different stocks.

2.47. The investigation showed that 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.

*Being open and cooperative with the FSA*

2.48. Following the appointment of investigators, a number of document and information requirements pursuant to sections 171 and 172 of FSMA were made of the Firm. The requirements were made on 16 October 2006, 27 October 2006, 10 November 2006, 12 December 2006, 2 March 2007, 10 May 2007, 5 June 2007, 17 July 2007 and 9 August 2007.

2.49. PCS was required to provide the information requested in the respective letters by specified dates to enable the FSA to carry out the investigation into the affairs of PCS

promptly and thoroughly. However despite being granted two extensions of time, PCS failed to comply. PCS also failed to respond fully to two letters setting out outstanding items despite an extension of the deadlines within which the information was to be provided.

- 2.50. Some of the information that remained outstanding when PCS went in to administration was provided by the Administrators. However, this information would have been available to the Firm at the time of the requirement. The majority of the evidence relied upon in the investigation was obtained from the Administrators.

### **Analysis of breaches in the Warning Notice**

#### ***Principle 1***

- 2.51. By reason of the facts and matters set out in paragraphs 2.18 to 2.39 above, the FSA considers that PCS breached Principle 1.

#### ***Close links and misleading the FSA***

- 2.52. PCS misled the FSA about the true nature of its relationships with an individual.
- 2.53. The emails reviewed and the disingenuous responses of senior management to questions about the individual in interview, particularly the denial of involvement in the activities of the Firm even when presented with these emails referred to above, demonstrate that PCS was dishonest about the nature of the relationships.
- 2.54. In allowing this individual to play a part in the business of PCS and in concealing this from the FSA, PCS demonstrated a lack of integrity.

#### ***Misleading customers about the extent and nature of the research of securities***

- 2.55. PCS misled its customers as to the quality and thoroughness of the research and due diligence it conducted by providing its customers with exaggerated, unsupported and misleading information about its professional and technical services.
- 2.56. The statements made about the extent of the research were misleading, as they implied that there was a level of diligence and research behind the selection of the securities which, in practice, did not exist.
- 2.57. PCS did not ensure that its research consultant was provided with complete information about the companies and securities that were being researched. PCS could therefore not be sure that the reports were based on all information relevant to his outlook on the prospects of companies and their stock.
- 2.58. PCS also knew that there was no adequate quality control in place to monitor the research report produced after a stock was selected. Further, there is no evidence that any additional due diligence was carried out at any stage. PCS did not put any additional safeguards explaining the potential conflicts of interest into the sales scripts used by advisers.

- 2.59. In so misleading its customers as to the basis on which it made recommendations to invest in the securities, PCS showed a lack of integrity in its approach to its core business.

*Permitting advisers to continue to engage in inappropriate selling practices despite awareness of those failings*

- 2.60. Despite PCS' awareness of failings and knowledge of the potential impact of such practices on its customers, PCS permitted its advisers to use inappropriate and persistent selling methods in their promotion and the sale of high risk securities to customers.
- 2.61. PCS was aware of the failings in the manner in which PCS promoted and sold stock to customers by way of its internal monitoring systems.
- 2.62. PCS permitted staff to use sales guidance and a sales manual setting out the Firm's expectations of advisers in terms of their sales tactics and containing a series of responses designed to undermine and eventually overcome any objections a customer might have had to a sale.
- 2.63. In the FSA's view, the behaviour of the advisers, proximity of senior management to advisers and the awareness of senior management undermine the Firm's assertions that transgressions were not serious and that standards were acceptable.
- 2.64. The evidence demonstrates that PCS encouraged inappropriate sales practices despite its awareness that the securities promoted by it presented particular risks to customers. PCS also failed to take any action to properly address the issues raised and maintained the view that all had been done to offer products to customers in a fair and balanced way.
- 2.65. In allowing these practices to continue, PCS demonstrated a reckless disregard for proper standards.

*Principle 3*

- 2.66. By reason of the facts and matters set out in paragraphs 2.40 to 2.41 above, the FSA considers that PCS breached Principle 3.

*Failure to establish and operate adequate compliance monitoring systems*

- 2.67. PCS failed to establish and operate adequate compliance policies and procedures that were adequate to manage and control its regulated business.
- 2.68. PCS failed to maintain proper and adequate procedures assessing suitability, particularly for managing information relating to the increase in customer trading limits. Whilst PCS had systems for reporting and recording compliance risks, these systems were inadequate to enable PCS to manage these risks.

- 2.69. PCS did not follow up customer information where files were missing key data and information. This resulted in trades being conducted without adequate confirmation of customer's identity, verification of risk appetite, capital or income.
- 2.70. As a result, PCS was unable to adequately monitor, identify and manage the regulatory risks facing its business and its customers as and when they arose.

Principle 6

- 2.71. The consequence of the failings set out at paragraphs 2.42 to 2.47 above was that PCS failed to pay due regard to the interests of its customers and treat them fairly in breach of Principle 6.
- 2.72. PCS failed to ensure that its recommendations were suitable for customers. In particular, when making recommendations it failed to obtain and consider adequate personal and financial information, or adhere to the customers' agreed trading limits.

*Breaching customers' agreed trading limits*

- 2.73. The evidence demonstrates that PCS staff routinely ignored the Firm's requirement that once the limit of a customer's agreed trading limit had been reached, any subsequent amendment to these limits had to be justified by a demonstrable change in customers' financial circumstances, risk appetite or life stage. There is no evidence that PCS took adequate steps to address this issue.
- 2.74. PCS increased trading limit levels merely to accommodate further trading and as such this conduct led to PCS making recommendations that were not suitable for customers, especially those that could not afford to invest.

Principle 11

- 2.75. PCS failed to co-operate with the FSA's investigation.
- 2.76. The failure of the Firm to provide all the information required by the FSA and in a timely manner is serious as it has resulted in parts of the operation of the business of PCS being obscured and the investigation taking longer than necessary.

**Representations**

No representations were made in respect of the Warning Notice.

**3. CONCLUSION**

- 3.1. The facts and matters set out above demonstrate that PCS has breached Principles 1 (integrity), 3 (systems and controls) 6 (due regard for customer's interests and treat them fairly), and 11 (deal with the FSA in an open and cooperative way). These breaches are such that the FSA would have imposed a financial penalty of £2,000,000, were it not for the fact that the Firm is in insolvent liquidation. In those circumstances, the FSA has decided to issue a public censure against PCS.

#### **4. DECISION MAKER**

- 4.1. The decision which gave rise to the obligation to give this Final Notice was made by the Regulatory Decisions Committee.

#### **5. IMPORTANT**

- 5.1. This Final Notice is given to you under section 205 of FSMA and in accordance with section 390 of the FSMA.

##### **Publicity**

- 5.2. 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.

##### **FSA contacts**

- 5.3. If you have any questions regarding the procedures of the Regulatory Decisions Committee, you should contact Daniel Lewsey (direct line: 020 7066 7468/fax: 020 7066 7469) in the Regulatory Decisions Committee Professional Support Services.
- 5.4. 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**