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Financial Conduct Authority fines Credit Suisse and Yorkshire Building Society for financial promotions failures



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Press release

fine was £1,429,000.

The Financial Conduct Authority (FCA) has today fined both Credit Suisse International (CSI) and Yorkshire Building Society (YBS) for failing to ensure financial promotions for CSI's Cliquet Product¹ were clear, fair and not misleading. CSI was fined £2,398,100 and YBS's

The Cliquet Product was designed by CSI to provide capital protection and a guaranteed minimum return with the apparent potential for significantly more if the FTSE 100 performed consistently well. The probability of achieving only the minimum return was 40-50% and the probability of achieving the maximum return was close to 0%. Despite this CSI's and YBS's financial promotions marketed the potential maximum return on the product as a key promotional feature.

The target market for the Cliquet Product was described by CSI as "stepping stone customers" who were conservative and risk averse. The product was typically sold to unsophisticated investors with limited investment experience and knowledge through a number of distributors. 83,777 customers invested a total of £797,380,716 in the product; with YBS being the distributor responsible for approximately 75% of the total amount invested.

The maximum return figure was given undue prominence in both CSI's product brochures for the Cliquet Product, which YBS approved and provided to their clients, and in YBS's own financial promotions for the product, some of which also did not clearly explain how returns were calculated.

Tracey McDermott, FCA's director of enforcement and financial crime said:

"It is crucial that firms consider the needs of their customers from the time that products are being designed through to their marketing and sale. The information provided to customers forms an important part of this. Financial promotions are often the primary source of information for consumers and in this case CSI and YBS let their customers down badly. These promotions were a serious breach of the requirement to be clear, fair and not misleading.

"CSI and YBS knew that the chances of receiving the maximum return were close to zero but they nevertheless highlighted this as a key promotional feature of the product. This was unacceptable."

In September 2010, following concerns raised by third parties, including Which?, YBS changed its promotions so that undue prominence was no longer given to the potential maximum return. However, YBS continued to cite the potential maximum return and to give an unfair impression of the likelihood of achieving it. CSI also reviewed its promotions in response to the third parties' concerns, but decided not to change its product brochure significantly.

In addition, the FCA found that CSI failed to have a procedure in place for a complete review of their long running promotions on a periodic basis. If CSI's processes had included such a review, this may have resulted in the problems with the product brochure being remedied earlier.

Both firms agreed to settle at an early stage of the FCA's investigation and therefore received a 30% settlement discount. Today's fines are the first time that the FCA has taken action against both the manufacturer of a product and its distributor simultaneously.

Notes for editors

1. [The final notice for CSI](#).
2. [The final notice for YBS](#).
3. CSI and YBS have agreed to contact customers who bought the issues of the Cliquet Product available between 1 November 2009 and 17 June 2012 (including some customers who purchased these issues immediately before this period). They will be offered the opportunity to exit the product without penalty (where applicable) and interest up to the date they exit based on a fixed term deposit rate. Customers who CSI and YBS have agreed to contact who are no longer in the Cliquet Product will also be offered the same rate. Some customers will already have been contacted. YBS customers who have questions can visit their website (www.ybs.co.uk). All other customers should visit Credit Suisse's website (www.credit-suisse.com/SDR). CSI has set up a dedicated call centre for affected customers. This can be reached on 0800 052 0044.
4. On 1 April 2013 the FCA became responsible for the conduct supervision of all regulated financial firms and the prudential supervision of those not supervised by the Prudential Regulation Authority (PRA).
5. The FCA has an overarching strategic objective of ensuring the relevant markets function well. To support this it has three operational objectives: to secure an appropriate degree of protection for consumers; to protect and enhance the integrity of the UK financial system; and to promote effective competition in the interests of consumers. [You can find more information about the FCA, as well as how it is different to the PRA.](#)
6. The FCA is interested in how behavioural economics can help understand why consumers make the decisions they do. Some of the issues raised in this case will be examined as part of its ongoing work.

¹The Cliquet Product is a capital protected 4, 5 or 6 year structured deposit product which guarantees a minimum return. In addition, if the sum of the returns of the FTSE Index over each six month period (with the return in each period capped and floored) exceed the minimum return, the deposit pays the sum of the FTSE returns. For the maximum return to be achieved the FTSE 100 was required to rise by AT LEAST the cap level in every 6 month period. The Cliquet Product was sold by distributors under the following names - Protected Capital Plus Account, Guaranteed Capital Account, Protected Capital Account, Capital Plus Account, Guaranteed Capital Plus Account, Guaranteed Investment Account.

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FINAL NOTICE

To: **Credit Suisse International ("CSI")**

Firm
Reference
Number: **146702**

Address: **One Cabot Square
London
E14 4QJ**

Date **16 June 2014**

1. ACTION

- 1.1. For the reasons given in this notice, the Authority hereby imposes on CSI a financial penalty of £2,398,100.
- 1.2. CSI agreed to settle at an early stage of the Authority's investigation. CSI 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 £3,425,900 on CSI.

2. SUMMARY OF REASONS

- 2.1. In the period 1 November 2009 to 17 June 2012 ("the Relevant Period"), CSI breached Principle 7 of the Authority's Principles for Businesses ("the Principles") in that it failed to pay due regard to the information needs of its clients and communicate with them in a way which is clear, fair and not misleading. The

financial promotions which CSI issued for its Cliquet Product¹ did not satisfy this requirement.

- 2.2. There were 105 issues of the Cliquet Product available for subscription during the Relevant Period. In total, 83,777 customers invested £797,380,716 in these 105 issues. The Cliquet Product was not sold directly by CSI, but sold to retail investors through third party distributors. These retail investors were typically unsophisticated investors with limited investment experience and knowledge. The age profile of the investors was 14.5% under 45, 53% between 45 and 65 and 32.5% over 65.
- 2.3. The Cliquet Product was designed by CSI to provide capital protection and a guaranteed minimum return with the potential for more if the FTSE 100 Index performed consistently well. The potential for more was subject to a cap on the potential maximum return offered by the product. During the Relevant Period the maximum return figure given in the Product Brochures varied between 20% and 72% for the 4 to 6 year versions of the PCA. The guaranteed minimum return varied between 4% and 23.5% for the 4 to 6 year versions. Throughout the Relevant Period CSI knew from its own analysis that there was close to a 0% probability of achieving the maximum return and a 40% to 50% chance of a customer only receiving the guaranteed minimum return. Of the products that matured during the Relevant Period (which had opened between 2003 and 2008 and were held through the financial crisis), 41% achieved more than the guaranteed minimum. The remaining 59% of products achieved only the minimum. Overall, the average return above the guaranteed minimum was 2.57% (equating to an annual return of 0.45%) higher than the guaranteed minimum return. None of the issues of the Cliquet Product ever achieved the maximum return.
- 2.4. The Product Brochures CSI issued for the Cliquet Product gave undue prominence to the potential maximum return. Each of the 105 Product Brochures available during the Relevant Period highlighted the potential maximum return figure as one of the key promotional features of the Cliquet Product (including on its front page) notwithstanding the fact CSI knew, on the basis of its own analysis, it was almost impossible to achieve the maximum return. While it was necessary to refer

¹ The Cliquet Product is a 4, 5 or 6 year capital protected structured product, which guaranteed a minimum return and had a cap on the potential maximum earnings. The Cliquet Product generated returns through a series of 6 month options over the lifetime of the product based on the growth of the FTSE 100 (known as a 'cliquet' structure). The total return was calculated by taking the sum of the returns from each 6 month period throughout the lifetime of the product (subject to the minimum guaranteed return and a cap on the potential maximum return for each of the 6 month periods). For the maximum return to be achieved the FTSE 100 was required to steadily rise throughout the lifetime of the product.

to the cap on returns in the documents, given CSI's knowledge of the low likelihood of receiving the maximum return, it was highly inappropriate to emphasise the maximum return in this way.

- 2.5. This led to an unfair presentation of the likelihood of achieving the maximum return (and consequently the overall likely return). Customer surveys showed that the end result was a significant disparity between customer expectation and the actual likely returns (as set out in paragraph 2.3 above). A survey carried out by one of the Cliquet Product's distributors in October and November 2010 found that around 18% of customers expected to achieve the maximum return compared to about 8% of whom expected to receive the minimum.
- 2.6. In order to understand the likelihood of achieving anything above the minimum return the Cliquet Product's potential customers required a high level of sophistication and experience. Given the profile of the Cliquet Product's customers, there was a significant risk that they would not possess sufficient understanding of structured products to fully understand the Cliquet Product from the content of the Product Brochures.
- 2.7. Until 18 January 2012, CSI failed to provide a sufficiently clear, full and prominent explanation to customers of the basis for the calculation of the level of charge that would apply to their investment in the event of early termination. As at September 2013, around 4% of customers (3,033 customers) who had invested in the Cliquet Product during the Relevant Period had chosen to withdraw from the product early. Of the customers who withdrew approximately 14% (424 customers) had to pay an early exit fee. This was applied to the initial investment sum and, therefore, these customers received less than their initial investment back. The average early exit fee applied to customers who withdrew early was £271 (around 3% of the investment). The remaining approximately 86% (2,609 customers) who withdrew received their initial investment back without any accrued interest or return. Customers were unable to understand the basis for the calculation of the level of charge to be applied to the amount invested.
- 2.8. CSI's financial promotions procedures did not provide for any holistic periodic review of their compliance with regulatory requirements. In reviewing the Product Brochures and the General Terms and Conditions, CSI's Compliance, Legal and Sales departments focused on approval of individual changes in isolation, rather than undertaking any periodic review of the document as a whole. If CSI's processes had included such a review, this may have led to the proactive

identification of issues concerning the undue prominence given to the maximum return and the inadequate reference to the early exit fee in the Cliquet Product's financial promotions.

2.9. As a result of these matters, CSI did not pay sufficient regard to the information needs of customers.

2.10. The Authority considers CSI's failings to be particularly serious because:

- (1) financial promotions are often the primary source of information for customers seeking to understand a particular product prior to making a decision whether to invest. It is therefore essential that firms producing such materials ensure that the content of their communication provides customers with a balanced impression of the product. Issues with the product may only become fully apparent some years into the investment and exiting the product is often difficult and expensive;
- (2) the Authority has consistently stressed in its publications the importance of firms taking appropriate steps to ensure that communications with customers are clear, fair and not misleading;
- (3) the typical investors in the Cliquet Product were unsophisticated investors with limited investment experience and knowledge;
- (4) of the widespread availability of and investment in the Cliquet Product. During the Relevant period over 83,000 customers invested a total of approximately £797m in the 105 issues of the Cliquet Product;
- (5) the issues described above concerning the prominence of maximum returns, the likelihood of achieving the maximum returns and the early exit fee were brought to CSI's attention by the Authority, Which? and distributors of the product;
- (6) the majority of changes which CSI made to its financial promotions to address issues in how it promoted the Cliquet Products and met its customers' information needs were made at the instigation of third parties, including distributors and Which?, rather than on CSI's own initiative;
- (7) the results of the consumer research available to CSI during the Relevant Period, when compared to its own analysis and actual past returns, indicated that there was a significant disparity between customer

understanding of the realistic potential returns from the Cliquet Product and the actual likely returns;

- (8) CSI designed the Cliquet Product to be sold on a non-advised basis; and
- (9) CSI has previously been the subject of a number of disciplinary actions by the Authority.

2.11. Following intervention from the Authority in June 2012, CSI agreed to contact 4,273 customers who had agreed to enter into the latest tranches of the Cliquet Product (which had yet to close). CSI provided them with additional information on the likelihood of achieving returns from the product and offered customers the opportunity to withdraw their funds without incurring a penalty. Of those who responded to CSI, 18.37% decided to withdraw from the Cliquet Product (including some who withdrew for reasons other than the new information). The remaining 81.63% confirmed they wished to retain their investment. CSI has now agreed to extend this customer contact exercise. Customers who have queries on this exercise or who wish to make a complaint should contact 0800 052 0044 or visit www.credit-suisse.com/SDR.

2.12. The Authority recognises that from April 2012, CSI has reviewed and developed its systems and controls in relation to product governance. As part of this process, CSI reviewed and made a number of material improvements to its Cliquet Product Brochures from June 2012 onwards. The Authority also acknowledges that during the Relevant Period CSI considered that the absence of a significant level of customer complaints suggested consumers found its Product Brochures to be clear, fair and not misleading. In addition, the Authority notes that CSI no longer acts as a plan manager of new structured deposit products for UK retail customers.

3. DEFINITIONS

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

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

"AER" means Annual Equivalent Rate;

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

"BCOBS" means the part of the Authority's Handbook titled the Banking Conduct of Business Sourcebook;

"Cliquet Product" means the capital protected structured cliquet product with a term of four, five or six years, which guaranteed a minimum return and had a cap on the potential maximum earnings, which was issued by CSI and sold on a non-advised basis through third-party distributors during the Relevant Period;

"COBS" means the part of the Authority's Handbook titled the Conduct of Business Sourcebook;

"CSI" means Credit Suisse International;

"Customer Contact Letter" means the letter sent to the 4,273 customers from the latest tranches of the Cliquet Product (which had yet to close) in July 2012 providing them with additional information and giving them the opportunity to withdraw from these without incurring a charge;

"DEPP" means the Authority's Decision Procedure & Penalties Manual as set out in the Authority's Handbook;

"distributor" means third party building society distributors;

"General Terms and Conditions" means the terms and conditions document which was normally distributed to customers at the same time as the Product Brochure (but was also available on the internet);

"the Index" means the FTSE 100 Index;

"the Principles" means the Authority's Principles for Businesses as set out in the Authority's Handbook;

“PCA” means Protected Capital Account;

“Product Brochure” means the brochure issued by CSI as a financial promotion for the Cliquet Product and entitled “Plan Specific Terms and Conditions” which was normally provided to customers following a meeting with a trained member of the distributors’ staff (but was also available on the internet);

“the Relevant Period” means the period between 1 November 2009 and 17 June 2012;

“the Rules” means the rules set out in the Authority’s Handbook; and

“the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber).

4. FACTS AND MATTERS

BACKGROUND

Credit Suisse International

- 4.1. CSI is an indirect wholly owned subsidiary of Credit Suisse Group AG. CSI has been authorised by the Authority since 1 December 2001.
- 4.2. The CSI group has three principal business divisions: Fixed Income, Equities and Investment Banking, which are managed as part of the Investment Banking Division of the Credit Suisse group. The Equity Division, which produced the Cliquet Product, engages in sales, trading, brokerage and market making in international equity and equity related securities, options, futures and OTC derivatives.
- 4.3. In 2013, CSI decided to cease acting as a plan manager of new structured deposit products to UK retail customers.

The Cliquet Product

- 4.4. There were 105 issues of the Cliquet Product available in the Relevant Period, into which 83,777 investors invested a total amount of £797,380,716 in deposits. The average amount invested in each Cliquet Product during the Relevant Period was approximately £9,500.
- 4.5. The Cliquet Product is a capital protected structured product with a term of 4, 5 or 6 years, which guaranteed a minimum return and had a cap on the potential maximum earnings. The Cliquet Product had different variations and was known

by different names during the Relevant Period. These are listed in Annex B to this document. One of these product variations was the Protected Capital Account ("PCA"). The versions of each of these would be numbered and, therefore, for example, the first issue of the PCA would be described as "PCA 1". At any one time, there may have been a number of consecutive issues in distribution with different 4 to 6 year investment terms.

- 4.6. CSI designed the Cliquet Product to be suitable for what it described as the '*stepping stone customer*'. CSI defined the '*stepping stone customer*' as a conservative, risk averse customer with at least £3,000 available to invest for a fixed period of 4 to 6 years. CSI described the '*stepping stone customer*' as a conservative, risk averse investor who typically sought more competitive returns than those offered by deposit accounts but was unwilling to take a large step away from fixed rate investments and did not have sufficient assets to need independent financial advice. Retail investors who entered into the Cliquet Product were typically unsophisticated investors with limited investment experience and knowledge. The age profile of the investors was 14.5% under 45, 53% between 45 and 65 and 32.5% over 65.
- 4.7. CSI developed the Cliquet Product to add to its portfolio of structured deposit products and to be fundamentally similar in nature to other deposit products offered to '*stepping stone customers*' by third party distributors (who were, in practice, typically building societies). The Cliquet Product offered capital protection and a guaranteed minimum return with the potential for some higher growth if the Index consistently increased during the life of the Cliquet Product. On this basis CSI assessed the Cliquet Product as low-risk, non-complex and suitable for non-advised sales to retail customers. Distributors would normally sell the product in their branches following a one to one meeting between the customer and a trained staff member where the Cliquet Product (and potentially other products) was explained. The sale itself would be conducted on a non-advised basis. CSI's primary focus in designing the Cliquet Product was to provide capital protection and a guaranteed minimum return. The by-product of providing this guaranteed return was the introduction of a cap or limit on the potential maximum return.
- 4.8. CSI's Product Brochures highlighted potential maximum returns, which varied between 20% and 72% for the 4 to 6 year versions of the PCA, and guaranteed minimum returns, which varied between 4% and 23.5%, during the Relevant Period. These potential maximum returns were given equal, or near equal

prominence, to the presentation of the minimum return (see paragraphs 4.10 to 4.21 below). The Cliquet Product generated returns through a series of 6 month options over the lifetime of the product based on the growth of the FTSE 100 (known as a 'cliquet' structure). Any positive returns secured during any of the six month periods would be offset by any negative returns in other six month periods. The total return was calculated by taking the sum of the returns from each six month period throughout the lifetime of the product (subject to the minimum guaranteed return and a cap on the potential maximum return for each of the 6 month periods). For the maximum return to be achieved the FTSE 100 was required to steadily rise throughout the lifetime of the product.

- 4.9. Throughout the Relevant Period, CSI was fully aware from its own analysis that the likelihood of achieving the maximum return was close to 0%. CSI was also aware that the conditions required to achieve the advertised headline rates had not occurred since the start of the period analysed (1984, which was when the FTSE 100 was launched). CSI's analysis also showed that there was an approximately 40% to 50% chance of a customer only achieving the minimum return. There were 82 Cliquet Products that matured during the Relevant Period (which opened between 2003 and 2008); 59% of the maturing Cliquet Products paid out only the guaranteed minimum return whilst none of the remaining 41% delivered the maximum return. Overall, the average return above the guaranteed minimum was 2.57% (equating to an annual return of 0.45%) higher than the guaranteed minimum return. None of the issues of the Cliquet Product ever achieved the maximum return.

The Product Brochure

Prominence of the maximum return

- 4.10. The Product Brochure was the primary source of written information for customers seeking to understand the product prior to making a decision whether to invest. The accuracy and clarity of the document was particularly important because the:

- (1) investors in the Cliquet Product comprised '*stepping stone customers*' who were typically unsophisticated investors with limited or no experience of complex structured deposit products, such as the Cliquet Product;
- (2) Cliquet Product was developed with the expectation that it would be sold on a non-advised basis; and

- (3) terms and conditions for the Cliquet Product included an early exit fee which could vary significantly depending on the circumstances.

4.11. At the beginning of the Relevant Period in November 2009, the Product Brochure included both the guaranteed minimum and potential maximum return with equal, or close to equal, prominence.

- (1) By way of example, the front page of the Product Brochure for the Guaranteed Investment Account – TG 5, which opened on 6 November 2009, included the following information:

The image shows a slide from a product brochure with a blue background and a yellow sun graphic at the bottom right. The text is as follows:

Guaranteed Investment Account - Tracked Growth 5 (the "Plan")

- Potential return based on the FTSE® 100 Index†
- 100% Capital Guaranteed
provided that the Account is held for the full Investment Term
- 5 year fixed Investment Term
- TAX FREE for Cash ISAs and/or Cash ISA transfers
- 11.25% minimum growth (gross) at maturity
- 50% potential maximum growth
(gross) at maturity

- (2) Page 3 of the Product Brochure for the Guaranteed Investment Account - TG 5 stated the following:

How does the Plan work? You will receive your capital back on the Plan Maturity Date and:

11.25% minimum growth

or up to a maximum of

50% growth

dependent upon the performance of the FTSE® 100 Index as outlined below

- 4.12. The maximum return, therefore, featured in the Product Brochure as one of the key promotional features of the Cliquet Product. The probability of achieving the maximum return was close to 0%.
- 4.13. During the Relevant Period, CSI did not consider that there was a lack of balance between the representation of the guaranteed minimum return and the potential maximum return in the Product Brochure and so did not take any steps to correct this. In fact, CSI made two additional changes the effect of which was to exacerbate the unfair presentation of the possibility of achieving the maximum return (and consequently the overall likely return). These were carried over into subsequent launches of the Cliquet Product over the Relevant Period. These amendments were:
- (1) the introduction of a table setting out examples of possible gross returns on £10,000 provided that the Cliquet Product is held until the maturity date. Four scenarios were included with equal prominence given to the guaranteed minimum and the potential maximum return. CSI first introduced the examples section for the PCA 1 tranche in April 2010 and this element was included in the financial promotions for 84 Cliquet Product launches; and
 - (2) the reduction of the size of the font used for the prominent minimum growth figure on page 3 of the Product Brochure, with the impact of matching it with that used for the 'maximum' growth figure. In the Product Brochures for the Cliquet Product issues that opened up to 18 January 2012, the font sizes had been chosen to maintain a small distinction

between the two figures in the second reference to the minimum and maximum return on page 3 of the Product Brochure, with the aim of giving the guaranteed minimum return some additional prominence over that of the potential maximum return figure. In later issues, CSI gave the guaranteed minimum return and maximum return equal prominence (in terms of font size and presentation) in the Product Brochure. This amendment was implemented without following the proper internal policies (see paragraph 4.34 below).

- 4.14. The Product Brochure sought to explain the low likelihood of achieving the maximum return with the following wording (which appeared twice):

"The maximum growth of XX% will only be achieved if the percentage gain in the Index is X% or more for each of the consecutive semi annual periods."

- 4.15. From the launch of PCA 4 opening on 28 May 2010, this wording was slightly amended to include the words *"and every one"*. This change was intended to add extra emphasis in the Product Brochure to the conditions which needed to be met in order to achieve the maximum return. After this addition the new explanatory text read as follows:

"The maximum growth of XX% will only be achieved if the percentage gain in the Index is X% or more for each and every one of the consecutive semi-annual periods."

- 4.16. As set out above, CSI calculated that the likelihood of achieving the maximum return was extremely remote (i.e. close to 0%). CSI sought to set out the conditions required to obtain the maximum return, which did not refer to the results of CSI's analysis and relied on potential investors to infer the low likelihood of achieving the maximum return from the explanation above. The explanation above required a high level of sophistication from potential investors which, given the intended target market, there was a significant risk those customers would not possess. This meant the content of the Product Brochures did not pay sufficient regard to the information needs of customers.

- 4.17. From August 2010, CSI used back testing results as part of face to face discussions with distributors. In November 2011, CSI developed a Structured Product Evaluation Pack to provide additional guidance to distributors about the Cluquet Product features and the applicable target market. This pack included information regarding historical performances and expected probabilities, market

commentary, and an analysis of the target market. As this document was directed at distributors, it carried the warning *"This material is solely directed at Professional Clients and Eligible Counterparties as defined by the FSA, and is not directed at, and should not be relied upon by, Retail Clients."* CSI included the following explanation regarding the maximum return:

"The back testing does not reveal instances of all periods hitting the Cap % to produce the highest level of return. This is consistent with the low probability recorded for this occurrence, and should be noted in the product documents.";
and

"As would be expected, the model driven probabilities suggest approximately a 50% chance of receiving only the minimum return (when the market falls or is flat), and a strong possibility of achieving AERs above this... and then a limited and decreasing possibility at higher levels."

- 4.18. In fact, the only reference to the low probability of hitting the cap % in the *"product documents"* was the wording at paragraphs 4.14 and 4.15 above.
- 4.19. CSI also implemented a positive change to the relevant text in the Product Brochure. However, this was included after Which? approached CSI in September 2010 with concerns about the Cliquet Product and the completion of a customer survey rather than CSI identifying pro-actively the need to alter the Product Brochure. The change was to underline the text set out in paragraph 4.15 above seeking to explain the circumstances in which the maximum return would be achieved. The effect of this was to place some additional emphasis on the terms that needed to be met to achieve the maximum return.

"The maximum growth of XX% will only be achieved if the percentage gain in the Index is X% or more for each and every one of the consecutive semi-annual periods."

- 4.20. This amendment was implemented for the PCA 12 launch that opened on 12 November 2010. The change affected a total of 57 Product Brochures. The change increased the emphasis on the relevant phrase but provided no further explanation. The wording therefore remained inadequate for the reasons set out in paragraph 4.16.
- 4.21. As noted above, CSI's Product Brochures presented the potential maximum return as one of the key features of the Cliquet Product. Throughout the Relevant Period

the maximum return was given equal, or near equal, prominence to the guaranteed minimum return in the Product Brochures. Whilst CSI included in its Product Brochures an explanation of the likelihood of achieving the maximum return it was not adequate for the target market for whom these products were intended, as it created an unfair impression as to the achievability of that return. This impression was evident from customers' expectations of returns: in a customer survey of 300 customers conducted in October and November 2010 18% of customers surveyed expected to achieve the maximum return despite the fact this was almost impossible to achieve.

Explanation of the early exit fee

4.22. Of the customers who had invested in the Cliquet Product during the Relevant Period, as at September 2013, 3,033 customers had terminated investments involving the Cliquet Product early (approximately 4% of all customers). Where a customer terminated early, the Cliquet Product terms and conditions provided for the application of the early exit fee.

4.23. There were a number of factors which needed to be taken into account to calculate the early exit fee (see paragraph 4.32 below). This made it impractical to quantify it for each customer in advance. The average investment in the product during the Relevant Period was approximately £9,500. As at September 2013, around 4% of customers who had invested in the Cliquet Product during the Relevant Period had chosen to withdraw from the product early. Of the customers who withdrew from the Cliquet Product around 14% (424 customers) had to pay an early exit fee. This was applied to the initial investment sum and, therefore, these customers received less than their initial investment back. The average early exit fee applied to customers who withdrew early was £271 (around 3% of the investment). The remaining approximately 86% (2,609 customers) who withdrew received their initial investment back without any accrued interest or return.

4.24. The only reference in the Product Brochure to the early exit fee to be applied in the event of early termination was:

"You will have 14 days from the date of receipt of details of your cancellation rights to change your mind and cancel your investment.

Following the 14 day period any early encashment will result in an early exit fee (including in the event of death) and so you will get back less than you initially

invested.

Please see the General Terms & Conditions for details relating to your cancellation rights (clause 5) and early encashment (clause 6)."

- 4.25. On page 2 of the Product Brochure, throughout the Relevant Period there was an additional warning to customers:

"Please note that the Plan is intended to be held until the Plan Maturity Date. You should have enough emergency funds elsewhere as the Plan is not designed for early encashment."

- 4.26. The wording in paragraphs 4.24 and 4.25 above was slightly amended over in the period up to January 2012 with the intention of adding extra emphasis to the early exit fee in the Product Brochure. However, these changes (which were prompted by third parties) did not materially alter the explanation of the early exit fee given.

- 4.27. The General Terms and Conditions read as follows:

"If you cash in your investment or transfer your Account after the 14-day cancellation period ... but before the Plan Maturity Date (including in the event of death), an Early Termination Amount will be paid to you. The Early Termination Amount will be your Initial Investment less an Early Exit Fee and so you will get back less than you originally invested. Any Early Termination Amount will not include any other amounts which would otherwise be payable if the Account were held until the Plan Maturity Date.

'Early Exit Fee' means an amount calculated by [CSI] by reference to the amount initially deposited by you and is determined at the relevant time based on prevailing market conditions such as, but not limited to, interest rates and the level of any relevant Index."

- 4.28. The Cliquet Product was intended to be held until the end of the investment term. CSI communicated this to customers through different statements throughout the Product Brochure. From November 2009 until April 2010, the statement on the front cover of the Product Brochure stated that:

"100% Capital Guaranteed provided that the Account is held for the full Investment Term."

4.29. From April 2010 until the end of the Relevant Period, the front cover statement read as follows:

"Potential return dependent on the FTSE 100 Index ... PLUS your Initial Investment back at maturity provided that the Account is held for the investment term."

4.30. Until November 2010, early termination of the Cliquet Product resulted in an early exit fee, including in the event of death. From the launch of PCA 12 on 12 November 2010 onwards, the early exit fee no longer applied in the event of death.

4.31. The Product Brochures and General Terms and Conditions issued by CSI prior to January 2012 contained explanations of the effect of the early exit fee that were not sufficiently clear, full and prominent. The Authority recognises that CSI was unable to quantify the early exit fee for each customer in advance. However, CSI should have provided sufficient information to customers to allow them to understand the basis on which the fee would be calculated.

4.32. From the launch of PCA 36 on 18 January 2012, CSI added a section entitled 'What should I expect from the Early Exit Fee?' to explain to customers the factors that would be taken into account when the early exit fee was calculated. This stated:

"If you exit your investment before the Plan Maturity Date, and the value of your investment at the time of exit is lower than your Initial Investment, an Early Exit Fee will be charged which is equivalent to the shortfall in value of your Initial Investment. A number of factors have significant bearing on the calculation of any Early Exit Fee.

- *The presence of up front commissions or charges incurred at Issue Date, as set out in Clauses 11 and 13 of the General Terms and Conditions, will increase the size of the Early Exit Fee.*
- *The higher the minimum return for the Plan and the closer the Plan is to maturity, the lower the Early Exit Fee will be.*
- *The Early Exit Fee will also be linked to interest rates used by banks when lending to each other at the time of exiting the Plan. For example, after Issue Date, should interest rates (for the life of the Plan) rise, any Early Exit Fee is likely to increase in size.*

- *The observed, up to point of exit, and expected performances of the Index up to the Plan Maturity Date will affect the Early Exit Fee. Positive performances of the Index may reduce, whilst negative may increase, any potential Early Exit Fee.*

Other market factors could impact the calculation of the Early Exit Fee, such as, but not limited to: the cost of the Deposit Taker of replacing the monies returned early, or how volatile the Index is."

- 4.33. This element was included in the financial promotions for 11 Cliquet Product launches. By setting out these factors in the product literature, CSI made sufficient improvements to avoid making the marketing material unfair from 18 January 2012 onwards. In addition, CSI added text explaining that partial withdrawals were not permitted for the PCA 39 launch which opened on 6 April 2012. This change affected 5 Cliquet Product launches.

Amendments to the Product Brochures

- 4.34. Any changes to the text of the Product Brochure would require formal approval by CSI's Sales and Compliance teams if those changes were material. A change would be considered material if it altered the balance of, or the impression given by, the document.
- 4.35. In July 2011, CSI also developed and standardised the Cliquet Product Brochure for its distributors.
- 4.36. Third parties, such as distributors and deposit takers for the Cliquet Product, proposed the majority of alterations to the Product Brochure during the Relevant Period. These changes included additions to the explanation of the early exit fee, the clarification of the growth calculation method, and the display of AER alongside the headline rates. As these alterations constituted material changes to the Product Brochure, they triggered the joint approval process by Sales and Compliance. The Product Brochure was reviewed on this basis at least four times over the 32 months in the Relevant Period.
- 4.37. CSI did not establish and implement appropriate systems and controls to ensure that the content of their financial promotions as a whole was clear, fair and not misleading in that CSI's systems and controls for the approval of its financial promotions did not provide for any holistic periodic review of their compliance with regulatory requirements. CSI's processes for ongoing financial promotions

focussed on the approval of individual changes to the Product Brochure in isolation; rather than the periodical review of the document as a whole.

- 4.38. If CSI's processes had included such a periodic review this may have led to the proactive identification of issues concerning the undue prominence given to the potential maximum return in the Cliquet Product's financial promotions.

Which? query

- 4.39. In September 2010, Which? contacted CSI and raised concerns over the fairness of the Cliquet Product financial promotions. In particular, Which? was concerned about the excessive prominence given to the potential maximum growth despite the remote likelihood of the attainability of that return. CSI engaged its Compliance, Legal and Sales Departments to conduct a review of the Product Brochures as a result of Which?'s approach. CSI concluded, notwithstanding the results of the surveys referred to in paragraphs 4.40 to 4.41 below, that Which?'s claims were unfounded. CSI's multi-departmental review concluded that the potential maximum return was not given excessive prominence and that the conditions required to be met in order to achieve any additional return were made clear in the Product Brochure. CSI did not make any material revisions to its Product Brochure as a result of the Which? query.

Customer experience survey

- 4.40. CSI, in conjunction with one of the distributors of the Cliquet Product, conducted a customer experience survey in October and November 2010 involving 300 customers as a means of assessing the validity of Which?'s concerns. The results of this survey found that around 18% of customers expected to achieve the maximum growth compared to about 8% of whom expected to receive the minimum at the end of the investment term. The remaining 73% expected to receive growth somewhere between the minimum and maximum returns (with no further details of the exact level expected being requested).
- 4.41. The high proportion of Cliquet Product customers expecting to achieve the maximum return was also demonstrated by various other customer surveys carried out by Cliquet Product distributors. For instance, customer experience surveys carried out by another one of CSI's Cliquet Product distributors in December 2010, July 2011 and September 2011 found that 16.7%, 14% and 14% of customers of expected to attain the maximum return respectively. These

same surveys found that 19.4% (December 2010), 14% (July 2011) and 24% (September 2011) expected to only receive the minimum return.

- 4.42. CSI had not received a significant level of complaints regarding customers' expectations of the performance of the Cliquet Product and took comfort from this that its Product Brochures were clear, fair and not misleading. Notwithstanding the lack of complaints, CSI knew from its own analysis that there was close to a 0% probability of achieving the maximum return and a 40% to 50% chance of a customer only receiving the minimum return. During the Relevant Period 41% of maturing Cliquet Products (which opened between 2003 and 2008) achieved more than the guaranteed minimum return. The remaining 59% of products achieved only the minimum. Overall, the average additional return realised was only 2.57% (equating to an annual return of 0.45%) above the guaranteed minimum return. None of the Cliquet Products delivered the maximum return. If these statistics are compared with the results of the customer experience survey it is apparent that there was a significant disparity between customer expectations and the actual likely returns. CSI should have taken steps to improve the Product Brochures to make this clear, fair and not misleading to the target market of *'stepping stone customers'*.
- 4.43. The customer experience survey of November 2010 also included full responses from customers. Some of these customer responses demonstrated a lack of understanding on the part of those customers of how the Cliquet Product worked and how returns at the end of the investment term were calculated. This highlighted the target market's limited investment knowledge and experience. The results of this customer experience survey should have prompted CSI to challenge whether the content of the financial promotions satisfied the clear, fair and not misleading criteria and whether the Product Brochures contained a balanced presentation of the potential returns available. CSI carried out a review of the Product Brochure following the conclusion of the survey but this review did not result in CSI making any material amendments to its financial promotions.

Customer contact exercise

- 4.44. Following intervention from the Authority in June 2012, CSI contacted 4,273 customers who had agreed to enter into the latest tranches of the Cliquet Product (which had yet to close) and sent out a Customer Contact Letter to each customer. The purpose of the Customer Contact Letter was to rectify the

breaches in the Product Brochure and to allow consumers to make a fully informed choice regarding their original decision to invest in the Cliquet Product.

4.45. The wording of the Customer Contact Letter stated that the Authority had *"expressed concern that [customers] may have been given the wrong impression as to the likelihood of receiving the maximum return for [the relevant Cliquet Product]"*, the Customer Contact Letter also explained that CSI had:

(1) *"calculated how [the relevant Cliquet Product] would have performed historically, looking at the growth returned on theoretical investments in the FTSE® 100 Index starting each day since its inception in 1984. The calculations [demonstrated] that:*

- *In just over half of the cases an investment in [the relevant Cliquet Product] would have delivered the minimum return.*
- *In the majority of remaining cases [the relevant Cliquet Product] would have returned an amount much closer to the minimum return than the maximum return.*
- *[The relevant Cliquet Product] would not have delivered a return of [maximum return]% ([maximum]% AER), which [was] the stated maximum."*

4.46. There was a 98% response rate to the letter. Of those who responded 18.37% withdrew from the Cliquet Product after receiving the Customer Contact Letter. The remaining 81.63% chose to remain in the investment. Customers were also asked to tick a box explaining the reason for their withdrawal. Of those who responded 11.69% referred to the additional information specifically. In addition, 2.30% did not select a response, 0.55% ticked "Other", 1.94% stated that their financial situation had changed, 1.41% stated that the product no longer suited their needs and 0.48% now preferred an alternative product. Of these only the change in financial circumstances category was clearly unconnected to the additional information provided in the Customer Contact Letter.

5. FAILINGS

Breach of Principle 7 and related BCOBS Rules

- 5.1. CSI failed to pay due regard to the information needs of its clients by producing financial promotions for its Cliquet Product, that did not satisfy the requirement to be clear, fair and not misleading in breach of Principle 7.
- 5.2. In addition to CSI's breach of Principle 7, the Authority also finds that CSI breached certain of the detailed rules contained in the BCOBS part of the Authority's Handbook. The specific nature of CSI's breaches is set out in paragraphs 5.4 to 5.8 below.

Undue prominence of the potential maximum return

- 5.3. During the Relevant Period, all 105 Cliquet Product Brochures open for subscription gave undue prominence to the maximum return. This led to an unfair presentation of the likelihood of achieving the potential maximum return (and consequently the overall likely return).
- 5.4. The following factors contributed to this:
- (1) the presentation of the 'potential maximum return' figure as one of the key promotional features of the Cliquet Product on the front page of the Product Brochure when it was only a by-product of the guaranteed minimum return and CSI knew there was virtually no chance of the potential maximum return being achieved;
 - (2) the equal prominence given to both the guaranteed minimum return and the potential maximum return on the front page of the Product Brochure;
 - (3) the presentation of the potential maximum return on the front page of the Product Brochure without qualifying the terms that needed to be met in order to attain that return until page 3 of the Product Brochure;
 - (4) the prominent reference to the minimum return in a larger font size to that of the text around it, followed by a prominent reference to the potential maximum return (in a slightly smaller font size to that used for the minimum return up to 18 January 2012 and exactly the same font size thereafter), and significantly larger than the surrounding text on page 3 of the Product Brochure;

- (5) the substantially less prominent presentation of the explanation of the conditions necessary to achieve the potential maximum return than the reference to maximum return itself;
- (6) the unclear wording used to explain the conditions necessary to achieve the potential maximum return;
- (7) the table on page 4 setting out examples of possible gross returns on £10,000 with four scenarios including one representing the potential maximum return;
- (8) the typical investors in the Cliquet Product, were unsophisticated investors with limited investment experience and knowledge;
- (9) the Cliquet Product was sold on a non-advised basis;
- (10) the issues concerning the prominence of maximum returns, the likelihood of achieving the maximum returns and the early exit fee were brought to CSI's attention by the Authority and other third parties, such as Which? and distributors of the product; and
- (11) the results of the consumer research available to CSI during the Relevant Period, when compared to its own analysis and actual past returns, indicated that there was a significant disparity between customer understanding of the realistic potential returns from the Cliquet Product and the actual likely returns.

Breaches of related BCOBS Rules

- 5.5. CSI unduly emphasised the potential maximum return without giving a fair and prominent indication of the remoteness of the potential to achieve the maximum return. CSI was aware, throughout the Relevant Period, that the probability of achieving the maximum return was close to 0% but did not make this clear in its financial promotions. During the Relevant Period 41% of maturing products (which opened between 2003 and 2008) provided returns above the guaranteed minimum. Overall, the average returns were 2.57% (equating to an annual return of 0.45%) higher than the minimum guaranteed return.
- 5.6. The Product Brochures, therefore, contained information which was insufficient for the target '*stepping stone customers*' and unfairly emphasised the potential maximum return without also giving a fair and prominent indication of the

likelihood of obtaining the maximum return. Customers, as CSI knew or should have known as a result of the survey results and other warnings, were unlikely to understand the remoteness of the possibility of achieving the maximum return, or anything above the minimum return, from the Product Brochures alone. This meant the content of the Product Brochures failed to pay due regard to the information needs of CSI's clients, failed to communicate information to customers in a way that was clear, fair and not misleading and prevented them from making decisions regarding the product on an informed basis. In this regard, CSI also breached BCOBS 2.3.1R and BCOBS 4.1.1R.

Explanation of early exit fee

- 5.7. Until 18 January 2012, CSI failed to provide a sufficiently clear, full and prominent explanation to customers of the level of charge that would apply to their investment in the event of early termination. Customers were unable to understand the basis for the calculation of the level of charge to be applied to the amount invested. In this regard, CSI also breached Principle 7 and BCOBS 2.3.1R and BCOBS 4.1.1R.

Amendments to financial promotions

- 5.8. CSI's processes for the approval of its ongoing financial promotions focussed on the approval of individual changes to its financial promotions. CSI's financial promotions processes provided for updates to be made to financial promotions with reference to past financial promotions and making isolated changes (e.g. for revised dates and rates for subsequent product launches or responding to change requests proposed by third parties). There was no holistic periodic review of the Product Brochure's compliance with regulatory requirements as a whole. If CSI had introduced such a review they may have pro-actively identified the failings identified above concerning the undue prominence given to the potential maximum return and the lack of an adequate explanation of the basis for the calculation of the early exit fee in the Cluquet Product's financial promotions. The fact that CSI did not meant that it failed to pay due regard to the information needs of its customers and accordingly did not communicate with them in a way that was clear, fair and not misleading, in breach of Principle 7.
- 5.9. Annex A sets out extracts from statutory and regulatory provisions and guidance relevant to this Final Notice.

6. SANCTION

- 6.1. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP.
- 6.2. Changes to DEPP were introduced on 6 March 2010. 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. In this case, as the Relevant Period is 1 November 2009 to 17 June 2012, the Authority has applied the five-step framework to calculate the appropriate penalty for CSI's breaches because the vast majority of the misconduct occurred within the period of the new penalty regime.

Step 1: disgorgement

- 6.3. 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. Given the misconduct relates to the financial promotions for the Cliquet Product alone it is impracticable to identify the direct financial benefit CSI derived from it.
- 6.4. Further, as CSI has agreed to carry out a customer contact exercise any financial benefit will be negated.
- 6.5. Step 1 is therefore £0.

Step 2: the seriousness of the breach

- 6.6. Pursuant to DEPP 6.5A.2G, at Step 2 the Authority determines the 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.
- 6.7. The Authority considers that the total revenue generated by CSI during the Relevant Period in respect of its sales of UK structured deposit products is indicative of the harm or potential harm caused by its breach in this case. The Authority has therefore determined a figure based on a percentage of CSI's total revenue from sales of UK structured deposit products during the Relevant Period.

The period of CSI's breach was from 1 November 2009 to 17 June 2012. CSI's total relevant revenue for this period was £19,032,942.

6.8. The revenue figures (while originally received in Sterling) are accounted for by CSI in CSI's functional currency, US Dollars. The Authority used the conversion rates at the date CSI recognised the relevant revenue (i.e. the day before the strike date) for each of the 105 tranches available within the Relevant Period.

6.9. In deciding on the percentage of the relevant 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%. The 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%

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

(12) whether the breach had an effect on particularly vulnerable people, whether intentionally or otherwise (DEPP 6.5A.2G(6)(d)); and

(13) the frequency of the breach (DEPP 6.5A.2G(7)(b)).

6.11. DEPP 6.5A.2G(9) lists the factors that tend to show that the breach was reckless including whether the firm's senior management, or a responsible individual, appreciated that there was a risk that their actions or inaction could result in a breach and failed adequately to mitigate that risk.

6.12. DEPP 6.5A.2G(11) lists factors likely to be considered 'level 4 or 5 factors'. In assessing the seriousness of the misconduct, the Authority considers the relevant factors to be whether:

- (1) the breach revealed systemic weaknesses in the firm's procedures relating to the firm's preparation of its financial promotions; and
- (2) CSI was aware there was a risk that the content of its Product Brochures failed to meet the requirement to be clear, fair and not misleading, but took inadequate steps to mitigate the risk.

6.13. DEPP 6.5A.2G(12) lists factors likely to be considered 'level 1, 2 or 3 factors'. Of these, the Authority considers the following factors to be relevant:

- (1) the profits made by CSI from the breach were not significant; and
- (2) there was no, or limited, actual or potential effect on the orderliness or confidence in markets as a result of the breach.

6.14. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 4 and so the Step 2 figure is 15% of £19,032,942.

6.15. The figure at Step 2 is therefore £2,854,941.

Step 3: mitigating and aggravating factors

6.16. 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.

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

- (1) CSI's previous disciplinary and compliance history (including that of related companies):
 - a. on 25 October 2011, the Authority imposed a financial penalty of £5.95m on Credit Suisse (UK) Limited for breaches of Principle 3. These breaches occurred between 1 January 2007 and 31 December 2009 and related to systems and controls failings in relation to the suitability of advice regarding structured capital at risk products (SCARPs) to its private banking retail advisory customers;
 - b. on 8 April 2010, the Authority imposed a financial penalty of £1.75m on Credit Suisse Securities (Europe) Limited, Credit Suisse

(UK) Limited and Credit Suisse AG for breaches of SUP 17 rules. In breach of SUP 17 Credit Suisse failed to report to the Authority all 30 million transactions executed on the London Stock Exchange between 5 November 2007 and 20 November 2008, and inaccurately reported a further 10 million transactions across all of its asset classes; and

- c. on 13 August 2008, the Authority imposed a financial penalty of £5.6m for breaches of Principles 2 and 3 in relation to the pricing of certain asset-backed securities held by the Structured Credit Group (SCG) within the Investment Banking Division. Between 30 September 2007 and 19 February 2008, there was evidence of mis-markings and pricing errors by a small number of traders in SCG.

(2) that previous guidance from the Authority stressed the importance of clarity and balance in financial promotions. Those guidance documents included:

- a. Financial Promotions: taking stock and moving forward (February 2005);
- b. Capital secured structured products (2005 review, updated April 2010);
- c. Responsibilities of Providers and Distributors for the Fair Treatment of Customers" ("RPPD") (July 2007);
- d. Financial Promotions Industry Update No.3 – Stand-alone compliance (September 2009);
- e. Thematic Review: Structured Products (October 2009);
- f. Financial Promotions – guidance Prominence (September 2011); and
- g. Retail Product Development and Governance – Structured Products Review (Guidance Consultation) (November 2011).

(3) that the issues described above concerning the early exit fee, the prominence of maximum returns and the likelihood of achieving the maximum returns were brought to CSI's attention by the Authority, Which? and distributors of the product.

- (4) that the majority of alterations to the Product Brochure during the Relevant Period were made at the instigation of third parties, such as distributors and deposit takers for the Cliquet Product, rather than at CSI's instigation. These changes included additions to the explanation of the early exit fee (as set out in paragraphs 4.22 to 4.33 above), the clarification of the growth calculation method and the display of AER alongside the headline rates.

6.18. The Authority considers that the following factors mitigate the breach:

- (1) the level of co-operation shown by CSI both when the issue was raised by the Authority during the issue of one of the tranches (PCA 40) and subsequently;
- (2) the agreement by CSI to extend the customer contact exercise; and
- (3) the changes made to the Product Brochure after June 2012 and in relation to the system and controls in relation to product governance including for financial promotions.

6.19. The Authority has considered the various aggravating and mitigating factors, and having done so considers that the Step 2 figure should be subject to a 20% uplift at Step 3.

6.20. Therefore, the Step 3 figure is £3,425,930.

Step 4: adjustment for deterrence

6.21. Pursuant to DEPP 6.5A.4G, if the Authority 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.

6.22. The Authority considers that the Step 3 figure represents a sufficient deterrent to CSI and others, and so has not increased the penalty at Step 4.

6.23. The figure at Step 4 therefore remains £3,425,930.

Step 5: settlement discount

6.24. 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.

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

6.26. The figure at Step 5 is therefore £2,398,151 which has been rounded down to £2,398,100.

Penalty

6.27. The Authority therefore imposes a total financial penalty of £2,398,100 on CSI for breaching Principle 7 and BCOBS Rules 2.3.1R and 4.1.1R.

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 for payment

7.3. The financial penalty must be paid in full by CSI to the Authority by no later than 30 June 2014, 14 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 1 July 2014, the Authority may recover the outstanding amount as a debt owed by CSI 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 Andrew Wigston (direct line: 020 7066 6286) of the Enforcement and Financial Crime Division of the Authority.

Signed:

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Jamie Symington

Financial Conduct Authority, Enforcement and Financial Crime Division

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. STATUTORY PROVISIONS

1.1 The Authority's operational objectives, set out in sections 1B to 1E of the Act, are to secure an appropriate degree of consumer protection, to protect and enhance the integrity of the UK financial system and to promote effective competition in the interests of consumers.

1.2 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. REGULATORY PROVISIONS

Principles for Business (PRIN)

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 as set out in the Act and reflect the Authority's regulatory objectives. The Principles relevant to this case are as follows:

2.2 Principle 7 states:

"A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading."

Handbook Rules

2.3 The Authority's Banking Conduct of Business Sourcebook (BCOBS) has applied to authorised firms since 1 November 2009. It sets out the Authority's rules governing the activity of accepting deposits from banking customers carried on from an establishment maintained by it in the United Kingdom and activities connected with accepting deposits. It includes sections on communicating with banking customers, including those relating to financial promotions.

2.4 BCOBS 2.3.1R provides:

"A firm must ensure that each communication made to a banking customer and each financial promotion communicated or approved by the firm:...

(2) is accurate and, in particular, does not emphasise any potential benefits of a retail banking service without also giving a fair and prominent indication of any relevant risks;

(3) is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received; and

(4) does not disguise, diminish or obscure important information, statements and warnings.

2.5 BCOBS 4.1.1R provides:

"A firm must provide or make available to a banking customer appropriate information about a retail banking service and any deposit made in relation to that retail banking service:

(1) in good time;

(2) in an appropriate medium; and

(3) in easily understandable language and in a clear and comprehensible form;

so that the banking customer can make decisions on an informed basis."

The Decision Procedure and Penalties Manual ("DEPP")

2.6 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

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

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

ANNEX B

SCHEDULE OF CLIQUET PRODUCTS DURING RELEVANT PERIOD

Protected Capital Plus Account
Guaranteed Capital Account
Protected Capital Account
Capital Plus Account
Guaranteed Capital Plus Account
Guaranteed Investment Account