
FINAL NOTICE

To: **Courtover Investment Management Limited**

Of: **St Helen's House
156 St Helen's Road
Swansea
SA1 4DG**

Date: **29 APRIL 2005**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS ("the FSA") gives Courtover Investment Management Limited ("Courtover") final notice about a requirement to pay a financial penalty.

1. THE PENALTY

1.1 The FSA gave Courtover a Decision Notice dated 24 March 2005 that, pursuant to section 206 of the Financial Services and Markets Act 2000 ("the Act"), the FSA has decided to impose a financial penalty of £20,000 on Courtover in respect of breaches of the following of the FSA's Rules and Principles:

- (1) Senior Management Arrangements, Systems and Controls Sourcebook ("SYSC") SYSC 3.1.1R and 3.2.6R;
- (2) Chapter 3 of the Conduct of Business Sourcebook ("COB 3"), COB 3.6.1R, COB 3.7.1R (1), COB 3.7.4R, COB 3.8.4R, COB 3.8.8R, COB 3.8.10R; and
- (3) Principles 2 and 3 of the FSA Principles for Businesses ("FSA Principles").

1.2 The FSA would have imposed a far higher financial penalty but for the co-operation demonstrated by Courtover and the action it has taken to address its failings.

2. RELEVANT STATUTORY PROVISIONS AND REGULATORY REQUIREMENTS

2.1 Section 206 of the Act provides:

If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act, it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate.

Financial Promotion Restriction

2.2 Section 21 of the Act (Restrictions on financial promotion) prohibits an unauthorised person from communicating a financial promotion in the course of business unless an exemption applies or the financial promotion is approved by an authorised firm.

2.3 The glossary of definitions of the FSA's handbook defines a financial promotion as:

(in accordance with section 21(1) of the Act (Restrictions on financial promotion)) an invitation or inducement to engage in investment activity.

Systems and Controls Rules

2.4 SYSC 3.2.6 R provides:

A firm must take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system and for countering the risk that the firm might be used to further financial crime.

2.5 SYSC 3.1.1 R provides:

A firm must take reasonable care to establish and maintain such systems and controls as are appropriate to its business.

Conduct of Business Rules relating to Financial Promotions

2.6 The FSA's Rules which govern the communication, approval and content of financial promotions are set out in COB 3.

Confirmation of compliance with COB 3 and record keeping

2.7 COB Rule 3.6.1 R provides:

(1) Before a firm communicates or approves a non real time financial promotion, it must confirm that the financial promotion complies with the rules in this chapter.

(2) A Firm must arrange for the confirmation exercise in (1) to be carried out by an individual or individuals with appropriate expertise.

2.8 FSA Rule COB 3.7.1 R (1) provides:

A firm must make an adequate record of each non-real time financial promotion which it has confirmed as complying with the rules in this chapter.

2.9 FSA Rule COB 3.7.4 R provides:

A record in COB 3.7.1 R may be in any form, provided that it is readily accessible for inspection by the FSA.

2.10 COB 3.12.1 G (2) gives the following guidance:

Most of the rules in this chapter apply when a firm approves a financial promotion in the same way as when a firm communicates a financial promotion itself. A firm therefore has a similar responsibility for a financial promotion that it approves as for one that it communicates. For example, a firm which approves a non-real time financial promotion must:

(b) if COB 3.8.4.(1) applies, be able to show that it has taken reasonable steps to ensure that the financial promotion is clear, fair and not misleading.

Reasonable steps to ensure clear, fair and not misleading

2.11 COB Rule 3.8.4 R (1) provides:

A firm must be able to show that it has taken reasonable steps to ensure that a non-real time financial promotion is clear, fair and not misleading.

2.12 Evidential provision COB 3.8.5 E (1) provides further detail as to how firms can comply with the clear, fair and not misleading rule in COB 3.8.4 including that:

A firm should take reasonable steps to ensure that, for a non-real time financial promotion:

(b) any statement of fact, promise or prediction is clear, fair and not misleading and discloses any relevant assumptions;

(d) the facts on which any comparison or contrast is made are verified, or, alternatively, that relevant assumptions are disclosed and that the comparison or contrast is presented in a fair and balanced way, which is not misleading and includes all factors which are relevant to the comparison or contrast;

(f) the design, content or format does not disguise, obscure or diminish the significance of any statement, warning or other matter which the financial promotion is required by this chapter to contain;

(g) it does not include any reference to approval by the FSA or any government body, unless such approval has been obtained in writing from the FSA or that body;

(h) it does not omit any matters the omission of which causes the financial promotion not to be clear, fair and not misleading;

(i) the accuracy of all material statements of fact in it can be substantiated.

2.13 Evidential provision COB 3.8.5 E (2) (b) provides that:

Contravention of COB 3.8.5 E (1) may be relied on as tending to show contravention of COB 3.8.4 R (1).

Comparisons and contrasts

2.14 COB 3.8.12 G (2) gives the following guidance:

Any of the following may mean that a specific non-real time financial promotion does not meet the requirements of COB 3.8.4 R (1) of being clear, fair and not misleading:

(e) a comparison with deposits without an indication in clear terms, and with equal prominence, that the investment does not include the security of capital which is characteristic of a deposit with a bank or building society.

2.15 COB Rule 3.8.4 R (2) provides:

A non-real time financial promotion which includes a comparison or contrast must:

(a) compare investments or services meeting the same needs or which are intended for the same purpose;

(b) objectively compare one or more material, relevant, verifiable and representative features of those investments or services, which may include price;

Fair and adequate description of nature of investment and risks

2.16 COB Rule 3.8.8 R (1)(a) and (c) provides that:

A specific non-real time financial promotion must;

(1) include a fair and adequate description of:

(a) the nature of the investment or services ...

(c) the risks involved;

2.17 COB 3.8.9 G gives the following guidance:

A specific non-real time financial promotion should give a fair and balanced indication of the requirements in COB 3.8.8 R (1)(a) to (c), to meet COB 3.8.4 R (1).

2.18 COB 3.8.9 G (3) gives the following guidance:

In giving a fair and adequate explanation of the investment or service being promoted firms should avoid:

(a) accentuating the positive benefits of an investment without also giving a fair indication of the risks;

Disclosure of material interest

2.19 COB Rule 3.8.10 R provides:

A specific non-real time financial promotion relating to a designated investment other than a packaged product must, when it is the case, and if it is known, disclose if the firm or its associate:

(1) has or may have a position or holding in the investment concerned or in a related investment;

(2) has or may have a material interest in any investment concerned, and the nature and extent of that interest;

FSA Principles for Business

2.20 The FSA Principles 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 the Act and reflect the regulatory objectives.

2.21 FSA Principle 2 provides:

A firm must conduct its business with due skill, care and diligence.

2.22 FSA Principle 3 provides:

A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

3. REASONS FOR THE PENALTY

Conduct in Issue – Summary

3.1 The FSA has decided to impose a financial penalty on Courtover in respect of breaches of the FSA's Rules and Principles. These breaches relate to Courtover's conduct in approving a financial promotion ("the promotion") issued by another company which was neither authorised or regulated by the FSA nor required to be so. The promotion was for a share offer and featured several material breaches of the FSA's Rules.

3.2 These breaches, which are described at Section 5 below, relate to Courtover's:

- (1) approval of a financial promotion which featured several serious breaches of the FSA's Rules;
- (2) failure to assess, prior to approving the promotion, adequately or at all, whether the promotion complied with the requirements of COB 3;
- (3) failure to make or retain any adequate records showing that it had approved the promotion, and by what process; and
- (4) failure to establish and maintain effective systems and controls to ensure its compliance with regulatory requirements. In particular, Courtover had no

adequate procedures to ensure that it only approved compliant financial promotions.

3.3 These failings are viewed by the FSA as particularly serious in the light of the following factors:

- (1) the promotion failed to disclose the significant risks or drawbacks associated with investing in the promoted shares;
- (2) the deficiencies within the promotion were serious in nature.¹ The promotion featured misleading wording implying that the share offer had in some way been approved under the Act. This statement could have misled consumers into thinking that the shares had been endorsed by the FSA and were therefore a “safe” investment, without knowing the significant risks of investing in them, which the promotion did not disclose. The promotion additionally mis-described the share offer (for example it described it as a *fund* and did not make clear that it was a share offer), and omitted to disclose that Courtover’s Principal had a personal interest in its outcome;
- (3) the deficiencies arose from systemic weaknesses in Courtover’s procedures for the approval of financial promotions. In particular, it failed to implement any, or any adequate, systems to ensure that the financial promotions it approved were compliant with regulatory requirements;
- (4) the promotion had the potential to be viewed by large numbers of investors; it appeared, for example, in a national newspaper which was purchased by approximately 200,000 people; and
- (5) the deficiencies in the promotion were not detected by Courtover. They were only identified by the FSA’s routine monitoring of financial promotions appearing in the national press.

3.4 While the failings in this case merit a significant financial penalty, the FSA considers that they have been mitigated by the co-operation demonstrated by Courtover and the action it is prepared to take to address these failings.

3.5 This action includes the principal of Courtover, who approved the promotion, agreeing to attend appropriate industry training on the regulatory requirements for financial promotions. Courtover has, in addition, confirmed that it has ceased approving financial promotions and has agreed to seek a voluntary variation of its permission to exclude the communication or approval of financial promotions until such time as it has demonstrated that it has the appropriate expertise to ensure its compliance.

3.6 Courtover has also been proactive in seeking a prompt conclusion to this matter and agreeing the facts of this case.

¹ These deficiencies are fully described at Section 5 below.

3.7 Accordingly, Courtover has received credit for the above in the amount of the financial penalty the FSA is proposing to impose. Without this level of co-operation, the financial penalty would, given the aggravating factors described at paragraph 3.3 above, have been substantially higher.

4 BACKGROUND

Courtover Investment Management Limited

4.1 Courtover is a UK incorporated company. Its principal activities are execution-only stock broking and some on-line trading in Contracts for Differences. The remainder of its activities involve investment management and general financial services (i.e. pensions, life assurance and mortgages).

4.2 Courtover has two directors, John Evans, who is the managing director with overall control of Courtover (“the Principal”) and a non-executive director. The Principal undertakes all significant influence functions including compliance and has responsibility for approving financial promotions. There is one other investment advisor in addition to the Principal.

4.3 Courtover was previously regulated by the Personal Investment Authority from 3 March 2000. It has been authorised by the FSA since 1 December 2001 and currently holds permissions under Part IV of the Act to undertake the following regulated activities:

- (1) advising on investments (except on Pension Transfers and Pension Opt Outs);
- (2) agreeing to carry on a regulated activity;
- (3) arranging (bringing about) deals in investments;
- (4) making arrangements with a view to transactions in investments;
- (5) advising on regulated mortgage contracts;
- (6) arranging regulated mortgage contracts;
- (7) making arrangements with a view to a person who participates in the arrangements entering into a regulated mortgage contract;
- (8) assisting in the administration of non-investment insurance contracts; and
- (9) dealing in non-investment insurance contracts as agent.

Background to the promotion

4.4 The promotion, which Courtover approved on 11 February 2004, was for a share offer by an unlisted property investment company, Overseas Property Investments plc (“the company”), which was not authorised or regulated by the FSA. This company was seeking to build up a portfolio of residential property interests primarily in Spain and France.

- 4.5 The company and Courtover had a common director, Courtover's Principal, who was the finance director for the company, but has since resigned from the company.
- 4.6 The promotion was for the issue of unlisted, non-voting "B" shares in the company. The voting "A" shares in the company were held by the Principal (25%) and the company's other directors. The minimum investment in the shares was £20,000. The company was seeking to raise £10,000,000 through this share issue to finance its property acquisitions.
- 4.7 The company sent respondents to the promotion a mini prospectus for the share issue, which Courtover also approved ("the prospectus"). This disclosed that the company proposed to finance its growth through, for example, gearing and further share offers, and that it hoped to generate income from renting out properties in its portfolio.
- 4.8 The promotion appeared in *The Business* newspaper on three weekends in March 2004. This newspaper was distributed free with the London edition of *The Mail on Sunday*. The promotion was therefore accessible to approximately 200,000 Mail on Sunday readers. The promotion also featured in a number of other periodicals in February, March and April 2004, including *Mature Times*, *Investors Chronicle*, *Investor International*, *Investment International*, *What Investment?* and *Woods & Jacks*.
- 4.9 However, according to Courtover, only 29 people responded to the promotion, none of whom invested.
- 4.10 A copy of the promotion is attached to this Final Notice.

Action taken by Courtover

- 4.11 Courtover has taken the following action in response to the failings set out in this Final Notice:
- (1) after being contacted by the FSA, Courtover withdrew its approval of the promotion;
 - (2) Courtover has indicated that it is no longer approving financial promotions;
 - (3) the Principal, who approved the promotion, has agreed to attend appropriate industry training on the regulatory requirements for financial promotions;
 - (4) Courtover has, in addition, agreed to seek a voluntary variation of Courtover's permission to exclude the communication or approval of financial promotions until such time as it has demonstrated that it has the appropriate expertise to ensure compliance;
 - (5) Courtover has been open and co-operative with the FSA during its investigation of this matter; and
 - (6) Courtover has been proactive in seeking a prompt conclusion to this matter.

The FSA's Regulatory Approach to Financial Promotions ("the FSA's April 2002 Publication")

- 4.12 In April 2002, the FSA issued the above publication which explained the FSA's approach to financial promotions after 1 December 2001. The FSA's April 2002 Publication made it clear that one of its key regulatory priorities was the enhancement of the minimum standards for information given by firms to customers.
- 4.13 The FSA's April 2002 Publication stated that vigorous enforcement action would be taken in relation to serious or persistent rule breaches and specifically warned against the following deficiencies:
- (1) a lack of balance, with headline benefits emphasised without clear and fair mention of material risks or drawbacks;
 - (2) misleading claims, and the creation of unrealistic expectations; and
 - (3) key information hidden in small print.
- 4.14 The FSA's April 2002 Publication stated that a key aim is to help consumers get a fair deal, with a view to ensuring that consumers' expectations are met. It highlighted the need to avoid misleading claims, buried risk warnings and unrealistic past performance or headline rates.
- 4.15 While the FSA's April 2002 Publication does not constitute and is not treated by the FSA as having the effect of formal guidance, it does contain detailed statements regarding the FSA's expectations and the publication stressed the importance of promoting a balanced picture in financial promotions.

The FSA's Plan and Budgets

- 4.16 The FSA made financial promotions a priority issue in both its 2002/3 Plan and Budget² and the 2003/4 Plan and Budget³. In the FSA Plan & Budget 2002/03, one of the FSA's strategic outcomes was the pursuit of "*fair treatment of consumers by enhancing the minimum standards for information given by firms to consumers*".
- 4.17 In the FSA Plan & Budget 2003/04, one of the key priorities outlined in the strategic plan for that year was *better information for consumers*. In particular, the reduction of unclear and misleading financial promotions was identified as a major workstream:

"We will intensify our efforts to reduce the number of unclear and even misleading financial promotions. ... It is important that firms' senior management understand their responsibilities in this area, and through focused supervision and enforcement work we will target firms that fall short of our standards."

² Published January 2002.

³ Published January 2003.

4.18 This theme has been carried forward in the FSA Plan & Budget 2004/05⁴.

5. CONTRAVENTIONS OF RELEVANT STATUTORY PROVISIONS AND REGULATORY REQUIREMENTS

5.1 During February 2004 Courtover acted in breach of the FSA Rules and Principles in that it:

- (1) approved a financial promotion which featured numerous material breaches of FSA's Rules;
- (2) failed to assess, either adequately or at all, before approving the promotion, whether it complied with the requirements of COB 3;
- (3) failed to make and retain adequate records of the promotion and its approval of it; and
- (4) failed to establish and maintain effective systems and controls to ensure its compliance with regulatory requirements. In particular, Courtover had no adequate procedures to ensure that it approved financial promotions in accordance with the requirements of COB 3.

5.2 Details of these failings are set out below.

Approval of non-compliant promotion

5.3 Courtover approved a financial promotion which featured several material breaches of the FSA's requirements for financial promotions as set out below. Courtover failed to take reasonable steps to ensure its compliance with these requirements by virtue of the matters set out at paragraphs 5.22 to 5.24 and 5.28 to 5.32 below.

Inadequate and misleading description of the nature of the investment

5.4 The promotion mis-described the nature of the share offer and included inaccurate and/or misleading claims as described below.

5.5 The promotion featured the headline wording, which appeared in large prominent font:

INVEST ABROAD AND RECEIVE A 20% RETURN

5.6 Courtover was unable to provide any evidence to substantiate the claim that the shares would provide a "20% return", but indicated that this derived from a revaluation of the properties purchased by the company after its first six months of trading. Courtover was unable to provide any evidence or records of this re-valuation, and there was no guarantee that these previous results would be repeated. Given the nature of the

⁴ Published January 2004.

investment and its risks,⁵ such a strong claim is likely to have created unrealistic expectations among consumers and was thus misleading.

- 5.7 Furthermore, it was inappropriate to use the word “return” when the company's stated policy in the prospectus was not to declare any dividends. As such, any gain would only be by way of capital growth on the shares over time, and could only be realised on their sale. This wording was repeated elsewhere in the promotion (see paragraph 5.16 below).
- 5.8 The promotion, additionally, mis-described the share offer. It described it as a *fund* and did not state that it related to a share issue. This was an inaccurate and therefore misleading description.
- 5.9 By virtue of these deficiencies the promotion was not clear, fair and not misleading and did not contain a fair and adequate description of the nature of the investment. This was in breach of FSA's Rules COB 3.8.4 R (1) and COB 3.8.8 R (1)(a).

Misleading claim

- 5.10 The promotion contained the following misleading statement which featured in a list of reasons for investing in the shares:

Approved under section 21 of the Financial Services and Markets Act.

- 5.11 This was a seriously misleading statement which implied that the share issue was approved in some manner by, or under, the regulatory regime. This could have misled otherwise cautious consumers to view the shares as a “safe” investment, without knowing the significant risks, which were not disclosed.⁶ This statement was therefore in breach of COB 3.8.4 R (1).

Inadequate risk warnings

- 5.12 The promotion failed to disclose the significant risks or drawbacks associated with investing in the shares⁷. Key risks and drawbacks were that:
- (1) the shares would not be listed on a recognised exchange and may therefore be illiquid and difficult to sell;
 - (2) the company to which the share issue relates is at an early stage of development;
 - (3) the value of the shares on offer may fall as well as rise;

⁵ See paragraph 5.13 below

⁶ Evidential provision COB 3.8.5 E (1) (g) provides that *promotions should not include any reference to approval by the FSA or any government body, unless such approval has been obtained in writing from the FSA or that body.*

⁷ Guidance COB 3.8.9 G (3) gives the guidance that firms should avoid *accentuating the positive benefits of an investment without also giving a fair indication of the risks.*

- (4) investors may not get back the full amount of the capital invested and may lose all of their capital; and
 - (5) any transactions in the underlying property portfolio, property valuations and rental income may be subject to exchange rate fluctuations.
- 5.13 The promotion contained two risk warnings. These were that property prices and rentals can go down as well as up and that interest rates can rise as well as fall. These appear at the foot of the promotion in small print. FSA research, detailed in the FSA's April 2002 Publication, showed that small print is not effective as a means of conveying key messages to consumers. The risks warnings and other information should appear in the main body of the promotion, and not in the small print.
- 5.14 The failure to disclose the key risks and drawbacks associated with investing in the shares was in breach of COB 3.8.4 R (1) and COB 3.8.8 R (1)(c).

Inappropriate comparison with a bank or building society account

- 5.15 Within a list of reasons why to invest in the shares, the promotion includes the words:

Higher potential returns than bank or building society.

- 5.16 It was inappropriate to compare the potential "returns" of the unlisted shares with a deposit with a bank or building society. The promotion failed to mention that, in contrast to a bank or building society account:
- (1) the shares would carry a much higher risk than saving through a bank or building society;
 - (2) investing in the shares would provide no security of capital;
 - (3) investors would have very limited access to their capital, which would be dependent on the saleability of the shares; and
 - (4) the investor would receive no income on their investment as the stated policy of the company was not to pay a dividend.

- 5.17 COB 3.8.12 G (2) (e) gives the following guidance:

Any of the following may mean that a specific non-real time financial promotion does not meet the requirements of COB 3.8.4 R (1) of being clear, fair and not misleading:

(e) a comparison with deposits without an indication in clear terms, and with equal prominence, that the investment does not include the security of capital which is characteristic of a deposit with a bank or building society.

- 5.18 The comparison failed to meet the requirements of COB 3.8.4 R (2); that comparisons or contrasts:

(a) compare investments or services meeting the same needs or which are intended for the same purpose;

(b) objectively compare one or more material, relevant, verifiable and representative features of those investments or services, which may include price;

- 5.19 By virtue of these matters the comparison failed to meet the requirements of COB 3.8.4 R (1) and 3.8.4 R (2).

Failure to disclose a material interest

- 5.20 In breach of FSA Rule COB 3.8.10 R, Courtover approved a financial promotion which failed to disclose the Principal's material interest in the company, or the nature and extent of that interest, namely, his status as a salaried director. It also failed to disclose that he stood to gain personally a commission from the company of 2% of the funds received by the company in respect of each subscription made through his introduction.

Failure to ensure that the promotion was compliant before approval

- 5.21 FSA Rule COB 3.6.1 R (1) requires that before a firm communicates or approves a financial promotion, it must confirm that it complies with the requirements of COB 3. FSA Rule COB 3.12.1 G (2) makes clear that the COB 3 rules apply in the same way when a firm approves a promotion as when it communicates a financial promotion.
- 5.22 Courtover failed to assess, adequately or at all, before approving the promotion, whether it complied with the requirements of COB 3. For example, it failed to consider whether the promotion fairly and adequately described the nature of the share offer, or what sort of risk warnings were required. As a consequence, it approved a promotion which contained material breaches of the requirements of COB 3, as described above.
- 5.23 Courtover additionally failed to ensure that the promotion was approved by an individual with appropriate expertise as required by COB 3.6.1 R (2). The promotion was approved by Courtover's Principal, who had no previous experience of approving financial promotions, and inadequate knowledge of the COB 3 requirements.

Failure to make and retain adequate records

- 5.24 Courtover failed to make or retain any, or any adequate, record of its approval of the promotion. It was unable to produce any records to the FSA to show that it had approved the promotion, or confirmed that it complied with the requirements of COB 3. It did not make a record of the date upon which it approved the promotion, who it was approved by, by reference to what criteria, or the evidence from which it had verified the accuracy of its contents.
- 5.25 Although Courtover's compliance manual set out the information that was required for record keeping in relation to its approval of financial promotions, appropriate records were not made or retained.
- 5.26 This was in breach of COB 3.7.1 R (1) and COB 3.7.4 R which require firms to make an adequate record of each financial promotion they have approved in a form that is readily accessible for inspection by the FSA.

Inadequate systems and controls for the approval of financial promotions

- 5.27 Courtover did not operate any effective systems or controls for approving financial promotions.
- 5.28 Courtover's compliance manual made clear that the Compliance Officer (Courtover's Principal) was responsible for vetting each non-real time financial promotion and confirming that it complied with COB 3. It noted the requirements to ensure that the promotion was *clear, fair and not misleading* and to keep *appropriate records*.
- 5.29 However, there were no procedures for ensuring that Courtover only approved financial promotions which were compliant with COB 3 and that the approval exercise was carried out by someone with appropriate expertise. There were no processes or mechanisms, for example, for assessing whether a financial promotion was clear, fair and not misleading and ensuring that the contents of promotions were adequately evidenced.
- 5.30 Although Courtover's compliance manual set out the information that was required for record keeping in relation to its approval of financial promotions, appropriate records were not made or retained.
- 5.31 Courtover therefore failed to exercise reasonable care to, and did not, establish and maintain effective systems and controls to ensure its compliance with the FSA Rules on financial promotions. This was in breach of SYSC 3.1.1 R and SYSC 3.2.6 R.

Breach of FSA Principles

- 5.32 Courtover was required to:
- (1) conduct its business with due care, skill and diligence (Principle 2); and
 - (2) take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems (Principle 3).
- 5.33 Courtover failed to conduct its business with due care, skill and diligence and to take reasonable care to organise and control its affairs in a responsible manner by virtue of its failure to take any steps or implement any procedures to ensure that non-compliant advertisements were not approved. This was in breach of FSA Principles 2 and 3.

6. RELEVANT GUIDANCE ON SANCTION

- 6.1 The FSA's policy on the imposition of financial penalties is set out in Chapter 13 of the Enforcement Manual, which forms part of the FSA Handbook ("ENF"). The principal purpose of a financial penalty 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 to firms the benefits of compliant behaviour.
- 6.2 As stated at paragraph 13.3.4 of the FSA Enforcement Manual, the criteria listed in the Manual are not exhaustive and all relevant circumstances of the case will be taken into consideration.

- 6.3 In determining whether a financial penalty is appropriate, and its level, the FSA considers all the relevant circumstances of the case. The FSA considers the following factors to be particularly relevant in this case.

The seriousness of the misconduct or contravention

- 6.4 The deficiencies were particularly serious; the promotion was for a high risk, unlisted security with a minimum contribution of £20,000 and contained a variety of inaccurate and misleading information. As a consequence, consumers may have reached an unrealistically optimistic view about the shares, without knowing their significant risks.
- 6.5 These deficiencies were compounded by the inclusion of wording implying that the investment had been approved under section 21 of the Act. This was a seriously misleading statement which could have misled consumers to view the shares offered in the promotion as a “safe” investment.
- 6.6 The promotion had the potential to reach the attention of a significant number of consumers, many of whom may not have been experienced investors. However, no consumer loss has been identified as a result of the promotion as Courtover has confirmed that no new investments resulted from it. In addition, the prospectus, which consumers would have received before purchasing the shares, generally clarified the nature of the share offer and the key risks, although it repeated the wording implying that the share offer had been approved under the Act.
- 6.7 The deficiencies arose from systemic weaknesses; Courtover failed to implement any, or any adequate, systems and controls for the approval of financial promotions. This was despite the considerable volume of material issued by the FSA highlighting the importance of financial promotions and setting out the regulatory approach to this area.

The extent to which the contravention or misconduct was deliberate or reckless

- 6.8 There is no evidence that Courtover deliberately contravened FSA Rules and Principles. However, it failed to take any steps to ensure that it only approved compliant promotions.

The size, financial resources and other circumstances of Courtover

- 6.9 Courtover has indicated that it is able to afford the financial penalty.

The amount of profit accrued or loss avoided

- 6.10 There is no evidence that Courtover deliberately set out to accrue additional profits as a result of its failings. However, Courtover’s Principal stood to gain a commission from the company of 2% of the funds received by the company in respect of each subscription made through his introduction.

Conduct following the contravention

- 6.11 The general policy of the FSA is that firms are given significant reductions in penalty where the seriousness of the non-compliance is mitigated by a proactive response from the firm after the breaches are identified.
- 6.12 Courtover has actively sought to respond to the concerns raised by the FSA.
- 6.13 Courtover did not itself identify the breaches, but once they were brought to its attention by the FSA, it withdrew its approval of the promotion.
- 6.14 The Principal has agreed to attend appropriate training to improve his knowledge and understanding of the requirements relating to financial promotions. Courtover has volunteered to seek a variation of its permission which will limit its permission to specifically exclude the communication or approval of financial promotions until such time as it can demonstrate that it has the appropriate expertise in place to do so in a compliant manner. These measures should ensure its future compliance.
- 6.15 Courtover has co-operated with FSA staff in their consideration of the matters set out in this Notice and brought this matter to a prompt and effective conclusion by quickly agreeing the facts.
- 6.16 Accordingly, these factors have been taken into consideration in settling the financial penalty, as outlined at paragraphs 3.4 to 3.6 above.

Disciplinary record and compliance history

- 6.17 Courtover has not been subject to any previous enforcement action.

Previous action by the FSA and other regulatory authorities in relation to similar failings

- 6.18 The FSA has in the past taken action against firms for advertising failings. This action has included the imposition of financial penalties. The FSA has taken these penalties into account.

7. IMPORTANT NOTICES

- 7.1 This Final Notice is given to you in accordance with section 390 of the Act.

Manner of payment

- 7.2 The Penalty must be paid to the FSA by instalments as set out below.

Time for payment

- 7.3 The first instalment of the Penalty in the sum of £1,674 must be paid to the FSA by no later than 13th May 2005, followed by 11 monthly instalments each of £1,666 payable on the 21st day of each month thereafter ("the due date"). If the due date falls on a public holiday (including Saturdays and Sundays) in any given month, then the due date is deemed to be the next business day immediately following the public holiday concerned.

If the penalty is not paid

- 7.4 Each instalment must be paid on the due date as specified above and in any event, no later than 14 days after each due date ("the payment period"). If any instalment is not paid within the payment period, and remains outstanding on the 15th day after the due date, the whole of the outstanding amount of the penalty will become due and the FSA may recover the same as a debt owed by you and due to the FSA.

Publicity

- 7.4 Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Final Notice relates. Under these provisions, the FSA must publish such information about the matter to which this Final Notice relates as the FSA considers appropriate. The information may be published in such a 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.

Third party rights

- 7.5 The FSA gave a copy of the Decision Notice to the company. Accordingly, the FSA must also give a copy of this Final Notice to the company.

FSA contacts

- 7.6 For more information concerning this matter generally, you should contact Stella Thompson at the FSA (direct line: 020 7066 1416 /fax: 020 7066 1417).

Alison Wheeler
Enforcement Division



OVERSEAS PROPERTY INVESTMENTS

INVEST ABROAD AND GET A

20%*

RETURN!

An investment opportunity in overseas property with returns of 20%*

With a minimum investment of £20,000, this fund is aimed at medium to long-term investors wishing to benefit from rising values in the overseas property and rental market, investing in a diversified portfolio of prime property and land located throughout the world.

Reasons Why:

- ▶ **MANAGEMENT TEAM WITH A PROVEN TRACK RECORD**
- ▶ **HIGHER POTENTIAL RETURNS THAN BANK OR BUILDING SOCIETY**
- ▶ **APPROVED UNDER SECTION 21 OF THE FINANCIAL SERVICES & MARKETS ACT 2000**
- ▶ **OFFER AVAILABLE FOR LIMITED PERIOD ONLY**



FREEPHONE 0800 0743683 www.opiuk.com



I would be interested in receiving further information

Name

Address

Post Code

Please return to

OVERSEAS PROPERTY INVESTMENTS PLC
St. Helens House, 156 St Helens Rd,
Swansea SA1 4DG
FREEPHONE: (0800) 0743683
Fax: (01792) 470460 Email: enquiries@opiuk.com

Please note: property prices and rentals can go down as well as up. Interest rates can rise as well as fall. This Financial Promotion has been approved for the purposes of section 21 of the Financial Services and Markets Act 2000 by Courtover Investment Management Ltd. who are regulated by the Financial Services Authority.

*This is based on the reasonable opinion of the Directors of OPI plc and assumes annual capital growth of 25% on long term dealings and 40% on short term property trading.

OVERSEAS PROPERTY FUND