BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY

FINAL NOTICE

To: **Mr Colin J McIntosh**
(IRN CJM01220)

Copy to: **Millburn Insurance Company Limited (in administration)**
(FRN: 202177)

Date: 1 February 2016

1. IMPOSITION OF PENALTY

1.1. Pursuant to section 67 of the Financial Services and Markets Act 2000 ("FSMA" or "the Act"), the PRA hereby imposes a financial penalty of £25,173 on Mr McIntosh, for breaches of Statements of Principle 6 and 7 between 26 December 2010 and 18 September 2013 ("the Relevant Period").

1.2. Pursuant to section 63 of FSMA, the PRA hereby withdraws Mr McIntosh's approval to perform the CF1 (Director) controlled function at Millburn because it appears to the PRA that Mr McIntosh is not a fit and proper person to perform that function.

1.3. Pursuant to section 56 of FSMA, the PRA hereby makes an order prohibiting Mr McIntosh from performing any controlled function in relation to any regulated activity carried on by:

a) a PRA-authorised person or;
b) an exempt person in relation to any PRA-regulated activity carried on by that person,

because it appears to the PRA that Mr McIntosh is not a fit and proper person to carry out a controlled function.

1.4. Mr McIntosh agreed to settle at an early stage of the PRA's investigation and therefore qualified for a 30% (stage 1) discount under the PRA Settlement Policy. Were it not for this discount, the PRA would have imposed a financial penalty of £35,962 on Mr McIntosh.

2. SUMMARY OF THE GROUNDS FOR ACTION

2.1. The PRA has taken action against Mr McIntosh because as CEO of Millburn Insurance Company ("Millburn") and holder of two PRA controlled functions, he failed to exercise due care, skill and diligence in the management of a firm for which he was responsible, in breach of Principle 6 of the FSA's (and from 1 April 2013, the PRA's) Statements of Principle for Approved Persons. Mr McIntosh also failed to take reasonable steps to ensure that a firm for which he was responsible complied with regulatory requirements, in breach of Principle 7 of the Statements of Principle for Approved Persons.

2.2. The breaches of Principles 6 result from Mr McIntosh's failures:

(a) to give sufficient consideration to the risks resulting from Millburn's expansion during the Relevant Period, including those risks resulting from its delegation of underwriting authority and its use of reinsurance;

(b) to put in place appropriate steps to mitigate the misalignment of his duties and interests in relation to Millburn and the MGA respectively; and

(c) to take reasonable steps to mitigate an identified risk in relation to Millburn's reinsurance.

The breaches of Principle 7 result from Mr McIntosh's failures:

(d) to establish and implement appropriate systems and controls to monitor and control the nature of the business that was being underwritten for Millburn; and

(e) to establish and implement appropriate systems and controls to ensure that Millburn was able to meet its regulatory obligations in relation to technical provisions, capital, reinsurance and financial reporting.

2.3. During the Relevant Period Millburn breached a number of rules in the FSA (and after 1 April 2013, the PRA) Handbook, including rules in the Prudential Sourcebook for Insurers (INSPRU), the General Prudential Sourcebook for all authorised firms (GENPRU) and the Sourcebook on Senior Management Arrangements, Systems and Controls (SYSC). Mr McIntosh's position within Millburn meant that it was his responsibility to take reasonable steps to prevent these breaches from occurring, and to mitigate them once they had occurred. He did not do so.

2.4. As a result of the gravity of the breaches of Principles 6 and 7 by Mr McIntosh, the PRA is of the opinion that he is not a fit and proper person to hold a PRA controlled function. This justifies the withdrawal of his approval, under section 63 FMSA, and the imposition of a prohibition order under section 56.

2.5. Further details of the grounds for the PRA taking action against Mr McIntosh can be found in Annex B.

3. WHY THE PRA INVESTIGATED THIS MATTER

3.1. The PRA is responsible for the prudential regulation and supervision of banks, building societies, credit unions, insurers and major investment firms. The PRA's role is to promote the safety and soundness of those firms, and, specifically for insurers, to contribute to securing an appropriate degree of protection for those who are or may become policyholders. The PRA is not responsible for ensuring that no insurer fails, but rather that all insurers have an appropriate degree of resilience, and that those that fail exit the market in an orderly fashion with their policyholders receiving appropriate protection.

3.2. As part of its supervision of authorised firms, the PRA expects senior management at those firms to understand the regulatory requirements to which firms are subject and to establish a culture that supports adherence to the spirit and the letter of those requirements. This means that senior management must take an active role in ensuring the safety and soundness of authorised firms. In this context, the PRA considers senior management responsibility to be individual as well as collective.

3.3. Mr McIntosh's failures were particularly important in relation to Millburn as he was Millburn's CEO. He was the only person at Millburn who was in a position to implement the measures that would have been required to ensure that Millburn had an appropriate degree of resilience. Mr McIntosh personally designed and implemented agreements and processes which were fundamentally flawed, and failed to improve them to the required standard despite some Board pressure to do so. It is therefore appropriate to hold Mr McIntosh to account for his role in Millburn's breaches.

3.4. During the Relevant Period, Millburn's total gross written premium (GWP) was over £32.9 million. Millburn never held more than £2.7 million in capital during the Relevant Period. Of the 7,871 claims made by Millburn's policyholders

(totalling over £16 million) during the Relevant Period, 914 claims remained outstanding prior to its administration, amounting to over £6.4 million. Millburn has incurred, and will continue to incur, liabilities to policyholders, the full extent of which has not yet been ascertained. Without reinsurance recoveries, there is little prospect that Millburn will be able to pay these claims in full, with the likely result that losses will be borne by policyholders and/or the FSCS.

4. REASONS WHY THE PRA TOOK ACTION

4.1. The PRA considers that:

(1) senior management have a responsibility to consider critically the risks attaching to any expansion plan and to put appropriate mitigation in place;

(2) a clear preference for expansion does not negate the need for risk assessment and mitigation;

(3) the fact that a senior management financial conflict of interest is known to peers does not necessarily mean that it will be acceptable for senior managers to continue to act without appropriate measures being put in place to mitigate the resultant risk; and

(4) senior managers must ensure that appropriate systems and controls are put in place to enable firms to meet their regulatory obligations and to demonstrate that firms are capable of being managed prudently. Managers who fail to meet their obligations in this regard should expect to be held to account personally.

5. OUTLINE FACTS AND MATTERS RELIED ON

5.1. Millburn is a UK insurance company based in London which had permission to underwrite insurance policies in the classes of Damage to Property, Fire and Natural Forces, Goods in Transit and Miscellaneous Financial Loss. Millburn is a very small category 5 firm, but from late 2010 it had plans to grow. As a result, it embarked on a significant expansion. This was part of an agreement which would ultimately have led to a change in ownership. Mr McIntosh was the CEO of Millburn and a PRA approved person during the Relevant Period. The Board approved the intention to expand and Mr McIntosh was responsible for executing the expansion. He did not carry out an assessment of the risks associated with it or attempt to mitigate them.

5.2. In January 2011, in order to implement the plan, Millburn appointed a managing general agent (MGA) to underwrite business on its behalf and handle any resultant claims. Mr McIntosh owned a small shareholding in this MGA. Mr McIntosh drafted the MGA agreement and was also appointed as a delegatee under it, while retaining his position as Millburn's CEO. Mr McIntosh signed the agreement on behalf of the MGA; another Millburn director signed on behalf of Millburn. Subsequent to the agreement, further delegations by the MGA to third parties were authorised by Millburn, including permission for the MGA to enter into binding authority agreements with authorised insurance intermediaries, thereby permitting third parties to accept proposals and issue policies and thus bind Millburn contractually. The MGA was paid for its services by commission, expressed as a percentage of GWP for the business the MGA underwrote, either directly or through third parties. The value of Mr McIntosh's shares in the MGA was therefore related to the volume of business that the MGA wrote for Millburn, rather than necessarily the quality or suitability of that business.

5.3. The MGA agreement did not adequately specify the policy, premium and claims data or management information to which Millburn should have been entitled, nor did it provide details of the type of business Millburn wished the MGA to underwrite, on what terms and at what price. The MGA, sub-delegates of the MGA and third parties wrote business on behalf of Millburn but Millburn did not require the MGA to provide timely and reasonably accurate basic written policy, premium and claims data on that business. Millburn also did not require the MGA to provide adequate, timely insurance risk management information on the business. Consequently, Millburn was not able to monitor and control the prudential risks to which it was exposed. Mr McIntosh relied on his personal knowledge of the MGA transactions to interpret the limited information that was provided by the MGA. He was pressed to provide more detailed, formal information on some occasions by Millburn's Board but was never able to secure a flow of information which would have been adequate for Millburn to produce reasonably accurate financial statements or to manage the prudential risk to which it was exposed.

5.4. The second element in Millburn's expansion plan was to change its reinsurance arrangements. As a result, Millburn entered into three reinsurance treaties ("the Reinsurance Treaties") with a reinsurer ("the Active Reinsurer"), covering the entirety of its business written during the Relevant Period, in the form of an overarching stop-loss treaty and two fully fronted schemes (whereby Millburn took on risks but reinsured them 100% to the Active Reinsurer, earning a

fronting fee). The first of these treaties was concluded on 26 December 2010. These treaties were the only reinsurance cover for the business underwritten during the Relevant Period and Millburn was materially dependent on them. Mr McIntosh drafted the most significant of these agreements, the stop-loss treaty, and signed it on behalf of Millburn. The treaty contained no protection for Millburn against reinsurer non-performance. Mr McIntosh also did not consider introducing such measures at a later stage during the Relevant Period.

5.5. Initially, the Reinsurance Treaties performed as expected, but from a point in 2013, no further amounts were paid under the Treaties. This meant that Millburn became unable to meet its claims as they fell due.

5.6. Following engagement with the PRA, on 18 September 2013 Millburn voluntarily varied its permissions so as to cease writing new insurance business, and it voluntarily agreed to the imposition of asset requirements to protect policyholders. Millburn entered into administration on 9 December 2013. Millburn's administrators are unable, at this stage, to determine the quantum of the dividend to creditors as this is dependent on future recoveries from the Active Reinsurer and the final level of creditors' claims. It is possible that creditors will not be paid in full.

5.7. Following the events at Millburn, the PRA and the FCA each carried out investigations. The facts and matters relied on by the PRA in its decision-making process regarding Mr McIntosh can be found in Annex A.

6. PRA POWER TO ACT

6.1. Mr McIntosh's breaches took place between 26 December 2010 (the date of the stop-loss reinsurance treaty) and 18 September 2013 (the date Millburn stopped writing new business).

6.2. On 1 April 2013, a new 'twin peaks' regulatory structure came into being under which the FSA was replaced by the FCA and the PRA. The effective date of that change, 1 April 2013, is known as the date of Legal Cutover (LCO). Following LCO, both the FCA and the PRA have an enforcement remit and are able to exercise a range of enforcement powers and impose sanctions under the Act.

6.3. Although the conduct to which this matter relates straddled LCO, Part 2 of the Financial Services Act 2012 (Transitional Provisions) (Enforcement) Order 2013

("the Transitional Provisions Enforcement Order") permits the PRA to take action in relation to misconduct occurring prior to LCO and for which the PRA would have been the appropriate regulator had the misconduct occurred on or after LCO. The PRA therefore has the ability to take action in relation to this matter.

6.4. Pursuant to Section 69(8) of the Act, the PRA must have regard to any statement published at the time when the misconduct occurred when taking enforcement action. Since the Relevant Period commenced before LCO but continued after that date, pursuant to Article 3(4)(b) of the Transitional Provisions Enforcement Order, the PRA Penalty Policy is the relevant statement to which regard must be had in the imposition of a financial penalty.

6.5. The PRA has therefore taken the following actions in relation to Mr McIntosh:

(a) the withdrawal of his current CF1 (Director) approval for Millburn;

(b) the imposition of a financial penalty of £35,962 (before Stage 1 settlement discount); and

(c) the imposition of a prohibition on Mr McIntosh exercising any PRA controlled function in relation to any regulated activity carried on by a PRA-authorised person or exempt person in relation to any PRA-regulated activity carried on by that person.

6.6. The PRA's penalty calculation is set out in Annex C.

7. PROCEDURAL MATTERS

7.1. The procedural matters set out in Annex D are important.

Robert Dedman
Chief Counsel, Regulatory Action Division,
for and on behalf of the PRA

Annex A

1. FACTS AND MATTERS RELIED UPON

Background

1.1. Millburn is a UK insurance company based in London and was placed into administration on 9 December 2013. Its business included underwriting insurance policies in the classes of Damage to Property, Fire and Natural Forces, Goods in Transit and Miscellaneous Financial Loss.

1.2. Prior to the Relevant Period, Millburn was wholly owned by another company ("the Holding Company"). During that time, Millburn underwrote longer term insurance-backed guarantee policies and other policies relating to home improvement works carried out by contractors, with annual gross written premium below £500,000. This business was subsequently reinsured in full by another subsidiary of the Holding Company's Group before commencement of the Relevant Period. As at 31 December 2010, Millburn held approximately £2 million of capital, and its gross written premium for the year was £237,000.

1.3. During the Relevant Period, Mr McIntosh was the CEO of Millburn. He held CF1 (Director) and CF3 (CEO) roles (from LCO, PRA controlled functions), and CF10 (Compliance) and CF11 (Money Laundering Reporting) roles (from LCO, FCA controlled functions).

Millburn's change in business strategy

1.4. In late 2010, Millburn changed its business strategy so that it could be actively marketed for sale to a potential investor.

1.5. On 1 November 2010, an Investor Company entered into an agreement with Millburn and its shareholders for the purchase, in four stages, of Millburn's entire share capital, from 31 March 2011 and completing on 31 December 2013.

1.6. As part of the sale process, Millburn approved an expansion plan. This committed Millburn to commence underwriting a wider range of insurance policies, for which Millburn had appropriate permissions, and their sale through intermediaries, in order to expand Millburn's balance sheet.

1.7. On 31 December 2010, a company connected to the Investor Company purchased 9.9% of Millburn's shares. This was the only share purchase to take place.

Appointment of the MGA

1.8. As part of the expansion plan, on 1 December 2010, Millburn entered into an appointed representative agreement ("the AR Agreement") with the MGA, whereby the MGA became the appointed representative of Millburn. Mr McIntosh held a 5% stake in the MGA, the fact of which was known to Millburn.

1.9. The terms of the AR Agreement provided that Millburn was responsible for the MGA in respect of insurance mediation activities relating to policies underwritten by Millburn.

1.10. Subsequently, on 26 January 2011, an MGA agreement was concluded between Millburn and the MGA. Mr McIntosh drafted this agreement and signed it on behalf of the MGA. Another Millburn director signed on behalf of Millburn. As Millburn's managing general agent, the MGA was granted authority to:

(1) negotiate and enter into binding authority agreements with authorised insurance intermediaries on behalf of Millburn for the sale and fulfilment of Millburn insurance policies;

(2) negotiate and enter into agreements with authorised insurance intermediaries on behalf of Millburn for the sale and fulfilment of Millburn insurance policies;

(3) accept and issue Millburn insurance policies to individual customers; and

(4) undertake financial accounting services on Millburn's behalf.

1.11. The MGA was to be remunerated for its services by way of a 1% commission on gross written premiums, whether the business was underwritten directly by the MGA or via a sub-delegation. This gave Mr McIntosh a financial interest in ensuring that the MGA wrote a high volume of business, irrespective of the suitability of that business for Millburn, though there is no evidence that this financial interest motivated Mr McIntosh's actions in practice.

1.12. Also on 26 January 2011, Millburn approved the appointment of sub-delegatees under the MGA Agreement, thereby granting sub-delegatees authority to:

(1) enter into binding authority agreements with authorised insurance intermediaries for the sale and fulfilment of Millburn insurance policies;

(2) directly accept proposals and issue policies on Millburn's standard policy wording and/or on amended wording otherwise agreed by Millburn; and

(3) issue policies of insurance and other documents agreed by Millburn to evidence cover issued pursuant to the MGA Agreement.

1.13. No contractual restrictions were imposed on the type, quality or price of the business that could be underwritten on Millburn's behalf either in the MGA Agreement or the sub-delegations under it. No contractual requirements were imposed in the MGA Agreement on the policy, premium and claims data and management information which the MGA would provide or to which Millburn would be entitled. A cap on gross annual premium was included in the contract and was the only ostensible financial control.

Millburn's insurance arrangements

1.14. Millburn, via the MGA and its sub-delegatees, entered into a number of binding authority agreements with third parties during the Relevant Period. Mr McIntosh was personally involved in approving many of these agreements. His approval or rejection of these agreements was the only practical limit on what business the MGA would select for Millburn, yet Mr McIntosh stood at all times on both sides of these transactions, representing the interests of the MGA and of Millburn. Gross written premium received during the Relevant Period in respect of these policies has yet to be ascertained precisely, but is currently estimated at over £32.9 million. Millburn did not always receive policy, premium and claims data. The total number of policies underwritten by Millburn has therefore yet to be ascertained precisely. The total value of claims made by policyholders prior to Millburn's administration exceeded £16 million.

Millburn's reinsurance arrangements with the Active Reinsurer

1.15. Millburn entered into three reinsurance treaties with the Active Reinsurer (the "Reinsurance Treaties"): one over-arching stop-loss treaty and two facultative ones. The most important was the over-arching General Policies Reinsurance, dated on or around 26 December 2010, under which the Active Reinsurer provided Millburn with stop-loss cover in respect of all insurance policies issued by Millburn from 1 November 2010 via the MGA and/or under binding authority

agreements issued by Millburn, with a limit of £25 million in excess of actual premium earned in any one year. The General Policies Reinsurance covered worldwide policies issued in classes of Damage to Property, Fire and Natural Forces, Goods in Transit and Miscellaneous Financial Loss. It was Millburn's principal source of protection for its underwriting expansion. The treaty was drafted by Mr McIntosh and signed by him on behalf of Millburn. Neither the treaty, nor any ancillary agreement, contained any protection for Millburn against reinsurer default. Default in this context means a delay in performing contractual obligations as well as the non-performance of those obligations, either in whole or part.

1.16. Prior to entering into the Reinsurance Treaties with the Active Reinsurer, Millburn received and reviewed the Active Reinsurer's financial statements. Mr McIntosh did not carry out any further due diligence in relation to the Active Reinsurer, either prior to or during the term of the Reinsurance Treaties, despite his recognition that reinsurer default could make Millburn unviable. Consequently, Mr McIntosh did not discover that the Active Reinsurer is the subject of cease and desist orders in relation to insurance sales in a province in Canada and in certain states in the United States of America which pre-date the Reinsurance Treaties with Millburn. Mr McIntosh did not consider using another reinsurer and did not carry out and record a risk assessment in respect of its exposure to the Active Reinsurer, and the resultant concentrated counterparty risk, at any point during the Relevant Period. Mr McIntosh did not arrange for Millburn to mitigate its exposure to reinsurance counterparty risk in any way, and did not monitor its exposure to the Active Reinsurer with a view to assessing whether total exposure remained prudent, whether risk mitigation techniques should subsequently be put in place or whether risk concentration limits had been reached which triggered reporting obligations to the PRA.

Oversight of the MGA's activities

Data

1.17. Mr McIntosh did not define Millburn's contractual entitlement to receive reasonably accurate, timely, written data on policies, premiums and claims when he drafted the MGA agreement. Mr McIntosh also did not establish practical appropriate systems and controls to ensure that Millburn was in fact provided with such data. Consequently, Millburn relied on limited written data and some oral explanation by Mr McIntosh (representing the MGA). This was insufficient for Millburn to be able to verify compliance with its regulatory obligations in

relation to capital, risk management and accounting. Because of these limitations, Millburn's GWP for the Relevant Period was still subject to material revision in July 2015.

Underwriting guidelines

1.18. Following commencement of the MGA Agreement, Mr McIntosh did not put in place underwriting guidelines for the MGA, despite such guidelines being envisaged by the wording of the risk provisions in the MGA Agreement. In November 2012, a recommendation was made at a Millburn/MGA management meeting that underwriting guidelines should be put in place. However, these were not implemented until around April 2013, by which time the MGA had already entered into a number of sub-delegations under which a substantial volume of business had been underwritten.

Management Information

1.19. Millburn received management information through different routes and with varying frequencies as the Relevant Period progressed. However, at all times the written management information was insufficient in isolation for Millburn to be able to assess or have appropriate insight into the prudential risk it was exposed to. Millburn was consequently reliant on verbal explanations provided by Mr McIntosh on behalf of the MGA. This remained insufficient to provide insight into Millburn's prudential risk.

Millburn's administration

1.20. The PRA became concerned about Millburn in May 2013 and obtained further information from the firm. As a result of that information, the PRA identified concerns in relation to Millburn's solvency and management.

1.21. On 18 September 2013, following the involvement of the PRA, Millburn voluntarily varied its permission so as to cease writing new insurance business, and it voluntarily agreed to asset requirements to protect policyholders. Millburn went into administration on 9 December 2013. As a result of its administration, Millburn was declared in default by the FSCS.

Millburn's capital position

1.22. During the Relevant Period, Millburn never held more than £2.7 million capital on its balance sheet. This was wholly insufficient to mitigate the effects of default by the Active Reinsurer.

Annex B

1. BREACHES AND FAILINGS

Principle 6

1.1. Principle 6 states that an approved person performing an accountable function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his accountable function. APER 4.6.4E explains that behaviour which breaches Principle 6 may include permitting transactions without sufficient understanding of the risks involved, and permitting expansion without reasonably assessing the risks of that expansion.

Expansion risks

1.2. Mr McIntosh was presented with a clear Board intention for Millburn to expand. Nonetheless, as Millburn's CEO, it was his responsibility to consider the risks attaching to expansion and to ensure that they were mitigated where possible. Having been tasked by the Board to execute the expansion, it was Mr McIntosh's responsibility to do so in a way which did not pose unsuitable risks to the firm. However, Mr McIntosh did not assess the risks of the plan or mitigate them in any way. He therefore permitted a very significant expansion of Millburn's business into areas it was unfamiliar with, without putting in place systems and controls to assess, manage or mitigate the resultant risks.

1.3. Mr McIntosh also permitted a situation in which his duties as Millburn's CEO had the potential to conflict with his interests as a shareholder of the MGA. As Millburn's CEO, his legal duty was to promote the long term success of Millburn. As a shareholder in the MGA and an individual involved in making underwriting decisions for it, however, his short term incentive was to maximise the volume of business written for Millburn, thereby maximising revenue for the MGA. This structural misalignment of interests and incentives existed even though there is no evidence that Mr McIntosh's motivation was to maximise revenue for the MGA at the expense of Millburn. The fact that this situation was known to Millburn did not relieve Mr McIntosh from his obligation to work with Millburn to mitigate the risk which resulted from it. Mr McIntosh could have mitigated that risk through an appropriate assessment of the risks of expansion, the establishment of independent underwriting controls and ensuring proper oversight of the business through the provision of accurate, timely data and management information.

Such controls would have provided evidence to demonstrate that Mr McIntosh was acting appropriately and that the risks resulting from his conflict of interest had been minimised. His failure to put these structural controls in place demonstrates that he did not exercise due skill, care and diligence in the exercise of his accountable function at Millburn.

1.4. Millburn's expansion plans depended on reinsurance as well as underwriting activity. Mr McIntosh was aware of Millburn's material dependence on the Active Reinsurer and consequently of the importance to Millburn that the reinsurance treaties should perform as expected. He failed, however, to carry out sufficient due diligence on the Active Reinsurer during the Relevant Period to have a full picture of the particular characteristics of the Active Reinsurer's risk profile, specifically that the Active Reinsurer:

(1) was the subject of cease and desist orders in a province in Canada and in certain states in the United States of America in respect of carrying out unlicensed insurance business;

(2) had not been subject to independent scrutiny from a ratings agency and so had no rating; and

(3) was not required to provide any form of security against default by Millburn.

1.5. These characteristics should have led Mr McIntosh to be particularly careful to assess, monitor and mitigate reinsurance default risk. However, Mr McIntosh failed to carry out and record a risk assessment of the Reinsurer and to put in place prudent mitigation of Millburn's exposure to the Active Reinsurer. Mr McIntosh's failures in relation to prudent mitigation were particularly serious given that, as the drafter of the main reinsurance treaty, he could have proposed measures to protect Millburn's interests. Such measures are routinely used in the insurance market. If he had been unable to negotiate protective measures with the Active Reinsurer, Mr McIntosh could also have taken other measures to protect Millburn, including the use of other reinsurers and proposing to the Board that Millburn should hold more capital. He took no such steps.

Principle 7

1.6. Principle 7 states that an approved person performing an accountable function must take reasonable steps to ensure that the business of the firm for which he is responsible in his accountable function complies with the relevant requirements and standards of the regulatory system. APER 4.7.3E explains that

the failure to implement adequate and appropriate systems of control may breach Principle 7, as may failing to take reasonable steps to monitor compliance with requirements, described by APER 4.7.4E.

Failure to implement systems of control

1.7. From the date of its appointment, the MGA was authorised to write insurance business on Millburn's behalf. Mr McIntosh failed to establish and implement appropriate systems and controls for the provision of basic, timely data on policies, premiums and claims by the MGA and coverholders. Mr McIntosh further failed to establish and implement appropriate systems and controls for the provision of timely management information which could have enabled Millburn to assess the prudential risks to which it was exposed.

1.8. In particular, Mr McIntosh failed to:

(1) establish a sufficiently clear contractual definition of the policy, premium and claims data which Millburn required;

(2) implement a system which was effective in practice for reporting that basic data accurately, on a timely basis and in a written form which was capable of interrogation by Millburn;

(3) establish and implement underwriting guidelines for the MGA that set out in detail the nature of business acceptable to Millburn, the terms on which it could be written and the rates to be applied. Such guidelines, which were envisaged by the wording of the risk provisions contained in the MGA Agreement, would have mitigated the prudential risks associated with allowing the MGA to bind Millburn to contracts of insurance, by making Millburn's risk appetite clear to the MGA; and

(4) establish and implement systems and controls which stipulated the scope and quality of management information that Millburn required from the MGA. As a result, the MGA did not prepare adequate management information to enable Millburn to identify, measure, and control effectively the prudential risks that Millburn was, or might be, exposed to as a result of the MGA's activities.

Consequences of failure to establish systems of control

1.9. Mr McIntosh's failures with respect to Millburn's systems and controls led to Millburn breaching rules in the PRA Handbook. Full details of these breaches can be found in the Warning Notice issued to Millburn.

1.10. Mr McIntosh's failure to ensure that Millburn received reasonably accurate and timely data on the policies it underwrote, and the premiums and claims due on those policies meant that it could not verify the accuracy of its technical provisions, as technical provisions depend among other things on premium and claims data. These failures with regard to data meant that Millburn was also unable to verify whether it was holding sufficient capital, as capital calculation also depends among other things on premium and claims data. They further meant that Millburn was unable to record its financial position to a reasonable degree of accuracy. These failures have complicated both Millburn's administration and the PRA's investigation, even in relation to the most basic metric insurers report, namely GWP. Without the ability to record GWP accurately, many other material elements in Millburn's financial position were by definition inaccurately recorded.

1.11. Mr McIntosh's reliance on his own insight into the business written by the MGA did not constitute a sound, effective and complete process to manage Millburn's exposure to insurance risk, especially in relation to a rapidly growing portfolio of risks. Verbal information should supplement comprehensive, timely and accurate data and management information, not attempt to act as a substitute for it. Mr McIntosh's failure to establish underwriting guidelines and to clearly communicate Millburn's risk appetite to those authorised to bind it to contracts of insurance meant that a critical part of the system for controlling insurance risk was not in place. Mr McIntosh's failure to ensure that Millburn received appropriate, timely management information meant that Millburn was unable to understand the prudential risks to which it was exposed.

1.12. Mr McIntosh's failure to act represents a failure to take reasonable steps to ensure the business complied with regulatory requirements, as each of his failures was a significant departure from normal market practice which the PRA considers could not be justified on the facts.

Failure to monitor reinsurance concentration risk

1.13. Mr McIntosh failed to put in place a process to monitor Millburn's reinsurance concentration risk, and therefore failed to consider during the course of the Reinsurance Treaties whether mitigation techniques should be employed, whether total exposure remained at prudent levels, and whether reporting obligations to the PRA were triggered.

Consequences of failure to monitor reinsurance concentration risk

1.14. Mr McIntosh's failures with respect to Millburn's reinsurance led to Millburn breaching the rules in the PRA Handbook. Full details of these breaches can be found in the Final Notice issued to Millburn.

1.15. Mr McIntosh's failure to monitor and to put in place a process to monitor Millburn's compliance with these requirements was a significant departure from normal market practice which the PRA considers cannot be justified on the facts. Mr McIntosh was aware of the critical importance of reinsurance to Millburn yet he did not implement or monitor an appropriate system of control to ensure that Millburn was able to meet its regulatory obligations.

Sections 56 and 63 – being a fit and proper person

1.16. Under section 56 of the Act, the PRA may make a prohibition order if it appears that an individual is not a fit and proper person to perform functions in relation to regulated activity carried on by a PRA-authorised person or by an exempt person in relation to a PRA-regulated activity. Under section 63 of the Act, the PRA may withdraw an approval given under section 59 to an approved person if the PRA considers that the person is no longer fit and proper to perform that function.

1.17. When considering whether a person is fit and proper, the PRA may take account of any matter which it would be entitled to consider under section 60 when an application for approval is made. In deciding on an application for approval, section 61 of the Act permits the PRA to consider the qualifications, training, competence and personal characteristics of the applicant. The FSA (and from 1 April 2013, the PRA) has provided further guidance on the fit and proper standard in the Handbook (and now, PRA Rulebook). Under FIT 1.3.1G, the most important elements in this assessment are the individual's honesty,

integrity and reputation, their competence and capability and their financial soundness. When considering an individual's competence and capability, FIT 2.2.1A G explains that the PRA will have regard to all relevant matters, including whether the person as demonstrated by experience and training that they are suitable to perform a controlled function.

1.18. Mr McIntosh has breached two principles in the Statement of Principles for Approved Persons. In so doing, he played a significant role in Millburn breaching two of the PRA's Principles for Businesses and numerous PRA Handbook rules. The gravity of Mr McIntosh's breaches mean that he is not a fit and proper person to carry out a controlled function as a result of his lack of competence. He deviated significantly from normal market practice in his management of Millburn without justification. He either failed to understand or failed to turn his mind to matters which were material to Millburn's financial viability and its ability to comply with regulatory requirements. When he did identify a source of risk, he took no action to manage, monitor or mitigate it. He also permitted his interests in another firm to conflict with his duties as Millburn's CEO without mitigating the resultant risk. His performance over a lengthy period was so poor that it is evidence of a lack of competence, as referred to in FIT 2.2.1A G. Accordingly, under section 63 the PRA has withdrawn Mr McIntosh's status as a PRA approved person, and under section 56, issued a prohibition order against him.

Annex C

1. PENALTY REGIME

1.1. The PRA took over prudential regulation of Millburn on 1 April 2013. Mr McIntosh's breaches occurred during the period 26 December 2010 to 18 September 2013 ("the Relevant Period") and therefore straddle that date.

1.2. Because the breaches continued after 1 April 2013, pursuant to article 2(5)(b) of the Transitional Provisions Order, the PRA must apply its penalty regime set out in the PRA Penalty Policy.

Single penalty calculation

1.3. The PRA considered whether or not to calculate separate penalties in respect of Mr McIntosh's breaches of Principles 6 and 7. However, as the factual matrix underpinning the misconduct in relation to both regulatory breaches is linked, the PRA concluded that a single penalty calculation is appropriate.

Step 1: Disgorgement

1.4. Pursuant to paragraph 17 of the PRA Penalty Policy, at Step 1 the PRA seeks to deprive an individual of any economic benefits derived from or attributable to the breach of its requirements, where it is practicable to ascertain and quantify them.

1.5. The PRA has no evidence to suggest that Mr McIntosh derived any economic benefits from the breaches of Principles 6 and 7. The PRA therefore does not disgorge any sum from Mr McIntosh.

1.6. The Step 1 figure is therefore £0.

Step 2: The seriousness of the breach

Relevant revenue

1.7. Pursuant to paragraph 18 of the PRA Penalty Policy, at Step 2 the PRA determines a starting point figure for a punitive penalty having regard to the seriousness of the breach by the relevant individual - including any threat the individual posed or continues to pose to the advancement of the PRA's statutory

objectives - and the income of the individual. The individual's relevant income is the gross amount of all benefits received by the individual from the employment in connection with which the breach occurred, during the period of the tax year preceding the date when the breach ended.

1.8. The PRA considers Mr McIntosh's relevant income to be £36,540.

Step 2 factors

1.9. In determining a percentage rate to apply to the individual's relevant income to produce a figure at Step 2 that properly reflects the nature, extent, scale, gravity and overall seriousness of the breach, the PRA may have regard to the factors set out at paragraph 21 of the PRA Penalty Policy.

1.10. The PRA considers the percentage rate of Mr McIntosh's relevant income should be 30%, for the following reasons:

(1) Mr McIntosh's breaches had a significant adverse effect on the advancement of the PRA's statutory objectives, specifically the "safety and soundness" and "policyholder protection" objectives. In particular, Mr McIntosh's failure to assess, monitor and control the risks Millburn took in relation to its expansion plan undermined Millburn's safety and soundness, the effect of which, in this case, was Millburn entering into administration when its reinsurance did not perform, causing loss to its policyholders (PRA Penalty Policy, para. 21(a));

(2) the breaches occurred for a period of over two years and eight months (PRA Penalty Policy, para. 21(b));

(3) the breaches were neither reckless nor deliberate (PRA Penalty Policy, para. 21(c));

(4) Mr McIntosh was directly responsible for Millburn's underwriting decisions and for oversight of the business written by the MGA (PRA Penalty Policy, para. 21(d));

(5) whilst Mr McIntosh as CEO was responsible for breaches in relation to failures to measure, monitor and report on the reinsurance concentration risk, the decision to reinsure solely with the Active Reinsurer was a collective decision by Millburn (PRA Penalty Policy, para. 21(d)); and

(6) Mr McIntosh was the CEO of Millburn and has worked in the insurance industry for over 50 years (PRA Penalty Policy, para 21(h)).

1.11. Therefore, the Step 2 figure is 30% of £36,540 = £10,962.

Step 3: Adjustment for any aggravating, mitigating or other relevant factors

1.12. Pursuant to paragraph 24 of the PRA Penalty Policy, at Step 3 the PRA may increase or decrease the Step 2 figure (excluding any amount to be disgorged pursuant to Step 1) to take account of any factors which may aggravate or mitigate the breach, or other factors which may be relevant to the breach or the appropriate level of penalty in respect of it.

1.13. The PRA considers that the following aggravating and mitigating factors are relevant:

(1) Mr McIntosh could reasonably have been expected to be aware of the breaches throughout the Relevant Period;

(2) Mr McIntosh is co-operating as the PRA would expect when under investigation (PRA Penalty Policy, para. 25(c)); and

(3) Mr McIntosh has not had any previous disciplinary or compliance problems with the PRA or FCA (PRA Penalty Policy, para. 25(e)).

1.14. The PRA does not consider that these factors are sufficient to justify any deduction or increase of the Step 2 figure.

1.15. Therefore, the Step 3 figure is £10,962.

Step 4: Adjustment for deterrence

1.16. Pursuant to paragraph 27 of the PRA Penalty Policy, if the PRA considers the penalty determined following Steps 2 and 3 is insufficient effectively to deter the person who committed the breach and/or others who are subject to the PRA's regulatory requirements from committing similar or other breaches, it may increase the penalty at Step 4 by making an appropriate adjustment to it.

1.17. The PRA considers that the Step 3 figure of £10,962 does not represent a sufficient deterrent to others, and so made an adjustment to the penalty at Step 4 of £25,000. Therefore, the Step 4 figure is £ 35,962.

Step 5: Application of any applicable reductions for early settlement or serious financial hardship

Settlement discount

1.18. Pursuant to paragraph 29 of the PRA Penalty Policy, the PRA and the individual on whom a penalty is to be imposed may seek to agree the amount of the penalty and any other appropriate settlement terms. The PRA Settlement Policy provides that the amount of the penalty which would otherwise have been payable may, subject to the stage at which a binding settlement agreement is reached, be reduced. Paragraph 26 of the PRA Settlement Policy provides that, where the PRA proposes to impose a financial penalty under the Act and a settlement agreement is agreed by the parties, approved by the PRA's settlement decision makers and concluded, the person concerned will be entitled to a reduction in the amount of the financial penalty (as set out at paragraph 28 of the PRA Settlement Policy).

1.19. The PRA and Mr McIntosh reached an agreement at an early stage of the PRA's investigation, therefore a 30% discount was applied to the Step 4 figure.

1.20. The Step 5 figure is therefore £25,173.

Conclusion

1.21. The PRA therefore hereby imposes on Mr McIntosh a financial penalty of £35,962 (before the Stage 1 discount) reduced to £25,173 (after Stage 1 discount) for his breaches of Principles 6 and 7.

Annex D

1. PROCEDURAL MATTERS

Decision maker

1.1. The settlement decision makers made the decision which gave rise to the obligation to give this Notice.

1.2. This Final Notice is given under sections 56, 57, 63 and 67 of the Act and in accordance with section 390 of the Act. The following statutory rights are important.

Manner of and time for Payment

1.3. The financial penalty must be paid in two instalments by Mr McIntosh to the PRA, as follows:

(1) £12,210 to be paid no later than 11 February 2016, 14 days from the date of this Notice; and

(2) £12,963 to be paid no later than 21 April 2016, 12 weeks from the date of this Notice.

If the financial penalty is not paid

1.4. If any, or any part of, an instalment is outstanding on the day after it is due to be paid to the PRA (in accordance with paragraph 1.3 above), the PRA may recover the full outstanding amount of the financial penalty as a debt owed by Mr McIntosh and due to the PRA.

Publicity

1.5. Sections 391(4), 391(6A) and 391(7) of the Act apply to the publication of information about the matter to which this Notice relates. Under those provisions, the PRA must publish such information about the matter to which this notice relates as the PRA considers appropriate. The information may be published in such manner as the PRA considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the PRA, be unfair to the person with respect to whom the action was taken, prejudicial to the safety and soundness of PRA-authorised persons or prejudicial to securing an appropriate degree of protection for policyholders.

PRA contacts

1.6. For more information concerning this matter generally, contact John Cheesman at the PRA (direct line: 020 3461 7866, john.cheesman@bankofengland.co.uk).

APPENDIX 1

DEFINITIONS

1. THE DEFINITIONS BELOW ARE USED IN THIS FINAL NOTICE:

1.1. "the Act" means the Financial Services and Markets Act 2000 (as amended);

1.2. "the Active Reinsurer" means the insurance company providing reinsurance to Millburn as described at paragraph 1.15 of Annex A;

1.3. "AR" means appointed representative, an exempt person under section 39 of the Act;

1.4. "the AR Agreement" means the Appointed Representative Agreement between Millburn, the MGA and another party commencing on 1 December 2010, as referred to in paragraph 1.8 of Annex A;

1.5. "Handbook" means the FSA (and after 1 April 2013, the PRA's) Handbook of Rules and Guidance;

1.6. "the Holding Company" means Millburn's majority shareholder, referred to at paragraph 1.2 of Annex A;

1.7. "the FCA" means the Financial Conduct Authority;

1.8. "the FSCS" means the Financial Services Compensation Scheme;

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

1.10. "FSMA" means the Financial Services and Markets Act 2000 (as amended);

1.11. "the General Policies Reinsurance" means the agreement referred to at paragraph 1.15 of Annex A;

1.12. "the Investor Company" means the company referred to at paragraph 1.5 of Annex A;

1.13. "LCO" means Legal Cutover, as described at paragraph 6.2 of this Notice;

1.14. "the MGA" means Millburn's managing general agent;

1.15. "the MGA Agreement" means the managing general agency agreement entered into on 26 January 2011 by Millburn and the MGA, as referred to at paragraph 1.10 of Annex A;

1.16. "Millburn" means Millburn Insurance Company Limited (In Administration);

1.17. "Notice" means the PRA's Final notice;

1.18. "the PRA" means the Prudential Regulation Authority;

1.19. "the PRA Penalty Policy" means *'The Prudential Regulation Authority's approach to enforcement: statutory statements of policy and procedure April 2013 – Appendix 2 – Statement of the PRA's policy on the imposition and amount of financial penalties under the Act'*;

1.20. "the PRA Settlement Policy" means *'The Prudential Regulation Authority's approach to enforcement: statutory statements of policy and procedure April 2013 – Appendix 4 - Statement of the PRA's settlement decision-making procedure and policy for the determination and amount of penalties and the period of suspensions or restrictions in settled cases'*;

1.21. "Principle" means a principle included in the FSA's (and after 1 April 2013) the PRA's Statements of Principle for Approved Persons;

1.22. "the Reinsurance Treaties" means the General Policies Reinsurance and two facultative treaties between Millburn and the Active Reinsurer, as set out at paragraph 1.15 of Annex A;

1.23. "the Relevant Period" means the period 26 December 2010 to 18 September 2013;

1.24. "the Transitional Provisions Enforcement Order" means the Financial Services Act 2012 (Transitional Provisions) (Enforcement) Order 2013;

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