
FINAL NOTICE

To: **Anthony Dale Cuming**

Reference
Number: **AXC00025**

Date: **26 July 2024**

1. ACTION

1.1. For the reasons given in this Final Notice, the Financial Conduct Authority (“the Authority”) hereby:

- (1) imposes on Mr Cuming a financial penalty of £1,691,259, pursuant to section 66 of the Financial Services and Markets Act 2000 (“the Act”); and
- (2) makes an order prohibiting Mr Cuming from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm, pursuant to section 56 of the Act.

1.2. However, the Authority has agreed not to enforce the financial penalty provided that Mr Cuming pays £2,000 to the Financial Services Compensation Scheme (the “FSCS”). The £2,000 that Mr Cuming has agreed to pay to the FSCS represents substantially all

of his available assets to meet a penalty or judgment.

2. REASONS

Background

- 2.1. Pensions are a traditional way of saving and investing money in a tax-efficient way for retirement. The value of an individual's pension can have a significant impact on their quality of life during retirement and, in some circumstances, may affect whether they can afford to retire at all. It is of paramount importance that consumers of financial services can have confidence that persons exerting significant influence at authorised firms are accountable to the regulator and have been approved as fit and proper.
- 2.2. Between 16 January 2015 and 30 November 2017 ("the Relevant Period"), Mr Cuming, an independent financial adviser ("IFA"), was an approved person at Grosvenor Butterworth (Financial Services) Limited ("GBFS"), a small IFA firm authorised by the Authority to conduct regulated activities, including arranging deals in investments and advising on pension opt-outs and pension transfers ("Pension Transfers"). By the start of the Relevant Period, Mr Cuming had over 13 years' experience of working in financial services and advising on investments and over 7 years' experience of working as an IFA.
- 2.3. Mr Cuming was the sole person at GBFS approved to perform the controlled functions of CF1 (Director), CF10 (Compliance Oversight) and CF11 (Money Laundering Reporting). He was also responsible for Insurance Mediation, had responsibility for MCD Intermediation, and was one of the 14 individuals at GBFS approved to perform the CF30 (Customer) controlled function during the Relevant Period. As CF30, Mr Cuming's role included giving advice or performing related activities in connection with Pension Transfers, pension conversions or pension opt-outs for retail clients.

The Scheme

- 2.4. During the Relevant Period, Mr Cuming participated in a scheme involving a number of firms and individuals (the "Scheme"), including Kyle Jones ("Mr Jones") who was another IFA at GBFS, and Steven Sahota ("Mr Sahota") who was a discretionary fund manager at Beaufort Securities Limited ("BSL"), a small to medium retail advisory stockbroker authorised by the Authority, as well as other IFAs, an Unregulated Individual (the "Unregulated Individual") who oversaw the Scheme and certain Introducers ("Introducers"). The Introducers were unregulated firms or individuals who referred pension holders to regulated IFAs for advice and recommendations concerning

their pension arrangements.

- 2.5. As part of a team, Mr Sahota established and grew a discretionary fund management service ("DFM Service"), which managed portfolios of assets, including the Strategic Income Portfolio (the "Strategic Income Portfolio").
- 2.6. The Scheme involved certain participants (principally the Unregulated Individual and his firms) identifying companies (the "Investment Companies") which were seeking to raise capital and contacting them with the promise of receiving significant capital through BSL's DFM Service. The Investment Companies issued bonds or shares which were nearly all high-risk and of limited liquidity.
- 2.7. In return, the Investment Companies were to make substantial payments by way of marketing fees, marketing allowances, introducer fees, commission or other fees ("Marketing Fees"), which would be distributed between the participants in the Scheme. The investment products issued by the Investment Companies that agreed to pay the Marketing Fees ("the Underlying Investments") were included in the Strategic Income Portfolio.
- 2.8. Incentivised by Marketing Fees, the IFAs involved in the Scheme, including Mr Cuming and Mr Jones at GBFS, would advise customers, who had been contacted by Introducers involved in the Scheme, to transfer or switch their existing pensions to the Beaufort SIPP ("Beaufort SIPP"), a white-labelled self-invested personal pension ("SIPP") created by BSL. These pension funds were invested by the DFM Service, at the direction of Mr Sahota, into products contained within BSL's Strategic Income Portfolio, including the Underlying Investments.
- 2.9. Certain Introducers would seek to: (a) influence the advice of the IFAs and Mr Sahota's investment management decisions, (b) direct Mr Sahota in relation to the investment of pension holders' funds into specific investments (including the Underlying Investments) and (c) direct the IFAs to act as their agent.
- 2.10. Pension holders' funds were specifically placed in the Strategic Income Portfolio and thereby invested in the Underlying Investments, regardless of whether they were suitable for those pension holders, so that those involved in the Scheme would receive a share of the Marketing Fees. Mr Sahota's team was responsible for these investment decisions, which were effected by an assistant (who was not involved in the Scheme). Mr Sahota failed to ensure that pension holders were placed in suitable investments as he was driven by the desire for personal gain (rather than by the needs of the pension holders) and exposed the pension holders to a significant risk of detriment and,

in many cases, actual loss.

- 2.11. During the Relevant Period, there was little oversight of the DFM Service by BSL senior management or by BSL's discretionary fund management committee, whose purpose was to monitor and supervise the activities of the discretionary fund managers across BSL.
- 2.12. In total, approximately £5.9 million in Marketing Fees was paid to the various participants in the Scheme. Mr Cuming received directly at least £780,000 in Marketing Fees, out of which he paid Mr Jones around £177,900 and Mr Sahota around £126,300, retaining approximately £433,000 for himself. The payment of these Marketing Fees was not disclosed to the pension holders and was to the ultimate detriment of the pension holders whose funds were invested in the Underlying Investments. These Marketing Fees were separate from the fees charged by the IFAs advising the pension holders and by the DFM Service, which were payable by the pension holders in the usual way. In some cases, the payment of Marketing Fees directly resulted in certain Investment Companies facing significant financial difficulty and in turn substantially impaired the value of the Underlying Investments.

Mr Cuming's and Mr Jones' involvement in the Scheme

- 2.13. Between 20 January 2015 and 25 October 2016 GBFS advised at least 182 customers, in respect of around £14 million of customers' funds to transfer or switch their pensions to the Beaufort SIPP. At least 167 of these customers were advised by Mr Jones or Mr Cuming, with Mr Cuming advising no fewer than 99 of these customers.
- 2.14. That advice from Mr Cuming and Mr Jones was driven by the Marketing Fees they would receive and paid little or no regard to the personal circumstances of the customers and the high-risk nature of nearly all the Underlying Investments included within the Strategic Income Portfolio.
- 2.15. In furtherance of the Scheme, Mr Cuming and Mr Jones regularly discussed with Mr Sahota where the pension holders' funds should be invested and the exact allocations. Mr Cuming and Mr Jones worked closely with Mr Sahota to invest customers' funds in particular Underlying Investments.
- 2.16. Further, the Authority concludes that Mr Cuming sought to conceal his involvement in the Scheme and almost all of the financial benefit he derived from it, by receiving the Marketing Fees directly into his personal bank account or through bank accounts held by his connected companies, rather than via GBFS.

- 2.17. Mr Cuming was responsible for (amongst other things): (i) monitoring the compliance of the advice provided to customers; (ii) ensuring that conflicts of interest were managed appropriately and disclosed to customers; and (iii) conducting due diligence and monitoring the Introducers and the discretionary fund manager ("DFM"). However, as a result of his overriding interest and role in the Scheme, driven by his receipt of Marketing Fees, Mr Cuming paid no real regard to the Underlying Investments and the risks they posed before advising customers, the suitability of the advice given to GBFS' customers, properly overseeing the Introducers and Mr Sahota as DFM, or to the clear and acute conflict of interest in play.
- 2.18. Mr Cuming failed to ensure that (a) GBFS' customers were appropriately informed of his and GBFS' relationship with the Introducers and the DFM involved in the Scheme; (b) GBFS' customers were informed of the significant Marketing Fees he personally received when he advised customers to transfer or switch their pensions to the Beaufort SIPP and their pension funds were then invested in the Underlying Investments included in the Strategic Income Portfolio; and (c) a suitable process was put in place for managing the conflict of interest.
- 2.19. As a result, GBFS' customers did not know the true position and were unable to make a fully informed decision about: (a) seeking advice from GBFS in relation to transferring or switching their pension funds into a SIPP; (b) accepting the personal recommendation they received from GBFS; and (c) using their existing pension funds to purchase investments in the Strategic Income Portfolio. As a consequence, the customers were exposed to a significant risk of loss and, in many cases, actual loss.
- 2.20. On 18 September 2017, following intervention by the Authority, GBFS signed a voluntary requirement which was imposed by the Authority on GBFS following an application by GBFS under section 55L(5) of the Act ("VREQ") to cease all regulated activities relating to Pension Switches which involved the movement of funds from one personal pension scheme to another where no safeguarded benefits are involved, or Pension Transfers.
- 2.21. On 31 October 2017, at the request of the Authority, GBFS signed a further VREQ to cease all regulated activities. GBFS subsequently applied to cancel its Part 4A permission on 30 November 2017 and this was effected on 1 December 2017.
- 2.22. On 17 January 2018, GBFS entered into liquidation.

Complaints to the Financial Ombudsman Service

- 2.23. Some customers who had been advised by GBFS to transfer or switch their pensions subsequently complained to the Financial Ombudsman Service. A number of these customers complained that they had been wrongly advised to transfer their pensions into a SIPP with BSL; that their funds had been wrongly put into high-risk investments (namely, one or more of the Underlying Investments); and that they had been placed into investments that were not in line with their attitude to risk.

FSCS claims

- 2.24. As a result of GBFS going into liquidation on 17 January 2018, complaints made against GBFS were subsequently referred to the FSCS. As at 18 March 2024, the FSCS had paid compensation of approximately £4 million in respect of claims brought against GBFS. These claims were made by pension holders that, following advice from GBFS, had switched/transferred their pensions to the Beaufort SIPP and, as a result, their pension funds were invested in one or more investments included in the Strategic Income Portfolio.

Provision of information to the Authority

- 2.25. Mr Cuming failed to deal with the Authority in an open and cooperative way during the course of its investigation into his conduct in that he failed, without a reasonable excuse:
- (1) to attend a compelled interview with the Authority; and
 - (2) to respond to a compelled information requirement issued by the Authority.

Mr Cuming's lack of integrity

- 2.26. The Authority considers that throughout the Relevant Period Mr Cuming demonstrated a lack of integrity and is not a fit and proper person because, while approved by the Authority to perform the CF1 (Director), CF10 (Compliance Oversight), CF11 (Money Laundering Officer) and CF30 (Customer) controlled functions he acted dishonestly in that he:
- (1) participated in the Scheme, as a result of which GBFS' customers whose pension funds were invested in the Strategic Income Portfolio were exposed to a significant risk of detriment and, in many cases, actual loss. Mr Cuming worked closely with other individuals involved in the Scheme to ensure that customers'

pension funds were invested in particular products so that significant Marketing Fees could be generated and paid to himself and Mr Jones and to other participants in the Scheme. Mr Cuming failed to disclose to customers that their pension funds were being invested in such products and that he and Mr Jones (as well as other participants in the Scheme) would, in return, be personally receiving significant Marketing Fees, and the Authority concludes that he did not do so because it would have exposed the Scheme; and

- (2) knowing what the Scheme involved and how it was structured, held himself out, and caused GBFS to hold itself out, to customers as providing bespoke, independent investment advice based on a comprehensive and fair analysis of the whole market. Mr Cuming knew that the advice given to customers was not independent but he did not pay proper regard to such matters. Instead, he advised GBFS' customers to transfer or switch their pensions to the DFM Service at BSL in order that their pension funds would be invested specifically in the Strategic Income Portfolio. Mr Cuming knew that holding himself out, and causing GBFS to hold itself out, in this way was misleading to customers as it did not reflect the reality of the part he and Mr Jones played in the Scheme or the service GBFS purported to provide. In doing so, Mr Cuming knowingly exposed customers to a significant risk of loss and made significant personal financial gain at the expense of customers' investable funds.

2.27. Further, the Authority considers that Mr Cuming demonstrated a lack of integrity and is not a fit and proper person, in that while approved by the Authority to perform the same controlled functions, he advised, and directed GBFS to advise, customers to transfer or switch their pensions to the Beaufort SIPP, knowing that their pension funds would be invested in Underlying Investments included in the Strategic Income Portfolio at BSL, notwithstanding his awareness that the Underlying Investments were nearly all high-risk and of limited liquidity and therefore were unlikely to be suitable for many of GBFS' customers. As a consequence, the advice provided was unsuitable and was driven by the significant financial benefit Mr Cuming would receive in return. In providing such advice, and in directing GBFS to provide such advice, Mr Cuming failed to pay any real regard to the suitability of the Underlying Investments and the risks they posed, and thereby recklessly disregarded the interests of GBFS' customers.

2.28. The Authority considers Mr Cuming's misconduct to be particularly serious in light of matters, including the following:

- (1) customers were not made aware of the true nature of the advice they received, including the fact of Mr Cuming's involvement in the Scheme and his financial

interest in the transfer of pension funds into the Underlying Investments within the Strategic Income Portfolio which created a clear and acute conflict of interest;

- (2) Mr Cuming used this conflict of interest to benefit personally from the transfer of customers' funds into these Underlying Investments in return for significant financial benefit in the form of undisclosed Marketing Fees;
- (3) Mr Cuming knowingly preferred his personal financial gain over ensuring GBFS' customers received adequate and bespoke advice tailored to their individual needs and circumstances. Customers were therefore denied the opportunity to make an informed decision on whether to use GBFS' services and whether to invest in the products recommended to them by Mr Cuming. The Authority considers that had customers known the true state of affairs, it is likely they would have ceased to use GBFS' services;
- (4) customers were exposed to a significant risk of loss and, in many cases, actual loss from the transfer of their pension funds into unsuitable investments. During the Relevant Period, GBFS advised at least 182 customers, who had pensions with a total value of approximately £14 million, to transfer or switch their pensions to BSL's DFM Service, where their funds were invested in the Strategic Income Portfolio, with around £10 million invested in the Underlying Investments.

2.29. Accordingly, the Authority hereby:

- (1) imposes a financial penalty on Mr Cuming in the amount of £1,691,259 (including interest) for his breach of Statement of Principle 1 during the Relevant Period; and
- (2) makes an order prohibiting Mr Cuming from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.

2.30. However, Mr Cuming has agreed to pay £2,000 to the FSCS, to contribute towards the redress paid and payable to customers of GBFS who have been disadvantaged. The £2,000 that Mr Cuming has agreed to pay to the FSCS represents substantially all of his assets available to meet a penalty or judgment. Provided Mr Cuming makes the agreed payment to the FSCS, the Authority will not seek to enforce the financial penalty against him.

- 2.31. This action will advance the Authority's operational objectives of securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.

3. FAILINGS

- 3.1. The regulatory provisions relevant to this Notice are referred to in the Annex.

Statement of Principle 1

- 3.2. Statement of Principle 1 required Mr Cuming to act with integrity in carrying out his controlled functions. A person will lack integrity where they act dishonestly or recklessly. The Authority considers that during the Relevant Period, Mr Cuming failed to act with integrity in carrying out his controlled functions at GBFS in breach of Statement of Principle 1. This is evidenced by Mr Cuming's conduct set out at paragraphs 2.26 and 2.27.

Lack of fitness and propriety

- 3.3. The Authority considers, based on the facts and matters set out in this Notice, that Mr Cuming lacks integrity and is not a fit and proper person to perform any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.

4. SANCTION

Financial penalty

- 4.1. The Authority's Handbook of rules and Guidance ("Handbook") entitled Decision Procedure and Penalties Manual ("DEPP") at 6.5B sets out the details of the five-step framework that applies in respect of financial penalties imposed on individuals in non-market abuse cases.

Step 1: disgorgement

- 4.2. Mr Cuming derived direct financial benefit from his breach of Statement of Principle 1 in the form of the Marketing Fees that he received arising from the Scheme, which were generated from the advice given by GBFS to customers to transfer or switch their pensions to the BSL DFM Service. The Authority has calculated that the amount of the direct benefit Mr Cuming received in Marketing Fees during the Relevant Period totalled

£433,213.

- 4.3. The Authority will ordinarily also charge interest on the benefit derived directly from misconduct. The Authority considers it appropriate to apply simple interest at a rate of 0.25% on Mr Cuming's benefit. Interest calculated on Mr Cuming's benefit from receipt to the date of this Notice amounts to £9,846.
- 4.4. Step 1 is therefore £443,059 (the total of £433,213 plus interest of £9,846).

Step 2: the seriousness of the breach

- 4.5. The period of Mr Cuming's breach was from 16 January 2015 to 30 November 2017. The Authority considers Mr Cuming's relevant income for this period to be £717,397.
- 4.6. In deciding on the percentage of the relevant income that forms the basis of the Step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 40%.
- 4.7. In assessing the seriousness level, the Authority takes into account various factors which reflect the nature and impact of the breach, and whether it was committed deliberately or recklessly. The Authority considers that the following factors are relevant.

Impact of the breach

- 4.8. Mr Cuming gained significant financial benefit as a result of the advice he and Mr Jones provided to customers to transfer or switch their pension to the Beaufort SIPP so that their pension funds could be invested into the Underlying Investments included in the Strategic Income Portfolio (DEPP 6.5B.2G(8)(a)).
- 4.9. Mr Cuming's breach of Statement of Principle 1 exposed customers who switched or transferred their pension to the Beaufort SIPP to a significant risk of loss and, in many cases, caused customers to suffer actual loss (DEPP 6.5B.2G(8)(c)).

Nature of the breach

- 4.10. Mr Cuming breached Statement of Principle 1 repeatedly and over an extended period of time (DEPP 6.5B.2G(9)(b)).

- 4.11. Mr Cuming failed to act with integrity because he acted dishonestly and recklessly throughout the Relevant Period (DEPP 6.5B.2G(9)(e)).
- 4.12. Mr Cuming encouraged Mr Jones to participate in the Scheme in breach of Statement of Principle 1 (DEPP 6.5B.2G(9)(h)).
- 4.13. Mr Cuming was an experienced IFA with over 7 years of experience at the start of the Relevant Period (DEPP 6.5B.2G(9)(j)).
- 4.14. Mr Cuming, as the individual approved to perform the CF1 (Director) and CF10 (Compliance Oversight) controlled functions, held a senior position at GBFS (DEPP 6.5B.2G(9)(k) and (l)).

Deliberate misconduct

- 4.15. Mr Cuming intentionally and repeatedly breached Statement of Principle 1 so that he could receive significant Marketing Fees (DEPP 6.5B.2G(10)(a), (b) and (h)).
- 4.16. Mr Cuming knew that he and Mr Jones on behalf of GBFS were misleading customers and treating them unfairly by holding the firm out as providing bespoke, independent investment advice based on a comprehensive and fair analysis of the whole market when, as he knew, this did not reflect the reality of the service that GBFS would provide given his and Mr Jones' involvement in the Scheme (DEPP 6.5B.2G(10)(c)).

Reckless misconduct

- 4.17. Mr Cuming acted recklessly in disregarding the interests of GBFS' customers when providing advice and directing GBFS to provide advice to them (DEPP 6.5B.2G(11)(a)).

Level of seriousness

- 4.18. DEPP 6.5B.2G(12) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the Authority considers the following factors to be relevant:
 - (1) Mr Cuming's breach of Statement of Principle 1 exposed a large number of customers to a significant risk of loss and, in many cases, caused customers to suffer actual loss (DEPP 6.5B.2G(12)(a));
 - (2) Mr Cuming failed to act with integrity and was dishonest (DEPP 6.5B.2G(12)(d));

and

- (3) Mr Cuming's breach of Statement of Principle 1 was committed deliberately and recklessly (DEPP 6.5B.2G(12)(g)).

4.19. DEPP 6.5B.2G(13) lists factors likely to be considered 'level 1, 2 or 3 factors'. The Authority considers that none of these factors apply.

4.20. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 5 and so the Step 2 figure is 40% of £717,397.

4.21. Step 2 is therefore £286,958.

Step 3: mitigating and aggravating factors

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

- (1) In 2013, prior to the Relevant Period, the Authority issued an alert on investing pension monies into unregulated products through a SIPP, in which it specified a model similar to the customer journey in this case. Following this, a second alert was issued by the Authority in 2014 which stated that pension transfers to SIPPs intended to hold non-mainstream propositions are unlikely to be suitable options for the vast majority of retail customers (DEPP 6.5B.3G(2)(k)); and

- (2) The lack of cooperation shown by Mr Cuming during the Authority's investigation, in persistently failing without a reasonable excuse to attend a compelled interview and to respond to a compelled information requirement. Mr Cuming's actions undermined the Authority's ability to conduct its investigation in an efficient and effective way and to obtain the information it reasonably needed from him in relation to his own and GBFS' conduct (DEPP 6.5B.3G(2)(b)).

4.23. The Authority considers that there are no factors that mitigate the breach.

4.24. Having taken into account these aggravating factors, the Authority considers that the Step 2 figure should be increased by 45%.

4.25. Step 3 is therefore £416,089.

Step 4: adjustment for deterrence

- 4.26. The Authority considers the Step 3 figure of £416,089 and the absolute value of the penalty is too small in relation to the breach to represent a sufficient deterrent to Mr Cuming and others, and so has increased the penalty at Step 4 by a multiple of 3.
- 4.27. The reasons for applying this multiplier are that Mr Cuming made a significant personal financial gain from his misconduct, which was not included in the calculation of his relevant income at Step 2, abused the senior position he held at GBFS to participate in the Scheme, and exposed customers to the risk of, and actual, significant detriment.
- 4.28. Step 4 is therefore £1,248,267.

Step 5: settlement discount

- 4.29. No settlement discount applies.
- 4.30. Step 5 is therefore £1,248,200 (rounded down to the nearest £100 in accordance with the Authority's usual practice).

Penalty

- 4.31. The Authority therefore imposes a financial penalty of £1,691,259 (namely £1,248,200 plus the Step 1 figure of £443,059 (including interest)) on Mr Cuming for breaching Statement of Principle 1.

Prohibition order

- 4.32. The Authority has had regard to the guidance in Chapter 9 of the Authority's Handbook entitled Enforcement Guide ("EG") in considering whether to prohibit Mr Cuming.
- 4.33. By virtue of the matters addressed in this Notice, in particular the finding at paragraph 3.3 above, and having regard to its statutory objectives, including protecting and enhancing the integrity of the UK financial system and securing an appropriate degree of protection for consumers, the Authority considers that it is appropriate and proportionate in all the circumstances to make a prohibition order in respect of Mr Cuming under section 56 of the Act in those terms.

5. PROCEDURAL MATTERS

- 5.1. This Notice is given to Mr Cuming in accordance with section 390 of the Act.

5.2. The following statutory rights are important.

Decision maker

5.3. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.

Manner and time for payment

5.4. The financial penalty is due and payable in full by Mr Cuming to the Authority no later than 12 August 2024.

5.5. However, the Authority has agreed not to enforce the financial penalty provided that Mr Cuming pays £2,000 to the Authority, for the purpose of onward payment to the FSCS, on or before 31 December 2026. The £2,000 that Mr Cuming has agreed to pay represents substantially all of his available assets to meet a penalty or judgment.

5.6. If Mr Cuming fails to pay the £2,000 on or before the day it is due to be paid (in accordance with paragraph 5.5 above), and it remains outstanding after at least 14 days' notice given by the Authority, then the Authority may immediately recover the full amount of the financial penalty (less any amounts paid to the Authority) as a debt owed by Mr Cuming and due to the Authority.

Publicity

5.7. 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 Mr Jones or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

5.8. The Authority intends to publish such information about the matter to which this Notice relates as it considers appropriate.

Authority contact

- 5.9. For more information concerning this matter generally, contact Natalie Rivett at the Authority (direct line: 020 7066 4166 / email: Natalie.Rivett@fca.org.uk).

Kerralie Wallbridge

Head of Department

Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX

1. RELEVANT STATUTORY PROVISIONS

- 1.1. The Authority's statutory objectives, set out in section 1B(3) of the Act, include the operational objectives of securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.
- 1.2. Section 66 of the Act provides that the Authority may take action against a person if it appears to the Authority that he is guilty of misconduct and the Authority is satisfied that it is appropriate in all the circumstances to take action against him. A person is guilty of misconduct if, while an approved person, he has failed to comply with a Statement of Principle issued under section 64 of the Act, or has been knowingly concerned in a contravention by a relevant authorised person of a relevant requirement imposed on that authorised person.
- 1.3. Section 56 of the Act provides that the Authority may make an order prohibiting an individual from performing a specified function, any function falling within a specified description or any function, if it appears to the Authority that that individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.

2. RELEVANT REGULATORY PROVISIONS

Statements of Principle and Code of Practice for Approved Persons

- 2.1. The Authority's Statements of Principle and Code of Practice for Approved Persons have been issued under section 64 of the Act.
- 2.2. During the Relevant Period, Statement of Principle 1 stated:

'An approved person must act with integrity in carrying out his accountable functions.'
- 2.3. 'Accountable functions' include controlled functions and any other functions performed by an approved person in relation to the carrying on of a regulated activity by the authorised person to which the approval relates.

- 2.4. The Code of Practice for Approved Persons sets out descriptions of conduct which, in the opinion of the Authority, does not comply with a Statement of Principle. It also sets out factors which, in the Authority's opinion, are to be taken into account in determining whether an approved person's conduct complies with a Statement of Principle.

The Fit and Proper Test for Approved Persons

- 2.5. The part of the Authority's Handbook entitled "The Fit and Proper Test for Approved Persons" ("FIT") sets out the criteria that the Authority will consider when assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
- 2.6. FIT 1.3.1G states that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person. The most important considerations will be the person's honesty, integrity and reputation, competence and capability and financial soundness.

The Authority's policy for exercising its power to make a prohibition order

- 2.7. The Authority's policy in relation to prohibition orders is set out in Chapter 9 of the EG.
- 2.8. EG 9.1 states that the Authority may exercise this power where it considers that, to achieve any of its regulatory objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he may perform.

DEPP

- 2.9. 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.