Demetrios Hadjigeorgiou and David Stephen have referred their Decision Notices to the Upper Tribunal where they will each present their respective cases. Any findings in these individuals' Decision Notices are therefore provisional and reflect the FCA's belief as to what occurred and how it considers their behaviour is to be characterised.

Kulvir Virk has not referred the FCA's decision to the Upper Tribunal and his Final Notice has not been the subject of any judicial finding. To the extent that Kulvir Virk's Final Notice contains criticisms of Demetrios Hadjigeorgiou and David Stephen, they have received Decision Notices which set these out. They dispute many of the facts and any characterisation of their actions in Kulvir Virk's Final Notice and have referred their Decision Notices to the Upper Tribunal for determination. The Tribunal's decision in respect of the individuals' references will be made public on its website.

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FINAL NOTICE

To: Kulvir Virk

Reference Number: KXV01033

Date: 19 June 2024

1. ACTION

1.1. For the reasons given in this Final Notice, the Authority hereby:

(1) imposes on Kulvir Virk a financial penalty of £215,500 pursuant to section 66 of the Act; and

(2) makes an order prohibiting Mr Virk from performing any function in relation to any regulated activities carried on by any authorised or exempt person, or exempt professional firm pursuant to section 56 of the Act.

2. SUMMARY OF REASONS

2.1. On the basis of the facts and matters described below, between 16 February 2016 and 2 August 2019 (the "Relevant Period"), Mr Virk breached Statement of Principle 1 (Integrity) and Statement of Principle 6 (Due skill, care and diligence) of the Authority's Statements of Principle and Code of Practice for Approved Persons Chapters of the Authority's Handbook ("APER") by failing to act with integrity and by failing to exercise due skill, care and diligence in managing the business of SVS Securities Plc ("SVS").

2.2. During the Relevant Period, Mr Virk held the controlled functions of CF1 (Director), CF28 (Systems and controls) and CF30 (Customer) at SVS. He had previously been the Chief Executive of SVS between April 2003 and September 2012 and was the de facto Chief Executive of SVS from January 2016 until August 2016. He was also the majority shareholder, an influential figure in SVS and took key decisions in relation to the fixed income investments within the Model Portfolios. SVS operated a discretionary fund management business that managed investments held on behalf of retail pension customers within a self-invested personal pension ("SIPP"). The pension funds within the SIPPs were invested in one of four portfolios of assets created and managed by SVS (the "Model Portfolios"). The Model Portfolios were called Income / Mixed / Growth / Aggressive Growth and SVS's marketing material described them as being *'high risk portfolios designed to give you maximum growth opportunities'.*

2.3. Discretionary fund managers act as agents for their customers, making investment decisions in financial markets on their behalf. Confidence that discretionary fund managers will conduct themselves properly when acting on behalf of customers is central to the relationship of trust between the industry and its customers. When making investment decisions for customers, discretionary fund managers should act in the best interests of their customers and should not let conflicts of interest interfere with their obligations to customers. The Authority has stressed the importance of discretionary fund managers managing conflicts of interest effectively.

2.4. Mr Virk recklessly caused SVS to use a business model intended to maximise the flow of retail customer funds into the Model Portfolios for onward investment into high-risk illiquid bonds operated by connected persons and business associates of

SVS and Mr Virk. This model, which created systemic conflicts of interest and inappropriately prioritised income to SVS at the expense of the firm's customers, operated throughout the Relevant Period. It was driven by the financial benefit that SVS (and so Mr Virk) derived from undisclosed commissions of up to 12% of the customer's investment, paid to SVS by the bond operators out of the principal which SVS customers invested in the bonds. Mr Virk was aware of the risk of customer detriment with this business model, and it was unreasonable for him to take that risk in the circumstances.

2.5. Mr Virk recklessly entered SVS into a series of commission-driven commercial arrangements with these bond operators that committed SVS to channel customer funds into the high-risk fixed income bonds. The model developed through the leadership of Mr Virk relied upon incentivising unauthorised introducers through marketing agreements by which SVS paid these introducers commission of 7-9% of the introduced customer's funds that were invested into SVS's Model Portfolios. A total of 879 customers invested £69.1 million into the Model Portfolios. Over half of these customers were advised to invest in SVS by a financial adviser firm that was wholly or partly controlled by the owners of one of the introducers to whom SVS was paying undisclosed incentive commission.

2.6. Mr Virk was central to the decision-making in relation to which fixed income investments were included in the Model Portfolios. In prioritising income to SVS over the interests of the firm's customers, Mr Virk ignored SVS's responsibilities as discretionary fund manager and failed to ensure that investment decisions were taken on an arms-length basis. Instead, Mr Virk played an active role within SVS to enter SVS into commercial agreements with bond providers, agreed to provide pricing on Bloomberg and a secondary market, arranged for SVS to take undisclosed commission upfront, provided assistance to Ingard Limited ("Ingard"), a bond provider which had one of Mr Virk's co-directors at SVS as a director and shareholder, and arranged for SVS to pay Ingard's listing fees, all in advance of any meaningful due diligence being carried out. Mr Virk's influence over the Model Portfolios meant that any due diligence carried out was in essence a formality and as a result SVS knew little about the underlying loans upon which the viability of the fixed income bonds depended. Fixed income investments issued by providers chosen by Mr Virk on the basis of undisclosed commission arrangements and undisclosed connections have since defaulted, leaving retail investors with substantial losses, unlikely to receive more than a fraction of their original investment. Mr Virk acted recklessly because he was aware of the risk of customer detriment with prioritising income to SVS in this way, and it was unreasonable for him to take that risk in the circumstances.

2.7. Mr Virk recklessly entered SVS into an agreement in November 2018 with Innovation Capital Finance Limited ("ICFL"), under which SVS committed to invest a certain amount of its customer funds into the ICFL Bond (subject to it being listed on an HMRC recognised stock exchange), which would earn SVS £1 million in commission payable by ICFL. At Mr Virk's initiative, SVS took an advance of £750,000 of the commission as a loan from ICFL, whilst SVS was experiencing issues with its liquidity and cashflow, before any due diligence on the investment was conducted, in circumstances where Mr Virk knew that the Authority had raised serious concerns about investing customer funds without adequate due diligence.

2.8. Mr Virk knew that the Authority had raised concerns in early 2018 over the lack of due diligence by SVS on the fixed income investments in the Model Portfolios. When later in 2018 Mr Virk entered into the commission agreement with ICFL without regard for due diligence, he recklessly ignored these concerns.

2.9. The commission and incentives that drove this business model were not disclosed by SVS to SVS's customers or their financial advisers, as required by the Authority's rules. Mr Virk was aware that SVS was taking commission from its customers' funds before they were invested but failed to take steps to ensure that the commission and incentives that drove this business model were appropriately disclosed by SVS to its customers or their financial advisers. This created a significant conflict of interest between SVS and its clients which was not disclosed.

2.10. At a time when SVS had concerns about its financial position, Mr Virk led a decision to apply a 10% mark-down on the valuation that SVS customers would receive when they disinvested from the fixed income assets in the Model Portfolios. Mr Virk's stated intention in proposing this change was to generate more income for his firm. As a result, SVS earned £359,800 in income at the expense of its customers. Mr Virk was repeatedly warned of the risk that the proposed change was not fair to SVS's customers or compliant with the Authority's rules, but Mr Virk recklessly dismissed the concerns and pressed ahead with the mark-down.

2.11. In April 2015 Mr Virk signed a loan agreement and debenture between SVS and Business Resource Consultancy Limited ("BRC" / the "BRC Loan"), which was funded by a loan from OC Finance S.A. ("OC Finance"). SVS had invested in bonds provided by OC Finance. The purpose of the BRC Loan was to 'develop a series of initiatives to expand the service proposition' and the debenture granted BRC a fixed charge over SVS's business assets. BRC had common ownership with Corporate Finance Bonds Limited ("CFBL"), whose bonds SVS included in its Model Portfolios (the "CFBL Bonds"). SVS drew down some of the funds from the loan

facility and the loan remained outstanding during the Relevant Period. In mid-2016, the BRC Loan was novated to CFBL (the "CFBL Loan") shortly after Mr Virk entered SVS into an agreement with CFBL by which SVS would be paid 12% commission on the customer funds it channelled into the CFBL Bonds. This created a significant conflict of interest, as it meant that CFBL had rights over SVS's assets through the fixed charge attached to the CFBL Loan at a time when SVS was deciding to invest Model Portfolio customer funds into the CFBL Bonds. Mr Virk was aware of the terms of the loan agreement, debenture and novation of the BRC Loan to CFBL and played a key role in SVS's agreement with CFBL that the CFBL Bonds would be included in the Model Portfolios; however, Mr Virk failed to disclose this conflict to SVS's Compliance function (despite having been specifically requested in May 2017 to disclose potential conflicts) and failed to ensure it was disclosed to SVS's customers. The Authority considers that Mr Virk knowingly failed to disclose this business conflict of interest.

2.12. Mr Virk ignored the evident risks from the conflict between SVS and its customers. As a result, the conflict was not identified, recorded or managed by SVS and not disclosed to customers or their financial advisers.

2.13. When viewed together across the Relevant Period, the key SVS business model decisions and associated conflicts of interest summarised above show a consistent pattern in how Mr Virk conducted SVS's business, and in the regulatory impact of this, which has led the Authority to conclude that his actions were knowing or reckless and that, as a result, he acted with a lack of integrity in breach of Statement of Principle 1.

2.14. For the reasons summarised below at paragraphs 2.15 – 2.20, Mr Virk also failed to act with due skill, care and diligence in breach of Statement of Principle 6 in managing the business of SVS.

2.15. Mr Virk failed to take reasonable steps to ensure that SVS remained compliant with the Authority's rules in relation to inducements. SVS received large commission payments from the fixed income product providers for including their investments in the Model Portfolios. This represented a level of inducement which clearly compromised both SVS's independence and its ability to act in the best interests of its customers. COBS 2.3A.15R, which came into force on 3 January 2018, states that, except for specific purposes, a firm must not accept commission from any third party in relation to the provision of a relevant service to retail clients. As a CF1 Director Mr Virk should have taken reasonable steps to ensure that SVS did not accept such payments after 3 January 2018. Instead, SVS

continued to accept commission payments after this date and in November 2018 Mr Virk entered SVS into the commission agreement with ICFL.

2.16. Mr Virk was aware that the Authority had raised concerns in January 2018 that the Model Portfolios were overly exposed to one bond provider, CFBL, and that this posed a concentration risk, due to SVS's investments in multiple series of the CFBL Bonds. Mr Virk failed to take reasonable steps to stop SVS from making further investments in the CFBL Bonds in line with assurances made by SVS to the Authority.

2.17. Mr Virk was aware that one of his co-directors at SVS was also a director of Ingard, at a time when SVS invested customers' funds into an Ingard bond, and that a non-executive director of SVS was also a director of Angelfish Investments Plc ("Angelfish"), at a time when SVS invested customers' funds into Angelfish preference shares, but failed to take reasonable steps to ensure that these conflicts of interest were managed appropriately.

2.18. Mr Virk engaged Specialist Advisors Limited ("Specialist Advisors") to provide marketing and consultancy services in relation to the Model Portfolios. Mr Virk knew that Specialist Advisors was controlled by Stuart Anderson, who also controlled CFBL, which had provided a loan to SVS and whose bonds were included in the Model Portfolios. Mr Virk failed to disclose this engagement to the firm's Compliance function and failed to take reasonable steps to ensure that the conflict of interest was managed.

2.19. In addition to his role at SVS, Mr Virk worked as a consultant with Company X (a company specialising in retail sales via mail order or internet, whose registered address was the same as that of SVS). During the Relevant Period, and when the CFBL Bonds were included in the Model Portfolios, CFBL provided loans to Company X. To secure its loans, CFBL took charges over Company X's assets in May and November 2017. Mr Virk used his influence over the bonds included in the Model Portfolios to ensure that CFBL Bonds were the largest fixed income investment, yet at the same time, SVS customer funds were being used via the CFBL Bonds to support a business connected to Mr Virk. This was a personal conflict of interest which Mr Virk failed to take reasonable steps to ensure was disclosed, and accordingly it was not managed appropriately.

2.20. SVS did not properly communicate the decision to introduce a 10% mark-down to the valuation of fixed income disinvestments to customers or their financial advisers. Customers therefore took disinvestment decisions without understanding the financial implications of disinvesting their funds and lost

pension savings as a result. Mr Virk failed to take reasonable steps to ensure that SVS properly communicated this decision to introduce the 10% mark-down.

2.21. The Authority has concluded that in respect of the matters in paragraphs 2.4 – 2.12, Mr Virk failed to act with integrity, in breach of Statement of Principle 1, and that in respect of the matters in paragraphs 2.15 – 2.20, he failed to exercise due skill, care and diligence in managing the business of SVS, in breach of Statement of Principle 6.

2.22. In addition, as a result of his conduct, Mr Virk is not a fit and proper person, and poses a risk to consumers and to the integrity of the financial system. The nature and seriousness of the breaches outlined above warrant the imposition of an order prohibiting him from performing any function in relation to any regulated activities carried on by an authorised or exempt person or exempt professional firm.

2.23. The Authority hereby:

1) imposes on Mr Virk a financial penalty of £215,500 pursuant to section 66 of the Act; and

2) makes an order prohibiting Mr Virk from performing any function in relation to any regulated activities carried on by any authorised or exempt person, or exempt professional firm pursuant to section 56 of the Act because he lacks fitness and propriety.

3. DEFINITIONS

3.1. The definitions below are used in this Notice:

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

"Mr Anderson" means Stuart James Anderson.

"Angelfish" means Angelfish Investments Plc.

"the Angelfish Conflict" means the conflict of interest in relation to Mr Flitcroft's role as director of both Angelfish and SVS.

"APER" means the Statements of Principle and Code of Practice for Approved Persons.

"the Authority" means the body corporate known as the Financial Conduct Authority.

"BRC" means Business Resource Consultancy Limited.

"BRC Loan" means a loan issued to SVS from BRC for up to £1 million in April 2015.

"CFBL" means Corporate Finance Bonds Limited.

"CFBL Bonds" means various series of bonds issued by CFBL under its £500m secured note programme, launched on 21 June 2016.

"COBS" means the part of the Authority's Handbook entitled Conduct of Business Sourcebook.

"CoI Register" means SVS's Conflicts of Interest Register.

"Company X" means the firm to which CFBL made a loan whilst Mr Virk was acting as a consultant for Company X. The nature of business conducted by Company X was retail sales via mail order houses or via the internet.

"DEPP" means the Decision Procedure and Penalties Manual, part of the Authority's Handbook.

"Mr Ewing" means David Norman Ewing.

"EG" means the Authority's Enforcement Guide set out in the Authority's Handbook.

"FIT" means the Fit and Proper Test for Approved Persons and specified significant-harm functions section of the Authority's Handbook.

"Mr Flitcroft" means Andrew John Alec Flitcroft.

"the FSCS" means the Financial Services Compensation Scheme.

"the Handbook" means the Authority's Handbook of rules and guidance.

"ICFL" means Innovation Capital Finance Limited.

"ICFL Bond" means the bond issued by ICFL under its £100m secured note programme, launched on 17 January 2019, in respect of which SVS made an investment of £10m.

"IFA" means Independent Financial Adviser.

"Ingard" means Ingard Limited.

"Ingard Alternative Funding" means Ingard Alternative Funding Limited.

"the Ingard Conflict" means the conflict of interest in relation to Mr Ewing's role as director of both Ingard and SVS.

"Ingard Financial" means Ingard Financial Limited.

"Ingard Property Bond 1" means the bond issued by Ingard Property Bond Designated Activity Company.

"Ingard Property Bond 2" means the bond issued by Ingard Property Bond 2 Designated Activity Company.

"Ingard Property Bonds" means Ingard Property Bond 1 and Ingard Property Bond 2.

"Investment Committee" means the SVS committee that provided oversight on discretionary and advisory investment services, handled products in the Model Portfolios and monitored investment performance.

"Mark-down" means the difference, if any, between:

(i) the price at which the firm takes a principal position in the relevant investment in order to fulfil a customer order; and

(ii) the price at which the firm executes the transaction with its customer.

"MiFID II" means the Markets in Financial Instruments Directive (2014/65/EU).

"Model Portfolios" means the discretionary fund-managed model portfolios managed by SVS.

"Model Portfolio Employee" means the Head of the Model Portfolio Team.

"Model Portfolio Team" means the SVS staff responsible for the Model Portfolios.

"OC Finance" means OC Finance S.A.

"OC Finance Bonds" means bonds issued by OC Finance.

"PROD" means the part of the Authority's Handbook entitled "Product Intervention and Product Governance Sourcebook".

"Prohibition Order" means the order to be made pursuant to section 56 of the Act prohibiting Mr Virk from performing any function in relation to any regulated

activity carried on by any authorised person, exempt person or exempt professional firm.

"Queros" means Queros Capital Partners PLC.

"RDC" means the Regulatory Decisions Committee of the Authority (see further under Procedural Matters below).

"the Relevant Period" means the period between 16 February 2016 and 2 August 2019.

"SIPP" means a self-invested personal pension. A SIPP is the name given to the type of UK government-approved personal pension scheme, which allows individuals to make their own investment decisions from the full range of investments approved by Her Majesty's Revenue and Customs.

"SIPP Trustee" means the trustee and administrator of the SIPPs used to invest in the Model Portfolios.

"Specialist Advisors" means Specialist Advisors Limited.

"the Statements of Principle" means the Statements of Principle as set out in APER.

"Mr Stephen" means David John Alexander Stephen.

"SVS" or "the firm" means SVS Securities Plc.

"SYSC" means the part of the Authority's Handbook entitled "Senior Management Arrangements, Systems and Controls".

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

"UCITS" means Undertakings for Collective Investment in Transferable Securities.

"Mr Virk" means Kulvir Virk.

"the Warning Notice" means the Warning Notice dated 17 February 2023 given to Mr Virk.

4. FACTS AND MATTERS

Background

4.1. SVS was regulated by the Authority from 9 April 2003 to 31 August 2023. It had permission under Part 4A of the Act to carry out a range of regulated advisory and transactional activities. Its principal business activities included: advising on investments, dealing in investments as agent, dealing in investments as principal, managing investments, arranging safeguarding and administration of assets, and safeguarding and administration of assets.

4.2. SVS's four main services, or business areas, were:

1) Advisory - traditional stockbroking services (private client broking) on an advisory basis to both retail and institutional clients. This also included taking part in AIM listings and secondary placings on a principal basis;

2) Discretionary - investments into the Model Portfolios by one of the SVS discretionary team;

3) Execution only - online equity, ISA, SIPP trading on an execution only basis; and

4) Foreign exchange trading - Retail online execution only foreign exchange business that operated under the trading name of SVSFX.

4.3. During the Relevant Period, Mr Virk was approved by the Authority to perform the CF1 (Director), CF28 (Systems and controls), and CF30 (Customer functions) at SVS. Mr Virk had previously been approved by the Authority to perform the CF3 (Chief Executive) role at SVS from 9 April 2003 to 14 September 2012, and was the de facto Chief Executive of SVS from January 2016 until he left the United Kingdom in August 2016 to reside in the United Arab Emirates.

4.4. The Authority received a number of complaints from customers about the Model Portfolios in early 2019. On 13 May 2019, the Authority requested that SVS provide information about the due diligence that it had conducted on investments within its Model Portfolios. On 2 July 2019, the Authority conducted a site-visit at SVS's offices.

4.5. The information gathered by the Authority from SVS raised serious concerns and on 26 July 2019, at the request of the Authority, SVS applied for requirements to be imposed on it. Requirements were imposed on the firm on the same date. By

these voluntary requirements SVS agreed to cease all regulated activities in relation to its discretionary fund management business and not to accept any new clients into any of its other business areas.

4.6. On 2 August 2019, the Authority imposed further requirements on SVS requiring it to cease all regulated activities, safeguard assets and notify affected third parties.

4.7. On 5 August 2019, SVS was placed into Special Administration. The Special Administration ended on 30 March 2023 and SVS was dissolved on 10 August 2023.

4.8. The FSCS started considering claims from Model Portfolio customers on 10 August 2020.

The Model Portfolios and Underlying Investments

Creation and Structure of the Model Portfolios

4.9. During the Relevant Period, 879 retail customers invested £69.6 million in the Model Portfolios. The vast majority of the customers who invested in the Model Portfolios were retail customers transferring their pensions from existing pension plans, including customers who had transferred from defined benefit pension schemes.

4.10. The Model Portfolios were created by SVS as part of its discretionary fund management business. The Model Portfolios were broken down into four separate portfolios: Income, Mixed, Growth and Aggressive Growth. They purported to invest in a mixture of equities, fixed income and collective funds which could be tailored to meet different client objectives. Of the total £69.6 million invested in the Model Portfolios, around 63% of the invested monies were allocated to the fixed income products.

Decision-making and Governance of the Model Portfolios

4.11. The SVS Board of Directors, including Mr Virk, were responsible for *'oversight and overview'* of the Model Portfolios. This included formal sign-off on new investments. In practice, however, it was Mr Virk who introduced new fixed income investments into the Model Portfolios and agreed the commercial terms on which the investments were made, in particular the payment of inducement commission to SVS by the product provider based upon a percentage of the customer funds invested.

4.12. Separate from the Board of Directors and Mr Virk's commercial initiatives, there were a number of committees with formal governance responsibilities for the Model Portfolios. These included a Model Portfolio Strategic Investment Committee (the "Investment Committee"), a Fixed Income Investment Committee, a FTSE Investment Committee, a Small Cap Investment Committee and a Funds / Yield Investment Committee. Mr Virk was a member of the Fixed Income Investment Committee, which was focused on the fixed income products, but he was not a member of the Investment Committee which officially had responsibility for the strategic direction of the Model Portfolios.

4.13. The Model Portfolio Team had overall responsibility for the Model Portfolios, convening Investment Committee meetings, producing management information, devising and implementing operational strategy, ensuring that introducer and financial advisers were *'properly serviced',* dealing with disinvestments, and onboarding new clients. Throughout the Relevant Period Mr Virk was in regular direct contact with the management of the Model Portfolio Team.

Features of the Model Portfolios

4.14. The Model Portfolios were discretionary managed portfolios which aimed to deliver a strategy of capital growth and income through asset allocation.

4.15. By July 2019, the fixed income asset class comprised the following high risk, corporate bonds and preference shares:

1) CFBL Bonds;
2) Ingard Property Bonds;
3) ICFL Bond;
4) Angelfish preference shares; and
5) Queros.

CFBL Bonds

4.16. At the start of the Relevant Period, SVS had already invested Model Portfolio funds into the OC Finance Bonds, which were fixed income products. In 2016, Mr Anderson established CFBL as a new vehicle to attract fixed income investment. CFBL issued a £500 million secured note programme which launched on 21 June 2016. The stated aim of the programme was to provide UK companies with development capital to grow their business - through accelerated growth plans, acquisitions or realisation of new opportunities. It purported to achieve this by

issuing bonds and then using the capital to lend to such businesses on a secured basis.

4.17. The CFBL £500 million secured note programme was approved by the Irish Stock Exchange on 21 June 2016. Each series of the CFBL Bonds was listed on the Global Exchange Market of Euronext Dublin. The OC Finance Bonds, into which SVS had already invested Model Portfolio funds, were rolled into the CFBL Bond programme as Series 1 and Series 2. There were eight different series of the CFBL Bonds. The bonds were issued with a fixed rate of interest (either 5.95% or 6.25%) for a fixed term of 4.5 or 5 years. The CFBL Bonds had maturity dates between 7 July 2021 and 24 April 2022.

4.18. Between 16 February 2016 and 1 July 2019 SVS invested into six series of the CFBL Bonds. As at 1 July 2019, a total of £23,912,255 of SVS customer funds was invested in the CFBL Bonds via the Model Portfolios. This represented 29% of all funds in the Model Portfolios. Over half of the fixed income investments in the Model Portfolios were invested in CFBL Bonds.

4.19. In return for investing SVS customer funds into the CFBL Bonds, CFBL paid SVS commission of 10-12% of the funds invested. The CFBL Bonds were delisted on 6 November 2019 due to the economic environment and to save costs.

4.20. By 29 April 2020, the CFBL Bonds had defaulted on coupon payments. With effect from 18 May 2020, Heritage Corporate Finance Ltd replaced CFBL as the issuer of the bonds. Customers are only expected to recover between 20-35% of the value of their investments in the CFBL Bonds.

Ingard Property Bonds

4.21. SVS included Ingard Property Bond 1 and Ingard Property Bond 2 in the Model Portfolios. The stated purpose of both bonds was to provide bridging loans to the UK property market. Both bonds were listed on the Cyprus Stock Exchange.

4.22. Both bonds were issued with a fixed rate of interest (either 5.75% or 7%) for a fixed term of 7 years. Ingard Property Bond 1 matured on 31 December 2023 and Ingard Property Bond 2 is due to mature on 31 December 2025. In January 2017 SVS invested Model Portfolio customer funds into Ingard Property Bond 1 and in December 2018, SVS invested Model Portfolio customer funds into Ingard Property Bond 2, in each case in return for commission of 12% of the customer funds invested. As at 1 July 2019, SVS had invested £5.7 million into the Ingard Property Bonds. This represented 7% of the total funds in the Model Portfolios.

ICFL Bond

4.23. ICFL issued a £100 million secured note programme which launched on 17 January 2019. The stated aim of the programme was to facilitate secured lending, primarily in the innovation and technology sector. The purpose of the ICFL Bond was to connect investors seeking high, fixed income yields with capital security, and borrowers seeking capital injections at competitive rates to grow their business.

4.24. As at 1 July 2019, SVS had invested £10 million in the ICFL Bond in the Model Portfolios, in return for commission of 10% of customer funds invested. The bond was issued for a fixed term until 30 January 2024 with a fixed 6.25% coupon. As at 1 July 2019, there were £9,802,834 of Model Portfolio customer funds invested in the ICFL Bond, which represented 12.3% of the total funds in the Model Portfolios. ICFL Bonds comprised 23.09% of all the fixed income investments in the Model Portfolios.

Angelfish Preference Shares

4.25. SVS invested just over £3 million of the Angelfish preference shares within the Model Portfolios. Angelfish's investment strategy was focused on businesses and companies in the technology sectors, and the stated purpose of the preference share issue was to progress development activities and provide capital for further investment opportunities as they arose. The preference shares were listed on the NEX Exchange Growth Market in the UK. As at 11 May 2016, SVS invested into the Angelfish preference shares. Subsequently SVS purchased a further tranche of preference shares in October 2018. A commission was paid to SVS of 9-10% on the October 2018 Model Portfolios' take up of preference shares issued by Angelfish. There was no historic trading activity in the Angelfish preference shares before SVS invested. As at 1 July 2019, SVS had £3,065,447 of Model Portfolio customer funds invested into the Angelfish Preference Shares, which represented 3.65% of the total funds in the Model Portfolios.

4.26. The Angelfish preference shares offered dividends at 7.1% per annum. Angelfish has defaulted on dividend payments and no payment has been received by customers since 30 June 2019. The Angelfish preference shares were converted to ordinary shares in September 2020.

The Customer Journey

4.27. SVS operated a business model that relied upon financial incentives to market its discretionary managed Model Portfolios to retail customers. SVS then used those customer funds for its own benefit by exercising its discretion to prefer fixed income investments which paid SVS itself substantial commission, calculated as a percentage of the customer funds that SVS steered into those investments. Mr Virk was substantially responsible for the key commercial relationships upon which this business model was based.

Unauthorised Introducers

4.28. SVS entered into marketing agreements with unauthorised introducer firms and individuals. The role of the introducer was to "generate certain customer lead types … with a view to generating income" for SVS. SVS incentivised its introducers to attract customers funds into the Model Portfolios by paying them commission calculated as a percentage of the net sum invested with SVS. This incentive commission varied between 7% and 9% of customer funds invested, depending on the introducer. Mr Virk signed marketing agreements on behalf of SVS with key introducers and was aware that the firm used commission-based introducers to maximise the flow of customer funds into the Model Portfolios.

4.29. Mr Virk was aware of the potential risks of this business model as, on 4 August 2016, he received an Authority alert from Mr Stephen, the Head of Risk and Compliance, which highlighted the responsibilities of authorised firms when accepting business generated by unauthorised introducers, particularly where the introducer influences the final investment choice.

Financial Advisers

4.30. The introducer firms did not introduce customers directly to SVS; they introduced prospective customers to financial advisers on the premise that they would recommend the Model Portfolios to customers where it was suitable to do so.

4.31. The unauthorised introducers introduced customers to financial advisers employed by various regulated financial advice firms; prospective customers were introduced for a pension review.

4.32. SVS had written Introducing Broker Partnership Agreements with the financial advice firms. Some of these were signed on behalf of SVS by Mr Virk. The terms of the Introducing Broker Partnership Agreements included that the financial

advisers would only introduce customers to SVS for whom the services could reasonably be expected to be suitable. Fees taken by the financial advisers for advising customers to invest into the SVS Model Portfolios were at the discretion of the financial adviser, although these were typically 4% of the value of the customer's investment.

4.33. The two financial advice firms that advised the most customers to invest in the Model Portfolios together accounted for 539 out of the total 879 Model Portfolio customers. Both of these financial advice firms were wholly or partly controlled by individuals who also owned and controlled an unauthorised introducer with which SVS entered into a marketing agreement, signed by Mr Virk. Under the marketing agreement, SVS paid the introducer 8% commission based upon the customer funds that were introduced by that introducer and invested into the Model Portfolios. The introducer commission arrangements put in place by SVS therefore created a strong business incentive to maximise the flow of customer funds into the Model Portfolios. A director of one of these financial adviser firms informed the Authority that he was told by one of the owners (of the financial advice firm and the connected introducer) that *"if you don't use them [SVS] we won't have a business"* and *"if you don't use them we will sack you as a director and get somebody else in who will".* SVS's relationship with this introducer and the associated financial advice firm began in July 2015 after meetings with Mr Virk. The Introducing Broker Agreement with the financial advice firm was signed on 11 November 2015 and the marketing agreement with the introducer was signed on 25 November 2015.

SIPP Trustees

4.34. For those customers that were advised to invest in the Model Portfolios, SIPP Trustees would enter into an arrangement with the customer to maintain a SIPP and to hold its assets. The SIPP Trustees were clients of SVS and established, operated and administered the SIPPs.

4.35. The financial advisers were responsible for contacting the SIPP Trustees on behalf of the client.

SVS (Discretionary Fund Manager)

4.36. SVS categorised the Model Portfolio customers as retail customers. SVS classified its Model Portfolios as high-risk investments, but accepted funds from retail customers with highest-medium and even low-medium appetites for risk. SVS made discretionary decisions on which assets to include in the Model Portfolios.

Each of the Model Portfolios held the same assets but in different proportions. Customers were not asked for permission before investing, but they and their financial advisers would receive statements on a periodic basis detailing the investments.

Conflicts of Interest

4.37. In accordance with SYSC, a firm must take reasonable steps to identify whether a conflict of interest exists between itself (including its managers and employees) on the one hand and clients of the firm on the other (SYSC 10.1.3R). When considering if a conflict of interest exists, firms should take into account whether the firm (or its managers and employees) is likely to make a financial gain or avoid a financial loss at the expense of the client, and/or the firm (or its managers and employees) has an interest in the outcome of a service provided to a client or a transaction carried out on behalf of the client which is distinct from the client's interest in that outcome. The firm must keep and regularly update a record where conflicts have arisen or may arise (SYSC 10.1.6R). Where a conflict of interest is identified, a firm must have effective arrangements so that reasonable steps can be taken to prevent conflicts of interest adversely affecting the interests of its client (SYSC 10.1.7R). Where a firm cannot ensure that the interests of a client will not be damaged as a result of a conflict, the firm must disclose the nature or sources of the conflict and the steps taken to mitigate those risks before undertaking business for the client (SYSC 10.1.8R).

4.38. The SVS Board of Directors had high-level responsibilities to ensure that there was an operational framework in place to ensure conflicts of interest were identified and managed. As the de facto Chief Executive of SVS from the start of the Relevant Period up to August 2016, Mr Virk was responsible for the conduct of the whole of the firm's business which included identifying and managing conflicts of interest appropriately. Mr Virk remained a CF1 (Director), CF28 (Systems and Controls) and shareholder of SVS throughout the Relevant Period, continued to have high-level responsibilities for the rest of the Relevant Period, and was involved in, and at times created, SVS's relationships with the product providers for bonds included in the Model Portfolios.

4.39. SVS introduced a new Conflicts of Interest policy in 2016. The Conflicts of Interest policy document emphasised the importance of identifying and managing conflicts and set out what the policy should include. The policy set out high level *'Principles'* that were to act as guidelines for the creation of specific procedures in each of the firm's business areas. In practice, there were no detailed procedures put in place

for the management of potential conflicts of interest between the firm's directors, the firm itself, and its customers. However, it was evident from the high-level principles that employees were required to disclose any potential or actual conflicts of interest and that the firm relied on the *"integrity of colleagues in making them aware of actual or potential conflicts"*. All employees of the firm were also provided annual and ad-hoc training on conflicts of interest.

4.40. SVS took retail pension customers' funds and channelled them into investments which benefitted companies in which SVS directors, and their close business associates, had shareholdings. As noted above, SVS also benefitted from lucrative commission arrangements with the companies from which conflicts of interest arose. Mr Virk was responsible for establishing these commission arrangements and thereby ensured that the financial interests of SVS (and therefore himself) were placed ahead of the interests of SVS's customers. Mr Virk failed to disclose key conflicts of interest to Compliance or to other senior management which meant that these conflicts of interest were not managed appropriately.

Failure to identify and manage conflicts of interest

4.41. The Authority identified a number of actual and potential conflicts of interest which Mr Virk failed properly to identify and/or manage during the Relevant Period:

1) by March 2014, Mr Virk was aware that Mr Flitcroft, a non-executive director of SVS, was also a director of Angelfish but failed to take reasonable care to ensure that the conflict was adequately managed, see paragraphs 4.424.42 to 4.474.47;

2) by March 2016, Mr Virk was aware that Mr Ewing, a director of SVS, was also a director of Ingard but failed to take reasonable care to ensure that the conflict was adequately managed, see paragraphs 4.484.48 to 4.55;

3) a loan to SVS that was held by CFBL and which SVS later defaulted on. Mr Virk was aware of the loan from September 2016 but failed to consider that it represented a conflict of interest, see paragraphs 4.56 to 4.70;

4) consultancy services provided to SVS by Specialist Advisors, a firm which had common ownership with CFBL. Mr Virk was aware of these services from at least April 2017 but failed to consider that they represented conflicts of interest, see paragraphs 4.71 to 4.79; and

5) a loan from CFBL to Company X, for which Mr Virk acted as a consultant. Mr Virk failed to disclose this conflict of interest, see paragraphs 4.80 to 4.82.

Conflicts of interest regarding Angelfish

4.42. During the Relevant Period, SVS included two tranches of the Angelfish preference shares in the Model Portfolios (see paragraphs 4.25 and 4.26). The first tranche of the Angelfish preference shares was included at the outset of the Model Portfolios. Angelfish paid SVS a commission of 9–10% of the customer funds invested in the October 2018 Model Portfolios' take-up of preference shares issued by Angelfish. The Authority has not seen evidence to show how this commission was accounted for by Angelfish, or any analysis to show how SVS factored this into its assessment of the value and viability of the investment for SVS customers.

4.43. Acceptance of this commission created a conflict between the commercial interests of SVS and the interests of its Model Portfolio customers. At no point were the commission arrangements with Angelfish disclosed to SVS's customers or their financial advisers.

4.44. When the first investment into the Angelfish preferences shares was made, Mr Flitcroft was a director of both Angelfish and SVS (the "Angelfish Conflict").

4.45. Mr Virk was aware of the Angelfish Conflict from at least 14 March 2014 and the SVS Board of Directors discussed that the conflict should be disclosed and managed. However, the Angelfish Conflict was not recorded in the SVS CoI Register by Mr Stephen until 6 September 2017, after customers' funds had already been invested in the Angelfish preference shares and was not disclosed in writing to customers or their financial advisers until 16 November 2017.

4.46. The Authority considers that SVS was prompted to include the Angelfish Conflict in the CoI Register due to requests from the Authority for SVS to provide details of the conflicts identified in the Model Portfolios.

4.47. Mr Virk was aware that the investment in Angelfish gave rise to a clear conflict of interest in respect of Mr Flitcroft's role at both firms. Although Mr Virk was not responsible for recording Mr Flitcroft's conflict of interest, he was a key decision maker in SVS investing in the fixed income investments, yet he failed to take reasonable care to ensure that the Angelfish Conflict was declared and managed appropriately. Mr Virk was closely involved in negotiating the commercial terms on which SVS invested Model Portfolio funds and served throughout the Relevant Period (and before) as a CF1 director of SVS, so would have been aware that

Angelfish paid SVS commission of 9-10% of the funds invested in the October 2018 Model Portfolios' take-up of preference shares issued by Angelfish.

Conflicts of interest regarding Ingard

4.48. During the Relevant Period, SVS included Ingard Property Bond 1 and Ingard Property Bond 2 in the Model Portfolios (see paragraphs 4.21 and 4.22). These investments were made in January 2017 and December 2018. When the first investment into Ingard Property Bond 1 was made, Mr Ewing was a director of the bond issuer Ingard and was also a director of SVS. By the time of SVS's investment into Ingard Property Bond 2, Mr Ewing had resigned from SVS.

4.49. Mr Virk was aware of the conflict of interest in relation to Mr Ewing's role as director of both SVS and Ingard (the "Ingard Conflict") from at least 3 March 2016 and the SVS Board of Directors discussed that the conflict should be disclosed and managed. However, the conflict was not recorded in the CoI Register until 6 September 2017, after customers' funds had already been invested in Ingard Property Bond 1, and was not disclosed in writing to customers or their financial advisers until 16 November 2017.

4.50. The Authority considers that SVS was prompted to include the Ingard Conflict in the CoI Register due to requests from the Authority for SVS to provide details of the conflicts identified in the Model Portfolios.

4.51. The Authority considers that SVS did not appropriately manage the Ingard Conflict. On at least two occasions, before SVS placed funds into Ingard Property Bond 1, Mr Ewing (acting on behalf of Ingard) directly engaged with a member of SVS's staff encouraging them to maximise the amount of funds to be placed into the bond. Customers' funds were then invested into Ingard Property Bond 1, and the conflict was not disclosed at that time to customers or their financial advisers.

4.52. Furthermore, in January 2018, when a SIPP Trustee raised concerns about the status of the Ingard Property Bond 1, Mr Ewing (acting now on behalf of SVS) engaged with the SIPP Trustee in an attempt to alleviate their concerns. This posed a clear conflict due to Mr Ewing's role at Ingard.

4.53. The Authority considers that Mr Virk was aware that the investment into Ingard created a clear conflict of interest. Although Mr Virk was not responsible for recording Mr Ewing's conflict of interest, he was a key decision maker in SVS investing in Ingard Property Bond 1, yet he failed to take reasonable care to ensure that the Ingard Conflict was declared and managed appropriately. Details

of the Ingard Conflict were not included in the CoI Register and the conflict was not disclosed in writing to customers, or their financial advisers, until after customers' funds had been invested.

4.54. In return for directing customer funds into the Ingard bonds, Ingard paid SVS a commission of 12% of the customer funds invested. The Authority has not seen evidence to show how this commission was accounted for by Ingard, or any analysis to show how SVS factored this into its assessment of the value and viability of the investment for SVS customers.

4.55. Acceptance of this level of commission created a conflict between the commercial interests of SVS and the interests of its Model Portfolio customers. At no point were the commission arrangements with Ingard disclosed to SVS's customers or their financial advisers.

Conflicts of interest with CFBL

4.56. In April 2015, BRC and SVS entered into a loan agreement and debenture for up to £1 million. The debenture was signed by Mr Virk. The purpose of the loan was stated as:

'*The Borrower shall use all money borrowed under this agreement for the purpose of developing a series of initiatives to expand the service proposition and distribution reach of a UK authorised Stock-Broking firm.*'

4.57. The debenture granted BRC a fixed charge over SVS's business assets, including the goodwill, investments, intellectual property and monies in credit in accounts held by SVS. BRC was controlled by Mr Anderson, who was the stated signatory on behalf of BRC for both the Facility Agreement that created the BRC Loan and the Debenture that secured it over SVS's assets. In June 2018, BRC changed its name to Stuart Anderson.me Limited. During the Relevant Period, SVS drew down £225,000 of the BRC Loan facility. Repayment of the BRC Loan remained outstanding during the Relevant Period.

4.58. The funds used to finance the loan from BRC to SVS were lent to BRC by OC Finance. SVS invested into two series of the OC Finance Bonds. At the start of the Relevant Period, the OC Finance Bonds constituted part of the fixed income element of the Model Portfolios. The OC Finance Bonds were removed from the Cayman Islands stock exchange and were transferred to a new issuer, CFBL. The OC Finance Bonds were transferred to CFBL Series 1 and 2 in February 2016.

4.59. In July 2016, Mr Virk agreed with Mr Anderson the terms on which SVS would invest customer funds into the CFBL Bonds. These included a commission of 10% that SVS would deduct from the funds of its customers before they were invested into the CFBL Bonds, and a further fee of 2% (of customer funds) payable because SVS had agreed to provide "administration services" as "ongoing support" to CFBL. The services Mr Virk agreed to provide to CFBL included acting as a market maker for the CFBL Bonds and updating pricing on Bloomberg on a weekly basis.

4.60. A month later, on 11 August 2016, CFBL emailed Mr Virk and others informing them that the existing loan to SVS from BRC was to be novated to CFBL (the "CFBL Loan"). As BRC and CFBL were both controlled by Mr Anderson, there was a significant conflict of interest which the novation made more direct; it meant that CFBL had rights over SVS's assets through the fixed charge attached to the CFBL Loan at the same time as SVS was making decisions about the investment of Model Portfolio customer funds into the CFBL Bonds. The elements of this conflict of interest were fully known to Mr Virk; he was aware of the terms of the loan agreement and debenture and was instrumental in discussions with CFBL about the inclusion of the CFBL Bonds in the Model Portfolios.

4.61. On 18 August 2016, CFBL chased SVS for the return of the signed documentation to complete the novation of the BRC Loan. On 21 August 2016, Mr Virk instructed Mr Flitcroft to review the novation documentation.

4.62. On 6 September 2016, CFBL emailed Mr Virk informing him that as the process to move all loans from BRC to CFBL had begun, they also needed to move the collection of interest.

4.63. On 16 September 2016, the agreement novating the loan from BRC to CFBL was signed. This effectively meant that CFBL had loaned funds to SVS.

4.64. SVS began investing funds into further series of CFBL Bonds, starting with CFBL Series 3 on 11 August 2016, the date on which CFBL emailed Mr Virk and others notifying them of the move to novate the loan from BRC to CFBL. Over the course of the Relevant Period, SVS invested into six series of CFBL Bonds. This amounted to investments of £23.4 million. Throughout the Relevant Period, the CFBL Bonds remained by far the largest fixed income product in the Model Portfolios, comprising over half of all fixed income investments in July 2019.

4.65. At the time of SVS's investment into CFBL Series 3, Mr Virk was aware that the BRC Loan was to be novated to CFBL. Similarly, on each occasion when SVS

invested further customer funds into the later series of CFBL Bonds, Mr Virk was aware that SVS owed a debt to CFBL.

4.66. Mr Virk was the SVS director responsible for agreeing the BRC Loan. At the beginning of the Relevant Period, Mr Virk was therefore aware that SVS owed a debt to BRC, that BRC was controlled by Mr Anderson, that the BRC Loan was secured over the assets of SVS's business, and that the loan funds had been provided to BRC by OC Finance, a bond provider – also controlled by Mr Anderson – into whose products SVS had already invested customer funds. Mr Virk was involved in the novation of the BRC Loan from BRC to CFBL in mid-2016. He was aware that CFBL – again, controlled by Mr Anderson – was a bond provider into which SVS had invested Model Portfolio customer funds. From the beginning of the Relevant Period therefore, there was a conflict of interest between SVS and BRC and then between SVS and CFBL which Mr Virk was required to disclose so that it could at the very least be included on the CoI Register and disclosed to customers. There is no evidence that Mr Virk ever disclosed the existence of the CFBL Loan to Compliance, to the Investment Committee, or in the SVS Board of Directors meetings.

4.67. SVS's failure to repay the CFBL Loan aggravated an obvious conflict of interest because SVS remained beholden to CFBL and incentivised to continue to include CFBL products in the Model Portfolio. Furthermore, as SVS continued to invest into more series of CFBL Bonds, further connections were made between SVS and businesses controlled by Mr Anderson. Mr Anderson, on behalf of CFBL, attended a meeting in June 2017 between SVS and financial advisers, indicating an improper level of proximity between a bond provider and the business of SVS. The meeting was with the owners of a key introducer with which SVS had an agreement by which it paid that introducer a fee of 8% of the value of an introduced customer's investment, where the customer funds were invested into SVS's Model Portfolios. These introductions to SVS were made via a financial adviser firm that was owned and controlled by the same individuals.

4.68. There is no record in the CoI Register of the BRC Loan or the CFBL Loan ever being identified or managed. Furthermore, this conflict was not disclosed to customers or their financial advisers. SVS charged Model Portfolio customers an annual fee of 1.5% of the sum invested; in return for this, SVS exercised discretionary fund management on their behalf. SVS customers were entitled to assume that SVS's decision to invest their funds into the CFBL Bonds was based upon the merits of the investment, and that the decision was taken by SVS on an arms-length basis as the customers' discretionary fund manager. The Authority

considers that Mr Virk was fully aware of the conflict of interest and disregarded the impact it would have on customers.

4.69. In July 2016, the OC Finance Bonds held by SVS had been novated to CFBL Series 1 and 2, and Mr Virk agreed for SVS to attract funds into the CFBL Bonds in return for 10% commission. At the same time, Mr Virk and an SVS Business Development Manager met Mr Anderson at SVS's offices to arrange for another of Mr Anderson's companies, Specialist Advisors, to open a *"trading account"* where the balance of CFBL's issued bonds would be held for sale on the secondary market. Mr Anderson explained that Specialist Advisors would "*buy back and act as a liquidity pool for bonds which don't have a natural market and need to be sold over the coming years*". In response to this request, Mr Virk instructed the Business Development Manager to send the SVS corporate account opening forms to Mr Anderson.

4.70. Mr Anderson also requested documentation to act as introducer into the Model Portfolios. Although ultimately the introducer agreement was not put in place, the discussions in this period indicate the close business connections between SVS, BRC and CFBL. These connections were reinforced by strong financial inducements and gave rise to a conflict of interest which needed to be identified, disclosed and managed.

Marketing services provided by Specialist Advisors

4.71. A further example of this close business connection is the decision of SVS to engage Specialist Advisors to *"Create and manage all marketing material"* for the Model Portfolios. Specialist Advisors provided its proposal to SVS on 25 April 2017. By this point, SVS had already invested millions of pounds of Model Portfolio customer funds into CFBL Bonds Series 3, 4, 5, 6 and 7.

4.72. Specialist Advisors provided draft Model Portfolio brochures to SVS in September 2017. SVS paid £72,000 to Specialist Advisors for marketing consultancy and the design of these brochures. Although these brochures were not widely circulated, the Authority has seen instances where they were provided to financial advisers and onwards to investors.

4.73. Mr Stephen was not made aware of the marketing services provided by Specialist Advisors, but he stated to the Authority that he would have considered it to be a conflict of interest which should have been managed.

4.74. Mr Virk was aware of the connection between Specialist Advisors and CFBL. He engaged Specialist Advisors on behalf of SVS and was the decision maker in

relation to the marketing services provided. Mr Virk also engaged directly with Mr Anderson regarding both the work of Specialist Advisors and the CFBL Bonds.

4.75. Mr Virk should have recognised that the marketing services were a conflict of interest and he should have disclosed the existence of the contractual relationships with Specialist Advisors to SVS's Compliance function. Mr Virk should not have allowed SVS to contract with Specialist Advisors to provide marketing services to SVS that included creating marketing material for the Model Portfolios, which included CFBL – a company to which SVS was indebted, and which had common management with Specialist Advisors.

UCITS consultancy provided by Specialist Advisors

4.76. Specialist Advisors also provided UCITS consultancy services to SVS. This related to discussions around the creation of a UCITS structure in 2017 for use in the Model Portfolios. Although the creation of the UCITS structure was not followed through by the firm, discussions with Specialist Advisors as consultant on the proposed UCITS structure lasted until 2019.

4.77. Furthermore, as mentioned above in paragraph 4.67, a meeting between SVS and financial advisers to discuss the UCITS structure with Specialist Advisors was organised so that Mr Anderson could also discuss the fixed income bonds in the proposed structure, in particular his own CFBL Bonds.

4.78. This relationship was another instance where two parties, that should have had separate interests, SVS on the one side, promoting the interests of its customers, and the management of Specialist Advisors and CFBL on the other, instead worked together to create a new offering for SVS without regard for the divergence of their commercial interests. Specialist Advisors had common management with CFBL and provided UCITS consultancy services in relation to SVS's Model Portfolios. This provision took place at a time when SVS had included the CFBL Bonds in those Model Portfolios. The Authority considers the UCITS consultancy services provided by Specialist Advisors to be a potential conflict of interest which the management of SVS, which included Mr Virk, should have recorded and managed.

4.79. Mr Virk should have recognised that the UCITS services were a potential conflict of interest and should have taken reasonable care to ensure that it was disclosed to SVS's Compliance function.

CFBL loan to Company X

4.80. In addition to his role at SVS, Mr Virk was also involved with Company X for which he worked as a consultant. The nature of business conducted by Company X was retail sales via mail order houses or via the internet.

4.81. During the Relevant Period, and when the CFBL Bonds were included in the Model Portfolios, CFBL provided loans to Company X, indicating that SVS customer funds going through the CFBL Bonds were used for the benefit of an employee of SVS. To secure its loans, CFBL took charges over Company X's assets. The charges were dated 3 May 2017 and 16 November 2017. At the time of the charges, Company X shared the same registered office address as SVS.

4.82. The Authority considers the loan from CFBL to Company X to be a conflict of interest. SVS customer funds were being used via the CFBL Bonds to support a business connected to Mr Virk. Mr Virk knew that he was required to disclose any external interests but there is no contemporaneous evidence to indicate that he disclosed his relationship with Company X to Compliance or the other SVS directors. Given that Mr Virk had influence over the bonds placed in the Model Portfolios, this relationship should have been disclosed to enable it to be managed. This is particularly important because Company X, an entity Mr Virk was involved with outside of SVS, received loans from CFBL, during a period of time when SVS was increasing its holding of CFBL Bonds.

Requesting Disclosures of Conflicts

4.83. On 24 May 2017, following an information requirement issued by the Authority, Mr Stephen asked the SVS directors to disclose any potential conflicts of interest as he needed *'to clarify any potential conflicts with each of the Directors as I'm aware that there may be a potential conflict with the Corporate Finance Bond and loans made by the Bond to separate legal entities where directors have an interest in that entity […].'*

4.84. Mr Ewing and Mr Flitcroft disclosed their interests in Ingard and Angelfish respectively. Mr Virk did not disclose any of his potential conflicts, stating instead: *'I can confirm that as far as I am aware no company where I am a director, shareholder or employee has received a loan from any of the corporate bonds where SVS has facilitated funds through the SVS model portfolio.'* Mr Virk did not disclose that he was a consultant at Company X, which had by this point received a loan from CFBL. In addition, Mr Virk would have known that the CFBL Loan to SVS remained outstanding, but this also was not disclosed at any point.

Decisions to invest in fixed income assets

4.85. Section 3.3.1R of PROD, which came into force on 3 January 2018, states that a distributor must: understand the financial instruments it distributes to clients; assess the compatibility of the financial instruments with the needs of the clients to whom it distributes investment services, taking into account the manufacturer's identified target market of end clients; and ensure that financial instruments are distributed only when this is in the best interests of the client. SVS was a distributor for purposes of the PROD rules.

4.86. In his role as CF1, Mr Virk was key to decisions about which fixed income investments were to be included in the Model Portfolios. He identified the fixed income products to be included in the Model Portfolios and had close relationships with some of the key providers, for example CFBL and Ingard. The due diligence performed on the fixed income investments was in essence just a formality as Mr Virk had already made decisions to invest Model Portfolio customer funds into products where he had established a commercial relationship to the benefit of SVS and, through SVS, himself.

Decisions to invest in the CFBL Bonds

4.87. SVS invested in the CFBL Bonds initially as a consequence of a transfer of the OC Finance Bonds into CFBL Bonds Series 1 and 2. SVS then made further investments into later series of the CFBL Bonds. In total, as stated in paragraph 4.17, SVS held six series of the CFBL Bonds in the Model Portfolios.

4.88. SVS entered into an agreement with CFBL on 7 July 2016. Mr Virk acted on behalf of SVS. The terms of the agreement were incorporated into a Consultancy Agreement between CFBL and SVS backdated to 1 July 2016, which was signed on behalf of CFBL by Mr Anderson. Under the terms of the Consultancy Agreement, SVS as "Consultant Company" would provide services to CFBL. The defined services were that SVS would "*assist with the raising of money for the companies [sic] £500,000,000 bond program listed on the Irish Global Exchange Market*" and "*… with the raising of money for any additional products that the company may launch in the future*." The Consultancy Agreement expressly permitted SVS to use third parties to attract investment into the CFBL Bonds. In return for these services, SVS was entitled to commission of 10% of the total order value purchased by SVS from any series of the CFBL Bonds. SVS was permitted under the Consultancy Agreement to subtract its 10% commission directly from customer funds before they were invested. SVS was therefore highly incentivised to maximise investment into the CFBL Bonds.

4.89. SVS began acting in accordance with the terms of its agreement with CFBL straightaway: on 12 July 2016, SVS received payments totalling £1,058,860 for investment into CFBL Bonds. Mr Virk instructed SVS Operations to deduct SVS's 10% fee from the gross proceeds. SVS Operations confirmed that this had already happened: "*10% less* [was] *sent compared to the subscription figure*". The subscription forms referred to customer investments totalling £1,176,512.

4.90. Although the Investment Committee had formal responsibility for the strategic direction of the Model Portfolios, the initial decision whether to invest in the CFBL Bonds was not made or indeed discussed at the Investment Committee. Nor is there any evidence it was discussed by the SVS Board of Directors as the decision had already been made by Mr Virk. Mr Virk identified CFBL Bonds as investments to include in the Model Portfolios and made the decision for SVS to invest in the bonds. Separate decisions were not made for each series, rather once each series was fully subscribed, SVS moved on to invest in the next series. The commission terms favourable to SVS that Mr Virk agreed with CFBL similarly rolled over for each new series.

4.91. The agreement between SVS and CFBL was concerned with raising money for the CFBL Bonds in return for commission; it did not refer to due diligence on the suitability of the CFBL Bonds as an investment and the due diligence carried out by SVS on CFBL was insufficient. The Authority raised concerns to SVS about the due diligence carried out on the CFBL Bonds on 24 November 2017, 4 January 2018 and 23 January 2018. In response, SVS only gathered certain due diligence material from CFBL in November 2017 because the Authority had required SVS to provide a copy of it.

4.92. On 23 January 2018, the Authority wrote to SVS outlining a series of concerns in relation to the CFBL Bonds, specifically in relation to due diligence performed by SVS, the concentration risk, the liquidity risk and SVS's analysis of the CFBL Bonds. The Authority had concerns about SVS's knowledge of the bonds as it placed too much reliance on the fact that the bonds were listed on a recognised exchange and had not assessed the credit quality, duration and gross redemption yield compared to the other offerings in the market. SVS had not provided the Authority with a sufficient level of analysis of the bonds and the various tranches. The Authority was also concerned that SVS did not know the details of the underlying loan recipients of the CFBL Bonds.

4.93. On 1 February 2018, SVS responded to the Authority and gave the following written assurance:

'*We accept that the SVS model portfolios have issuer concentration risk to CFBL. Notwithstanding our further comments we will look to reduce the concentration risk of this issuer within the Model Portfolios*.'

4.94. SVS decided to invest in CFBL Series 9 on 6 November 2017. When the Authority wrote to SVS on 23 January 2018, SVS had invested £1.28 million in CFBL Series 9. On 14 March 2018, approximately 40% of the Model Portfolio assets were held in CFBL Bonds. At the SVS Board Meeting on the same date, SVS resolved *"as an interim measure that 50% of available fixed income cash may still be invested in the CFBL products, subject to these investment decisions being properly documented".* Notwithstanding the concerns raised by and assurance given to the Authority, SVS continued to invest a further £5,106,150 in CFBL Series 9 between 31 January 2018 and 11 May 2018.

4.95. The concentration of CFBL Bonds within the Model Portfolios reduced from 39.3% on 31 March 2018 to 34.31% on 13 May 2019. However, whilst SVS initially considered reducing its holdings of CFBL Bonds, the concentration risk was only reduced due to SVS diluting the proportion of CFBL Bonds in the Model Portfolios by increasing its investments in other high risk, illiquid, fixed income products, including the ICFL Bond, Ingard Property Bond 2, and a further tranche of the Angelfish preference shares. In fact, the total value of customer funds invested in the CFBL Bonds had increased. This was not consistent with the written assurance SVS gave to the Authority. The Authority expected SVS to reduce its holdings in the CFBL Bonds, but instead it increased its holdings and increased its investments in other similarly high risk and illiquid products.

4.96. Furthermore, SVS lacked the data needed to monitor these investments. It lacked adequate information about the underlying loan recipients, their financial standing, their potential to meet high interest rates set by CFBL, their ability to repay the principal sum at the end of the loan term, or the performance of the loans. This information was needed to assess the bonds and comply with PROD 3.3.3R, which came into force on 3 January 2018, that any investment product must be distributed in accordance with the needs, characteristics and objectives of its target market.

4.97. The high level of fees and the associated arrangements in the agreement entered into by Mr Virk represents a level of inducement that compromised SVS's ability

to act in the best interests of its customers. SVS received 10% commission on the customer funds it obtained through financial advisers and channelled, via the Model Portfolios, into the CFBL Bonds. SVS also received a further 2% fee for *"administrative services"* which included support as a market maker and updating the pricing of CFBL Bonds. Both fees were determined by reference to the amount of investment by SVS in the CFBL Bonds. The commission/fees were deducted by SVS from its customers' funds before they were invested into the CFBL Bonds. The actual sum invested by SVS was therefore only 88% or 90% of the total. Mr Virk knew this as he instructed SVS Operations to start subtracting SVS's 10% commission from customer funds in July 2016, as soon as SVS's agreement with CFBL was in place.

4.98. The loss to SVS's Model Portfolio customers appears to have been made up by CFBL crediting the customer (via the relevant Model Portfolio) with bonds equating to 100% of the intended investment sum. CFBL then accounted for the missing 10% or 12% commission that SVS had taken from its own customers by adding this on to the loans of CFBL's underlying loan recipients. This increased the principal of each loan above the amount actually borrowed, and correspondingly increased the amount of the borrower's interest payments during the loan term. As this higher financial burden increased the risk of borrower default, the arrangement entered into by Mr Virk increased the risk of the investment.

4.99. Mr Virk knew that in respect of the CFBL Bonds, 90% or less of investor money reached the debtor servicing the bond. SVS lacked information on the underlying loans recipients or the credit quality of the CFBL Bonds. Even if Mr Virk knew that CFBL credited the customer with bonds worth 100% of the intended investment, SVS and Mr Virk lacked the data to assess the risk of this arrangement for SVS's customers. Mr Virk was more focussed on the commission to SVS than whether SVS's customers invested into CFBL Bonds would ever get their money back.

4.100. SVS did not disclose its commission arrangements with CFBL to its customers or their financial advisers.

4.101. SVS therefore committed to invest in the CFBL Bonds without carrying out an adequate due diligence assessment and agreed to assist CFBL by providing a price on Bloomberg and a secondary market in the CFBL Bonds. This would potentially improve the liquidity of the CFBL Bonds and so attract further investment, which in turn furthered the financial interests of SVS, and Mr Virk.

4.102. The Authority considers that the close relationship between SVS and CFBL, including SVS receiving commission of 12% from CFBL, agreeing to provide a

price on Bloomberg and a secondary market in the CFBL Bonds, and receiving a loan from CFBL, meant that the due diligence carried out was in essence a formality because, in substance, Mr Virk had already committed to SVS investing customer funds into the CFBL Bonds in return for the agreed commission.

4.103. Mr Virk was responsible for the inclusion of the CFBL Bonds in the Model Portfolios. He had a close relationship with the management of CFBL and had the main relationship with CFBL. He was also the main decision maker in relation to the fixed income investments in the Model Portfolios. The Authority considers that he should have ensured that sufficient and appropriate due diligence was carried out on the CFBL Bonds before any investment decision was taken.

Decision to invest in Ingard Property Bond 1

4.104. SVS informed the Authority that when assessing the suitability of a fixed income investment to be included in the Model Portfolio, it relied on it already being listed on a stock exchange recognised by HMRC. However, SVS agreed to invest in Ingard Property Bond 1, and took commission, before the bond was listed. Ingard Property Bond 1 was listed on the Cypriot Stock Exchange on 20 January 2017. An SVS invoice dated 29 November 2016 included £150,000 as "10% commission on £1,500,000.00 raised".

4.105. SVS had a close relationship with Ingard and had been involved in the creation of Ingard Property Bond 1 since at least 4 January 2016.

4.106. Mr Virk played a key role in SVS investing in Ingard Property Bond 1. He was part of *'Project Bald Eagle'* alongside the directors of Ingard Property Bond 1 which worked to get the bond listed and assisted with the structure of the bond, and he arranged for SVS to pay the listing fees for Ingard Property Bond 1 without informing other members of SVS senior management. By the time SVS had started gathering due diligence materials, SVS had already provided assistance and support to Ingard to help get its new bond listed and advanced funds to help it cover the costs of listing the bond on an exchange. SVS paid a total of £96,782.93 on behalf of Ingard to assist with the listing process.

4.107. SVS had also committed to target investment of Model Portfolio customer funds into Ingard Property Bond 1 prior to listing of the bond and prior to SVS gathering due diligence materials.

4.108. The Authority considers that the close relationship between SVS and Ingard, including Mr Virk providing assistance to Ingard and paying fees on behalf of

Ingard Property Bond 1, meant that the due diligence SVS carried out was in essence a formality because, in substance, Mr Virk had already committed SVS to investing in Ingard Property Bond 1.

4.109. As early as March 2016, Mr Virk's correspondence with directors of Ingard Property Bond 1 was based upon the expectation that SVS would receive 10% commission and that SVS would commit at least £1.5 million of customer funds, though Mr Virk intended to raise £5 million. The eventual commission arrangements with Ingard provided for SVS to be paid 12% of the customer's funds invested via the Model Portfolio into the Ingard bonds. The Authority has not seen evidence to show how this shortfall was accounted for by Ingard. Mr Virk was central to this arrangement and would have known that the 12% commission needed to be factored into any proper assessment of the value and viability of the Ingard bonds as an investment.

Decision to invest in the ICFL Bond

4.110. SVS entered into an agreement with ICFL on 1 November 2018 to invest £10 million of Model Portfolio customer funds into the ICFL Bond. Mr Virk signed the agreement on behalf of SVS. Mr Virk had initially been approached by ICFL as it had been informed by one of ICFL's corporate consultants that SVS was interested in investing in the ICFL Bond. Specialist Advisors and Mr Anderson were advisers to ICFL. The agreement provided that SVS would be paid commission of £1 million, being 10% of the minimum investment of £10 million. SVS took £750,000 of this commission up front, whilst the firm was experiencing issues with its liquidity and cashflow, and accounted for it as a loan in case it had to be paid back.

4.111. The agreement was entered into, and the £750,000 commission paid, without due diligence having been undertaken and without the Model Portfolio Team's awareness. The Model Portfolio Team subsequently attempted to gather due diligence material from ICFL on 7 February 2019. ICFL considered it to be highly unusual that SVS was undertaking due diligence after ICFL had already paid commission to SVS.

4.112. The ICFL Bond had various similarities to the CFBL Bonds:

1) Shared staff between ICFL, CFBL and Specialist Advisors, in particular, Mr Anderson acted as a consultant to ICFL to secure SVS's "cornerstone" investment into the ICFL Bond;

2) Two of the three members of the ICFL Lending Advisory Board were also members of the CFBL Investment Advisory Group. These were the committees who recommended loans to be made by CFBL and ICFL;

3) Both the CFBL Bonds and the ICFL Bond provided loans offering fixed coupons of between 5.95% and 6.25% per annum for a five-year term. They took similar margins: CFBL took a typical margin of 3%, ICFL sought a margin of around 2%;

4) Both CFBL and ICFL were listed on the Global Exchange Market of the Irish Stock Exchange;

5) Both CFBL and ICFL lent to a minimum of 5 borrowers with no more than 20% to each borrower;

6) The *'Lending Criteria'* applied by CFBL and ICFL in seeking to lend to businesses was almost identical;

7) The *'Bond Process'* for approving loan applications set out in the CFBL and ICFL due diligence documents was identical; and

8) The *'Bond Series Loan Book Review Process'* for reviewing loans set out in the CFBL and ICFL due diligence documents was identical.

4.113. As stated in paragraph 4.104, SVS informed the Authority that when assessing the suitability of a fixed income investment to be included in the Model Portfolio, it relied on it already being listed on an HMRC recognised stock exchange. However, Mr Virk had already committed SVS to invest customer funds into the ICFL Bond before it was listed, in return for advance commission.

4.114. The Authority considers that due diligence carried out by SVS was in essence a formality as SVS had already agreed to invest in the ICFL Bond, and received commission, before due diligence was undertaken.

4.115. Mr Virk signed the agreement with ICFL on behalf of SVS. He was therefore aware that SVS had already committed to invest Model Portfolio customer funds into the ICFL Bond in return for advance commission before due diligence was carried out on the product. SVS did not disclose its advance commission arrangements with ICFL with its customers and their financial advisers.

4.116. Mr Virk was already aware of the Authority's concerns about the due diligence carried out on the CFBL Bonds from January 2018 but one year later, Mr Virk

reached a commercial agreement with ICFL which led to similar failings; the due diligence subsequently undertaken by SVS on ICFL was inadequate to assess and monitor the ICFL Bond. SVS should have undertaken its due diligence before it committed to invest client money in ICFL. SVS lacked adequate information about the underlying loan recipients, their financial standing, their potential to meet high interest rates set by ICFL, their ability to repay the principal sum at the end of the loan term, or the performance of the loans. As stated in paragraph 4.96, this information was needed to assess the bonds and, after 3 January 2018, to comply with the rule in PROD 3.3.3R that any investment product must be distributed in accordance with the needs, characteristics and objectives of its target market.

4.117. The ICFL Bond was a similar product to the CFBL Bonds, in which the Authority expected SVS to reduce its concentration. It was similar to the CFBL Bonds as it had a similar structure and processes, had low liquidity and shared staff with CFBL and Specialist Advisors. The Authority considers that SVS increased its exposure to high risk, illiquid bonds when it lacked the information to assess properly the risk of these investments. Mr Virk was aware of the concerns already raised by the Authority and should have taken reasonable care to ensure that adequate due diligence was carried out on ICFL to avoid a repeat of the same problem.

4.118. Mr Virk committed SVS to invest in the ICFL Bond in November 2018. Due diligence later carried out on the ICFL Bond identified that the 10% commission paid to SVS was to be made up by adding it to the loans of ICFL's underlying borrowers. In a conference call in February 2019 attended by representatives of SVS and ICFL, together with Mr Anderson (on behalf of Specialist Advisors, advising ICFL), it was explained that *"the 10% commission which is paid to attract funding to the bond is ultimately added to borrower loans. A potential borrower wishing to drawdown net funds of £875,000 will actually be taking out a loan for £1,000,000 capital value for repayment at the period end".* Mr Virk either knew of this when he committed SVS to the investment, or else he closed his mind to the consequences for SVS's customers of the commission arrangements he agreed with ICFL.

Decision to introduce a mark-down on fixed income disinvestments

4.119. The Authority requires firms to pay due regard to the interests of their customers and treat them fairly. This obligation was acknowledged in SVS's Order Execution Policy.

Decision to introduce a 10% mark-down

4.120. In November 2018, the Board of Directors decided to introduce a 10% mark-down on the valuation of the fixed income assets when a customer disinvested from the Model Portfolios. In email correspondence at the time in which questions were raised about the proposal, Mr Virk stated that the purpose of taking a 10% mark-down was to earn additional income for SVS.

4.121. This decision was made by the SVS Board of Directors but was driven by Mr Virk. The Authority considers that by making this decision, Mr Virk unduly prioritised the financial benefit to SVS over the best interests of customers. The application of a 10% mark-down was not notified to customers. This meant that customers did not have the opportunity to consider the potential impact of the mark-down when deciding whether to disinvest. If customers knew about this charge, they may have decided to disinvest before it came into effect or not to disinvest after it had, both of which would have led to less income for SVS.

Failure to communicate the 10% mark-down to customers

4.122. Prior to November 2018, SVS did not charge customers when they disinvested from the Model Portfolios.

4.123. From November 2018, SVS applied a 10% mark-down on all fixed income disinvestments. This mark-down was applied to all customers who disinvested regardless of the length of time they had held their investment. This was contrary to the statement in the Model Portfolio brochure provided to customers, that exit charges to customers who disinvested would differ based on the length of time a customer had been invested.

4.124. In breach of COBS 11.2A.31R, SVS did not communicate the 10% mark-down to customers in a clear manner and did not disclose anything in writing to customers, their SIPP Trustees or financial advisers for a further six months, namely on 30 May 2019. The written disclosure that was eventually made only referred to "the wider spread"; it did not include any reference to the rate of the 10% mark-down.

Internal concerns regarding the introduction of the 10% mark-down

4.125. Staff within SVS raised concerns that, amongst other things, the decision to introduce a 10% mark-down was not fair to customers and would lead to complaints. Despite these concerns being raised with Mr Virk, the SVS Board of Directors and Mr Stephen a number of times, they were unreasonably disregarded

by Mr Virk and he continued to support the 10% mark-down and as a result failed to prevent SVS treating customers unfairly.

4.126. Concerns were raised with Mr Virk, other directors and Compliance in relation to the decision to introduce the 10% mark-down, and/or the operation of the process behind the 10% mark-down, on the following occasions:

1) 2 November 2018 – concerns were raised about SVS profiting unduly from a disinvestment mark-down which was higher than the proposed exit charge;

2) 19 November 2018 - concerns were raised about not having a *"fully formed procedure"*;

3) 22 November 2018 – concerns were raised that the introduction of the 10% mark-down was not a *"a workable solution"*;

4) 26 November 2018 – staff within SVS questioned the justification for applying a 10% mark-down;

5) 14 December 2018 – concerns were raised that the 10% mark-down "*looks like a fee coming straight out of the models*";

6) 17 December 2018 – concerns were raised that the situation was unworkable and SVS was unable to provide an explanation to customers that could be defended;

7) 4 February 2019 – concerns were raised that the disinvestment process was not fair on customers; and

8) 13 February 2019 – concerns were raised that the new disinvestment policy was *"not an efficient way to carry out the disinvestments when compared to the application of exit charges as a percentage that reduces with each year of participation."*

4.127. Mr Virk responded to the concerns by instructing the Model Portfolio Team to implement the new disinvestment process saying, *'Can we please proceed and stop sending emails asking the same questions, this has all been discussed with Compliance'*. Mr Virk dismissed concerns raised within SVS about the 10% mark-down.

Financial consequences for customers due to the introduction of the 10% mark-down

4.128. SVS prioritised its profits at the expense of customers by introducing a 10% mark-down on the value of fixed income disinvestments. After the decision was made to introduce the 10% mark-down, customers disinvested £5,784,000 between October 2018 and August 2019. From these disinvestments, SVS earned £359,800 in income as customers were charged a higher amount than the cost to SVS. This income would have increased had SVS not entered administration on 5 August 2019.

4.129. The table below sets out the consequences of the introduction of the 10% mark-down for three customers:

	Customer 94008	**Customer 84848**	**Customer 124128**
Amount invested	£92,890.92	£266,204.76	£20,296.10
Date of investment	16 June 2017	1 November 2016	20 February 2019
Date disinvestment actioned	4 February 2019	4 February 2019	13 March 2019
Value of investments at date of disinvestment **(A)**	£75,575.54	£223,575.15	£19,880.64
Amount returned to customer **(B)**	£71,132.62	£210,431.09	£18,645.93
Amount returned to customer (%) **(B / A)**	94%	94%	94%
Value of fixed income assets disinvested **(C)**	£35,904.41	£106,214.79	£7,029.93
Amount of fixed income assets returned to customer **(D)**	£32,314.01	£95,593.33	£6,326.97
Fixed income disinvestment mark-down **(C – D)**	£3,590.40	£10,621.46	£702.96
Fixed income disinvestment mark-down(%) **(D / C)**	10%	10%	10%
Fixed income disinvestment as % of total investment **(C-D / A)**	5%	5%	4%

4.130. Customer 94008 was 60 years old when they invested, was a carer to their elderly parent, owned a property worth £70,000, had an annual income of £4,700, and

had other investments of £7,000. The Authority considers that the fixed income disinvestment mark-down of £3,590.40 taken by SVS was a significant amount to the customer.

4.131. Customer 84848 planned to retire in 10 years, was a personal assistant earning around £31,000 a year, owned a property worth £185,000, and had other savings and investments of £2,100. The Authority considers that the fixed income disinvestment mark-down of £10,621.46 taken by SVS was a significant amount to the customer. Customer 84848 submitted a complaint to SVS due to the performance of the Model Portfolios, the customer statements being unclear, and unsatisfactory service received from SVS. In the complaint, Customer 84848 explicitly asked whether exit charges were applied, to understand why the value of the customer's investment had decreased. The response to the complaint claimed that the Firm did not apply exit charges and instead the reduction in value was due to the "*wider spread*" on fixed income products when sold "*into the market*". This misrepresented the situation to the customer, as a flat 10% had been applied to the disinvestment, which operated as a charge. In reviewing the complaint, SVS considered that compensation may be appropriate for the unsatisfactory service provided but it does not appear that the firm considered the amount that the customer lost due to the disinvestment mark-down applied.

4.132. Customer 124128, and their partner, invested all of their pension funds of £20,296 into the Model Portfolio and had no other savings or investments. The customer planned to retire within 10 years, was a road maintenance worker earning £30,000 a year, and jointly owned a property worth £500,000. The customer was only invested in the Model Portfolios for 3 weeks and lost £702.96 due to the disinvestment mark-down, which the Authority considers to be a significant amount to the customer.

Summary

4.133. The decision to introduce a 10% mark-down on all fixed income disinvestments was led by Mr Virk and was not made with the best interests of customers in mind. In particular, the decision was made to generate revenue for SVS at a time when the firm had financial concerns and it unduly prioritised the financial interests of the firm over the interests of the firm's customers.

4.134. Furthermore, SVS did not inform customers in writing of the change until six months after it had been introduced, and the disclosure did not specify that SVS was taking a 10% mark-down. Concerns about the process were raised by the

Model Portfolio Team, but were not handled appropriately by Mr Virk who unreasonably dismissed the concerns.

4.135. The Authority considers that Mr Virk led the decision which was made to generate income for SVS at the expense of retail pension customers; he did not deal with the concerns raised in an appropriate manner; and he did not take reasonable steps to ensure that the decision was communicated to customers or their financial advisers in a durable format.

High level of fees and commission received by SVS

4.136. SVS received high levels of commission from the Model Portfolio fixed income product providers. COBS 2.3A.15R came into force on 3 January 2018, in line with MiFID II, and relates to the payment of inducements including commission. It states that a firm must not accept any commission from any third party in provision of a relevant service to retail clients. However, throughout the Relevant Period, SVS was paid commission from product providers calculated as a percentage of the customer funds SVS directed to that product. This incentivised SVS to maximise the investment of customer funds into these products. As a CF1 Director Mr Virk should have ensured that SVS did not accept such payments. These inducements put at risk SVS's independence and compromised its ability to act in the best interests of its customers.

4.137. When SVS placed customer funds into the fixed income investments, it received the following commission:

1) In relation to investments in CFBL Bonds, SVS received 10% commission from CFBL and 2% from Specialist Advisors. This investment totalled £23,436,165, or 54.41% of the fixed income investments;

2) In relation to investments in the Ingard Property Bonds, SVS received 10% commission from Ingard Alternative Funding and 2% from Ingard Financial. This investment totalled £5,700,000, or 13.23% of the fixed income investments;

3) in relation to investments in ICFL, SVS received 10% commission. SVS drew down £750,000 of the £1 million commission upfront due to liquidity and cashflow issues. This investment totalled £9,802,834, or 22.76% of the fixed income investments;

4) in relation to an investment in Angelfish preference shares in October 2018, SVS received 9-10% commission. This investment totalled £3,065,447, or 7.12% of the fixed income investments; and

5) in relation to investments in Queros, SVS did not receive any commission. This investment totalled £1,067,093 or 2.48% of the fixed income investments.

4.138. The amounts invested by SVS in the fixed income investments correspond with the amount of commission generated. The largest fixed income investments in the Model Portfolios were the CFBL Bonds, for which SVS received the greatest amount of commission. The smallest fixed income investment in the Model Portfolios was Queros, for which SVS received no commission.

4.139. The additional 2% paid on investments in CFBL and the Ingard Property Bonds was also determined by reference to the amount of customer funds invested by SVS in the relevant product.

4.140. The commission paid to SVS by the fixed income product providers was used to pay the marketing fees to the introducer firms to incentivise them to steer new customers into the Model Portfolios.

4.141. The commission payments expressed as a percentage of the customer funds invested into the product, together with the trigger for payment (channelling investor funds into bond products) that arose after 3 January 2018 were accordingly in breach of COBS 2.3A.15R. The Authority has found no evidence to indicate that the commission payments SVS received were necessary for the services it provided.

4.142. Mr Virk played a central role in agreeing the commercial terms on which SVS would invest customer funds into the products of CFBL, Ingard and ICFL. He was therefore fully aware of the commission paid to SVS by these fixed income product providers.

4.143. SVS charged commission of 1.5% on all transactions, which was reduced to 0.75% in April 2019. Taking into account the IFA advice fee of up to 4% of the customer's investment, this meant that Model Portfolio customers lost up to 5.5% of their investment at the outset. As SVS also took up to 10% of its customer's funds for commission in respect of fixed income products, this increased the risk of product default, so the likelihood that Model Portfolio customers would get back what they paid in was reduced further.

4.144. Mr Virk did not take reasonable steps to ensure that the commission arrangements between SVS and the fixed income providers were disclosed to customers or their financial advisers.

5. FAILINGS

5.1. The statutory and regulatory provisions relevant to this Notice are referred to in Annex A.

5.2. Based on the facts and matters described above, and for the reasons set out below, during the Relevant Period Mr Virk breached Statement of Principle 1 and Statement of Principle 6.

Breach of Statement of Principle 1

5.3. Mr Virk breached Statement of Principle 1 during the Relevant Period because he failed to act with integrity in carrying out his accountable functions. Mr Virk:

1) recklessly caused SVS to use a business model which allowed SVS to prioritise its income over the interests of its customers and to ignore its discretionary management responsibilities. Under this business model customer funds were invested into high-risk fixed income investments that paid SVS high levels of undisclosed commission. Mr Virk was aware of the risk of customer detriment with this business model, and it was unreasonable for him to take that risk in the circumstances. Mr Virk was central to the decision-making as to which fixed income investments to include in the Model Portfolios and his influence over the Model Portfolios meant that the due diligence carried out on fixed income investments was in essence a formality, in circumstances where he had already entered SVS into commission-driven agreements with bond providers that committed funds which customers had entrusted to SVS to manage on their behalf. A total of 879 customers invested £69.1 million into the Model Portfolios containing commission-bearing fixed income products operated by entities which had undisclosed connections to SVS and Mr Virk. Decisions taken by Mr Virk meant that SVS as a discretionary fund manager failed to act on an arms-length basis but acted instead in its own interests and those of its associates. Mr Virk agreed to provide pricing on Bloomberg and a secondary market, arranged for SVS to take commission up front, provided assistance to a bond provider and arranged for SVS to pay its listing fees. SVS Model Portfolio customers paid up to 3% of their investment to SVS in fees and were entitled to expect SVS to act in their best interests when taking

investment decisions on their behalf. Mr Virk abused this trust and overrode SVS's regulatory obligations to its customers in the pursuit of profit for SVS, and himself;

2) recklessly advanced this business model by entering SVS into agreements with key unauthorised introducers to incentivise them, by payment of commission of 7-9% of the introduced customers' funds, to maximise the flow of retail customer funds into the Model Portfolios. In breach of the Authority's rules, these incentives were not disclosed to SVS's customers or their financial advisers;

3) recklessly entered SVS into agreements with bond providers by which SVS committed to invest customer funds in return for commission payments of up to 12% of the value of the customer's investment. These commitments seriously compromised SVS's independence and its ability to act in the best interests of its customers. In November 2018, Mr Virk entered SVS into an agreement with ICFL that paid SVS 10% commission in advance of future investments in the ICFL Bond. Mr Virk recklessly committed customer funds to this investment, whilst SVS was experiencing issues with its liquidity and cashflow at that time;

4) recklessly entered SVS into the agreement with ICFL, and took advance commission, before any due diligence had been conducted but subject to it being listed on an HMRC recognised stock exchange, knowing that the Authority has raised serious concerns about investing customer funds without adequate due diligence;

5) knowingly failed to disclose a clear business conflict of interest to the Head of Risk and Compliance. Mr Virk failed to disclose or escalate the novation of the BRC Loan to CFBL. The novation of this loan created a significant conflict of interest as this meant that CFBL had rights over SVS's assets through the fixed charge attached to the CFBL Loan at a time when SVS was deciding to invest Model Portfolio customer funds into the CFBL Bonds. Mr Virk was aware that SVS thereby owed a secured debt to a bond provider whose bonds were included in the Model Portfolios. As a result of this knowing failure to disclose this business conflict of interest, the conflict was not managed and monitored properly and not disclosed to customers or their financial advisers; and

6) led the firm's decision to introduce a 10% mark-down to the valuation of fixed income disinvestments. Mr Virk did this with the express intention of

generating more income for SVS, which was experiencing financial concerns. The effect of this was to take funds from SVS's retail pension customers and SVS earned £359,800 in income at the expense of its customers. Mr Virk was aware of this, because concerns were repeatedly raised by the Model Portfolio Team that the process was not fair to customers and that it did not comply with SVS's regulatory obligations, but he recklessly dismissed the concerns and pressed ahead with the mark-down.

Breach of Statement of Principle 6

5.4. Mr Virk also breached Statement of Principle 6 during the Relevant Period because he failed to exercise due skill, care and diligence in managing the business of SVS. Mr Virk:

1) was aware of the Authority's concerns about the due diligence, concentration and liquidity risks in relation to the CFBL Bonds yet he failed to take reasonable steps to stop SVS from continuing to invest in CFBL Bonds, despite SVS providing assurance to the Authority that it would reduce its concentration in the CFBL Bonds;

2) failed to disclose to the Compliance function his personal conflict of interest arising from the loans from CFBL to Company X, a company he worked for as a consultant, with the result that SVS customer funds were being used via the CFBL Bonds to support a business connected to Mr Virk. He failed to take reasonable steps to ensure that this conflict was disclosed, and accordingly it was not managed appropriately;

3) failed to take reasonable steps to ensure that the Ingard Conflict and the Angelfish Conflict were managed appropriately;

4) engaged Specialist Advisors to provide marketing and consultancy services in relation to the Model Portfolios. Mr Virk knew that Specialist Advisors had common ownership with CFBL, which had provided a loan to SVS and whose bonds were included in the Model Portfolios. Mr Virk failed to disclose this to the firm's Compliance function and failed to take reasonable steps to ensure that this conflict of interest was managed;

5) failed to take reasonable steps to ensure that SVS properly communicated the decision to introduce a 10% mark-down to the valuation of fixed income disinvestments to customers or their financial advisers. Customers therefore took disinvestment decisions without understanding the financial

implications of disinvesting their funds and lost pension savings as a result; and

6) failed to take reasonable steps to ensure that SVS remained compliant with the Authority's rules in relation to inducements. SVS received large commission payments from the fixed income product providers for including their investments in the Model Portfolios. This represented a level of inducement which clearly compromised both SVS's independence and its ability to act in the best interests of its customers. Mr Virk should have taken reasonable steps to ensure that SVS did not accept commission payments after 3 January 2018, the date COBS 2.3A.15R came into force.

5.5. As a result of the failings set out in paragraph 5.3, during the Relevant Period, Mr Virk failed to act with integrity in carrying out his accountable functions; and as a result of the failings set out in paragraph 5.4, during the Relevant Period, Mr Virk failed to exercise due skill, care and diligence in managing the business of SVS, with the result that SVS's customers were adversely impacted whilst SVS benefitted financially.

Fit and Proper test for Approved Persons

5.6. The Authority and consumers rely on senior management function holders to ensure that authorised firms are properly managed and comply with the requirements of the regulatory regime. Mr Virk's failings were not confined to a single area but occurred across a business for which, as CF1 director, and as the de facto Chief Executive until August 2016, he was responsible: Mr Virk failed to disclose or manage multiple business and personal conflicts of interest; failed to prevent SVS treating customers unfairly with the introduction of the disinvestment mark-down, with the result that customers disinvesting from the Model Portfolio suffered financial detriment; failed to take steps to ensure that SVS complied with rules governing the payment of inducements; and committed customer funds to investments without ensuring that SVS first conducted adequate due diligence, instead prioritising SVS's income over the proper management of customers' investments.

5.7. By reason of the facts and matters described above, the Authority considers that Mr Virk's conduct demonstrates a serious lack of integrity and competence and capability, such that he is not a fit and proper person to perform any function in relation to regulated activities carried on at any authorised person, exempt person or exempt professional firm.

6. SANCTION

Financial penalty

6.1. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. The Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 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

6.2. Pursuant to DEPP 6.5B.1G, at Step 1 the Authority seeks to deprive an individual of the financial benefit derived directly from the breach where it is practicable to quantify this.

6.3. The Authority has not identified any financial benefit that Mr Virk derived directly from the breaches.

6.4. Step 1 is therefore £0.

Step 2: the seriousness of the breach

6.5. Pursuant to DEPP 6.5B.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. That figure is based on a percentage of the individual's relevant income. 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, and for the period of the breach.

6.6. The period of Mr Virk's breaches of Statement of Principle 1 and 6 was from 16 February 2016 to 2 August 2019. The Authority has obtained details of Mr Virk's relevant income from his employment at SVS. The Authority considers Mr Virk's relevant income for this period to be £653,261.

6.7. 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%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on individuals in non-market abuse cases there are the following five levels:

Level 1 – 0%

Level 2 – 10%

Level 3 – 20%

Level 4 – 30%

Level 5 – 40%

6.8. In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly.

6.9. 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) the breaches caused a significant loss or risk of loss to individual consumers (DEPP 6.5B.2G (12)(a));

2) Mr Virk failed to act with integrity (DEPP 6.5B.2G (12)(d));

3) as an experienced individual in a senior management position, Mr Virk abused a position of trust, and failed to put the customer at the heart of the decisions made, thus causing risk of loss to a large number of consumers (DEPP 6.5B.2G (12)(e)); and

4) some of Mr Virk's breaches were committed deliberately or recklessly (DEPP 6.5B.2G (12)(g)).

6.10. DEPP 6.5B.2G(13) lists factors likely to be considered 'level 1 or 2 or 3' factors. Of these, the Authority considers the following factor to be relevant:

1) some of Mr Virk's breaches were committed negligently.

6.11. Taking all of these factors into account, the Authority considers the seriousness of the breaches to be level 4 and so the Step 2 figure is 30% of £653,261.

6.12. Step 2 is therefore £195,978.

Step 3: mitigating and aggravating factors

6.13. Pursuant to DEPP 6.5B.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any

amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breach.

6.14. The Authority considers that the following factors aggravate the breaches:

1) Mr Virk did not cooperate with the investigation. He resides outside of the UK and was not willing to attend an interview with the Authority on a voluntary basis. He initially indicated that he would be willing to provide evidence by answering written questions. The Authority provided written questions to him however he then informed the Authority that he was unwilling to provide responses to the questions (DEPP 6.5B.3G (2)(b)); and

2) Mr Virk's previous disciplinary record and previous compliance history (DEPP 6.5B.3G (2)(f) and (i)). On 13 October 2016, the Authority issued a letter to Mr Virk setting out concerns about the non-disclosure of his criminal convictions:

a. on 21 November 2002, SVS submitted an application to the Authority for Mr Virk to hold the CF1 (Director), CF3 (Chief Executive), CF10 (Compliance Oversight) and CF11 (Money Laundering Reporting) controlled functions at SVS. This application did not disclose that Mr Virk had a conviction dated 4 June 1982. Mr Virk was approved by the Authority on 9 April 2003;

b. on 24 May 2013, SVS submitted an application to the Authority for Mr Virk to hold CF10 (Compliance Oversight) and CF11 (Money Laundering Reporting). This application again did not disclose Mr Virk's conviction dated 4 June 1982 nor did it disclose another conviction dated 8 February 2013; and

c. on 20 June 2013, SVS submitted an application to the Authority for Mr Virk to hold CF3 (Chief Executive) which did not disclose Mr Virk's convictions. Nor were the convictions disclosed when the Authority asked for additional information in August 2013. This application and the May 2013 application above were subsequently withdrawn in September 2013.

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

6.16. Having taken into account these aggravating factors, the Authority considers that the Step 2 figure should be increased by 10%.

6.17. Step 3 is therefore £215,576.

Step 4: adjustment for deterrence

6.18. Pursuant to DEPP 6.5B.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.

6.19. The Authority considers that the Step 3 figure of £215,576 represents a sufficient deterrent to Mr Virk and others, and so has not increased the penalty at Step 4.

6.20. Step 4 is therefore £215,576.

Step 5: settlement discount

6.21. The Authority and Mr Virk have not reached an agreement to settle and so no discount applies to the Step 4 figure. Pursuant to DEPP 6.5B.5G, if the Authority and the individual on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the individual reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

6.22. No settlement discount applies. Step 5 is therefore £215,576. In accordance with the Authority's usual practice this is to be rounded down to £215,500.

Penalty

6.23. The Authority hereby imposes a total financial penalty of £215,500 on Mr Virk for breaching Statements of Principle 1 and 6.

Prohibition Order

6.24. The Authority has the power to prohibit individuals under section 56 of the Act. The Authority has had regard to the guidance in Chapter 9 of the Enforcement Guide in considering whether Mr Virk should be prohibited, and the nature of any such prohibition. The relevant provisions of the Enforcement Guide are set out in

Annex A to this Notice. In particular, the Authority has been mindful of the following factors:

a. whether the individual is fit and proper to perform functions in relation to regulated activities;

b. whether, and to what extent, the approved person has failed to comply with the Statements of Principle issued by the Authority with respect to the conduct of approved persons;

c. the relevance and materiality of any matters indicating unfitness;

d. the particular controlled function the approved person was performing, the nature and activities of the firm concerned and the markets in which he operates;

e. the severity of the risk which the individual poses to consumers and to confidence in the financial system; and

f. the previous disciplinary record and general compliance history of the individual including whether the Authority, any previous regulator, designated professional body or other domestic or international regulator has previously imposed a disciplinary sanction on the individual.

6.25. Given the nature and seriousness of the failures set out above, Mr Virk's conduct demonstrated a lack of integrity and competence such that he is not a fit and proper person to perform any function in relation to any regulated activities carried on by any authorised or exempt person or exempt professional firm. The Authority considers that, in the interests of consumer protection, and in order to maintain market confidence, it is appropriate and proportionate in all the circumstances to impose on Mr Virk the Prohibition Order in the terms set out above.

7. REPRESENTATIONS

7.1 Annex B contains a brief summary of the key representations made by Mr Virk in response to the Warning Notice and how they have been dealt with. In making the decision which gave rise to the obligation to give this Notice, the Authority

has taken into account all of the representations that it received on the Warning Notice, whether or not set out in Annex B.

8. PROCEDURAL MATTERS

8.1. This Notice is given to Mr Virk under and in accordance with section 390 of the Act. The following statutory rights are important.

Decision maker

8.2. The decision which gave rise to the obligation to give this Notice was made by the RDC. The RDC is a committee of the Authority which takes certain decisions on behalf of the Authority. The members of the RDC are separate to the Authority staff involved in conducting investigations and recommending action against firms and individuals. Further information about the RDC can be found on the Authority's website: https://www.fca.org.uk/about/committees/regulatory-decisions-committee-rdc

Manner and time for payment

8.3. The financial penalty must be paid in full by Mr Virk to the Authority no later than 28 June 2024.

If the financial penalty is not paid

8.4. If all or any of the financial penalty is outstanding on 28 June 2024, the Authority may recover the outstanding amount as a debt owed by Mr Virk and due to the Authority.

Publicity

8.5. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the Authority must publish such information about the matter to which this notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

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

Authority contact

8.7. For more information concerning this matter generally, contact Mark Lewis at the Authority (direct line: 020 7066 8442 / email: mark.lewis2@fca.org.uk).

Kerralie Wallbridge
Head of Department
Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. RELEVANT STATUTORY PROVISIONS

1.1. The Authority's statutory objectives, set out in section 1B(3) of the Act, include the operational objective of securing an appropriate degree of protection for consumers (section 1C).

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 64A 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 ("APER") have been issued under section 64A 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. During the Relevant Period, Statement of Principle 6 stated:

> *"An approved person performing an accountable higher management function must exercise due skill, care and diligence in managing the business of the firm for which they are responsible in their accountable function."*

2.4. '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.

2.5. APER sets out descriptions of conduct which, in the opinion of the Authority, do 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

2.6. 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.

2.7. 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

2.8. The Authority's policy in relation to prohibition orders is set out in Chapter 9 of the Enforcement Guide ("EG").

2.9. 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.

Conduct of Business Sourcebook

2.10. The Authority's rules and guidance for Conduct of Business are set out in COBS. The rules in COBS relevant to this Notice are 2.1.1R, 2.3A.15R, 11.2A.2R and 11.2A.31R.

Senior Management Arrangements, Systems and Controls Sourcebook

2.11. The Authority's rules and guidance for senior management arrangements, systems and controls are set out in SYSC. The rules in SYSC relevant to this Notice are 10.1.3R, 10.1.4R, 10.1.6R, 10.1.7R, 10.1.8R.

Product Intervention and Product Governance Sourcebook

2.12. The Authority's rules and guidance for Product Intervention and Product Governance are set out in PROD. The rules and guidance in PROD relevant to this Notice are 3.3.1R and 3.3.3R.

Decision Procedure and Penalties Manual

2.13. Chapter 6 of DEPP sets out the Authority's statement of policy with respect to the imposition and amount of financial penalties under the Act.

ANNEX B

Kulvir Virk's Representations

1. A summary of the key representations made by Mr Virk, and of the Authority's conclusions in respect of them (in bold type), is set out below.

The reality of Mr Virk's role, responsibilities and reliance on others

2. Mr Virk's role, in the period before 14 August 2016, was SVS's *de facto* Chief Executive Officer. An important part of Mr Virk's role was to utilise his contacts in the City of London on SVS's behalf. SVS's business was broad, and the Model Portfolio Team was a relatively small proportion of it, between 25% and 35% of SVS's revenue.

3. An experienced Head of Compliance, David Stephen, was recruited in 2014. Mr Virk ensured that Compliance was sufficiently resourced to perform their functions. Mr Virk also took steps to increase the number of directors on SVS's Board who would be able to focus on particular areas of the business with sufficient rigour.

4. During this period, Mr Virk was responsible for the Model Portfolios and the full range of SVS's operations. It was not possible for Mr Virk to be involved in day-to-day decisions in relation to any one part of its business, including the Model Portfolios. Given his then broad role, he was entitled to delegate certain of those matters appropriately to the Model Portfolio Team and to Compliance. Whilst Mr Virk accepts that he was the director formally responsible for the Model Portfolios prior to August 2016, the Model Portfolio Employee was responsible for its day-to-day management and for investment decisions. Mr Virk's role in relation to the Model Portfolios was, therefore, one of oversight. Mr Virk therefore delegated day-to-day management of the Model Portfolios, including investment decision-making and engagement with third parties, to the Model Portfolio Employee, with Compliance oversight from Mr Stephen.

5. Mr Virk was entitled to delegate these matters to the Model Portfolio Employee because the Model Portfolio Employee was suitably qualified, holding the requisite Level 6 investment qualification[1], and Mr Virk had no reason to doubt his competence. Mr Virk did not hold this qualification and did not consider that he was able to make investment decisions in respect of investments into the Model Portfolios. When Mr Virk did propose investments, these could be rejected by the Model Portfolio Employee or referred to the Investment Committee. Mr Virk reasonably relied on the Model Portfolio Employee.

6. In August 2016, Mr Virk relocated to Dubai, from which time he had primary responsibility for SVS's foreign exchange desk which focussed on China and the Middle East. From that point on, Mr Virk did not have a formal role in relation to the Model Portfolios other than as part of his broad responsibilities as a Board member; he had no day-to-day involvement in the management or oversight of the Model Portfolios. His responsibilities did not therefore extend to oversight of the Model Portfolio business, and these responsibilities were allocated to another responsible director. The Model Portfolio Employee reported to that director rather than to Mr Virk.

[1] Chartered Institute for Securities and Investment level 6 in Private Client Investment Advice & Management.

7. Although Mr Virk would visit London occasionally, he did not sit on any relevant portfolio management committees and usually joined Board meetings by telephone. Mr Virk did not, at any time, override the Board, Compliance or the relevant investment committees.

8. The Head of Compliance, Mr Stephen, was assisted by a Compliance team, comprised of a Compliance Manager, Executive and Assistant. It had a broad function to review SVS's activities across its various business lines and advise on the firm's compliance with the Authority's rules. Mr Stephen had ultimate responsibility for this function, and he reported to SVS's Board.

9. SVS's business sought advice from Mr Stephen and Compliance to ensure that SVS was compliant with relevant rules and regulations. Mr Virk relied on the Compliance function to ensure that the steps he took personally were considered and reasonable in all the circumstances. No important decision was taken without Compliance having first reviewed and approved it. Compliance was responsible for managing and recording conflicts of interest and had ownership of the CoI Register; it would make the decisions as to whether conflicts should be disclosed and would manage them. Compliance was a strong function within the firm and was not ignored, bypassed or overridden by the business. Mr Virk took reasonable steps in relying on it to ensure that SVS was compliant with the relevant rules and regulations.

10. **Directors are responsible for understanding their firm's business. Further, the Authority considers that Mr Virk was the dominant personality within SVS, before he departed for Dubai and that he remained so, after he departed; he also continued to involve himself in areas outside his documented responsibilities. The Authority considers that Mr Virk exercised a significant influence and remained key to decisions about which fixed income investments were to be included in the Model Portfolios, as further described below. Whilst the Model Portfolio business may only have represented about 25-35% of SVS's revenue, and the Model Portfolio Employee's reporting line may have changed, this did not mean that Mr Virk ceased to take an active role in the aspects of it referred to above after his relocation to Dubai in 2016.**

11. **The Model Portfolio Employee stated to the Authority that Mr Virk decided on the fixed income investments. Whilst the Authority accepts that day-to-day management of the Model Portfolio was delegated to the Model Portfolio Employee, the Authority considers that Mr Virk did not leave investment decisions to others, in particular to the Model Portfolio Employee, in the way he has sought to assert. The Model Portfolio Employee was not a genuinely independent decision-maker. The Authority also notes that, from at least early 2017, such decisions ought to have been made by the Investment Committee. However, in reality that was not also the case.**

12. **Whilst the Authority accepts that Mr Virk largely absented himself from Board meetings from around March 2018, he continued to engage in ad hoc meetings to discuss the Model Portfolios, including setting agendas and being involved in discussions about both product selection and the direction and the strategy which SVS was trying to achieve for the Model Portfolios. In addition, the Authority considers that Mr Virk's ongoing involvement was not limited to "bigger picture" issues but that he was also involved in issues of detail.**

13. **The Model Portfolio Employee's roles and responsibilities were described in a December 2017 SVS roles and responsibilities organogram document as follows: "*Overall responsibility for the Model Portfolios/DFM under forthcoming SMR. Responsible for convening Investment Committee meetings and ensuring that all investment decisions are documented, ensuring that all investments decisions are implemented…. producing MI in a timely fashion and reporting to AG, DH and the Board as appropriate*".**

14. **Mr Virk's assertion that the Model Portfolio Employee was responsible for making investment decisions with respect to the Model Portfolios is not borne out by the above description, which refers to him documenting and implementing decisions. The Model Portfolio Employee's own description of his role in practice is similar to this. In an interview with the Authority, the Model Portfolio Employee stated that "*nothing was done without Kulvir's agreement*" and "*at no point did I go out and sort of scour the market for fixed income products*".**

15. **The Authority considers that Mr Virk cannot rely on formal allocations of responsibility in an attempt to ignore the role that he actually assumed in relation to the Model Portfolios. Furthermore, Mr Virk was also required to take reasonable steps to oversee the business as a whole. The Tribunal noted in *Burns v Financial Conduct Authority*[2] as follows*: "that does not mean that it is not permissible for a board to vest prime responsibility for matters such as compliance in one of their number who is more expert than others on such matters. However, that does not absolve the other members of the board from obtaining a sufficient understanding of the business of the firm which they are ultimately responsible for managing, the key issues that are likely to arise out of its business model, and the manner in which they are being addressed".* The Authority considers that Mr Virk cannot avoid his responsibility with respect to the Model Portfolios by asserting that he relied on others.**

Investment decisions

16. The Authority is seeking to hold SVS (and Mr Virk) to a standard that is not justifiable based on the regulations as they applied at the time. The Authority's contention, that SVS was unaware of the underlying loan recipients of the ICFL and CFBL Bonds, misunderstands the nature of the product. At the point at which one invests in a fixed income product, whose issuer will use the proceeds to make loans, no loans will have yet been made. Accordingly, understanding the exact loan profile is not possible at the outset of the investment, nor is it necessary to meet the relevant product governance requirements set out in PROD 3[3] (or RPPD[4] before 3 January 2018).

17. It was not required, reasonable or proportionate for SVS to carry out extensive due diligence in respect of each series of the CFBL Bonds, as each series had the same basic profile, and

[2] Burns v Financial Conduct Authority [2018] UKUT 0246 (TCC) at paragraph 285.
[3] On or after 3 January 2018.
[4] Before 3 January 2018: The Responsibilities of Providers and Distributors for the Fair Treatment of Customers https://www.handbook.fca.org.uk/handbook/document/RPPD_FCA_20130401.pdf

the due diligence did not need to be repeated in detail, particularly given that there was limited applicable guidance prior to 3 January 2018. After 3 January 2018, SVS went beyond what was required by PROD. It was not SVS's role, and would in any event have been impractical, to expect it to have monitored the underlying loan recipients within these bonds on a regular basis. It would require SVS to second guess the issuer's decision-making, having undertaken due diligence on the issuer, including its decision-making process. Regardless of Mr Virk's own role and his reasonable steps, SVS was compliant with applicable regulation/guidance during the Relevant Period.

18. It is incorrect for the Authority to describe the purpose, or the primary focus of SVS's efforts, as being to maximise the flow of funds into the Model Portfolios and thereafter into fixed income products which paid commission to SVS. SVS was seeking to promote its discretionary fund management proposition to customers as a strong alternative to that of more established firms in the market. Mr Virk reasonably relied on the Model Portfolio Employee, as a qualified investment professional, and on Mr Stephen, as a capable and experienced compliance officer, to ensure that investments were made in a manner that was in the interests of customers and in accordance with regulatory requirements. Mr Virk did not therefore act in such a way as to prioritise SVS's income over the interests of its customers.

19. Mr Virk did not make investment decisions, suggest that due diligence was not necessary, require the Model Portfolio Employee to make particular investments in the Model Portfolios, or override his decision-making role as Head of the Model Portfolio Team. Instead, he simply suggested from time to time that the Model Portfolio Employee should consider particular investments, having sourced them through his relationships. His supposed *"influence"* did not mean that due diligence was, in essence, a formality. The Model Portfolio Employee would not always recommend the referred investment: an example of this was the CFBL Series 7 which was proposed by Mr Virk, and which the Model Portfolio Employee turned down for investment.

20. The decision to invest in the ICFL Bond was taken by a vote of the Investment Committee on 19 February 2019. Mr Virk did not attend that meeting. Whilst Mr Virk initially identified the CFBL Bonds, it was the Model Portfolio Employee who carried out the assessment of the appropriateness of those bonds for inclusion in the Model Portfolios and who made the investment decision.

21. Mr Virk relied on SVS Compliance to confirm that the steps being taken in relation to the CFBL Bonds throughout the Relevant Period were sufficient and appropriate for regulatory purposes. SVS's Compliance function reviewed due diligence on investments as a matter of course, and Mr Virk reasonably relied on this. Mr Virk considers that due diligence was therefore undertaken in relation to the CFBL Bonds in accordance with the requirements of the prevailing regulatory framework. However, in any event, Mr Virk was not responsible for the due diligence that was undertaken, having appropriately delegated that task before he relocated to Dubai to the Model Portfolio Employee, as overseen by SVS Compliance. He had no responsibility for the Model Portfolios after August 2016.

22. The position relating to the decisions to invest in the Ingard Property Bond 1, Angelfish preference shares and the ICFL Bond, is similar to that for the CFBL Bonds. In respect of the ICFL Bond, Mr Virk intended that due diligence should be undertaken prior to investment, and this was done. Due diligence undertaken in relation to the ICFL Bond was

not, in essence, a formality. Whilst Mr Virk introduced the investment proposal to SVS, he took reasonable steps to ensure that the required due diligence was undertaken.

23. **The Authority has not asserted a higher standard than that required of SVS at the time but has assessed Mr Virk's and SVS's conduct by the applicable standards at the time. The opening statement in the RPPD, at paragraph 1.1, sets out an important caveat for providers and distributors to consider the relevant standards to adhere to[5]: it was not, and did not seek to be, a complete exposition of all of a provider's or distributor's responsibilities to the customer or to each other.**

24. **The Authority does not consider that Mr Virk merely introduced, or suggested, the investments in the way asserted. Mr Virk has significantly understated his influence with respect to the Model Portfolios and his decision-making, and has overstated the nature of the Model Portfolio Employee's role in practice (for the reasons indicated in paragraphs 13-14 above).**

25. **The Authority also considers that it has fairly described, in this Notice, the SVS business model as one intended to maximise the flow of retail customer funds into the Model Portfolios for onward investment into commission paying, high-risk and in most cases illiquid bonds, for the following reasons: (1) SVS needed the large commissions from fixed income products to pay the large commissions promised by it to introducers: 97.52% of the fixed income products went into investments paying the significant commissions[6]; (2) SVS's need for commission was such that Mr Virk drew down £750,000 in commission advances from ICFL, in effect committing SVS's clients to investing in the ICFL Bond; (3) a senior SVS employee proposed investments into mainstream fixed income products in April 2018 with a different, lower risk profile, which proposal was abandoned after he had a discussion with Mr Virk; and (4) there is no other credible explanation why SVS continued to invest clients' funds into the investments they did. The Authority considers that Mr Virk was aware of the risk of customer detriment arising from the SVS business model, and that it was unreasonable for him to take that risk in the circumstances.**

26. **With respect to due diligence on the CBFL Bonds, the Authority considers that SVS should have gained a proper understanding of the loans that were intended to be made, and the criteria to be applied by CFBL, and should have continued to monitor the position during the life of the investment. SVS made a succession of investments in CFBL Bonds on behalf of investors and should have kept its assessment of the investments under constant review and understood the status of the CFBL loan book. SVS did not do this. The Authority does not suggest that SVS should have "second-guessed" CFBL's lending decisions: however, it should have been a relatively straightforward matter for SVS to have made its own assessment, checked the credit rating of those to whom loans were made, and**

[5] Paragraph 1.1 states as follows: In this Regulatory Guide ("Guide") we give our view on what the combination of Principles for Businesses ("the Principles") and detailed rules require respectively of providers and distributors in certain circumstances to treat customers fairly. However, it is not, and does not seek to be, a complete exposition of all of a provider's or a distributor's responsibilities to the customer or to each other; nor does it alter, replace or substitute applicable Principles, rules, guidance or law, such as those relating to unfair contract terms.

[6] The only investment in respect of which SVS did not receive significant commission was Queros and this received 2.48% of the fixed income investments (see paragraph 4.144 of the Notice).

then to check for downgrades during the life of the bonds. This was not done. This assessment and monitoring would not have been impractical for SVS to have undertaken and accordingly, these reasonable steps were not taken.

27. **With respect to the CFBL Bonds, Ingard Property Bond 1, Angelfish preference shares and ICFL Bond, Mr Virk took actions which effectively committed SVS to investing customer funds before the Model Portfolio Employee, or anyone else, had the opportunity to undertake proper due diligence. This meant that the due diligence was, in essence, a formality. The due diligence approach taken to the ICFL Bond illustrates this. The Model Portfolio Employee stated in an email to ICFL, on 7 February 2019, that enhanced due diligence would be necessary; ICFL queried this request 36 minutes later (copying Mr Virk) as follows: *"…this is the first time [enhanced due diligence] has been mentioned… and why, amongst other things, why this has only been raised now as when we entered into the process a Memorandum of Understanding was signed between our two companies which explicitly pledges a minimum investment of £10million to be invested immediately upon the bond receiving a rating of BBB+ or higher."* The Model Portfolio Employee responded that he knew of no such Memorandum of Understanding and would refer to the directors. He then sought instructions noting SVS's commitment to the bond and asking how the Board would like to proceed. The Authority notes that the Model Portfolio Employee did not show surprise that a commitment had already been made by Mr Virk for SVS to make a significant investment in ICFL without him being informed of such commitment. This exchange supports the Authority's view of the Model Portfolio Employee's role and responsibilities in practice, as set out in paragraphs 13 and 14 above.**

28. **At the subsequent due diligence meeting between SVS and ICFL both parties were fully aware that, if the investment did not go ahead, SVS would need to repay ICFL's advance of commission which SVS had yet to earn. The Authority considers: (1) that it is not credible that, having received an advance commission of £750,000 from ICFL (at a time when SVS was experiencing issues with its liquidity and cashflow), SVS would have backed out of the commitment that Mr Virk had already made to invest; and (2) that this influenced the due diligence which was performed.**

Commissions/inducements

29. The rule on inducements came into operation in January 2018, after Mr Virk had stepped back from any formal role in relation to the Model Portfolios in August 2016, and, in any event, at a time when Mr Stephen was aware that SVS continued to charge commissions on fixed income products. Mr Stephen had raised no concerns. Mr Virk was not advised that such commission was not permissible and understood that commissions paid in this way continued to be permissible. Had he been advised otherwise, he would not have approved or signed any subsequent agreements for SVS to invest in the way that occurred. It was reasonable for Mr Virk to rely on Mr Stephen in relation to SVS's receipt of commission, and accordingly Mr Virk took reasonable steps to ensure that SVS complied with the Authority's rules in relation to inducements.

30. Following requests for information, SVS disclosed the commissions to the Authority during 2017. The Authority came to the view, in September 2017, having looked carefully at SVS's

business, that SVS had not been influenced by receiving high commissions for placing clients into the bonds.

31. **COBS 2.3A.15R[7] came into force on 3 January 2018 and provided that discretionary managers must not accept fees or commissions from any third party in relation to the provision of the relevant service to the client. Mr Virk knew that commissions continued to be paid in this way after the introduction of this rule. The level of commissions received by SVS were not minor or non-monetary, nor could they be said to have been paid for third party research. The regulatory change post-dated the Authority's feedback to SVS in September 2017.**

32. **The Authority considers that Mr Virk was not as removed from SVS's Model Portfolio business, as he has asserted. After he had moved to Dubai, and after the prohibition on commissions had come into force, Mr Virk agreed the ICFL Memorandum of Understanding under which SVS received £750,000 in advance commission. There is no suggestion that Mr Stephen's advice was sought at that time or that he signed off the agreement to accept the advance commission.**

33. **Mr Virk has sought to place all responsibility with respect to introducers and the acceptance of commissions onto Mr Stephen, and he asserts that reliance on Mr Stephen is sufficient to constitute reasonable steps to satisfy the regulatory rule. The Authority disagrees. Mr Virk remained influential within the Firm, was a CF1 director, and held the CF28 (systems and controls) function. The regulatory change in January 2018 was a very significant matter for SVS's systems and controls, and Mr Virk ought to have been aware of such a key regulatory change that affected SVS's business both in his capacity as holder of the CF28 function and as a CF1 director.**

34. **The Authority considers that Mr Virk failed to take reasonable steps to ensure that SVS remained compliant with the Authority's rules on inducements.**

Conflicts of interest

(a) The Ingard Conflict and the Angelfish Conflict

35. SVS took a corporate finance role in assisting with its structuring as broker to the issue in 2013, before the Model Portfolios were established. Mr Virk was involved in the structuring of the Ingard Property Bond 1 by virtue of SVS's corporate finance role; this was separate and distinct from the decision to invest Model Portfolio monies in that product, which was a decision not made by Mr Virk. It is in the context of SVS's corporate finance role that Mr Virk agreed for SVS to pay certain fees for Ingard, in order to facilitate the structuring of

[7] COBS 2.3A.15R(1) This rule applies where a firm provides a retail client in the United Kingdom with… (c) portfolio management services.
(2) The firm must not accept any fees, commission, monetary or non-monetary benefits which are paid or provided by … any third party … in relation to the provision of the relevant service to the client. …
(3) Paragraph (2) does not apply to:
(a) acceptable minor non-monetary benefits (see COBS 2.3A.19R); (b) third party research received in accordance with COBS 2.3B (see COBS 2.3B.3R).

the Ingard Property Bond 1 and in the context of which SVS gave indicative investment targets. Those targets were necessary, in order for Ingard's business to be viable. That process was separate from the assessment of the bond's appropriateness for inclusion in the Model Portfolios. The Model Portfolio Employee, the decision-maker in respect of the Model Portfolio investments, was not involved in SVS's corporate finance advice. There was nothing improper in SVS providing such assistance to Ingard.

36. From the inclusion of the Ingard Property Bond 1 in the Model Portfolios in January 2017 to Mr Ewing's resignation from SVS in April 2018 (namely, the period of the Ingard Conflict), Mr Virk was not responsible for the Model Portfolios. He had relocated to Dubai in August 2016 with significantly reduced responsibilities. The Ingard Conflict was not within the scope of Mr Virk's responsibility to ensure that it was managed appropriately; that responsibility had been properly delegated. He had not assumed personal responsibility either in practice or because it formed part of his post-August 2016 job description. This conflict was for SVS as an entity to manage appropriately, and the responsible director was Mr Ewing himself (as the Ingard Conflict arose from his directorships), with Mr Stephen (as the Head of Compliance) who was responsible for the recording, management and disclosure of conflicts.

37. Mr Virk was only required to take reasonable steps and it was not reasonable to expect him, having moved to Dubai, to manage Mr Ewing's day-to-day contact with SVS staff, the relevant conflict of interests having been previously identified at a Board meeting which Mr Virk chaired. Further, Mr Virk was not personally responsible for intervening, given Mr Ewing's role at the time and the involvement of Compliance. Any failings in relation to this conflict are SVS's failings at a corporate level and Mr Ewing's and/or Mr Stephen's failings at an individual level.

38. Notwithstanding that it was not his responsibility, Mr Virk also held the reasonable belief that the conflict was being managed appropriately. Mr Ewing's other role outside the firm had been discussed openly at SVS and identified at a Board meeting, and the Ingard Conflict had also been discussed in connection with a skilled person's report. Mr Virk reasonably relied on Mr Stephen's awareness of the Ingard Conflict in his belief that the conflicts were being managed appropriately.

39. The identification and management of the Angelfish Conflict was not within the scope of Mr Virk's responsibilities. That responsibility sat with Mr Stephen and Mr Flitcroft himself. As with the Ingard Conflict, the Angelfish Conflict similarly concerned a long-standing director of SVS and was considered by SVS, including SVS Compliance, to have been managed in accordance with SVS's conflicts of interest policy. Any failings in relation to this conflict are SVS's failings at a corporate level and Mr Flitcroft's and/or Mr Stephen's failings at an individual level.

40. Notwithstanding that it was not his responsibility, Mr Virk also held the reasonable belief that the conflict was being managed appropriately. The Angelfish Conflict had been identified and steps taken to manage it within SVS by a number of measures, including the inclusion of text within the investor presentation and information memorandum for the Angelfish preference shares. Mr Virk reasonably relied on Mr Stephen's awareness of the Angelfish Conflict in his belief that the conflicts were being managed appropriately.

41. **Mr Virk was fully aware: (1) of Mr Ewing's role in arranging the investment in the Ingard Property Bond 1, in the structuring of which Mr Virk had been directly**

involved; (2) that Ingard relied on the fundraising target on which SVS had advised; and (3) that SVS was reliant on the success of the bond, in order to recover fees that were owed to it by Ingard. SVS then invested clients' money into these bonds. Mr Virk was also part of '*Project Bald Eagle*' (referred to in paragraph 4.106 of this Notice), alongside the directors of Ingard, the aim of which was to get the bond listed. Mr Virk and SVS chose an investment which produced large commissions for SVS and which assisted a director of SVS (Mr Ewing); the conflict was not disclosed in writing to customers or their financial advisers, until after the investment had been made. The Authority considers that this was an obvious conflict of interest, at the heart of which was Mr Virk, and that the conflict needed to be appropriately managed, which it was not.

42. **There is no evidence that discussions took place at Board level (or below) about the Ingard Conflict, and no customer disclosure took place prior to investments by SVS in the Ingard Property Bond 1. The Authority has not seen any evidence that Mr Virk informed Mr Stephen of the assistance that SVS (and Mr Virk) had provided to Ingard in the structuring of the bond.**

43. **Similar issues arose with respect to Mr Virk's identification and management of the Angelfish Conflict. Mr Virk was aware of the Angelfish Conflict which he had discussed with Mr Flitcroft in some detail, but he did nothing to manage that conflict appropriately or to check that others had done so. As with the Ingard Conflict, the Angelfish Conflict was another example of Mr Virk favouring investments which paid SVS significant commission.**

44. **The Authority considers that the Ingard Conflict and the Angelfish Conflict fell within the scope of issues with which Mr Virk should have concerned himself as a CF1 director and as the holder of the CF28 function notwithstanding his relocation to Dubai in August 2016. Accordingly, Mr Virk was not entitled to avoid his responsibility for managing the conflicts, and it was unreasonable for him to rely entirely on Mr Stephen both in this regard and with respect to updating the CoI Register at the time. Mr Virk has not provided evidence of any steps taken at the time by him to manage the obvious conflicts of interest. Accordingly, the Authority considers that Mr Virk failed to take reasonable steps to ensure that the Ingard Conflict and the Angelfish Conflict were managed appropriately.**

(b) Disclosure of the BRC Loan (and its novation) and the loan from CFBL to Company X

45. It is accepted by Mr Virk that the BRC Loan amounted to a conflict of interest which required appropriate management by SVS. Mr Virk considers that this conflict had been managed appropriately, so as to ensure that those making decisions in respect of the CFBL Bonds were not aware of the existence of the loan. The BRC Loan was known within SVS's senior leadership, and Mr Stephen was also aware of it. It was Mr Stephen's responsibility to record this conflict in the CoI Register and to ensure appropriate disclosure to customers.

46. The Model Portfolio Employee was the decision-maker for the CFBL Bonds and was not aware of the BRC Loan. There is no evidence that he was put under any pressure to invest

in the CFBL Bonds. Its existence could not have impacted his decision-making in respect of this investment. Accordingly, whilst Mr Virk accepts the BRC Loan amounted to a conflict, he considers it was managed appropriately.

47. Mr Virk raised the loan from CFBL to Company X with Mr Stephen prior to Company X entering into the loan agreement. Mr Virk was told by Mr Stephen that, since he was an unpaid consultant to Company X and was not an employee, shareholder or director of it and had no direct or indirect financial interest in it, there was no conflict of interest for him to disclose. Mr Virk recalls that Mr Stephen's advice was unequivocal on this point.

48. Accordingly, he did not consider that the matter needed to be disclosed. Mr Virk took reasonable steps by obtaining advice from Mr Stephen and then following that advice.

49. **Following a request from the Authority dated 11 May 2017 requiring SVS to provide information on conflicts of interest, Mr Stephen emailed the SVS Board asking them to review an attached CoI Register and provide him with information on any conflicts. This request was not limited to directorships that the individuals may have had in connected companies. He then had to chase for responses on two further occasions. On 24 May 2017 he asked the directors as follows: "*In addition I need to clarify any potential conflicts with each of the Directors as I'm aware that there may be a potential conflict with the Corporate Finance Bond and loans made by the Bond to separate legal entities where directors have an interest in that entity*" (see paragraph 4.83).**

50. **The Authority considers that Mr Virk's response that day (see paragraph 4.84 of this Notice), stating that: "*I can confirm that as far as I am aware no company where I am a director, shareholder or employee has received a loan from any of the corporate bonds where SVS as [sic] facilitated funds through the SVS model portfolio",* was false.**

51. **Mr Virk accepts that the BRC Loan (as novated to CFBL) was a conflict of interest. Mr Virk would have seen that the CoI Register (specifically sent with the email by Mr Stephen requesting disclosure) did not reference the BRC Loan. Mr Virk did not then disclose the BRC Loan when requested to do so, when he clearly should have done. Mr Virk cannot excuse that failure by asserting that it was Mr Stephen's responsibility to record the conflict in the CoI Register.**

52. **The Authority considers that Mr Virk knowingly failed to disclose this clear, and admitted, business conflict of interest, as he was required to do. Whether or not the Model Portfolio Employee and/or SVS's senior leadership was aware of the BRC Loan and its novation to CFBL is irrelevant to that failure.**

53. **Mr Virk acted as a consultant for Company X and was involved in it obtaining a loan from CFBL at the same time as SVS was placing investors' money into CFBL Bonds (see paragraphs 4.80 to 4.82 of this Notice). Mr Stephen denies that he gave advice to Mr Virk with respect to the disclosure of his connection with Company X, and the Authority considers that, if he had done so, the obvious response by Mr Virk to Mr Stephen's email (referred to in paragraph 49), would have been to refer to the loan and note Mr Stephen's earlier advice in his response. He did not do so. Accordingly, the Authority considers that Mr Virk failed to take any steps to disclose this personal conflict of interest, as he was required to do.**

(c) Specialist Advisors

54. SVS's contract with Specialist Advisors to produce marketing materials for the Model Portfolios did not amount to a conflict of interest as between SVS and its clients. Common management between CFBL and Specialist Advisors was not, in itself, sufficient for a conflict of interest to have arisen. There is no suggestion that a genuine service provided by Specialist Advisors was not provided. This was an arms' length, commercial arrangement and SVS felt no pressure to continue it (and in the end SVS aborted the service and the brochure was not used). There was no consumer disadvantage (note SYSC 10.1.5G[8]).

55. SVS's contract with Specialist Advisors to create a UCITS structure also did not amount to a conflict of interest as between SVS and its clients. SVS engaged Specialist Advisors on a commercial, arms' length basis in conjunction with discussions that it was having with other potential providers. This was a genuine project entirely separate from any investments that the Model Portfolios made into fixed income products. It was not, in any way, related to SVS's Model Portfolio investment decision-making process. There was no risk of disadvantage to the Model Portfolio customers, particularly given the early stage of the proposals and, in any event, the project was never implemented. In addition, Mr Stephen was involved in this project and did not consider that it raised any conflict of interest issues.

56. In any event, Mr Virk was not responsible for the marketing or the UCITS services as between SVS and Specialist Advisors, nor was he responsible for managing conflicts. It is insufficient to assert that there was common ownership between CFBL and Specialist Advisors and thereafter to assert that a conflict of interest arose. Proximity in itself is not sufficient.

57. Following requests for information, conflicts of interests were disclosed to the Authority during 2017. The Authority reached the view, in September 2017, having looked carefully at SVS's business, that conflicts were being appropriately managed by SVS.

58. **SVS engaged Specialist Advisors to produce marketing material, as referred to in paragraphs 4.71 – 4.75 of this Notice. This engagement took place at the same time as SVS was investing in CFBL; both Specialist Advisors and CFBL were companies over which Mr Anderson had significant control. 2% of the 12% commission due to SVS for investing clients' funds into CFBL was paid by Specialist Advisors. The Authority considers that Mr Virk (and SVS) had a close relationship with Mr Anderson and his companies, which needed careful management in light of the potential for a conflict of interest.**

59. **Mr Virk had knowledge of the circumstances of the engagement of Specialist Advisors to produce the marketing material and did not disclose these circumstances to Mr Stephen. Mr Stephen stated to the Authority in interview that, had he known about it at the time, he would have considered it to be a conflict of interest which should have been managed appropriately. The Authority considers that this engagement was a conflict of interest and that Mr Virk failed to take reasonable steps to identify and manage it.**

[8] SYSC 10.1.5G "it is not enough that the firm may gain a benefit if there is not also a possible disadvantage to a client, or that one client to whom the firm owes a duty may make a gain or avoid a loss without there being a concomitant possible loss to another such client".

60. **The Authority also considers that the provision of UCITS consultancy services by Specialist Advisors to SVS (as referred to in paragraphs 4.76 - 4.79 of this Notice) gave rise to a potential conflict of interest. The intention appears to have been to unitise the Model Portfolios, which meant that Mr Anderson's two businesses would both design the UCITS structure through Specialist Advisors and (through CFBL) control the largest single investment within the proposed UCITS fund. In the Authority's view, considering all the circumstances of the case and the relationship between Mr Virk, SVS and Mr Anderson and his companies, a potential conflict of interest arose, and this should have been disclosed to Mr Stephen and appropriately managed. Because it was not, the Authority considers that Mr Virk failed to take reasonable steps to identify and manage the UCITS consultancy services conflict.**

61. **The Authority considers that there was a risk of consumer disadvantage through these arrangements to provide marketing material and UCITS consultancy services, such risk arising from the risk of SVS preferring to place client funds to Mr Anderson's investment vehicles so as to further this relationship, rather than seek a better, or alternative, investment or provider.**

Decision to introduce a mark-down on fixed income disinvestments

62. Mr Virk recalls that there had been a discussion for some time about whether to introduce a fee in circumstances where a customer wished to exit the Model Portfolios. Mr Virk's understanding was that SVS's primary obligation in those circumstances was to achieve the best outcome for its clients when executing trades. Mr Virk recalls that Mr Stephen had stated that CFBL would only buy back investments in CFBL Bonds at 60% of their value, and that he considered the figure of 10% to reflect the bid/offer spread that was achievable on a best execution basis, in circumstances whereby SVS would be taking the disinvested product onto its own principal trading book. Mr Virk recalls that there were instances when some of these investments remained on the SVS principal trading book for up to six months. On that basis, SVS was taking market risk and tying up its own capital.

63. Mr Virk took reasonable steps by considering permissible approaches and in taking advice from Mr Stephen on whether introducing the disinvestment spread was the right thing to do from a regulatory perspective and whether it would be in the best interests of SVS's customers. Deference to Mr Stephen's view was entirely reasonable in the circumstances.

64. Mr Virk did not lead the decision to introduce the mark-down; but rather he was seeking, with others, to identify a practical solution to the matter at hand. Having considered the options, and in reliance on Mr Stephen's advice, Mr Virk, the other directors and the Model Portfolio Team more broadly considered that the introduction of a fixed percentage disinvestment spread to be applied on the customer's investment was an acceptable solution.

65. As to SVS's obligation to inform customers of the introduction of the disinvestment spread, Mr Virk was not responsible for the day-to-day operation of the Model Portfolios. Contact with IFAs was the responsibility of the individuals tasked with the day-to-day operation of the Model Portfolios, together with the responsible director for them. Mr Virk took

reasonable steps to ensure that customers would be informed, and he discharged that duty appropriately.

66. **If SVS's clients held their interest in their fixed income investments until maturity, they could have expected to receive back 100% of the price which they had paid for that interest, unless the bond issuer had become insolvent in the meantime. Whilst the fixed income investments were being held, clients were also entitled to their share of the regular coupon payments which were made by the product issuers. Furthermore, during that period SVS accounted to clients for the value of the fixed income investments at par (i.e. 100% of their issue price). At some point prior to 2 November 2018, it was suggested within SVS that clients who sought to disinvest should no longer receive the full value of the fraction of the fixed income investments currently attributed to them. The approach taken by SVS was for it, as principal, to acquire such investments from the disinvesting clients at 90% of their par value and then allocate them to other clients invested in the Model Portfolios at 100%. The person who conducted the trades in question for SVS stated to Mr Stephen and others on 5 December 2018 that: *"The models will purchase via CROSS from disinvesting clients at MID [mid-market price]. The client will be charged the flat 10% thereafter as a contract charge. This has the net effect of the firm making the 10% cut on price".***

67. **The fixed income investments within the Model Portfolios were from different bond programmes, each of which had different maturity dates and preference share issues. Accordingly, there was no single maturity date for the Model Portfolios, at which a disinvestment mark-down could be avoided. Although investors were informed that the fixed income investments should be held for five years, they were entitled to realise their investments at any time in accordance with SVS's Model Portfolio terms and conditions of business. Since the majority of the £69.6 million invested in the Model Portfolios represented money invested on behalf of SVS's clients for the purpose of funding their pensions, the Authority considers that Mr Virk must have known that certain of those clients were likely to wish to realise their investments for retirement, by disinvesting, before some or all of those maturity dates. This meant that, sooner or later, certain of the investors would incur the 10% disinvestment mark-down. In practice, the revenue which accrued to SVS from the 10% mark-down totalled £359,800.**

68. **Mr Virk asserts that the only other option available to investors would have been for the investments to be sold in the secondary market or for SVS to buy them at around 60% of their par value, reflecting what CFBL had apparently said was the likely secondary market price for CFBL's bonds. However, there is no evidence that Mr Virk, or SVS, conducted any investigation of the secondary market price for the fixed income investments held in the Model Portfolios; rather, it appears that they relied on this understanding which appears to reflect what Mr Anderson of CFBL had told them.**

69. **Prior to the adoption by SVS of the mark-down, SVS had itself made a market for the fixed income products by routinely using the Model Portfolios to purchase them from disinvesting clients at par value (100%). Accordingly, the Authority considers that Mr Virk is wrong to suggest that the only other option available to disinvesting investors would have been a sale at a discount of about 40%; the**

investments could have been purchased by SVS's Model Portfolios at par, as had previously been the case.

70. **The Authority has not seen any evidence that SVS was holding the disinvested investments on its principal book at all, let alone for up to six months, as asserted by Mr Virk to the Authority, and the evidence referred to in paragraph 62 suggests the contrary. The Authority concludes that, in reality, there was no market risk for SVS and that the 10% mark-down was not a "best execution" market spread; it simply constituted a profit for SVS. As such, the disinvestment mark-down scheme was contrary to investors' best interests. Further, that profit was not fairly disclosed to clients at the appropriate time, so clients lost the opportunity of deciding not to invest at all or subsequently not to disinvest on those terms. The Authority concludes that SVS (and Mr Virk) saw an opportunity to make a profit of 10% from disinvesting clients without fairly disclosing it, and took that opportunity.**

71. **Mr Virk has sought to avoid responsibility by asserting that he followed Mr Stephen's advice, and that deference to Mr Stephen was reasonable in the circumstances. Whilst the Authority considers that Mr Stephen was part of the decision to impose the disinvestment mark-down, this does not absolve Mr Virk of his responsibility in circumstances where he led the firm's decision to introduce the mark-down, and it was so obviously to the detriment of investors and for the enrichment of SVS. In addition, the Authority considers that Mr Virk did not need to be in day-to-day contact with IFAs or the Model Portfolios to know that the introduction of the 10% mark-down, not previously applied, could not be consistent with what investors had previously agreed to. Further, Mr Virk failed to take reasonable steps to check that clients were informed of the disinvestment mark-down at the appropriate time.**

<u>Concentration risk</u>

72. The Authority has asserted that Mr Virk failed to take action to stop SVS from continuing to invest in CFBL Bonds, after SVS had provided an assurance to seek to reduce the concentration of the CFBL Bonds within the Model Portfolios. SVS responded on 1 February 2018 to emails from the Authority in November 2017 and January 2018 (these had outlined a series of concerns in relation to the CFBL Bonds including concentration risk arising from SVS's investment of Model Portfolio monies into the CFBL Bonds). The email response stated "*We accept that the SVS model portfolios have issuer concentration risk to CFBL. Notwithstanding our further comments we will look to reduce the concentration risk of this issuer within the Model Portfolios".*

73. Mr Virk was not involved in the relevant decision-making process regarding further investments into CFBL Bonds in the Model Portfolios and did not have any other involvement or knowledge beyond being copied in on email exchanges between the Authority and SVS. Mr Stephen confirmed that it was acceptable for SVS to continue to invest in fixed income products.

74. "*Looking to reduce*" is not the same as affirming that there will be a reduction in the concentration of this issuer in the Model Portfolios. In any event, SVS did reduce the concentration of CFBL Bonds held in the Model Portfolios from 39.3% on 31 March 2018 to 29% on 1 July 2019. This assurance also did not make any reference to SVS not making further investments in CFBL Bonds. The assurance related to the concentration (i.e. proportion) of CFBL Bonds in the Model Portfolios and did not relate to other issuers. By explaining that SVS would *"look to reduce"*, SVS did not set out a timeframe for reducing the concentration, nor even undertake that the concentration would be reduced (although SVS did in fact reduce the concentration).

75. It is wrong to criticise Mr Virk for SVS not acting in accordance with the "spirit" of the Authority's concerns. The Authority's concerns, raised in its correspondence of November 2017 and January 2018, specifically related to concentration risk in CFBL, and it required SVS to consider the particular risks posed by that investment. That correspondence did not, for example, impose a requirement to reduce concentration in fixed income investments more generally or preclude the ability to invest in other fixed income products.

76. **Following earlier email correspondence, the Authority emailed SVS on 4 January 2018 (copying all the directors including Mr Virk) with its concerns regarding SVS's approach to CFBL stating, amongst other things, that: "*we are concerned that you do not appear to recognise the concentration risk posed by only investing with one bond provider where clients may be invested in several bond issuances. We would have expected a higher level of due diligence in order to give you the necessary comfort to invest such a large proportion of the model portfolio's* [sic] *with one bond provider…. We are concerned that you do not appear to be aware of the underlying investments in the CFBL bonds pre-investment".***

77. **The Authority repeated its concerns on 23 January 2018 stating: "*given the fact you are not aware of the underlying investments in the CFBL bonds pre-investment, there is a risk that by investing a significant proportion of the model portfolios in this investment without this information it may pose a risk for the rest of the portfolio"* and *"The underlying investments on the bonds are diversified…. does not prevent a systemic failure at the management of CFBL providing the loans to the various underlying companies…."*.**

78. **Significant investments were made into CFBL including on 31 January 2018, after and notwithstanding the Authority's clear and recent expressions of concern. As referred to in paragraph 4.94 of this Notice, a further £5,106,150 was invested by the Model Portfolios in CFBL Bond Series 9 between 31 January 2018 and 11 May 2018, including £2,000,000 on 20 March 2018. Accordingly, in the period immediately after the assurance, very significant sums were invested. In addition, Mr Virk was integral to SVS's subsequent investment in the ICFL Bond, a very similar investment product to the CFBL Bonds, and where the bond issuer was also connected to Mr Anderson.**

79. **Mr Virk took no action to ensure compliance with the assurance given by SVS to the Authority; he received emails showing the significant investments into CFBL and did nothing to prevent or query further investments. As indicated above, the Authority considers Mr Virk remained involved in investment decision-making at SVS. Mr Virk's assertion, that a reduction in concentration in CFBL between 31**

March 2018 and 1 July 2019 is a "*complete answer*" to SVS's assurance to the Authority on 1 February 2018, fails to take into account the significant £2,000,000 investment made on 20 March 2018, in the weeks immediately after the assurance was made, and the further significant investments totalling over £3,000,000, in the months shortly afterwards. The concerns set out in the Authority's correspondence were not limited to the CFBL Bonds, but also related to the fact that SVS was exposing its clients to the risk of a systemic failure at the management of CFBL.

80. **The Authority is not seeking to re-characterise the correspondence; it is looking at its obvious meaning, taking into account its proper context following SVS's recent engagement with the Authority. The Authority is therefore not seeking to criticise Mr Virk for acting outside the "spirit" of the correspondence.**

81. **Mr Anderson had introduced and advised ICFL, and Mr Virk was well aware of this. It is not credible to suggest that Mr Virk and SVS were appropriately addressing the Authority's concerns, as set out in the email correspondence, by amongst other things, building up new concentrations in ICFL, i.e. by increasing the concentration in another bond provider connected to Mr Anderson and thus to CFBL.**

82. **The Authority was entitled to expect Mr Virk and SVS to comply with the assurance SVS gave to it. Mr Virk did not take reasonable steps to ensure that SVS complied with the assurance as set out in its email to the Authority of 1 February 2018.**

Sanction

83. Mr Virk considers there should be no penalty imposed on him and, in all the circumstances, a prohibition is neither warranted nor necessary. The imposition of a prohibition order on Mr Virk would not be within the range of reasonable decisions open to the Authority. He does not represent a risk to the public in the future.

84. If a financial penalty is warranted any breaches were not deliberate or reckless and he has not failed to act with integrity; accordingly, the level 4 or 5 factors do not apply at Step 2 of the penalty calculation. It is relevant to note that little, or no, profits were made or losses avoided as a result of any breach, either directly or indirectly; and any breach was committed inadvertently (particularly given that Mr Virk was not responsible for the operation of the Model Portfolios and took advice from SVS's Compliance department appropriately throughout the Relevant Period).

85. **The Authority has determined that Mr Virk was reckless, and failed to act with integrity, in the matters set out at 5.3 of this Notice; and that he failed to exercise due skill, care and diligence in managing the business of SVS, in the matters set out at 5.4 of this Notice. It considers that the imposition of a prohibition order is reasonable and proportionate for the reasons set out at paragraphs 6.24 and 6.25 of this Notice. In addition, the Authority considers the level 4 or 5 factors (referenced in DEPP 6.5B.2G(12)) apply for the reasons set out at paragraph 6.9 of this Notice, and that the breaches were not committed inadvertently, as suggested by Mr Virk.**

Fairness and disclosure

86. Mr Virk considers that an adequate and robust disclosure exercise has not been carried out by the Authority. This has created a situation whereby crucial evidence relating to key events is missing. This lack of access and lack of adequate disclosure, including at the appropriate time and manner, has resulted in Mr Virk being hampered in his ability to properly defend himself. Mr Virk is also concerned that the Authority failed to carry out a rigorous investigation and interview key witnesses; he considers that the Authority proceeded on the basis it would take action against him, even before commencing the investigation.

87. Mr Virk points to a number of disclosure failures during the investigation, including late disclosure of relevant interviews transcripts and relevant material shortly before his oral representations meeting. The Tribunal has recently expressed concerns about the Authority's disclosure and investigation failures in *Seiler and others v Financial Conduct Authority*[9] and found that it could not be satisfied there were no other relevant documents that should have been disclosed. The same issues arise in Mr Virk's case and have resulted in unfairness towards him.

88. **The Authority through the relevant team in the Enforcement and Market Oversight Division has responded to all the concerns related to disclosure which have been raised by Mr Virk. The Authority's disclosure obligations, which apply to the giving of the Warning Notice and this Notice to Mr Virk, are set out in section 394 of the Act. This requires the Authority to allow the recipient of a specified statutory notice access to: (1) the material on which the Authority relied in taking the decision which gave rise to the obligation to give the notice; and (2) any secondary material which in the Authority's opinion, might undermine that decision.**

89. **The Authority accepts that there has, on occasion, been late disclosure, but it is satisfied, as at the date of this Notice, that there are no other relevant documents that should have been disclosed and does not consider that any unfairness has resulted to Mr Virk as a result.**

90. **Any concerns that Mr Virk has about the Authority's conduct may be pursued separately by referring the matter to the Authority's Complaints Scheme established under the Financial Services Act 2012.**

[9] Seiler and others v Financial Conduct Authority [2023] UKUT 00133 (TCC). https://www.gov.uk/tax-and-chancery-tribunal-decisions/thomas-seiler-louise-whitestone-and-gustavo-raitzen-v-the-financial-conduct-authority-2023-ukut-00133-tcc