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## FINAL NOTICE

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**To:** Mr Craig McNeil  
**Individual reference:** CMX01249  
**Date:** 21 September 2015

### 1. ACTION

- 1.1 For the reasons set out below and pursuant to section 56 of the Financial Services and Markets Act 2000 ("the Act"), the Financial Conduct Authority (the "Authority") hereby makes an order prohibiting Mr Craig McNeil ("Mr McNeil"), from performing any significant influence function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. This order takes effect from 21 September 2015.
- 1.2 Further, for the reasons set out below and pursuant to section 66 of the Act, the Authority hereby imposes a financial penalty on Mr McNeil of £350,000 in respect of his failure to comply with Statements of Principle 4 and 6 of the Authority's Statements of Principle and Code of Practice for Approved Persons ("APER").
- 1.3 Mr McNeil agreed to settle at an early stage of the Authority's investigation and therefore qualified for a 30% (stage 1) reduction in penalty, pursuant to the Authority's executive settlement procedures. Were it not for this discount, the Authority would have sought to impose a financial penalty of £500,000 on Mr McNeil.

### 2. REASONS FOR THE ACTION

- 2.1. The Authority has decided to take this action because, during the period from approximately February 2008 to December 2009 ("the Relevant Period"), Mr McNeil's conduct fell short of the standards required by the Authority of approved persons. In particular, Mr McNeil acted in breach of Statements of Principle 4 and

6 in his capacity as an approved person performing controlled functions at Keydata Investment Services Limited (now dissolved) ("Keydata") and failed to meet the minimum regulatory standards that are expected of an approved person performing controlled functions involving the exercise of significant influence.

2.2. Specifically, Mr McNeil failed:

- (1) in breach of Statement of Principle 4, to disclose information of which the Authority would reasonably expect to have been given notice regarding the failure of SLS Capital S.A. ("SLS"), a special purpose vehicle incorporated in Luxembourg, to make payments that were due to Keydata either on time or at all in respect of certain investment products provided by Keydata that were underpinned by SLS; and
- (2) in breach of Statement of Principle 6, to act with due skill, care and diligence in relation to the purchase of a collateral portfolio of contestable life policies ("the Collateral Portfolio") as security for Keydata's exposure to SLS.

2.3. By virtue of his conduct in relation to these matters, the Authority considers that Mr McNeil is not fit and proper to perform any significant influence functions in relation to any regulated activity carried on by any authorised or exempt person or exempt professional firm.

### **3. STATUTORY PROVISIONS, REGULATORY GUIDANCE AND POLICY**

#### **Statutory provisions**

- 3.1 The Authority's statutory objectives, set out in section 1B of the Act, include the protection of consumers and protecting and enhancing the integrity of the UK financial system.
- 3.2 The Authority has the power, pursuant to section 56 of the Act, to 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 the 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 exempt professional firm. Such an order may relate to a specific regulated activity, any regulated activity falling within a specified description, or all regulated activities.
- 3.3 The Authority also has the power, pursuant to section 66 of the Act, to impose a penalty on approved persons of such amount as it considers appropriate where it

appears to the Authority that the approved person is guilty of misconduct and it is satisfied that it is appropriate in all the circumstances to take action.

- 3.4 A person is guilty of misconduct if, while an approved person, he fails to comply with a statement of principle issued under section 64 of the Act or has been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under the Act.

### **Fit and Proper Test for Approved Persons**

- 3.5 The part of the Authority's Handbook entitled "FIT" sets out the Fit and Proper Test for Approved Persons. The purpose of FIT is to outline the main criteria for 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.
- 3.6 FIT 1.3.1G provides that the Authority will have regard to a number of factors when assessing a person's fitness and propriety. The most important considerations include the person's competence and capability.
- 3.7 In determining a person's competence and capability, FIT 2.2.1 provides that the Authority will have regard to matters including, but not limited to:
- (1) whether the person satisfies the relevant Authority training and competence requirements in relation to the controlled function the person performs or is intended to perform (FIT 2.2.1G(1)); and
  - (2) whether the person has demonstrated by experience and training that the person is suitable, or will be suitable if approved, to perform the controlled function (FIT 2.2.1G(2)).

### **The Authority's policy for exercising its powers to make a prohibition order**

- 3.8 The Authority's approach to exercising its powers to make prohibition orders is set out at Chapter 9 of the Enforcement Guide ("EG").

### **APER**

- 3.9 The APER Sourcebook of the Authority's Handbook sets out the Statements of Principle in respect of approved persons and conduct which, in the opinion of the Authority, constitutes a failure to comply with them. It also describes the factors that the Authority will take into account in determining whether an approved person's conduct complies with a particular Statement of Principle.
- 3.10 APER 3.1.3G states that, when establishing compliance with, or breach of, a Statement of Principle, account will be taken of the context in which a course of

conduct was undertaken, the circumstances of the individual case, the characteristics of the particular controlled function and the behaviour expected in that function.

- 3.11 In this case, the Authority considers the most relevant Statements of Principle to be 4 and 6.

#### **Statement of Principle 4**

- 3.12 Statement of Principle 4 provides that an approved person must deal with the Authority and other regulators in an open and cooperative way and must disclose appropriately any information of which the Authority would reasonably expect notice.
- 3.13 APER 4.4.4E states that failing to report promptly in accordance with his firm's internal procedures (or if none exist direct to the Authority), information which it would be reasonable to assume would be of material significance to the Authority, whether in response to questions or otherwise, falls within APER 4.4.3E, and is therefore conduct which, in the opinion of the Authority, does not comply with Statement of Principle 4.
- 3.14 APER 4.4.7E states that where an approved person is, or is one of the approved persons who is, responsible within the firm for reporting matters to the Authority, failing promptly to inform the Authority of information of which he is aware and which it would be reasonable to assume would be of material significance to the Authority, whether in response to questions or otherwise, falls within APER 4.4.3E.
- 3.15 An example of an obligation that the Authority expects Firms, and the approved persons responsible for reporting in such circumstances, to fulfil is set out in Chapter 15 of The Supervision Sourcebook ("SUP") of the Authority's Handbook.
- 3.16 Chapter 15 of SUP provides rules on events and changes in condition that a firm must notify; these are the types of event that the Authority must be informed about, usually as soon as possible, if it is to be able to carry out its monitoring function effectively and react in good time to developments that may require a regulatory response.
- 3.17 SUP 15.3.1R provides that a firm must notify the Authority immediately it becomes aware, or has information which reasonably suggests, that any of the following has occurred, may have occurred or may occur in the foreseeable future:
- (1) the firm failing to satisfy one or more of the threshold conditions; or

- (2) any matter which could have a significant adverse impact on the firm's reputation; or
- (3) any matter which could affect the firm's ability to continue to provide adequate services to its customers and which could result in serious detriment to a customer of the firm; or
- (4) any matter in respect of the firm which could result in serious financial consequences to the financial system or to other firms.

### **Statement of Principle 6**

3.18 Statement of Principle 6 states that an approved person must exercise due skill, care and diligence in managing the business of the firm for which he is responsible.

3.19 During the Relevant Period, APER 3.3.1E stated that:

*"In determining whether or not the conduct of an approved person performing a significant influence function complies with Statements of Principle 5 to 7, the following are factors which, in the opinion of the [Authority], are to be taken into account:*

*(1) whether he exercised reasonable care when considering the information available to him;*

*(2) whether he reached a reasonable conclusion which he acted on;*

*(3) the nature, scale and complexity of the firm's business;*

*(4) his role and responsibility as an approved person performing a significant influence function;*

*(5) the knowledge he had, or should have had, of regulatory concerns, if any, arising in the business under his control."*

3.20 APER 4.6 sets out descriptions of conduct which, in the opinion of the Authority, do not comply with Statement of Principle 6. This includes (but is not limited to) failing to take reasonable steps to inform oneself about the affairs of the business for which a person is responsible (APER 4.6.3E), such as permitting transactions without a sufficient understanding of the risks involved (APER 4.6.4E(1)), inadequately monitoring highly profitable transactions or business practices or unusual transactions or business practices (APER 4.6.4E(3)), or accepting implausible or unsatisfactory explanations from subordinates without testing the veracity of those explanations (APER 4.6.4E(4)).

## **The Authority's policy on exercising its power to impose a financial penalty**

- 3.21 Guidance on the imposition of penalties is provided in Chapter 6 of the Authority's Decision Procedure and Penalties Manual ("DEPP"), entitled "Penalties". DEPP 6 states that the Authority will consider the full circumstances of each case when determining whether or not to take action to impose a financial penalty and sets out a non-exhaustive list of factors that may be relevant for this purpose.

## **4. FACTS AND MATTERS RELIED ON**

- 4.1. This section is divided into three sub-sections, namely:

- A: Introduction;
- B: SLS's missed payments to Keydata; and
- C: The Collateral Portfolio

### **A: Introduction**

#### **Keydata**

- 4.2. Keydata was the wholly owned subsidiary of Keydata UK Limited ("Keydata UK"), a company incorporated in Scotland. Keydata's Chief Executive Officer, Stewart Ford ("Mr Ford"), was the majority shareholder and controller of Keydata UK. Keydata had permissions under Part IV of the Act to carry on regulated activities and was therefore an "authorised person" as defined in section 31 of the Act.
- 4.3. Keydata was a product provider which sourced and, through a network of Independent Financial Advisors ("IFAs"), distributed structured investment products for both advised and execution-only sales to retail customers. It launched its first investment products in 2001. The majority of Keydata's products were structured products involving the purchase of corporate bonds and it offered a range of five to six such products at any one time.
- 4.4. Keydata was a product provider that designed and distributed structured investment products. Prior to its administration on 8 June 2009, Keydata had £2.8 billion of its own and other institutions' investment products under administration (including £2.1 billion of assets held on behalf of major financial services firms whose products Keydata administered).
- 4.5. From the beginning of the Relevant Period until it was put into administration, Keydata operated from three separate locations based in London, Reading and Glasgow. Broadly speaking, the London office dealt with sales and marketing, the

Reading office dealt with client monies and the Glasgow office dealt with Keydata's corporate finances.

- 4.6. From the beginning of the Relevant Period until it was put into administration, Keydata's board of directors comprised Mr Ford, Mr McNeil and the Sales Director, Mark Owen ("Mr Owen"). There are no records of any Keydata board meetings. Matters relating to Keydata were discussed at Keydata UK board meetings. Keydata's Compliance Officer, Peter Johnson ("Mr Johnson"), also attended parts of some of these meetings, albeit only in part. Mr Ford, Mr McNeil, Mr Owen and Mr Johnson are referred to collectively as "the Senior Management" throughout the remainder of this notice.

#### **Mr McNeil**

- 4.7. Mr McNeil joined and became a director of Keydata UK in 2000 and became the Finance Director of Keydata in 2001. From the beginning of the Relevant Period until 19 June 2009 when his employment was terminated, he was approved to perform the controlled functions of Controlled Function ("CF") 1 (Director), CF28 (Systems and controls) and CF29 (Significant management) at Keydata, all of which are significant influence functions. Mr McNeil was also the Company Secretary of Keydata UK and Keydata.
- 4.8. Mr McNeil was responsible for the management of Keydata's corporate finance department (located in Glasgow). As Finance Director, he had overall responsibility for financial accounting and management accounting. This included ensuring that Keydata's financial returns and matters related to those returns were reported promptly and fully to the Authority.
- 4.9. Mr McNeil was the only director and member of the Senior Management of Keydata who was based in the Glasgow office.
- 4.10. Keydata's client finance department (located in Reading) dealt with client assets and client money. The Authority considers that, as a Finance Director, Mr McNeil could expect to be informed of matters that could impact on Keydata's corporate finance function, for example, in relation to Keydata's cash flows.
- 4.11. As Company Secretary for Keydata and Keydata UK, Mr McNeil had personal responsibility for keeping minutes of board meetings. Mr McNeil has confirmed that certain board minutes were subsequently altered in that additions were made in relation to the Collateral Portfolio transaction.

### **The SLS Products**

- 4.12. The facts and matters in this notice concern three investment products offered by Keydata from 26 July 2005 to 7 November 2005, namely, the Secure Income Bond ("SIB") issues 1, 2 and 3 (together, "the SLS Products").
- 4.13. The SLS Products invested in bonds issued by SLS ("the SLS Bonds"). SLS was a special purpose vehicle incorporated in Luxembourg. From September 2007, the majority shareholder and controller of SLS was Mr David Elias ("Mr Elias"), a British businessman based in Singapore. The press reported that Mr Elias died in Singapore on 8 May 2009.
- 4.14. The SLS Bonds invested in US senior life settlement policies ("the SLS Assets") and cash, (together, "the SLS Portfolio"). The SLS Assets were intended to produce income and a full return at the end of the term of the SLS Products (through the death of insured lives or the re-sale of the policies in the secondary market), although the return was not guaranteed.
- 4.15. Keydata purchased the SLS Bonds on behalf of investors in the SLS Products. From 26 July 2005 to 7 November 2005, £103 million was invested in the SLS Products by 6,486 retail investors.
- 4.16. Investors in the SLS Products did not pay any fee to Keydata in respect of their investment. However, SLS was required to pay Keydata an initial commission (a portion of which was allocated to the relevant IFAs) and ongoing IFA trail commission based on a percentage of the amount that was invested in the SLS Products. This is set out in more detail below.
- 4.17. The terms of the SLS Products were intended to mirror the terms and conditions of the SLS Bonds. For example, the investment options available through the SLS Products reflected that the SLS Bonds paid interest quarterly or annually.

### **The Authority's investigation**

- 4.18. After Keydata was put into administration on 8 June 2009, Keydata's administrators discovered that SLS had failed to make certain payments that were due to Keydata in respect of the SLS Products since early 2008 and that Keydata had been making payments to investors in respect of the SLS Products from its own corporate resources since August 2008, and to IFAs since November 2008, without notifying them of SLS's missed payments. This is set out in more detail below.



- 4.19. Keydata's administrators also discovered that part of the SLS Portfolio, which underpinned approximately £103 million of investors' monies in the SLS Products, had been misappropriated. SLS was put into liquidation in October 2009 and investors have suffered significant losses. There is no evidence that Mr McNeil was aware that part of the SLS Portfolio had been misappropriated.
- 4.20. Keydata's administrators terminated Mr McNeil's employment on 19 June 2009.
- 4.21. On 9 October 2009, Mr McNeil wrote to Keydata's administrators in relation to Keydata's dealings with SLS, amongst other matters ("the Letter to Keydata's Administrators").
- 4.22. The Authority's concerns in respect of Mr McNeil relate to his knowledge that SLS had failed to make payments that were due to Keydata and the way in which Keydata dealt with this issue.

**B: SLS's missed payments to Keydata**

**Commission, quarterly fees and interest payments**

***Commission***

- 4.23. Keydata received an initial commission from SLS which was 5.5% of the total funds invested in the SLS Products. Keydata retained 2.5% of the initial commission and paid 3% of it on to the relevant IFAs.
- 4.24. SLS was also required to pay IFA trail commission to Keydata in respect of each of the SLS Products on an annual basis. This was 0.5% of the total funds invested through IFAs in each product. Keydata paid the IFA trail commission on to those IFAs who were entitled to receive it.

***Quarterly fees***

- 4.25. SLS was also required to pay fees on a quarterly basis to Keydata in respect of each of the SLS Products. These payments were 1.81% of the funds invested in each product.

***Interest payments***

- 4.26. SLS was also required to make interest payments to Keydata, on either a quarterly or an annual basis, from which Keydata made income payments to investors in the SLS Products.
- 4.27. The commission, quarterly fees and interest payments in respect of the SLS Products were made through the client finance department in Keydata's Reading office. Mr McNeil was informed by this office when SLS failed to make the quarterly fee payments when they became due from February 2008 onwards and

subsequently when SLS failed to make certain interest payments on time from 31 March 2008 onwards and when SLS stopped making interest payments from August 2008 onwards.

#### **Missed quarterly fee payments**

- 4.28. In February 2008, Mr McNeil became aware that SLS had not paid the quarterly fee payment due to Keydata in respect of SIB 2. In March 2008, he became aware that SLS had not paid the quarterly fee payment due to Keydata in respect of SIB 1. In April 2008, he became aware that SLS had failed to pay the quarterly fee payment due to Keydata in respect of SIB 3.
- 4.29. Mr McNeil discussed the missed quarterly fee payments with Mr Ford, who informed him that SLS had decided to withhold payments of the quarterly fees until the SLS Products matured (in about two years' time) because the terms of the contract between Keydata and SLS that provided for these payments did not stipulate when they became payable.
- 4.30. Mr McNeil saw the contract that related to the payment of quarterly fees, which was silent on this point, and he supported the decision to wait until the maturity of the SLS Products before taking any action to recover the outstanding payments. Mr McNeil did not understand or seek to establish why SLS decided in February 2008 to defer future payments of the quarterly fees, when it had previously paid instalments on a quarterly basis.
- 4.31. SLS did not make any further payments to Keydata of the quarterly fees in respect of the SLS Products. Mr McNeil was aware of the continuing situation and of the increasing amount that SLS owed to Keydata in this regard.

#### **Missed interest payments**

- 4.32. Between April 2008 and August 2008, Mr McNeil was aware that SLS had failed to pay certain of the interest payments that were due to Keydata in respect of the SLS Products on time.
- 4.33. On 31 March 2008, SLS failed to pay the quarterly interest payment that was due to Keydata in respect of SIB 1. SLS subsequently made the payment late. However, during the interim period, the related income payment from Keydata to the SIB 1 investors became due. Keydata funded this income payment to the SIB 1 investors from its own corporate account pending receipt of the interest payment from SLS.
- 4.34. On 14 April 2008, Mr McNeil sent an email to Mr Ford titled "*SLS – URGENT*" which stated, "*SLS now owe us c£1.4m – 916K income payments and £482K in fees[sic] Keydata has already funded the 31 March SIB1 quarterly income*

*payment of £648K. The SIB3 quarterly income payment of £268K is due for payment to investors by Wed this week therefore Keydata will have to fund this if monies not received."*

- 4.35. On 30 June 2008, SLS failed to pay the next quarterly interest payment that was due to Keydata in respect of SIB 1. SLS subsequently made the payment late. However, during the interim period, the related income payment to the SIB 1 investors became due. Keydata funded this income payment partly from other monies that it had received from SLS and partly from its own corporate account pending receipt of the interest payment from SLS.
- 4.36. On 13 July 2008, SLS failed to pay the quarterly interest payment that was due in respect of SIB 3. SLS subsequently made the payment late. However, during the interim period, the related income payment to the SIB 3 investors became due. Keydata funded this income payment to investors from other monies that it had received from SLS.
- 4.37. On 29 July 2008, Mr McNeil sent an email to Mr Ford and Mr Owen which stated, *"In addition to the arrears of £967K in quarterly management fees, SLS have now defaulted on quarterly income payments on SIB1 and SIB3"*. Mr McNeil expressed concern about the effect that this and another (unrelated) issue were having on Keydata's cash flow and stated, *"We need to resolve these 2 situations fast as we have limited room to increase the funding position on either issue... I am particularly concerned with SLS where we do not appear to be in control."*
- 4.38. However, the situation was not resolved; instead, it continued to deteriorate. On 18 August 2008, SLS failed to pay the quarterly interest payment that was due in respect of SIB 2. Keydata never received this payment from SLS. From this point onward, SLS failed to make any further interest payments to Keydata in respect of the SLS Products.
- 4.39. Keydata continued to fund the related income payments to investors in the SLS Products when they became due from its own corporate account. Mr McNeil was responsible for releasing the corporate funds to the client finance department in Keydata's Reading office, which made the payments to investors.

#### **Keydata's decision to fund income payments to investors**

- 4.40. When Keydata chased SLS for the interest payments, SLS responded that, pursuant to the terms and conditions of the SLS Bonds, there was a 'buffer period' of about eight weeks from the payment date before it would be in default. Mr McNeil recalls that he asked Mr Ford to clarify the position with Mr Elias. In the meantime, Mr McNeil says that Mr Ford instructed him to fund the income

payments that were due to investors in the SLS Products out of Keydata's corporate account, so that investors would not be affected by SLS's failure to pay Keydata.

- 4.41. The decision to fund payments from the corporate account required board approval and in fact the board was aware that these payments were being made by Keydata.
- 4.42. Keydata released funds from Keydata's corporate account for the purpose of making the income payments to investors and recorded this on the balance sheet as a debt owed to Keydata by SLS. Initially, Mr McNeil thought that this would be a temporary situation and that SLS would still be able to fund the income payments that were due. During the Compelled Interview, Mr McNeil stated that, "*[the] expectation was that it was a short term funding requirement and I relied on the assurances from the CEO that that was the likely outcome.*"
- 4.43. The minutes of the Keydata UK board meeting on 10 October 2008 ("the October 2008 Board Meeting") recorded that, "*SLS Capital Inc have defaulted on income payments for SIB 1 / 2 claiming under contract they have 8 weeks to fund. KISL has funded income payments pending a meeting between SF and SLS to resolve.*"
- 4.44. However, as stated above, the matter was not resolved. The minutes of the Keydata UK board meeting on 13 November 2008 ("the November 2008 Board Meeting") recorded that, "*SF confirmed that following discussions with David Elias of SLS Capital Inc, DE had intimated that there was insufficient liquidity to make income payments in the short term and that [they] were looking to redeem the SLS bonds early (circ April 2009).*"
- 4.45. Mr McNeil says he understood from Mr Ford that SLS's liquidity problem had arisen "*because of the way that the fund was set up*" and that "*there was an asset coverage covenant and that they could only pay out income payments to the extent it had sufficient surplus above that and the kind of message coming through was that the covenant was – the surplus above the covenant wasn't sufficient to enable them to make the payment*".
- 4.46. Mr McNeil therefore knew that SLS's failure to make the interest payments due to Keydata under the SLS Bonds, so that the terms of the income payments due to investors under the SLS Products were adhered to, was the result of a problem with the SLS Products and/or the performance of the SLS Portfolio.
- 4.47. Keydata continued to effect income payments to investors in the SLS Products out of Keydata's corporate funds until Keydata was put into administration in June 2009.

4.48. Mr McNeil knew, or ought to have known, that by continuing to make the income payments that were due to investors in the SLS Products out of its corporate funds, when SLS had not paid the interest due to Keydata under the SLS Bonds, Keydata was masking any problems with SLS and the performance of the SLS Products.

#### **Missed IFA trail commission payments**

4.49. SLS also failed to make certain IFA trail commission payments to Keydata. Mr McNeil recalls that SLS failed to make the payments that were due in respect of SIB 2 in November 2008 and SIB 3 in January 2009 and that Keydata funded the related payments to IFAs from its own corporate funds. Mr McNeil knew, or should have known, that by continuing to make these trail commission payments to IFAs out of its own corporate funds, Keydata was masking any problems with SLS and the performance of the SLS Products.

#### **Keydata's exposure to SLS**

4.50. The amounts due to Keydata from SLS as a result of SLS's missed payments as described above increased over the period until Keydata was placed into administration in June 2009:

- (1) the minutes of the Keydata UK board meeting on 5 February 2009 ("the February 2009 Board Meeting") record that, "*KISL has funded £2.95m of income payments and IFA commission to date.*" Mr McNeil informed Keydata's administrators that £2,700,000 of this amount related to the funding of income payments to investors in the SLS Products;
- (2) during his compelled interview on 2 February 2010 ("the Compelled Interview"), Mr McNeil stated that, by the end of March 2009, Keydata had paid £2,800,000 of its own money out to fund income payments to investors in the SLS Products; and
- (3) towards the end of April 2009, Mr McNeil reported an exposure of £3,080,000 to SLS in Keydata's quarterly regulatory return to the Authority.

#### **Failure to report the problems with SLS to the Authority**

4.51. Although Mr McNeil became increasingly concerned about the problems with SLS, and he considered that this was information of which the Authority would expect to have notice, he failed to ensure that Keydata reported the matter to the Authority. Instead, from February 2009 onwards, he inappropriately relied on assurances, which he says that he received from Mr Ford, that Mr Ford would

make disclosure to the Authority. Mr McNeil failed to inform the Authority himself when he knew that Mr Ford had not in fact done so.

- 4.52. From August 2008, Mr McNeil became increasingly concerned that SLS might default on the interest payments under the SLS Bonds. However, Mr McNeil considered that there was no requirement to report the matter to the Authority at that time, based on his understanding that SLS was not technically in default under the terms and conditions of the SLS Bonds until the end of the 'buffer period' that was provided for under those terms and conditions.

#### **October 2008 Board Meeting**

- 4.53. At the October 2008 Board Meeting, there was a discussion regarding SLS's failure to pay interest payments on the SLS Bonds.
- 4.54. Mr McNeil recalls that a consensus was reached that, if SLS failed to pay the interest due at the end of the 'buffer period', Keydata would report the matter to the Authority: "*[These] discussions were centred around the fact that we, you know there was a requirement to disclose the breach at the end of the bond holder default period under the contract, and that that would be the point at which it became a reportable breach.*"
- 4.55. However, Mr McNeil did not record such a decision in the board minutes of the October 2008 Board Meeting.

#### **November 2008 Board Meeting**

- 4.56. By the November 2008 Board Meeting, Mr McNeil was aware that SLS's continuing failure to make the interest payments was due to a liquidity problem and of the decision to purchase the Collateral Portfolio as security for Keydata's exposure to SLS (this is set out in more detail below). By this time, Mr McNeil was in no doubt about Keydata's obligation to report the matter to the Authority.
- 4.57. Mr McNeil stated that the "key decision" at the November 2008 Board Meeting was to report the position regarding SLS to the Authority: "*the more important tenor from the meeting was that because, you know, because as we said earlier on that the view was that the income payments were in default at the end of the contractual default period that that was a point when I became aware and certainly the Board entered, had discussions about the requirement to report that to the FSA and you know, there was a clear, you know there was no –at that – my recollection was there was no contention over the issues that it was black and white that it had reached its default period, there was a obligation to report to the FSA.*"

- 4.58. Mr McNeil says that it was also agreed at this meeting that Mr Ford would report the matter to the Authority personally. Both Mr Ford and Mr Owen dispute that this was discussed at the meeting.
- 4.59. Despite his recollection that the decision to report the position regarding SLS to the Authority was the "*key decision*" made at the November 2008 Board Meeting, Mr McNeil did not record this in the minutes.

#### ***February 2009 Board Meeting***

- 4.60. At the next board meeting, which took place in February 2009, Mr McNeil became aware that the Authority had not been informed about the position regarding SLS. Mr McNeil says there was a discussion at this board meeting about whether to report to the Authority the position regarding SLS and that a decision was made not to report which he was not comfortable with. That there was such a discussion and decision is disputed by the other attendees.
- 4.61. Mr McNeil did not record a decision not to report the matter to the Authority in the board minutes.

#### **Continuing failure to report to the Authority**

- 4.62. As Finance Director, Mr McNeil was the director within Keydata responsible for reporting on financial matters to the Authority. Towards the end of April 2009, Mr McNeil reported to the Authority, as part of Keydata's quarterly regulatory returns, a large exposure of £3,080,000 to SLS. However, Mr McNeil has accepted that this return was not accompanied by any explanation of how this exposure had arisen or the impact that it could have on Keydata and on investors in the SLS Products.
- 4.63. At the Keydata UK board meeting on 30 April 2009 ("the April 2009 Board Meeting"), Mr McNeil was again made aware that no disclosure had been made to the Authority. By this time, Keydata had funded £4.2 million in income payments to investors from its own accounts and SLS, in turn, owed Keydata over £4 million in interest payments. Mr McNeil was also aware that no progress had been made by Mr Ford in resolving the matters with SLS.
- 4.64. Mr McNeil was therefore in no doubt about the seriousness of the situation and the urgency with which the Authority ought to have been notified. He knew, or should have known, that by funding payments to investors and IFAs itself, Keydata was masking problems with SLS and the SLS Products. However, he did not inform the Authority.
- 4.65. Mr McNeil considered that disclosure in these circumstances fell within the remit of "compliance" which was not his responsibility. He also continued to rely on

assurances, which he says that he received from Mr Ford, that Mr Ford was continuing to liaise with Mr Elias and would make the disclosure to the Authority when Keydata received an asset cover certificate on the SLS Portfolio. It was anticipated that this certificate would provide confirmation that the SLS Portfolio was performing as expected.

- 4.66. On 24 May 2009, Mr McNeil says that Mr Ford informed him that Keydata had not received the asset cover certificate in respect of the SLS Portfolio and that the Authority had requested an urgent meeting with Keydata on 1 June 2009. Despite Mr Ford's repeated failure to provide the Authority with full disclosure of matters concerning SLS, Mr McNeil says that once again he agreed that Mr Ford should make full disclosure to the Authority and he relied on Mr Ford to make the disclosure at the meeting on 1 June 2009. Mr McNeil did not take any steps to disclose the matter himself.
- 4.67. Prior to the meeting between Keydata and the Authority on 1 June 2009, Mr McNeil became aware of the reported death of Mr Elias. Mr McNeil knew, or should have known, that Mr Elias' death was likely to affect the ability of Mr Ford and Keydata to resolve matters with SLS. Notwithstanding this development and Mr Ford's history of failing to report the position regarding SLS to the Authority despite undertaking to do so, Mr McNeil did not seek confirmation from Mr Ford that he had reported the matter.
- 4.68. Mr McNeil accepts that he did not take any steps to inform the Authority of the position regarding SLS, even after Keydata was placed into administration on 8 June 2009. He also accepts that *"looking back, that's clear I should have taken legal advice and reported it to the FSA"*.
- 4.69. In all of the circumstances, Mr McNeil knew, or ought to have known:
- (1) of the risk of detriment to investors in the SLS Products due to SLS's failure to make income payments and the risk that SLS would fail to return capital on the maturity of the SLS Products;
  - (2) that by paying IFAs and investors out of its own funds, Keydata was masking the problems with the SLS Products; and
  - (3) that these matters were material and constituted information of which the Authority would reasonably expect notice.
- 4.70. Mr McNeil's continued reliance on the assurances he says that he received from Mr Ford over an extended period of time was unreasonable given what he knew, or



should have known, about the matters outlined above and the repeated failures of Mr Ford to fulfil past assurances.

**C: The Collateral Portfolio**

- 4.71. Mr McNeil did not challenge the decision that Keydata should enter into a complicated transaction to obtain security for its exposure to SLS's missed payments and allowed the transaction to go ahead without having a clear understanding of the transaction and the risks involved. Although monies were paid by Keydata in respect of the Collateral Portfolio transaction, the policies were not acquired.
- 4.72. The minutes of the November 2008 Board Meeting (later amended by Mr McNeil, he says, in order to clarify his understanding of the transaction), at which Mr McNeil became aware of SLS's liquidity problem, record a decision to purchase the Collateral Portfolio at an undervalue from SLS to act as security for the income payments payable by SLS to Keydata up to April 2009: *"In the meantime, SF had agreed to acquire a portfolio of contestable policies from SLS as collateral with a projected value of \$12 million (face value \$120 million) when they became non-contestable around April/May 2009. SF stated that the projected collateral value of £7m should comfortably cover SIB 1-3 income payments of £4m payable to end April 2009."*
- 4.73. Mr McNeil's understanding of the proposed transaction was as follows:
- (1) Keydata would purchase the Collateral Portfolio for approximately US\$4 million;
  - (2) the Collateral Portfolio would be worth over US\$12 million when the policies became "non-contestable";<sup>1</sup>
  - (3) the difference between the purchase price paid by Keydata and the value of the Collateral Portfolio when the policies become "non-contestable" would *"more than comfortably cover any exposure we could possibly have under the income payments in default. And also any fee payments, the trail commission payments in default"*; and

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<sup>1</sup> It is common for US life insurance policies to have a two year period in which the policy can be contested for reasons such as suicide and misrepresentation on the Part of the insured. The insurer may, within that period, cancel the policy and return the premiums or contest a claim for death benefit.

- (4) the policies in the Collateral Portfolio would be sold off at regular intervals to provide funds to Keydata to cover its income payments to investors in the SLS Products.
- 4.74. Mr McNeil understood that Keydata would pay for the Collateral Portfolio through a series of transactions as follows:
- (1) Keydata would make an initial payment of £500,000 to SLS's lawyers;
  - (2) Keydata would assign the benefit of future trail commissions on two other financial products (which were unrelated to SLS) to a third party administrator in relation to those products ("the third party administrator"); and
  - (3) the third party administrator would use these future trail commission payments for the purpose of paying the outstanding amount of the purchase price for the Collateral Portfolio.
- 4.75. In fact, as stated above at paragraph 4.71, although monies were paid by Keydata the Collateral Portfolio was not acquired.
- 4.76. Mr McNeil recalled that there was no real discussion of the decision to purchase the Collateral Portfolio at the November 2008 Board Meeting as he understood that Mr Ford had already committed Keydata to the transaction. However, he considered that it was appropriate for Keydata to acquire the Collateral Portfolio as, *"it gave us an immediate way of getting the money back within a number of months."*
- 4.77. Mr McNeil did not take sufficient steps to inform himself about the transaction or to understand the risks that were involved. In particular:
- (1) Mr McNeil could not provide a sufficient explanation for the structure of the transaction as described above;
  - (2) Mr McNeil did not see any contractual documents underlying the agreement between Keydata and SLS or the agreement between Keydata and the third party administrator;
  - (3) Mr McNeil did not verify the current or future value of the Collateral Portfolio, for example, by asking to see the independent professional valuation which he understood had been obtained; and

- (4) Mr McNeil did not verify how ownership of the policies would be transferred from SLS to Keydata or, subsequently, whether ownership of the policies had in fact been transferred to Keydata (see below).
- 4.78. Despite what he knew about SLS's liquidity problem and Keydata's exposure to SLS, Mr McNeil failed to inform himself about the transaction so that he could reach an informed conclusion about it and whether it was in Keydata's commercial interests. Instead, he relied entirely on assurances which he says were given by Mr Ford.
- 4.79. Following the November 2008 Board Meeting, Mr McNeil received instructions from Mr Ford to make a £500,000 payment out of Keydata's corporate account in furtherance of the transaction. Mr McNeil effected this payment without asking any further questions and without having seen any paperwork relating to the transaction. Furthermore, he did not obtain any confirmation (other than assurances from Mr Ford) that ownership of the policies had been transferred to Keydata.

#### **Ownership of the Collateral Portfolio**

- 4.80. Although Mr McNeil had understood from the outset that Keydata would acquire the Collateral Portfolio, at the February 2009 Board Meeting he came to understand that the policies had been transferred to another company that was owned and/or controlled by Mr Ford. In fact, this company did not in the event acquire the policies.
- 4.81. Mr McNeil stated in the Letter to Keydata's Administrators that, "*[he] did not feel comfortable that the collateral was not in [the] name of KISL when it was KISL that had funded the income payments.*" He was also concerned that it would be more difficult to sell the policies, in order to recoup the money that Keydata had paid for them and reduce its exposure to SLS, because they were being held by a company connected to Mr Ford. He says that he therefore asked Mr Ford to provide a letter confirming that he would reimburse Keydata in respect of SLS's outstanding payments.
- 4.82. The minutes of the February 2009 Board Meeting record that, "*SF also agreed to provide KISL with letter confirming that although he had purchased the collateral policies in his name he would reimburse KISL fully from proceeds for outstanding income payments and any outstanding KISL fees.*"
- 4.83. During the Compelled Interview, Mr McNeil stated that Mr Ford never provided this letter. Mr McNeil accepted that he had not taken any steps to follow up on the issue.

- 4.84. Mr McNeil also stated in the Letter to Keydata's Administrators that, at the February 2009 Board Meeting, he *"requested that some of the collateral be sold immediately as had always been agreed"*. However, he recalled that Mr Ford decided not to sell any of the policies until after April 2009, when they would become "non-contestable" and could be sold at a higher price. Although Mr McNeil thought that it was in Keydata's best interests for the policies to be sold on a regular basis, starting as soon as possible, he considered that Keydata had no control over the Collateral Portfolio since it was held by Mr Ford.
- 4.85. The minutes of the April 2009 Board Meeting record that, *"SF reported no real progress was being made with SLS. He had instructed the sale of \$2m of the policies held by SF as collateral against £4.2m of income payments funded to date by KISL. KISL should receive the proceeds in May. Policies will be sold as on as they become non-contestable and KISL funding reimbursed by SF."* These board minutes were prepared by Mr McNeil after the administration of Keydata and so were not approved by the Board.
- 4.86. During the Compelled Interview, Mr McNeil stated that Keydata never received these proceeds. He never saw any evidence that the policies existed. He says he relied entirely on assurances from Mr Ford that the policies were being held by a company controlled by Mr Ford and that Mr Ford had entered into an agreement to sell the policies when they became "non-contestable".

## **5. ANALYSIS OF BREACHES**

### ***Statement of Principle 4***

- 5.1. From 5 February 2009 to 19 June 2009, Mr McNeil breached Statement of Principle 4 because he did not deal with the Authority in an open and cooperative way and failed to disclose appropriately information of which the Authority would reasonably expect notice.
- 5.2. As an approved person at Keydata, Mr McNeil had a responsibility to report information of which the Authority would reasonably expect notice, including any matter which could result in:
- (1) serious detriment to Keydata's customers; or
  - (2) serious financial consequences to Keydata or other firms.
- 5.3. Mr McNeil was aware of information which he knew, or should have known, would be of material significance to the Authority. In particular, Mr McNeil was aware:

- (1) from February 2008 onwards, that SLS had stopped making quarterly fee payments when they became due;
- (2) from August 2008 onwards, that SLS had stopped making interest payments when they became due and that Keydata was making income payments to investors in the SLS Products from its own corporate funds;
- (3) from November 2008 onwards, that SLS's failure to make interest payments was due to insufficient liquidity; and
- (4) that SLS had failed to make the IFA trail commission payments that were due on 18 November 2008 and 13 January 2009 and that Keydata had funded the related payments to IFAs from its own corporate funds.

5.4. In light of the above, Mr McNeil knew, or ought to have known, that:

- (1) the late and missed payments by SLS posed a real risk to investors in the SLS Products; and
- (2) by paying IFAs and investors out of its own funds, Keydata was masking the problems with the SLS Products.

5.5. However, notwithstanding his own view that Keydata should report the position regarding SLS to the Authority from November 2008 onwards, Mr McNeil failed to ensure that the matter was so reported. He inappropriately relied on assurances, which he says that he received from Mr Ford, that Mr Ford would report the matter and, when he knew that it had not been reported, that it did not need to be.

5.6. Mr McNeil was personally responsible for failing to report to the Authority in breach of Statement of Principle 4 from February 2009, when he says he knew that Mr Ford had not reported the matter despite undertaking to previously, until 19 June 2009, when his employment at Keydata was terminated.

5.7. The Authority considers that Mr McNeil's failure to report the position regarding SLS is particularly serious given that he held controlled functions which involved the exercise of significant influence at Keydata and given that he was the director at Keydata with responsibility for reporting on financial matters to the Authority.

5.8. Mr McNeil did not inform the Authority about the position regarding SLS until after he was placed under investigation in December 2009.

5.9. Mr McNeil's failure to ensure that this matter was reported meant that the Authority was not made aware of the risk of detriment to investors in the SLS

Products due to SLS's failure to make income payments and the risk that SLS would fail to return capital on the maturity of the SLS Products.

***Statement of Principle 6***

5.10. The Authority considers that Mr McNeil breached Statement of Principle 6 because he failed to act with due skill, care and diligence in managing the business of Keydata for which he was responsible in his capacity as Finance Director performing CF1 (Director), CF28 (Systems and Controls) and CF29 (Significant Management). In particular, Mr McNeil failed to exercise reasonable care when he:

- (1) permitted Keydata to enter into the Collateral Portfolio transaction without having a clear understanding of the transaction and the risks involved;
- (2) paid £500,000 out of Keydata's corporate account to an agent of Mr Elias, purportedly in furtherance of the transaction, on the sole basis of instructions which he says that he received from Mr Ford, without having seen any paperwork to link the payment to the transaction;
- (3) failed to satisfy himself that the policies had been transferred to Keydata; and
- (4) when he was informed that the policies had been transferred to a company that was owned or controlled by Mr Ford, failed to take adequate steps to verify this information and to confirm that the policies were held for Keydata's benefit.

5.11. Mr McNeil relied entirely on assurances, which he says were given by Mr Ford, and failed to take reasonable steps to inform himself about the transaction so that he could reach a reasonable conclusion as to whether it was in Keydata's commercial interests and would be effective in providing security against SLS's non-performance. For example, Mr McNeil:

- (1) could not provide a sufficient explanation for the complicated structure of the transaction;
- (2) did not see any contractual documents underlying the agreement between Keydata and SLS or the agreement between Keydata and the third party administrator;

- (3) did not verify the current or future value of the Collateral Portfolio, for example by asking to see the independent professional valuation which he understood that Mr Ford had obtained; and
  - (4) did not verify how ownership of the policies would be transferred to Keydata or, subsequently, whether ownership of the policies had in fact been transferred to Keydata.
- 5.12. Although he was on the board of directors and held controlled functions which involved the exercise of significant influence at Keydata, Mr McNeil failed to take any steps to challenge the decision that Keydata should enter into the transaction.
- 5.13. The Authority considers that Mr McNeil's conduct in relation to the Collateral Portfolio is serious given:
- (1) the complex structure of the transaction, when there was no obvious commercial explanation for this (and Mr McNeil was unable to provide a sufficient explanation for it); and
  - (2) on the basis of his understanding of the transaction, Mr McNeil knew, or should have known, that there were significant risks inherent in the transaction (for example, that the future value of the policies depended on their becoming "non-contestable" and the need for there to be a secondary market for Keydata to sell the policies in order to obtain regular funds from them) and therefore that the decision to enter into the transaction required careful consideration.

**Lack of fitness and propriety**

- 5.14. In light of the facts and matters described above, the Authority considers that Mr McNeil lacks the fitness and propriety required to perform controlled functions involving the exercise of significant influence in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.
- 5.15. Mr McNeil's conduct in breaching Statements of Principle 4 and 6 fell significantly below the Authority's minimum regulatory standards. Mr McNeil's actions (and inaction) in relation to SLS's missed payments and the Collateral Portfolio demonstrate that he lacks the competence and capability that is required of individuals performing significant influence functions and that he would pose a risk to consumers and to regulated firms if he were permitted to perform any such functions.

## **6. FACTORS RELEVANT TO THE ACTION**

### **Prohibition**

- 6.1. The Authority has had regard to the guidance in Chapter 9 of EG in deciding that it is appropriate to make a prohibition order in this case.

### **Financial penalty**

- 6.2. The Authority considers it appropriate to impose a financial penalty, as well as making a prohibition order against Mr McNeil, in accordance with EG 9.23. The Authority has taken all of the circumstances of the case into account in deciding that the imposition of a financial penalty is appropriate and the level of the penalty imposed is proportionate.
- 6.3. The Authority's policy in relation to the imposition of financial penalties is set out in Chapter 6 of DEPP, which forms part of the Authority's Handbook. Changes to DEPP were introduced on 6 March 2010. Given that Mr McNeil's misconduct occurred before this date, the Authority has had regard to the provisions of Chapter 6 of DEPP in force before that date. This chapter set out the factors that may be of particular relevance in determining the appropriate level of financial penalty for a firm or approved person. The criteria are not exhaustive and all relevant circumstances of the case will be taken into consideration.

### **Deterrence**

- 6.4. The Authority considers that the imposition of a financial penalty will promote high standards of regulatory conduct by deterring approved persons from acting in this way.
- 6.5. In determining the appropriate level of penalty, the Authority has had regard to Mr McNeil's conduct in the performance of his controlled functions. The Authority considers that a significant penalty should be imposed to demonstrate to Mr McNeil and others the seriousness with which the Authority regards this behaviour.

### **The nature, seriousness and impact of the breach: DEPP 6.5.2G(2)**

- 6.6. The Authority considers that Mr McNeil's failings were serious because they allowed Keydata's customers who invested in the SLS Products to be exposed to the risk that SLS would fail to perform. In the event, over 6,000 investors, who had invested a total of approximately £103 million in the SLS Products, suffered significant losses.
- 6.7. In assessing Mr McNeil's conduct, the Authority has considered that he may have relied on assurances, which he says that he received from Mr Ford, that Mr Ford



would make appropriate disclosure to the Authority. However, the Authority considers that from February 2009 onwards Mr McNeil's continued reliance on any such assurances, and his failure to take any steps to report matters to the Authority himself, was unreasonable in all the circumstances, especially given his senior position at Keydata and his responsibilities as Finance Director.

**The extent to which the breach was deliberate or reckless: DEPP 6.5.2G(3)**

- 6.8. The Authority has found no evidence that the breaches were deliberate or reckless.

**Whether the person on whom the penalty is to be imposed is an individual: DEPP 6.5.2G(4).**

- 6.9. The Authority has taken into account the fact that, as an individual, the imposition of a financial penalty is likely to have a significant impact on Mr McNeil. The Authority considers the imposition of a financial penalty to be proportionate and appropriate in relation to the seriousness of the misconduct, especially in view of the seniority of Mr McNeil's position at Keydata.

**The financial resources and other circumstances of the person: DEPP 6.5.2G(5)**

- 6.10. In setting the penalty the Authority has had regard to Mr McNeil's present personal circumstances.

**The amount of benefit gained or loss avoided: DEPP 6.5.2G(6)**

- 6.11. During the Relevant Period, Mr McNeil earned £1,820,831. It is not possible to attribute a distinct portion of his salary to the profitability of Keydata as a result of its sale of the SLS Products.

**Conduct following the breach: DEPP 6.5.2G (8)**

- 6.12. The Authority notes that Mr McNeil drew some of the matters which are the subject of this notice to the attention of Keydata's administrators in October 2009. However, Mr McNeil did not inform the Authority of these matters until after he was placed under investigation in December 2009. Mr McNeil has cooperated with the Authority's investigation.

**Disciplinary record and compliance history: DEPP 6.5.2G(9)**

- 6.13. The Authority has not previously taken any disciplinary action against Mr McNeil.

### **Previous action taken by the Authority: DEPP 6.5.52G(10)**

- 6.14. The Authority seeks to ensure consistency when it determines the appropriate level of penalty and has taken into account previous decisions made in relation to similar misconduct by approved persons.

### **CONCLUSION**

- 6.15. Having regard to the seriousness of the breaches and the risks they posed to the Authority's statutory objectives of consumer protection and protecting and enhancing the integrity of the UK financial system, the Authority hereby makes an order prohibiting Mr McNeil from performing any significant influence function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm and hereby imposes a financial penalty of £500,000 (before any discount for early settlement) on Mr McNeil.
- 6.16. It is necessary and proportionate to impose a financial penalty to promote high standards of conduct and to deter other approved persons from acting in this way.

## **7. PROCEDURAL MATTERS**

### **Decision maker**

- 7.1. The decision which gave rise to the obligation to give this Final Notice was made by the Settlement Decision Makers.
- 7.2. This Final Notice is given under, and in accordance with, section 390 of the Act.

### **Manner of and time for payment**

- 7.3. The financial penalty must be paid in full by Mr McNeil to the Authority by no later than 7 October 2015.

### **If the financial penalty is not paid**

- 7.4. If all or any of the financial penalty is outstanding after 7 October 2015, the Authority may recover the outstanding amount as a debt owed by Mr McNeil and due to the Authority.

### **Publicity**

- 7.5. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the Authority must publish such information about the matter to which this notice relates as the Authority considers appropriate. The information may be published in such a manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the

Authority, be unfair to Mr McNeil or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

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

**Authority contacts**

- 7.7. For more information concerning this matter generally, contact Kevin Thorpe (direct line: 020 7066 4450) of the Enforcement and Market Oversight Division of the Authority.

Anthony Monaghan

Project Sponsor

Financial Conduct Authority, Enforcement and Market Oversight Division