FINANCIAL CONDUCT AUTHORITY

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Ancean Limited has referred this Decision Notice to the Upper Tribunal. The Tribunal may dismiss the reference or remit it to the Authority with a direction to reconsider and reach a decision in accordance with the findings of the Tribunal. Any findings in this Decision Notice are therefore provisional and reflect the Authority's belief as to the relevant facts and how they impact on Ancean's application for authorisation. The proposed action outlined in this Decision Notice will have no effect pending the determination of the case by the Tribunal. The Tribunal's decision will be made public on its website.

DECISION NOTICE

Ancean Limited

28 February 2024

ACTION

1. By an application dated 23 December 2022 ("the Application") Ancean Limited ("Ancean") applied under section 55A of the Financial Services and Markets Act 2000 ("the Act") for Part 4A permission to carry on the regulated activities of advising and arranging regulated mortgage contracts, home reversion plans and non-investment insurance contracts. Additionally, the firm applied for permission to carry out credit broking, debt counselling and debt adjusting.

2. The Application was completed by the provision of further information on 15 June 2023.

3. The Authority has decided to refuse the Application as it cannot ensure that Ancean will satisfy, and continue to satisfy, the threshold conditions set out in Schedule 6 to the Act.

SUMMARY OF REASONS

4. Ancean is a new firm which has not previously traded. It is controlled by its sole director, David Ewing, who is proposed to be its sole approved person.

5. Between 2014 and 2018, Mr Ewing was a director, and, from 2017 to 2018, chief executive, of SVS Securities Plc ("SVS"), a financial broker. SVS operated a discretionary fund management ("DFM") business which involved managing pension funds in model portfolios ("Model Portfolios"). While a director of SVS, Mr Ewing created a financial structure which enabled pension funds managed by SVS in the Model Portfolios to be invested in a property bridge lending company controlled by him, Ingard Alternative Funding Ltd ("IAF"). He therefore stood to benefit from the investment. This created a significant conflict of interest which, to Mr Ewing's knowledge, SVS failed to manage appropriately.

6. Bridge lending is not generally a suitable investment for mainstream pension funds. In order to disguise the use to which the funds would be put, Mr Ewing structured the scheme using Irish companies which issued listed bonds and lent the proceeds received on to IAF. In January 2017, some £2,625,000 of pension funds was used to purchase these bonds. A significant part of this was used to pay commissions and fees, including paying SVS 12% of the total proceeds. When questioned about the arrangements in January 2018 by a SIPP operator whose clients invested in the Model Portfolios, Mr Ewing provided incomplete and misleading responses designed to prevent the SIPP operator from disallowing further investment or forcing their sale.

7. Mr Ewing resigned from SVS in April 2018. Despite being aware that, as chief executive, he had undertaken on behalf of SVS to reduce exposure to these assets, and despite being aware that IAF was, by that time, operating at a loss, in December 2018, Mr Ewing enabled a further £3,075,000 of pension funds from SVS to be used to purchase bonds for onward lending to IAF. Again, significant sums were expended in fees and commissions, including to SVS.

8. IAF continued operating at a significant loss and appears to be insolvent. There is little prospect of the capital invested in the bonds being paid back and the losses have fallen on the Financial Services Compensation Scheme ("FSCS").

9. Subsequently, in various statements to the Authority, Mr Ewing has provided misleading statements about the prospects of the bonds being repaid, and about his role at SVS.

10. As a result, the Authority considers that Mr Ewing has not acted, and may not be expected to act, with probity. Given Mr Ewing's control of Ancean, this means that the Authority is not satisfied that, if authorised, Ancean would satisfy the requirement to be a fit and proper person, set out in threshold condition 2E ("the Suitability Threshold Condition").

11. Accordingly, the Authority has decided to refuse the Application.

DEFINITIONS

12. The definitions below are used in this Decision Notice.

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

"Ancean" means Ancean Limited, the applicant;

"the Application" means the application referred to in paragraph [1]/[2] above;

"the Authority" means the Financial Conduct Authority;

"DFM" means discretionary fund management;

"the Executive Decision Maker" means the member of the Authority's staff acting under executive procedures as described in Chapter 4 of the Decision Procedure and Penalties Manual in the Authority's Handbook.

"FSCS" means the Financial Services Compensation Scheme;

"Glenfinnian" means Glenfinnian Bond Designated Activity Company (formerly Ingard Property Bond Designated Activity Company), a company registered in Ireland;

"the Glenfinnian Bonds" means the bonds issued by Glenfinnian and purchased by SVS;

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

"IAF means Ingard Alternative Funding Limited;

"IFL" means Ingard Financial Limited (FRN 450731);

"IPRU-INV" means the Interim Prudential sourcebook for Investment Businesses, part of the Handbook;

"Model Portfolios" means the model portfolios created by SVS as part of its DFM business in which clients' funds were invested;

"Pulteney" means Pulteney Bond Designated Activity Company (formerly Ingard Property Bond 2 Designated Activity Company), a company registered in Ireland;

"the Pulteney Bonds" means the bonds issued by Pulteney and purchased by SVS;

"SIPP" means self-invested personal pension;

"SPV" means special purpose vehicle, a company explicitly established for the purpose of securitising assets;

"Standard Assets" means the list of assets defined as such within rule IPRU-INV 5.9.1R;

"the Suitability Threshold Condition" means the threshold condition at paragraph 2E of Part 1B of schedule 6 to the Act (see Annex);

"SVS" means SVS Securities Plc (FRN 220929), which was dissolved on 10 August 2023; and

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

FACTS AND MATTERS

Ancean

13. Ancean is a UK registered company, with company number 14101800, that was incorporated on 11 May 2022. Its registered office address is 19 Glencrofts, Hockley, England, SS5 4GN.

14. Mr David Ewing is Ancean's sole director and shareholder. In the event that Ancean is authorised, it is proposed that Mr Ewing would hold the SMF3 (executive director), and SMF16 (compliance oversight) controlled functions. No other individuals are proposed to be approved in respect of Ancean. The effect is that Mr Ewing would be in sole control of Ancean, and would have sole responsibility for its compliance with regulatory duties.

15. Ancean is not currently trading, but is seeking authorisation to start providing mortgage and equity release advice, and related services such as advising on

protection policies. The stated intention is for Ancean to offer mortgage advice and services to existing clients of Mr Ewing, which he has acquired during his time as director of IFL.

Ingard

16. Mr Ewing is the sole director and shareholder of Ingard Limited, an unregulated holding company.

17. Ingard Limited is the sole ordinary shareholder of Ingard Financial Ltd ("IFL"), a regulated mortgage, loan and insurance broker. Mr Ewing is the sole director of IFL.

18. Ingard Limited is the sole shareholder of IAF, an unregulated lending company incorporated in 2013. Mr Ewing is the sole director of IAF.

SVS

19. SVS was a financial services brokerage and wealth management firm. It provided advisory, execution and trading services to retail and institutional clients and DFM services.

20. Mr Ewing was a director of SVS from 1 August 2014 to 30 April 2018. He was approved by the Authority to hold the CF1 (director) controlled function from 31 October 2014 to 12 April 2018 and the CF3 (chief executive) controlled function from 31 January 2017 to 12 April 2018.

21. When applying to be approved as CF1 in respect of SVS in October 2014, Mr Ewing approved an application form which described his suitability for the role as follows:

> "*Mr Ewing will bring significant experience to the Board of SVS Securities. A major part of the SVS Business Strategy going forward is to grow the business through the IFA sector especially in the SIPP, ISA and Fund Sectors. One of his key roles is to expand the current IFA network through his role as New Business Director*."

22. The application form also asserted that he had undergone extensive training on all aspects of the SVS business model and the various departments within SVS.

23. Mr Ewing resigned from SVS as of 12 April 2018.

24. In July and August 2019, the Authority imposed requirements on SVS which prevented it from conducting further regulated activities. SVS was placed into special administration on 5 August 2019. It was dissolved on 10 August 2023.

SVS's Model Portfolios

25. SVS's DFM services included the creation of the Model Portfolios, into which its clients' funds were invested. The funds were pooled and invested in assets chosen by SVS. In total, 879 clients invested £69.1 million into the Model Portfolios. SVS was trusted by these clients to invest their funds, and to manage the investments, in the clients' best interests.

26. The SVS board of directors was responsible for oversight and overview of the Model Portfolios, including formal sign-off of any new investments.

27. The vast majority of funds invested in the Model Portfolios were pension investments, frequently invested as part of a self-invested personal pension ("SIPP").

SIPPs

28. A SIPP is a form of personal pension scheme which enables tax-efficient saving in a wider range of assets than were typically previously available in pension schemes and which enables the investor to exercise a degree of choice over how to invest. Generally, the assets are held on trust for the investor by a SIPP operator, a firm with a regulatory permission to operate a personal pension scheme.

29. In that they constitute their retirement savings, the maintenance of the value of their pension funds is of critical importance to many people. As long-term savings products, save for those who are sophisticated enough to understand the risks and to accept significant losses, the inclusion within pensions of high-risk, speculative investments is generally not appropriate.

30. For many years, the Authority has expressed concern about the inclusion in SIPPs of investments which were inappropriate, either because they were high-risk, illiquid, unprofitable or, in some cases, fraudulent. This was frequently because the investor did not select the asset but relied on the word of a third party as to the risk associated with the investment. In both January 2013 and April 2014, the Authority issued alerts about the inclusion in SIPPs of unregulated, non-mainstream assets. The latter alert stated: "*We believe pension transfers or switches to SIPPs intended to hold non-mainstream propositions are unlikely to be suitable options for the vast majority of retail customers*".

31. One of the measures taken by the Authority to mitigate this risk was to impress upon SIPP operators their responsibility for conducting due diligence to ensure that assets held by them on trust for investors were suitable.

32. In November 2016, the Authority introduced rules which related the capital requirements of SIPP operators to a list of standard assets ("Standard Assets"). These rules were codified in the Interim Prudential sourcebook for Investment Businesses ("IPRU-INV") as rule IPRU-INV 5.9.1R. As a result, many SIPP operators would only permit the SIPPs which they operated to invest in Standard Assets.

33. Standard Assets include "*Securities admitted to trading on a regulated venue*" but, importantly, are subject to the limitation that they must be "*capable of being accurately and fairly valued on an ongoing basis and readily realised within 30 days, whenever required*". Any assets which cannot be both accurately and fairly valued on an ongoing basis and readily realised within 30 days should be treated as non-standard even if they met the other criteria.

34. In January 2017, the Authority issued an alert to pension scheme operators (including SIPP operators) about the increasing sophistication of attempts to defeat their due diligence efforts. This included commentary on the evolution of scams from: first generation, which offered direct investment in unregulated physical assets; to second generation, which obscured the underlying unregulated physical assets by creating a special purpose vehicle ("SPV") to acquire them using funding raised by the issue of corporate bonds; to third generation which used the services of a discretionary fund manager to create an investment portfolio that did not require the input of the investor: the portfolio then invested in bonds issued by an SPV. In the Authority's view, this evolutionary process was designed to obscure the nature of the underlying investment.

SVS's business

35. During the time that Mr Ewing was a director, SVS attracted investment into the Model Portfolios by entering into marketing agreements with unauthorised introducer firms. The introducers would solicit customers either to open, or to transfer to, a SIPP to be invested in the Model Portfolios. The introducers were incentivised by the payment by SVS of commission calculated as a percentage (generally 7-9%) of the net sum invested in the Model Portfolios as a result of their introductions.

36. Those clients who wished to transfer a personal pension into a SIPP were required to receive advice from a regulated financial adviser. Most of the clients who invested in the Model Portfolios were advised by financial advice firms which were wholly or partly controlled by individuals who also owned or controlled an unauthorised introducer with which SVS had entered into a marketing agreement. These advisers were therefore incentivised to introduce their clients' funds to the Model Portfolios (rather than any other investment), regardless of the suitability of the assets held by the Model Portfolios.

37. As a director, initially with responsibility for new business, and subsequently as chief executive, of SVS, the Authority infers that Mr Ewing was well aware of SVS's business model and the incentives provided to advisors to introduce their clients' funds to the Model Portfolios. Mr Ewing was aware of the risks of dealing with unauthorised introducers, having been sent a copy of an alert issued by the Authority in August 2016, drawing the attention of regulated firms to the risks. The alert included the Authority's view that: "*This has been particularly evident in relation to advice on switching and transfer/conversion of pension benefits. We have specific concerns where this advice involves movement of pension pots to unregulated, high risk, illiquid products, whether they are based in the UK or overseas*".

Glenfinnian

38. From no later than October 2015, together with Kulvir Virk, another director of SVS, and others, Mr Ewing was involved in a project, codenamed Project Bald Eagle, to create a structure which would enable funds invested in the Model Portfolios to be used for the purposes of property bridging lending by IAF, a company controlled by Mr Ewing. It was anticipated that most of the lending to be conducted by IAF would be to clients introduced to it by IFL.

39. Bridge lending on property involves advancing monies to owners of property to bridge the gap between the time needed to make payment and the time when it is anticipated funds will be received. Such loans tend to charge high levels of interest which are reflective of the risks being taken on by the lender. As unregulated, non-mainstream assets, the Authority considers that investment in such loans is unlikely to be suitable for inclusion in the SIPPs of most retail consumers.

40. The structure adopted by Mr Ewing involved incorporating an SPV to issue bonds which could be purchased by the Model Portfolios. On 11 December 2015, Ingard Property Bond Designated Activity Company (later renamed Glenfinnian Designated Activity Company) ("Glenfinnian") was incorporated in Ireland as a subsidiary of Ingard Limited (and thus ultimately controlled by Mr Ewing). Mr Ewing was a director of Glenfinnian. The expressed intention of Mr Virk in an email in March 2016 (copied to Mr Ewing) was that €5 million would be raised by SVS for investment.

41. In other words, rather than SVS identifying appropriate investments for its investors in the Model Portfolios, in line with its duties to them, the directors of SVS, including Mr Ewing, created these investments, from which, by enabling the provision of

working capital to a company he owned, he stood to benefit. This created a significant conflict of interest in that Mr Ewing stood to benefit financially from a decision by SVS to invest its clients' funds in the scheme operated by his companies.

42. On 21 December 2016, Glenfinnian published a prospectus for the issuance of corporate bonds, up to the value of £4,050,000, for a term of 7 years at an interest rate of 7% per annum ("the Glenfinnian Bonds"). The finance raised by the Glenfinnian Bonds was designed to be lent by Glenfinnian to IAF, purportedly for the provision by IAF of short-term bridging finance, secured by IAF on property in the United Kingdom. Prior to receiving funds from Glenfinnian, IAF had seemingly conducted no previous lending nor any other significant business operations.

43. The Glenfinnian Bonds were listed on the Cyprus Stock Exchange on 20 January 2017.

44. The purpose in structuring the arrangement in this fashion appears to have been to disguise the underlying assets by enabling SVS to assert that, as securities admitted to trading on a regulated venue, the Glenfinnian Bonds were Standard Assets and thus able to be included within a SIPP operated by a SIPP operator which required all assets to be Standard Assets. However, this appears to have taken no account of the necessity for Standard Assets to be capable of being accurately and fairly valued on an ongoing basis and readily realised within 30 days.

45. Mr Ewing must have realised that there was no realistic prospect of the Glenfinnian Bonds fulfilling these criteria since, as he knew:

    a) there was no trading in any of the Glenfinnian Bonds;

    b) there were no market makers who provided prices for the Glenfinnian Bonds;

    c) SVS was the only holder of the Glenfinnian Bonds;

    d) SVS made no attempt to value the Glenfinnian Bonds on any objective or fair basis;

    e) the only significant assets of Glenfinnian, from which holders of the Glenfinnian Bonds' could hope to obtain repayment were loans made to IAF, a connected party, with no business or trading history, engaged in high-risk lending;

    f) IAF's business model, upon which repayment of the loan from Glenfinnian depended, involved providing bridging lending at rates significantly above prevailing commercial rates at the time; and

    g) IAF, as outlined below, was balance-sheet insolvent throughout the term of the Glenfinnian Bonds.

46. Notwithstanding this, in January 2017, at a time when Mr Ewing was its chief executive, SVS purchased bonds from Glenfinnan to a value of £2,625,000. The Glenfinnian Bonds were allocated to the Model Portfolios and the only purchaser of the Glenfinnian Bonds was SVS, which held the Glenfinnian Bonds (through a nominee company) on behalf of its clients.

47. In return for this investment, IAF paid SVS commission of 10% of the monies invested by SVS, on behalf of its clients. In addition, IFL paid a further commission of 2%. This created a further significant conflict of interest, since SVS was incentivised to decide to invest its clients' money in the Glenfinnian Bonds. Moreover,

by deducting 10% of the investment monies before they had been invested, SVS made it less likely that their clients would receive the returns that the Glenfinnian Bonds promised.

48. As an experienced financial services professional, Mr Ewing should have been well aware of the requirement on a regulated firm to identify and to prevent or manage conflicts of interest.

49. Yet, although SVS's board identified the conflict of interest in March 2016, there is no evidence that SVS's conflicts of interest register was updated until September 2017 and no evidence that the conflict was disclosed to any clients of the Model Portfolios until November 2017 after significant funds had already been invested.

50. Indeed, rather than manage the conflict by, for example, separating decision-making, Mr Ewing participated, together with Mr Virk and others, in an arrangement whereby Project Bald Eagle was effectively a joint venture between SVS and IAF. For example, SVS paid fees to advisers and underwriters acting on behalf of IAF and certain listing fees. The fact that SVS was paying fees on behalf of IAF was, to Mr Ewing's knowledge, kept from other members of SVS's management.

51. Moreover, Mr Ewing actively solicited another member of SVS's staff who was responsible for managing the Model Portfolios, to ensure that clients' funds would be available to be allocated to the investment. As a result, clients' funds were set aside even though SVS had conducted no adequate due diligence of the proposed investment. Mr Ewing also took responsibility for providing information designed to persuade SVS's compliance department to 'sign off' on the investment.

Engagement with SIPP operator

52. In December 2017, one of the SIPP operators whose clients' funds were invested in the Model Portfolios, emailed Mr Ewing to express concerns about some of the assets in the Model Portfolios. In particular, the SIPP operator expressed concerns about "*Non standard asset investment*" and about "*Investment in connected party investments*". The SIPP operator made it clear that its agreement with SVS was that all assets in the Model Portfolios had to be Standard Assets and, on the basis that some appeared not to be, requested that all further investments be suspended.

53. Mr Ewing personally engaged with the SIPP operator to alleviate its concerns over the appropriateness of the investments. In particular, he reassured the SIPP operator that all connected party investments had been made in compliance with SVS's conflicts of interest policy and stated that "*we have been very careful to segregate those with the potential conflicts from playing any part in the investment process*".

54. In doing so, Mr Ewing failed to reveal that he was one of the connected parties in question and that, in attempting to alleviate the SIPP operator's concerns, he had a significant conflict of interest in that he was incentivised to facilitate a continued flow of funds to the Glenfinnian Bonds and/or to avoid their sale by SVS. Moreover, as he must have known, his reassurance that those with potential conflicts were segregated from any part of the investment process was false and misleading since, as outlined above, Mr Ewing had played a significant part in the process of SVS deciding to invest in the Glenfinnian Bonds.

55. Mr Ewing further stated: "*All assets held in the* [Model Portfolios] *are listed on HMRC Recognised Stock Exchanges. With respect to IPRU-INV 5.9R, these would be considered securities admitted to trading on a regulated venue. We have made certain that all investments within the* [Model Portfolios] *are considered Standard*

Assets and would ask you to provide a list of any that you specifically consider not to be."

56. In making this assertion, Mr Ewing knew, or should have known, that the Glenfinnian Bonds were not appropriately considered to be Standard Assets since, as outlined above, they were not accurately and fairly valued on an ongoing basis and there was no realistic prospect of them being readily realised within 30 days, whenever required.

57. On 3 January 2018, the SIPP operator sent a list of further questions, including: "*The* [Glenfinnian Bonds have] *been potentially flagged as a non standard asset. Is the Cyprus exchange it trades on recognised by* [the Authority] *and again please confirm when it was last traded and how it meets* [the Authority's] *30 day rule*".

58. Mr Ewing responded on 6 January 2018. He provided appropriate evidence to demonstrate that the Cyprus Stock Exchange was a regulated venue but failed to answer directly the question as to how the Glenfinnian Bonds could be readily realised within 30 days, whenever required. The Authority considers that this was because he was aware that, for the reasons outlined above, there was no realistic prospect of the Glenfinnian Bonds being readily realised within 30 days. Elsewhere in his response, Mr Ewing stated that SVS provided "*an internal match bargain facility*", apparently whereby one client's divestments could be matched with another client's subscriptions, and that SVS could, in the event of above normal disinvestments, purchase the assets onto its own books. Even if correct, this could not, as Mr Ewing knew, or should have known, conceivably have met the definition of Standard Assets, which referred to the entirety of the assets held by the SIPP operator, the purchase of which the level of new subscriptions and SVS's resources could not have supported.

59. Mr Ewing subsequently met the SIPP operator. Following the meeting, on 10 January 2018, the SIPP operator emailed Mr Ewing, stating "*In respect of* [the Glenfinnian Bonds and two other investments] *I have clarified that these do not appear to meet the secondary FCA liquidity test. I will of course listen to any further commentary that you may have, however at this point our decision is that these investments are non standard assets and cannot form part of the clients' portfolios. As such they will need to be sold and you have confirmed that you are able to facilitate this. This will need to happen before the 31st January 2018. Please confirm that the trade will not incur any client losses*". The SIPP operator further stated that it would no longer support investment in connected party transactions or corporate bonds which did not have a credit rating.

60. Mr Ewing responded by email the same day. In relation to the Glenfinnian Bonds, he stated "*As discussed this has to date been 'traded' within the DFM as opposed to on the external exchange which obviously results in 0 trades. It is our intention to trade these outside the DFM in order to show a trade and as a result in satisfying the FCA 30 day liquidity rule, class the companies as standard. Perhaps once we have clarified the process here we can reassess and agree their inclusion*."

61. The SIPP operator replied the following day, reiterating its view that, on the basis of discussions with the Authority, the Glenfinnian Bonds were not Standard Assets and therefore needed to be traded out of the Model Portfolios by 31 January 2018.

62. Following that email, in discussions with SVS's directors, Mr Ewing suggested, as a possible solution, to discuss with the principal financial adviser with which SVS had an agreement, whether "*they will consider an alternative SIPP provider*".

63. Mr Ewing responded on 17 January 2018, reiterating that SVS "*do believe*" that all assets, including the Glenfinnian Bonds were Standard Assets. He agreed, however, that SVS would "*look to ensure*" that it removed any assets from the Model Portfolios which the SIPP operator required within 30 days.

64. The SIPP operator emailed Mr Ewing the same day, stating that it had "*clarified the position with* [the Authority] *who were very clear on their response to us*" and confirming that it had suspended any further new investment.

65. On 22 January 2018, SVS sent an email to the SIPP operator to which Mr Ewing was copied. This stated: "*With regards to the existing Connected Party Investments already within the Model Portfolio we will endeavour to reduce our exposure to these investments to zero over the next 12 months*". In addition, it confirmed that all assets in the Model Portfolios were Standard Assets. On that basis, the SIPP operator agreed to lift its suspension.

66. In fact, SVS decided not to reduce its holdings of the Glenfinnian Bonds (or other assets connected to SVS or its officers). When the SIPP operator raised this issue in October 2018, it was informed by SVS that, because Mr Ewing had resigned from SVS in May 2018 (sic)[1], it no longer considered the Glenfinnian Bonds to be "*connected*" to SVS. It failed to address the question of how the Glenfinnian Bonds could be considered to be Standard Assets.

Pulteney

67. In subsequent correspondence with the Authority, Mr Ewing suggested that he had resigned from SVS in April 2018 because he had concerns with its operations and he was unable to "*improve the compliance and adherence to regulatory requirements and expectations*" that he had wanted. Mr Ewing made no report to the Authority of any such concerns, and the Authority considers this to be misleading and untrue since, as demonstrated by his involvement with the Glenfinnian Bonds, Mr Ewing failed to pay due regard to the need to manage conflicts of interest and, in his interactions with the SIPP operator, Mr Ewing's reaction to being challenged on SVS's adherence with regulatory requirements was to suggest finding an alternative party which would not provide such challenge.

68. Moreover, by no later than 2 August 2018 (within 4 months of him leaving SVS) Mr Ewing had entered into correspondence with SVS whereby SVS agreed to invest up to £4.25 million in Ingard Property Bond 2 Designated Activity Company (subsequently renamed Pulteney Bond Designated Activity Company) ("Pulteney").

69. Pulteney was structured in almost precisely the same way as Glenfinnian. It was incorporated in Ireland on 20 July 2017 as a subsidiary of Ingard Limited. Mr Ewing was a director of Pulteney. It was designed to act as an SPV, with all monies invested due to be lent to IAF for the provision of property bridging loans. The Authority considers that Mr Ewing must have been aware that all funding would come from the Model Portfolios and, as a consequence, overwhelmingly from SIPP investors.

[1] The Authority received a Form C Notification from SVS in *April* 2018, stating that Mr Ewing had resigned as director effective from 12 April 2018

70. On 17 July 2018, Pulteney published a prospectus for the issuance of corporate bonds, to the value of £4,300,000, for a term of 7 years at an interest rate of 5.75% ("the Pulteney Bonds"). The Pulteney Bonds were listed on the Cyprus Stock Exchange.

71. From his previous role as chief executive of SVS, Mr Ewing knew that all investment in IAF's lending business had been funded by investors in SVS's Model Portfolios, overwhelming by those holding SIPPs. By virtue of his engagement with the SIPP operator in January 2018, Mr Ewing knew that it did not consider the Glenfinnian Bonds to be Standard Assets (apparently after communication with the Authority). Bonds and the financial distress of IAF, as outlined below, there could, in the Authority's view, have been no other rational conclusion.

72. Mr Ewing was also aware that, contrary to the assurance he, as chief executive of SVS, had given to the SIPP operator that SVS would remove the Glenfinnian Bonds from the Model Portfolios, there had been no sale by SVS of the Glenfinnian Bonds.

73. Notwithstanding this, and notwithstanding what he claimed to be concerns over SVS's compliance and adherence to regulatory requirements, Mr Ewing entered into a further arrangement with SVS, knowing that SIPP investments would be used to fund his property bridge lending company IAF. For precisely the same reasons as with the Glenfinnian Bonds, the Authority considers that Mr Ewing could not have believed that the Pulteney Bonds would be considered to be Standard Assets for the purposes of inclusion in a SIPP nor that bridging loans were suitable investments to be held by most SIPPs.

74. In the event, SVS purchased bonds from Pulteney to a value of £3,075,000 in December 2018. These were allocated to the Model Portfolios. At the time of this investment, as set out below, IAF's own published accounts showed it to be balance sheet insolvent, in that its liabilities exceeded its assets. SVS charged 10% of the value of the purchase (£307,500) in commission and a further 2% "corporate finance fee" (£61,500).

Performance of the Bonds and IAF

75. In total, SVS invested £2,625,000 of its clients' funds in the Glenfinnian Bonds and £3,075,000 in the Pulteney Bonds.

76. Of the £2,625,000 advanced to it by SVS, Glenfinnian lent £2,220,000 to IAF. By 31 December 2019, Glenfinnan's accounts listed its only significant asset, making up 95% of its total assets of £2,340,481, as a loan receivable from IAF of £2,220,000. This is significantly less than the £2,625,000 invested by SVS: £295,218 were accounted for as "*issue costs*".

77. By 31 December 2019, Pulteney's accounts listed its only significant asset, making up 95% of its total assets of £2,538,458, as a loan receivable from IAF of £2,400,000. This is significantly less than the £3,075,000 invested by SVS: £582,702 were accounted for as "*issue costs*".

78. Both Glenfinnian and Pulteney incurred significant operating expenses and fees. For example, in 2019, Glenfinnian charged a management fee of £24,000 and incurred operating expenses of £188,400. This included fees to its directors (which included Mr Ewing) of £71,971. Glenfinnian entered into a director's agreement with Mr Ewing for the provision of services at an annual fee of £12,000. In the same year, Pulteney incurred operating expenses of £215,345, including fees to its directors (which

included Mr Ewing) of £72,414. Pulteney entered into a director's agreement with Mr Ewing for the provision of services at an annual fee of £18,000.

79. Of the total £5.7 million invested by SVS in the Glenfinnian Bonds and the Pulteney Bonds, only £4.8 million was lent to IAF. The fees and expenses charged by Glenfinnian and Pulteney meant that there was less money to lend to IAF, reducing the potential returns that could have been made by IAF and used to repay Glenfinnian and Pulteney. As a result, they increased the risk that IAF would be unable to repay and thereby the risk that the Glenfinnian Bonds and the Pulteney Bonds would not be successfully redeemed.

80. Moreover, it is apparent that, throughout the course of its business activities, IAF has been severely, and increasingly, loss-making. Since receiving an initial loan from Glenfinnian, IAF has submitted annual accounts for the year ending 31 March, each confirmed as accurate by Mr Ewing, the sole director. Each set of accounts was unaudited and consisted only of a balance sheet, with no profit and loss account available. The accounts reveal the following (denominated in £):

	31/3/22	**31/3/21**	**31/3/20**	**31/3/19**	**31/3/18**	**31/3/17**
Assets						
Debtors	2,002,819	2,520,498	2,431,478	1,753,054	1,235,484	1
Cash	3,002	125,767	600,505	2,383,136	985,169	1,718,689
Liabilities						
Amounts due -1yr	(741,745)	(342,950)	(17,615)	(107,035)	(5,035)	(3,035)
Amounts due +1yr	(4,800,000)	(4,800,000)	(4,800,000)	(4,800,000)	(2,500,000)	(1,735,000)
Net assets	(3,535,924)	(2,496,685)	(1,785,632)	(770,845)	(284,382)	(19,346)

81. The accounts show that the loans from Glenfinnian and Pulteney were IAF's only source of working capital. They reveal a sustained deterioration in both cash balances and net assets, suggesting that IAF's business model was never viable and that there was little prospect at any point of IAF being able to repay the loans made by Glenfinnian and Pulteney upon which repayment of the Glenfinnian Bonds and the Pulteney Bonds depended. As IAF's sole director, and a director of both Glenfinnian and Pulteney, Mr Ewing must have been aware of this.

82. In April 2020, a valuation agent was engaged on behalf of SVS (by that time in special administration) to value certain of the assets in the Model Portfolios, including the Glenfinnian Bonds and the Pulteney Bonds. The valuation agent requested information on the underlying assets. In response, a director of Glenfinnian and Pulteney stated: ""…*a slowdown in business at IAF* [means] *lending is not currently achieving the rate required to generate the profit necessary to recover the costs of the issue of the bonds and hence ensure the repayment of all the principal of the bonds. Whether it will be possible to make up the shortfall in the future is currently unclear and depends on how long the current situation continues*..." Further information requested by the valuation agent on the underlying assets was not provided.

83. The valuation agent also noted that, in both Glenfinnian and Pulteney's interim results, up to 30 June 2019, the management reports noted: *"the Company has been advised by IAF that the capital raised by IAF through the Glenfinnian and Pulteney bonds is not sufficient for IAF to take advantage of the best and larger opportunities.*

A consequence is that IAF's current running yield has dipped below the level required to ensure the repayment of the bond's capital."

84. In June 2020, both Glenfinnian and Pulteney submitted audited financial reports for the year ending 31 December 2019. The management reports noted the comments made in the interim results and, in addition, referred to the significant impact of the COVID pandemic, and the resulting lockdown. This had, the reports stated, increased the rate of return needed by IAF to repay the loans. In response, the reports stated, Ingard Limited was seeking to obtain further financing which could reduce the overall cost of capital to the Ingard companies and strengthen the consolidated balance sheet. The Pulteney management report concluded: "*Currently the signs are positive and the Board remains optimistic that IAF's business will grow. However, given the current required rate of return and the economic uncertainties that remain as a result of COVID-19, there can be no guarantee that the company's bonds will repaid in full as they are currently structured, although with 6 years before the company's bond is due to be redeemed, the Board are confident that sufficient time should remain for the required rate to be achieved*".

85. No further accounts in respect of Glenfinnian nor Pulteney have been submitted since then. As is well known, the UK endured further national lockdowns between November and December 2020 and between January and July 2021. Ingard Limited's filed accounts reveal that no financing of the sort envisaged in the Glenfinnian and Pulteney management reports was obtained.

86. On 9 September 2021, dealing in the Glenfinnian Bonds and the Pulteney Bonds was suspended by the Cyprus Stock Exchange and they were delisted on 15 September 2021. The bonds have ceased to pay interest and it seems unlikely that there will be any capital to return on redemption. The legal owner of the bond has dissolved, without arrangements being made for the ownership to be transferred. Losses, estimated to be the entire value of £5.7million, are likely to be predominantly met by the FSCS as consumers are likely to have a valid claim either against SVS or the financial adviser who advised them to invest in the Model Portfolios.

87. In March 2023, the auditor of Glenfinnian was prohibited and fined by the Irish Auditing and Accounting Supervisory Authority in relation to the audit of Glenfinnian for the year ending 31 December 2019 for, amongst other things, failing to identify and assess the risks of material misstatement at the financial statement and for providing non-auditing services to Glenfinnian.

IFL Application

88. In November 2019, IFL applied to the Authority for Mr Ewing to be approved to hold the SMF16 (compliance oversight) and SMF17 (money laundering reporting) functions. As part of the assessment of this application, Mr Ewing was asked to provide "*A detailed statement on* [his] *role and responsibilities whilst at* [SVS]". In response, Mr Ewing stated: "*My roles here were relatively minor as I was only on a part time basis. I was initially asked to be a Non-executive director to meet once a month at the board meeting to provide additional strength to the board due to my knowledge and experience of compliance…My last year with* [SVS] *was a different role.* [Mr Virk] *decided to emigrate to Dubai and work remotely. I was asked if I would step up and take on the role of CEO while they sort* (sic) *a suitable replacement. During that time I still only worked part time…It quickly became apparent that I had little control and my efforts had little effect. I therefore resigned from the position*." In light of the above facts and matters, the Authority considers that Mr Ewing did not accurately relay to the Authority the nature of his work at SVS. In particular, he failed to mention that he had arranged for SVS's clients to invest in his company IAF, through the Model Portfolios.

89. Subsequently, as part of the same application process, on 6 July 2021, Mr Ewing was asked further questions about his involvement with SVS. He responded, by email of 20 July 2021, stating: "*Obviously I am aware of what happened to SVS despite my having left some 2 years before and having had minimal communication with the company since then*." This was untrue and misleading since, as outlined above, subsequent to leaving SVS, Mr Ewing had negotiated, and entered into, an arrangement whereby SVS lent his companies over £3 million.

90. In response to the question "*What has happened to the money that was included in the Ingard bonds that was included in the SVS portfolio?*", Mr Ewing stated: "*The money from the bond is still being utilised by Ingard, all interest payments have and will continue to be met. The business and accounts are audited yearly and there is currently no reason to think clients will not get the funds returned at the end of the bond term*".

91. This was untrue and misleading in that:

    a) IAF had never submitted audited accounts. As its sole director, Mr Ewing inevitably knew this;

    b) as a director of Glenfinnian and Pulteney, Mr Ewing must have been aware of the material doubts expressed as early as 2019 over the ability of IAF to repay the loans on which repayment of the Glenfinnian Bonds and the Pulteney Bonds depended;

    c) Mr Ewing was, by that time, aware of the further effects of the COVID pandemic and the resulting lockdowns; and

    d) as its sole director, Mr Ewing knew that, by that time, the financial position of IAF had deteriorated further, meaning that there must, by that time, have been significant doubt over its ability to repay the loans to Glenfinnian and Pulteney.

92. He further stated (in response to a question as to whether 'Ingard' had invested in SVS): "*My role at SVS had nothing to do with Ingard and there is no reason why Ingard would have 'invested' in SVS*". This was misleading since it failed to reveal that both IAF and IFL had paid SVS significant monies by way of commission in return for investing funds in the Model Portfolios in loans made by IAF.

93. He further stated: "*I honestly believed that we had taken the correct measure to ensure that we had stayed within the written and moral way we structured the Bond. If a similar situation were to arise again, I would take the additional step of speaking to the regulator first to get their stance on the matter*". This was misleading since, as relayed above, Mr Ewing had been alerted by the SIPP operator in January 2018 to its view, based on discussions with the Authority, that the Glenfinnian Bonds could not be considered to be Standard Assets. Notwithstanding that, Mr Ewing decided to use a virtually identical structure to secure further funding from the Model Portfolios through the Pulteney Bonds.

94. Mr Ewing was subsequently asked whether he had profited financially from the Glenfinnian Bonds and/or the Pulteney Bonds. By email of 13 September 2018, he answered "*No*". This was untrue and misleading since, as outlined above, Mr Ewing had, pursuant to directors' agreements, been paid by both Glenfinnian and Pulteney. Mr Ewing was also paid a salary by SVS of £2,500 per month and consultant's fees by SVS of £38,100 in the year to 30 June 2017, and £32,765 in the year to 30 June 2018.

The Application

95. During consideration of the Application, Mr Ewing was asked about the Glenfinnian Bonds and the Pulteney Bonds. He said that he had been persuaded by others at SVS to set up a bridging loan company which would receive funding through the setting up of corporate bonds. He said that he did not know anything about corporate bonds and was following the advice of others. If this were true, the creation of a structure which he did not understand for the investment of the pension monies of clients of the firm of which he was a director would, in the Authority's view, represent a significant failure to act with due skill, care and diligence. However, the Authority considers that it was not true and that Mr Ewing's statements were misleading in that he was a significant participant in the incorporation of Glenfinnian and Pulteney and the listing of the Glenfinnian Bonds and the Pulteney Bonds. Moreover, Mr Ewing was an experienced financial advisor with 25 years experience of working in financial services. In addition, this was a structure which, as he must have known, was deliberately designed to enable the investment of monies in SIPPs in a high-risk property bridging loan company controlled by him. The Authority considers that Mr Ewing deliberately understated his involvement in the scheme to mask the extent of his participation.

96. Mr Ewing said that IAF was unable to make as many loans as had been forecast as a result of a downturn in demand for bridging finance. He said that IAF was never profitable and that the interest charges on its loans were lower than what was owed to Glenfinnian and Pulteney.

97. He confirmed that the boards of both Glenfinnian and Pulteney had agreed to wind them up as it was not possible to raise further funding, and said that the legal owner of the Glenfinnian Bonds and the Pulteney Bonds (the SVS nominee company) had been wound up. He attributed the failure to "*The Slowdown in the bridge lending market that preceded COVID-19 … exacerbated by COVID-19 leading to* [IAF] *ceasing trading, whilst at the same time the companies continued to carry administrative overheads*."

98. Mr Ewing stated that IAF was in the process of being closed. He expressed the intention to "*cover*" repayment of the debts owed to Glenfinnian and Pulteney but provided no information on how this would be achieved. He believed that consumer losses were being met by the FSCS Scheme. He maintained that, in his view, he had done nothing wrong.

[redacted]

[redacted]

[redacted]

IMPACT ON THE THRESHOLD CONDITIONS

101. The regulatory provisions relevant to this Decision Notice are referred to in Annex A.

102. In light of the facts and matters set out above and for the reasons set out below the Authority cannot ensure that, if the Application were granted, Ancean would satisfy, and continue to satisfy, the Suitability Threshold Condition.

Suitability

103. Ancean has not satisfied the Authority that it is a fit and proper person having regard to all the circumstances, including, principally, its connection with Mr Ewing. As Mr Ewing is the sole controller and director of Ancean, and is proposed to be its sole approved person, this connection is particularly important in assessing the suitability of Ancean.

104. The Authority considers that Mr Ewing's conduct in relation to SVS, Glenfinnian, Pulteney and IAF demonstrate that he has consistently failed to act with probity and put his own interests above those of his clients who trusted him and his firm to manage their pension funds appropriately. In particular:

a) he participated in a scheme to enable the investment of pension monies, the control of which was entrusted in his firm, in high-risk property bridge lending which was, and which he knew was, an inappropriate investment for most SIPPs;

b) the overall structure of the scheme was designed to benefit Mr Ewing by allowing his company, IAF, access to working capital from which it may, through lending activities, have profited;

c) to disguise the true nature of the underlying assets, he constructed a scheme involving the incorporation of SPVs and the issuance and listing of corporate bonds;

d) the structure involved the significant extraction of investment monies in fees and commission, to Mr Ewing, SVS and others, which were a cost to investors and which increased the risk that the investments would fail and they would lose money;

e) despite the scheme involving significant and obvious conflicts of interest for both Mr Ewing and for SVS, he failed to take any, or any appropriate, steps to ensure that these conflicts were avoided or managed appropriately;

f) when challenged about the appropriateness of the investments by a SIPP operator, despite his obvious and significant conflict of interest, Mr Ewing engaged directly with the SIPP operator and made a series of incomplete and/or misleading statements which were designed to induce the SIPP operator not to disallow further investments in Mr Ewing's companies or to require sale of the Glenfinnian Bonds;

g) despite knowing that the SIPP operator required SVS to sell the Glenfinnian Bonds, and knowing that he, as chief executive of SVS had undertaken that it would do, Mr Ewing failed to take any steps to ensure that SVS sold the Glenfinnian Bonds and instead resigned from SVS, thereby enabling SVS to assert that the Glenfinnian Bonds were not connected investments;

h) after resigning from SVS, Mr Ewing participated in a further, virtually identical scheme to enable the investment of further pension assets in his high-risk bridge lending company;

i) he did this despite knowing that the SIPP operator did not regard such investments as Standard Assets (and would thus not be permissible investments under the terms of its contract with SVS) and that they were inappropriate assets to be included in most SIPPs;

j) further, he did this at a time when he knew that IAF was loss-making and that the further investment therefore involved additional risks to its success;

k) again, this was designed to benefit Mr Ewing by providing his company, IAF, with working capital from which it might profit;

l) as a result of Mr Ewing's actions, some £5.7 million of SIPP investors' funds appears likely to have been lost.

105. The Authority considers that Mr Ewing failed to act with probity and integrity and has demonstrated that he cannot be trusted not to put his own interests above those of his clients and to take unacceptable risks to their interests for his own benefit.

106. Mr Ewing continues to maintain that he did nothing wrong, indicating that he remains at significant risk of engaging in the same or similar conduct.

107. Subsequently, Mr Ewing has provided the Authority with several false, misleading and incomplete statements about his role at SVS and the performance of the Glenfinnian Bonds and the Pulteney Bonds. The circumstances in which he has done so demonstrate that his intention was to induce the Authority to approve him in respect of controlled functions and/or to grant the Application, in each case thereby benefitting him directly or indirectly.

108. As a result, the Authority considers that Mr Ewing cannot be trusted to be open and cooperative in his dealings with the Authority. Given his proposed role within Ancean, the Authority cannot be satisfied that Ancean will be open and cooperative in its dealings with the Authority.

109. As a result, the Authority cannot ensure that Ancean will satisfy, and continue to satisfy, the threshold conditions in relation to all the regulated activities for which Ancean would have permission if the Application was granted and the Authority has accordingly decided to refuse the Application.

REPRESENTATIONS

110. Annex B contains a brief summary of the key representations made on behalf of Ancean 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 made by Ancean, whether or not set out in Annex B.

PROCEDURAL MATTERS

Decision maker

111. The decision which gave rise to the obligation to give this Decision Notice was made by the Executive Decision Maker.

112. This Decision Notice is given under section 55X(4) and in accordance with section 388 of the Act. The following statutory rights are important.

The Tribunal

113. Ancean has the right to refer the matter to which this Decision Notice relates to the Tribunal. Under paragraph 2(2) of schedule 3 to the Tribunal Procedure (Upper Tribunal) Rules 2008, Ancean has 28 days from the date on which this Decision Notice is given to it to make a reference to the Tribunal. A reference to the Tribunal is made by way of a signed reference form (Form FTC3) filed with a copy of this Decision Notice. The Tribunal's contact details are: The Upper Tribunal (Tax and Chancery Chamber), Fifth Floor, Rolls Building, Fetter Lane, London EC4A 1NL (tel: 020 7612 9730; email: uttc@justice.gov.uk).

114. Further information on the Tribunal, including guidance and a link to 'Forms and further guidance' which includes Form FTC3 and notes on that form, can be found on the HM Courts and Tribunal Service website: https://www.gov.uk/courts-tribunals/upper-tribunal-tax-and-chancery-chamber.

115. A copy of Form FTC3 must also be sent to Nozrul Ali at the Financial Conduct Authority, 12, Endeavour Square, London, E20 1JN (email Nozrul.ali@fca.org.uk) at the same time as filing a reference with the Tribunal.

116. Once any such referral is determined by the Tribunal, and subject to that determination, or if the matter has not been referred to the Tribunal, the Authority will issue a Final Notice about the implementation of that decision.

Access to evidence

117. Section 394 of the Act does not apply to this Decision Notice.

Confidentiality and publicity

118. This Decision Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). Section 391(1A) provides that a person to whom a Decision Notice is given or copied may not publish the notice or any details concerning it unless the Authority has published the notice or those details.

119. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Decision Notice relates. Under those provisions, the Authority must publish such information about the matter to which this Decision 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 Ancean, prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

Authority contacts

120. For more information concerning this matter generally, contact Nozrul Ali Manager, Credit & Lending, at the Authority (direct line: 020 7066 4792 / email: Nozrul.Ali@fca.org.uk).

Sarah Hayes
Executive Decision Maker

ANNEX A – REGULATORY PROVISIONS RELEVANT TO THIS DECISION NOTICE

Relevant Statutory Provisions

1. Section 55A(1) of the Act provides for an application for permission to carry on one or more regulated activities to be made to the appropriate regulator. Section 55A(2) defines the "appropriate regulator" for different applications.

2. Section 55B(3) of the Act provides that, in giving or varying permission, imposing or varying a requirement, or giving consent, under any provision of Part 4A of the Act, each regulator must ensure that the person concerned will satisfy, and continue to satisfy, in relation to all of the regulated activities for which the person has or will have permission, the threshold conditions for which that regulator is responsible.

3. The threshold conditions that relate to the Application are set out in Part 1B of Schedule 6 to the Act. In brief, the threshold conditions relate to:

   (1) Threshold condition 2B: Location of offices

   (2) Threshold condition 2C: Effective supervision

   (3) Threshold condition 2D: Appropriate resources

   (4) Threshold condition 2E: Suitability

   (5) Threshold condition 2F: Business model

4. The Suitability Threshold Condition provides:

   The firm must be a fit and proper person having regard to all the circumstances, including—

   (a) The firm's connection with any person;

   (b) the nature (including the complexity) of the regulated activities that the firm carries on or seeks to carry on;

   (c) the need to ensure that the firm's affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system;

   (d) whether the firm has complied and is complying with requirements imposed by the Authority in the exercise of its functions, or requests made by the Authority, relating to the provision of information to the Authority and, where the firm has so complied or is so complying, the manner of that compliance;

   (e) whether those who manage the firm's affairs have adequate skills and experience and have acted and may be expected to act with probity;

   (f) whether the firm's business is being, or is to be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner;

   (g) the need to minimise the extent to which it is possible for the business carried on by the firm, or to be carried on by the firm, to be used for a purpose connected with financial crime.

Relevant provisions of the Authority's Handbook

Threshold Conditions - COND

5. In exercising its powers in relation to the granting of a Part 4A permission, the Authority has regard to guidance published in the Authority's Handbook, including the part entitled 'Threshold Conditions' ("COND"). Provisions relevant to the consideration of the Application include those set out below.

General guidance

6. COND 1.3.2G(2) states that, in relation to threshold conditions 2D to 2F, the Authority will consider whether a firm is ready, willing and organised to comply on a continuing basis with the requirements and standards under the regulatory system which will apply to the firm if it is granted Part 4A permission.

7. Under COND 1.3.3AG, in determining the weight to be given to any relevant matter, the Authority will consider its significance in relation to the regulated activities for which the firm has, or will have, permission, in the context of its ability to supervise the firm adequately, having regard to the Authority's statutory objectives. In this context, a series of matters may be significant when taken together, even though each of them in isolation might not give serious cause for concern.

8. COND 1.3.3BG provides that, in determining whether the firm will satisfy, and continue to satisfy, the threshold conditions, the Authority will have regard to all relevant matters, whether arising in the United Kingdom or elsewhere.

9. COND 1.3.3CG provides that, when assessing the threshold conditions, the Authority may have regard to any person appearing to be, or likely to be, in a relevant relationship with the firm, in accordance with section 55R of the Act (Persons connected with an applicant). For example, a firm's controllers, its directors or partners, other persons with close links to the firm (see COND 2.3), and other persons that exert influence on the firm which might pose a risk to the firm's satisfaction of the threshold conditions, would be in a relevant relationship with the firm.

Threshold condition 2E: Suitability

10. COND 2.5.2G(2) states that the Authority will also take into consideration anything that could influence a firm's continuing ability to satisfy the Suitability Threshold Condition. Examples include the firm's position within a UK or international group, information provided by overseas regulators about the firm, and the firm's plans to seek to vary its Part 4A permission to carry on additional regulated activities once it has been granted that permission.

11. COND 2.5.3G(1) states that the emphasis of the Suitability Threshold Condition is on the suitability of the firm itself. The suitability of each person who performs a controlled function will be assessed by the Authority under the approved persons regime (see SUP 10 (Approved persons) and FIT). In certain circumstances, however, the Authority may consider that the firm is not suitable because of doubts over the individual or collective suitability of persons connected with the firm.

12. COND 2.5.4G(2) states that examples of the kind of general considerations to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy, the Suitability Threshold Condition include, but are not limited to, whether the firm:

(a) conducts, or will conduct, its business with integrity and in compliance with proper standards;

(b) has, or will have, a competent and prudent management; and

(c) can demonstrate that it conducts, or will conduct, its affairs with the exercise of due skill, care and diligence.

13. COND 2.5.6G provides that examples of the kind of particular considerations to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy, this threshold condition include, but are not limited to, whether:

(1) the firm has been open and co-operative in all its dealings with the Authority and any other regulatory body;

…

(4) the firm has contravened, or is connected with a person who has contravened, any provisions of the Act or any preceding financial services legislation, the regulatory system or the rules, regulations, statements of principles or codes of practice; and whether

…

(13) the firm, or a person connected with the firm, has been a director, partner or otherwise concerned in the management of a company, partnership or other organisation or business that has gone into insolvency, liquidation or administration while having been connected with that organisation or within one year of such a connection.

IPRU-INV

14. IPRU-INV 5.9.1R sets out the Liquid Capital Requirement for firms whose permitted business includes establishing, operating or winding up a personal pension scheme. It includes a list of Standard Assets which comprises the following (subject to Note 1).

Cash

Cash funds

Deposits

Exchange traded commodities

Government & local authority bonds and other fixed interest stocks

Investment notes (structured products)

Shares in Investment trusts

Managed pension funds

National Savings and Investment products

Permanent interest bearing shares (PIBs)

Physical gold bullion

Real estate investment trusts (REITs)

Securities admitted to trading on a regulated venue

UK commercial property

Units in regulated collective investment schemes

15. Note 1 reads: *"A Standard Asset must be capable of being accurately and fairly valued on an ongoing basis and readily realised within 30 days, whenever required"*.

ANNEX B – REPRESENTATIONS

1. Ancean's representations did not dispute the factual matters on which the Authority's conclusions were based but instead contended that the appropriate inferences and/or conclusions to draw from these facts did not merit refusal of the Application. A summary of the principal representations made by Ancean appears below (in bold), along with the Authority's consideration of them.

2. **Mr Ewing's involvement in the business of SVS was limited and that, by comparison to others, he bore little culpability for events at SVS. In addition, he had engaged other professionals to advise upon, and assist with, the operation of Glenfinnian and Pulteney and had limited technical involvement with them.**

3. The Authority's assessment of the Application was not concerned with determining whether others at SVS were culpable, or who had most culpability. Rather, the assessment was focussed on whether Mr Ewing is a fit and proper person to lead an authorised firm and consequently, whether Ancean is suitable.

4. While Mr Ewing was not the only party involved, he was, together with Mr Virk, an originator of the scheme by which pension monies were invested in IAF, a director of each of the companies in the structure and, as the beneficial owner of IAF, he alone stood to benefit from the opportunity to profit from the working capital made available.

5. The fact that Mr Ewing used advisers and other participants to help structure and execute certain parts of the scheme does not serve to reduce his role in establishing and continuing it.

6. As a result, the Authority does not consider that Mr Ewing's role is appropriately characterised as limited and considers that, by seeking to minimise his role, the representations demonstrate an unwillingness by Mr Ewing to accept responsibility and a continuing attempt to blame others which enhances the Authority's concerns that such conduct is liable to be repeated.

7. **Mr Ewing's conflict of interest was disclosed in the prospectus and his lack of involvement in the investment function of SVS, together with the fact that he was remunerated by fixed payments, meant that any conflict of interest was theoretical, rather than presenting any material risk.**

8. Disclosure in the prospectus, which was unlikely to be used by investors to influence their investment decisions was not primarily where Mr Ewing's conflict was an issue. Rather the principal conflict lay in Mr Ewing's role as director (and CEO) of a firm with a fiduciary duty to manage its clients' funds and his decision to establish a structure to enable these funds to be invested in a business from which he stood to make a profit (and from which SVS earned significant commissions).

9. The Authority considers that this was an obvious and serious conflict and that its minimisation in the representations is a further indication of Mr Ewing's failure to accept and/or to appreciate acceptable standards of conduct. Mr Ewing received monies from Glenfinnian and Pulteney which he would not have done if the investments had not been made and had the opportunity to benefit from any profit made by IAF as a result of the funds provided to it.

10. **Mr Ewing's previous regulatory history demonstrates a willingness to promote compliant behaviour and an adherence to acceptable standards of conduct.**

11. Despite the warning notice provided to Ancean detailing the provision by Mr Ewing of false and misleading information to the Authority on several occasions, the representations failed to refer to, let alone explain, any of these instances. The Authority infers that is because the assertions in the warning notice were fairly and properly made.

12. These assertions demonstrate a serious lack of probity and failure to adhere to regulatory standards on Mr Ewing's part. In these circumstances, previous compliant behaviour is of limited significance.

13. **Ancean would consent to the imposition of certain conditions, including not to operate as a network, providing the Authority with details of, and feedback from, an external compliance consultant and being subject to enhanced supervision.**

14. The Authority considered that, given its finding that Mr Ewing was not a fit and proper person, the proposed conditions were insufficient to mitigate the potential risks of authorising Ancean. In particular, the Authority considered that the Authority could not be satisfied that Mr Ewing would act in good faith and not use his position for his own financial benefit. The Authority further considered that it could not rely upon Mr Ewing to provide it with accurate information given the false statements previously provided to the Authority.