Financial Conduct Authority

PURSUANT TO THE DECISION OF THE UPPER TRIBUNAL ON 6 NOVEMBER 2018, THIS DECISION NOTICE HAS BEEN SUPERSEDED BY A FINAL NOTICE DATED 16 JANUARY 2019.

DECISION NOTICE

To: **Stewart Owen Ford**

IRN: **SOF01000**

Date: **7 November 2014**

1. ACTION

1.1. For the reasons set out below, the Authority has decided to:

(1) impose on Mr Ford, pursuant to section 66 of the Act, a financial penalty of £75 million for breaches of Statements of Principle 1 (integrity) and 4 (relations with regulators); and

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

2. SUMMARY OF REASONS

2.1. Keydata designed, launched and, via IFAs, distributed structured investment products to retail customers. Keydata went into administration on 8 June 2009 and was dissolved on 2 July 2014. Prior to its administration, Keydata had £2.8 billion of its own and other institutions' investment products under administration.

During the Relevant Period (26 July 2005 to 8 June 2009) Keydata designed, launched and distributed four investment products which invested primarily in US senior life settlement policies: the SIB, the SIP, the Income Plan and the DIP.

2.2. The Products offered retail customers an income or growth investment, by way of ISA, personal equity plan or direct investment. The income option paid a fixed percentage income (payable quarterly or annually) and aimed to ensure the full return of capital to the investor at the end of a five, seven or ten year term. The growth option rolled up and accrued the income payments to provide a compound growth over the life of the Product and aimed to ensure the full return of capital to the retail investor at the end of a five, seven or ten year term. Keydata purchased, on behalf of the investors, bonds issued by a special purpose vehicle incorporated in Luxembourg (either SLS or Lifemark). The SLS Products were underpinned by investments in the SLS Bonds and the Lifemark Products were underpinned by investments in the Lifemark Bonds. The SLS Bonds and the Lifemark Bonds were to be listed on the Luxembourg Stock Exchange.

2.3. The funds raised through the issue of the SLS Bonds would then be invested by SLS in the SLS Portfolio, and similarly the funds raised through the issue of the Lifemark Bonds would then be invested by Lifemark in the Lifemark Portfolio. The structures of the SLS and Lifemark Portfolios were broadly similar: they contained US senior life settlement policies and required an amount of the funds raised to be kept in cash (or liquid securities) to fund the payment of fees, income and insurance premiums. The target spread for the SLS Portfolio was 40% cash and 60% policies and for the Lifemark Portfolio was 30% cash and 70% policies.

2.4. Mr Ford held Controlled Functions 1 (Director) and 3 (Chief Executive) throughout the Relevant Period and Controlled Function 8 (Apportionment and oversight) from the start of the Relevant Period until 31 October 2007. As CEO, Mr Ford was responsible for the oversight of all the business functions of Keydata including sales, business development, finance and operations, and had overall responsibility for Keydata's compliance with regulatory standards.

2.5. During the Relevant Period, Mr Ford:

(1) failed to act with integrity in carrying out his controlled functions, in breach of Statement of Principle 1, in that he:

(a) deliberately concealed, or caused Keydata to conceal, the problems with SLS's performance and solvency from Keydata's Compliance

Officer, the Authority, investors and IFAs, and, despite being aware that it was highly likely that the SLS Products would not fulfil the conditions set out in the ISA Regulations, recklessly failed to disclose that risk to those parties;

(b) deliberately caused Keydata to market and sell the Lifemark Products when he was aware that:

(i) Keydata's due diligence was not adequate and fell below the relevant regulatory standards and had failed to uncover various matters which posed a risk to the performance of the Lifemark Products, and that the other Keydata directors and Keydata's Compliance Officer were unaware of these matters, including, in particular, his Conflict of Interest; and

(ii) no arrangements were in place to manage adequately his Conflict of Interest;

(c) was aware that:

(i) Keydata had received professional advice that its financial promotions contained unclear, incorrect and misleading statements and had failed to take the steps recommended by its advisers to address those matters;

(ii) Keydata had received professional advice that its due diligence in respect of the Lifemark Products was inadequate and had failed to take the steps recommended by its advisers to address the failings; and

(iii) Keydata had received professional advice regarding the risk of the Lifemark Portfolio not performing, and that Keydata had failed to take adequate steps to ensure that the risk was being effectively managed and that investors and IFAs were aware of this risk;

but recklessly failed either to ensure that Keydata addressed the issues and risks that had been identified or to stop Keydata from marketing and selling the Lifemark Products until effective remedial steps were taken;

(d) recklessly failed to ensure that Keydata took steps to explain or mitigate the risk to investors who had invested in the Lifemark Products, and that material circulated to such investors gave an accurate impression of the risks to the performance of the Lifemark Portfolio, despite becoming increasingly aware of the severe risks affecting the Lifemark Portfolio;

(e) recklessly permitted Keydata to continue marketing and selling the Lifemark Products as fulfilling the conditions set out in the ISA Regulations, when he was aware that it was highly likely that they did not do so; and

(f) deliberately misled the Authority, by representing to the Authority during a compelled interview that the Products were on target to meet their obligations, despite being aware of the ongoing failure of SLS to make income payments, that it was highly likely that the SLS Products would not fulfil the conditions set out in the ISA Regulations and of the severe liquidity and other risks with the Lifemark Portfolio, and deliberately failed to instruct Keydata's Compliance Officer not to mislead the Authority at a meeting.

(2) failed to deal with the Authority in an open and cooperative way, in breach of Statement of Principle 4, in that he:

(a) made false representations to the Authority during a compelled interview;

(b) failed to instruct Keydata's Compliance Officer not to mislead the Authority at a meeting;

(c) was aware that a spreadsheet provided by Keydata to the Authority on 5 June 2009, by an email from Keydata's solicitors which was copied to him, was highly likely to mislead the Authority by representing that future income was expected from SLS, , and failed to correct the information provided;

(d) did not disclose to the Authority his true involvement with Lifemark and the Lifemark Companies despite knowing of its concern over his role as director of Keydata and Lifemark;

(e) failed to ensure that the Authority was made aware that the Luxembourg Regulator had concerns with the financial situation of the Lifemark Portfolio; and

(f) failed to ensure that the Authority was made aware: that SLS was failing to make income payments due under the SLS Bonds on an ongoing and regular basis; that Keydata was funding income payments for the SLS Products; that there were serious concerns about the solvency of SLS; that it was highly likely that the SLS Products would not fulfil the conditions set out in the ISA Regulations; that Keydata had identified problems with the due diligence for the Lifemark Products; or of the clear risk that the Lifemark Portfolio might not perform as investors had been led to expect due to severe liquidity and other risks which were not being effectively managed.

2.6. The Authority considers that Mr Ford's failings in this regard are of the most serious nature in light of:

(1) the significant level of consumer detriment which has arisen from the sales of the Products and the impact which this level of consumer detriment has had on the financial services sector. During the Relevant Period over 37,000 investors purchased the Products, investing over £475 million, and the FSCS has subsequently made payments to investors in the Products of over £330 million;

(2) the fact that Mr Ford had a clear and acute Conflict of Interest, and stood to benefit from all sales of the Lifemark Products and any eventual surplus within the Lifemark Portfolio. He therefore had a personal interest to ensure that the Lifemark Products continued to be sold and that Lifemark continued to buy US senior life settlement policies despite his awareness of the risk of the Lifemark Portfolio not performing. The Lifemark Companies took over £72.4 million from the Lifemark structure in undisclosed fees (a sum equivalent to 19.4% of all the investment funds invested in the Lifemark Products) in addition to the total of over £22.7 million paid by Lifemark to Keydata. Taking this amount of money from the Lifemark structure increased the risk of investors not receiving the return promised to them; and

(3) the fact that Mr Ford was Keydata's CEO throughout the Relevant Period but,

from mid-2007 onwards, did not commit as much time to Keydata's business as would reasonably be expected and required of a CEO of a business such as Keydata and failed to ensure that his regulatory and business responsibilities as CEO were properly discharged. This contributed to the reckless nature of his behaviour in relation to the Products.

2.7. The Authority considers that Mr Ford's conduct demonstrates that he is not fit and proper to perform any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.

2.8. The Authority considers that the nature and seriousness of Mr Ford's misconduct warrant the action set out at section 1 above.

3. DEFINITIONS

3.1. The following definitions are used in this Decision Notice.

(a) "2008 Actuarial Review" has the definition set out in paragraph 4.78;

(b) "the Act" means the Financial Services and Markets Act 2000;

(c) "the Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;

(d) "Brochure Advice" has the definition set out in paragraph 4.36;

(e) "CEO" means Chief Executive Officer;

(f) "Conflict of Interest" means Mr Ford's conflict of interest arising from the fact that he personally and/or his family, through trusts he set up on behalf of his family, were the beneficial owner(s) of, or entitled to the full benefit from, Lifemark and the Lifemark Companies;

(g) "CRT" means CRT Capital Investment Banking Group, an SEC regulated firm;

(h) "DEPP" means the version of the Decision Procedure and Penalties Manual section of the Handbook which was in force up to and including 5 March 2010;

(i) "DIP" means the Defined Income Plan;

(j) "Draft Lifemark Valuation Report" has the definition set out in paragraph 4.71;

(k) "EG" means the Authority's Enforcement Guide;

(l) "ENF" means the Authority's Enforcement Manual, which was in force between 1 December 2004 and 27 August 2007;

(m) "exempt professional firm" means a person to whom, as a result of Part XX of the Act, the general prohibition does not apply in relation to that activity;

(n) "February 2008 Brochure Report" has the definition set out in paragraph 4.43;

(o) "FIT" means the Fit and Proper Test for Approved Persons section of the Handbook;

(p) "FSCS" means the Financial Services Compensation Scheme;

(q) "Handbook" means the Authority's Handbook of Rules and Guidance;

(r) "HMRC" means Her Majesty's Revenue and Customs;

(s) "IFA" means Independent Financial Adviser;

(t) "ISA" means Individual Savings Account;

(u) "ISA Regulations" means the Individual Savings Account Regulations 1998 (SI 1998/1870);

(v) "June 2008 Extract Review" has the definition set out in paragraph 4.46;

(w) "Keydata" means Keydata Investment Services Limited;

(x) "Keydata's Compliance Officer" means the individual who, from prior to the start of the Relevant Period until 1 December 2008, was the compliance officer of Keydata and the holder of the CF10 (Compliance oversight) controlled function, and retained responsibility thereafter for dealings with the Authority in relation to the Products;

(y) "Lifemark" means Lifemark SA;

(z) "Lifemark Actuary" means the actuary for the Lifemark Portfolio;

(aa) "Lifemark Bonds" means the bonds issued by Lifemark;

(bb) "Lifemark Companies" means the various companies within the Lifemark structure described in paragraph 4.17 of which Mr Ford personally and/or his family, through trusts he set up on behalf of his family, were the beneficial owner(s) or from which they were entitled to the full benefit;

(cc) "Lifemark Investment Manager" means the investment manager appointed to manage the Lifemark Portfolio;

(dd) "Lifemark Portfolio" means the portfolio of US senior life settlement policies and cash in which the funds raised from investors through the issue of the Lifemark Bonds were invested by Lifemark;

(ee) "Lifemark Products" means issue 4 of the SIB, issues 1 to 12 of the SIP, issues 1 to 12 and 14 of the Income Plan and issues 1 to 9 of the DIP;

(ff) "Luxembourg Regulator" means the Commission de Surveillance du Secteur Financier, the Luxembourg financial regulator;

(gg) "March 2008 Due Diligence Report" has the definition set out in paragraph 4.55;

(hh) "October 2008 Lifemark Report" has the definition set out in paragraph 4.76;

(ii) "Offshore Arranger" means the company, incorporated in the British Virgin Islands, which was party to a Professional Services Agreement dated 16 October 2006 with Lifemark relating to services including the negotiation of contracts, introductions and support for operational matters in relation to the Lifemark Portfolio;

(jj) "Offshore Consultancy" means the company, incorporated in the British Virgin Islands, which entered into a fee sharing agreement with a US originator of life settlement policies for purchase by Lifemark;

(kk) "Offshore Partnership" means the offshore partnership, with which Mr Ford was a consultant, which carried out services for Keydata in relation to the SLS Products and was subsequently engaged by Keydata to negotiate and control the activities of all parties to the Lifemark Bonds, pursuant to a Corporate Management Services Agreement dated 25 May 2007;

(ll) "Offshore Partnership Report" has the definition set out in paragraph 4.66;

(mm) "Offshore Promoter" means the company, incorporated in Panama, which was party to a promotion and distribution agreement with Lifemark dated 17 March 2006 in relation to the Lifemark Bonds;

(nn) "Products" means the SIB, the SIP, the Income Plan and the DIP;

(oo) "RAC" means Required Asset Cover;

(pp) "Relevant Period" means the period from 26 July 2005 to 8 June 2009;

(qq) "SIB" means the Secure Income Bond;

(rr) "SIP" means the Secure Income Plan;

(ss) "SLS" means SLS Capital SA;

(tt) "SLS Bonds" means the bonds issued by SLS;

(uu) "SLS Investment Manager" means the investment manager appointed to manage the SLS Portfolio;

(vv) "SLS Portfolio" means the portfolio of US senior life settlement policies and cash in which the funds raised from investors through the issue of the SLS Bonds were invested by SLS;

(ww) "SLS Products" means issues 1, 2 and 3 of the SIB;

(xx) "Statement of Principle" means one of the Authority's Statements of Principle for Approved Persons in the Handbook;

(yy) "Summary Report" has the definition set out in paragraph 4.58; and

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

4. FACTS AND MATTERS

Keydata

4.1. Keydata was the wholly owned subsidiary of Keydata UK Limited, a company incorporated in Scotland. Mr Ford was the majority shareholder and controller of Keydata UK Limited and a director of Keydata UK Limited and Keydata. 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.

4.2. Keydata designed, launched and, via IFAs, distributed structured investment products to retail customers. It launched its first investment products in 2001. The majority of Keydata's products were structured products involving the purchase of bonds and it offered a range of five to six such products at any one time. As at June 2009, Keydata had £2.8 billion of investment products under administration (including £2.1 billion of assets held on behalf of major financial services firms whose products Keydata administered).

4.3. Keydata's business in relation to the Products was primarily managed and controlled by Mr Ford. Mr Ford held, among other controlled functions, Controlled Function 3 (Chief Executive) (which he held throughout the Relevant Period). Mr Ford sought to resign from his position as CEO of Keydata during 2007 and entered into a Non-Executive Service Agreement with Keydata dated 19 July 2007, which described him as a non-executive director. That agreement provided that Mr Ford was not expected to devote more than 20 hours per month to Keydata's business. As a consequence he did not commit as much time to Keydata's business as would reasonably be expected and required from a CEO of a business such as Keydata. However, Mr Ford did not notify the Authority of his purported resignation, he continued to hold Controlled Function 3, nobody

replaced him as Keydata's CEO and he continued to be regarded by the other Keydata directors and Keydata's Compliance Officer as Keydata's CEO. The Authority therefore considers that Mr Ford was Keydata's CEO throughout the Relevant Period and, accordingly, that he had the corresponding business and regulatory responsibilities.

The SLS Products

4.4. The SLS Products were underpinned by investments in bonds issued by SLS. They were promoted to investors as being eligible for ISA status. SLS was a special purpose vehicle incorporated in Luxembourg. The SLS Bonds were purchased by Keydata on behalf of investors in the SLS Products. From 26 July 2005 to 16 December 2005 £103 million was invested in the SLS Products by 6,486 retail investors, via IFAs.

4.5. The funds in the SLS Bonds were invested in US senior life settlement policies and cash, which comprised the SLS Portfolio. The reason for keeping a portion of the investments in cash was to fund the payment of fees, income and insurance premiums. The investment mix for the SLS Portfolio was targeted to be 60% policies and 40% cash for the SLS Products. The policies and cash were intended to produce income and a full return of capital at the end of the term of the SLS Product (through the death of an insured individual or the re-sale of the policy in the secondary market), although the return of capital was not guaranteed. The terms of the SLS Products were intended to mirror the terms and conditions of the SLS Bonds; for example the SLS Bonds paid income quarterly or annually (which was mirrored by the investment options available for the SLS Products, although the SLS Products had lower income rates than the SLS Bonds).

4.6. The investors did not pay a fee to Keydata in respect of the investment in the SLS Products. Keydata received an initial commission from SLS which was 5.5% of the total funds invested in the SLS Products. This was not disclosed to investors (and there was no requirement for it to be disclosed). Keydata retained 2.5% of the initial commission and passed 3% on to IFAs. Keydata also received quarterly fees from SLS in respect of each of the SLS Products. These payments amounted to 1.81% per annum of the funds invested in the SLS Products. In addition, SLS paid Keydata 0.5% in annual trail commission which Keydata passed on to IFAs. The total amount of the fees and commission paid by SLS to Keydata in relation to the SLS Products was £5,426,707.

4.7. Prior to September 2007 the shareholders of SLS included BWT Capital, CRT and

David Elias, a British businessman based in Singapore, who held a minority shareholding in SLS. However, from September 2007 Mr Elias acquired a controlling interest in SLS as a result of purchasing CRT's shares in the company. It was reported in the press that Mr Elias died in Singapore on 8 May 2009.

4.8. The SLS Products were high risk in nature and as such the returns offered to investors, both in respect of income and the return of capital at maturity, would be subject to a high level of risk. The high risk nature of the SLS Products resulted from the following:

(1) the SLS Portfolio invested in assets which were highly illiquid and very expensive to maintain. The costs of funding the premiums for the policies were extremely high and failure to make these payments would result in the policies lapsing and all capital value being lost; and

(2) the performance of the SLS Portfolio (and therefore the returns to investors) was dependent on the date of death of the individuals insured under the senior life settlement policies occurring broadly in line with the forecast life expectancies.

4.9. The SLS Portfolio operated on the basis of a 2:1 RAC ratio. In respect of all the SLS Products this meant that the face/maturity value of the policies within the SLS Portfolio should at all times be at least twice the amount of the principal outstanding on the SLS Bonds (the amount of subscription monies invested) minus cash. For example, if the face value of the SLS Portfolio was £20 million and the principal amount outstanding under the SLS Bonds was £5 million with a cash surplus of £1 million, this RAC ratio would be met as the RAC calculation would be 20 ÷ (5 - 1) = 5.

4.10. On or around 21 April 2008, SLS entered into an agreement with a company owned by Mr Elias under which all the policies in the SLS Portfolio and other assets of SLS were transferred to that company in return for a guarantee in relation to SLS's liabilities. From that date, the guarantee was the only asset in the SLS Portfolio; however, RAC certificates were issued subsequently, indicating that the RAC ratio was being met even though there was, from that date, no proper basis for such certificates to be issued. Neither Keydata nor Mr Ford were involved in, or informed at the time of, the arrangements between SLS and the guarantor to put in place the guarantee. SLS was put into liquidation on 1 October 2009.

The Lifemark Products

4.11. Following the launch of the SIB 3, Keydata was advised by CRT that it would not support any further issues of the SIB. The SIB 3 closed to retail investors on 16 December 2005 and, on 19 December 2005, Keydata instead started to launch the Lifemark Products, which were underpinned by investments in bonds issued by Lifemark, and which were also promoted to investors as being eligible for ISA status. Lifemark was a special purpose vehicle incorporated in Luxembourg on 12 January 2006 and regulated by the Luxembourg Regulator. Lifemark was set up by Mr Ford who was also one of its directors.

4.12. Mr Ford advised the Authority that he had been required to be a director of Lifemark by the Luxembourg Regulator as it wished Lifemark to have a representative of Keydata on its board. While this was correct, the Authority discovered after Keydata went into administration that Lifemark was also beneficially owned by Mr Ford through a structure under which the assets were held by a Dutch "stichting" or trust arrangement set up on his behalf. Mr Ford had no formal control over the actions of the trustees but in practice they would act in accordance with his instructions. Under this arrangement, Mr Ford would have benefited from any residual value in the assets of Lifemark once all holders of the Lifemark Bonds had been paid in full.

4.13. The Lifemark Bonds were purchased by Keydata on behalf of investors in the Lifemark Products. Keydata designed, marketed and sold over 30 issues of the Lifemark Products from 19 December 2005 to 8 June 2009. £373,162,684 was invested in the Lifemark Products by 30,906 retail customers, via IFAs.

4.14. The funds in the Lifemark Bonds were invested in US senior life settlement policies and cash, which comprised the Lifemark Portfolio. The investment mix for the Lifemark Portfolio was intended to be 70% policies and 30% cash for the Lifemark Products. The policies and cash were intended to produce income and a full return of capital at the end of the term of the Lifemark Product (through the death of an insured individual or the re-sale of the policy in the secondary market), although the return of capital was not guaranteed. The terms of the Lifemark Products were intended to mirror the terms and conditions of the Lifemark Bonds.

4.15. The investors did not pay a fee to Keydata in respect of the investment in the Lifemark Products. Keydata was entitled under an agreement with Lifemark to a

2.5% upfront commission on the funds invested in each Lifemark Product and a 1% per annum ongoing trail commission (this does not include any fees and commissions received by Keydata from Lifemark and passed on to IFAs). The commissions paid by Lifemark to Keydata up to 8 June 2009 in relation to the Lifemark Products totalled £22,791,932 (excluding fees and commissions paid on to IFAs).

4.16. The Lifemark Products were high risk in nature and as such the returns offered to investors, both in respect of income and the return of capital at maturity, would be subject to a high level of risk. The high risk nature of the Lifemark Products resulted from the following:

(1) the Lifemark Portfolio invested in assets which were long-term, highly illiquid and very expensive to maintain. The costs of funding the premiums for the policies were extremely high and failure to make these payments would result in the policies lapsing and all capital value being lost;

(2) the Lifemark Portfolio was not in existence when the Lifemark Products were launched and therefore it would take some time for the Lifemark Portfolio to reach the required size where it would be self-funding (i.e. policy maturities were able to fund the premium payments and obligations under the Lifemark Bonds). This meant that Lifemark needed to have the ability to continue to issue the Lifemark Bonds or raise funds by other means, including borrowing, until such time as the Lifemark Portfolio became self-funding; and

(3) the performance of the Lifemark Portfolio (and therefore the returns to investors) was dependent on the deaths of the individuals insured under the US senior life settlement policies occurring broadly in line with the forecast life expectancies.

4.17. In addition to his beneficial ownership of Lifemark, Mr Ford personally and/or his family, through trusts he set up on behalf of his family, were the beneficial owner(s) of, or entitled to the full benefit from, the Lifemark Companies, which comprised:

(1) the Offshore Promoter, which was paid fees of £5,283,739 under its agreement with Lifemark, which provided for it to "*promote and distribute the asset backed securitization bonds being issued from time to time by*

Lifemark";

(2) the Offshore Consultancy, which was paid fees of £31,106,469 by US brokers for introductory services in respect of the sale of US senior life settlement policies to Lifemark; and

(3) the Offshore Arranger, to which Lifemark agreed to pay 10% of the funds invested in the Lifemark Bonds pursuant to a Professional Services Agreement dated 16 October 2006 in return for the provision of a number of services including: the negotiation of contracts with "*investment activity parties*" and "*administration parties*"; the provision of "*introductions to distribution opportunities"* and advice on "*distribution opportunities to allow* [Lifemark] *access to key distribution opportunities*"; and the provision of support to Lifemark's contract counterparties for operational matters. Lifemark paid fees to the Offshore Arranger of £36,074,852.

4.18. As set out above, the Lifemark Companies took over £72.4 million from the Lifemark structure (a sum equivalent to 19.4% of all the investment funds invested in the Lifemark Products). The Authority considers that the Lifemark Companies performed no, or no meaningful, services in return for the sums received by them in respect of their involvement in the Lifemark structure.

4.19. The risk to investors in the Lifemark Products of not receiving the returns promised was made considerably more likely by the very high level of fees paid to Keydata and the Lifemark Companies (see paragraphs 4.15 and 4.17 above). The Provisional Administrator of Lifemark stated in his report to the Luxembourg Regulator that:

(1) the level of fees payable under the Lifemark structure, a number of which were undisclosed and paid to companies owned or controlled by Mr Ford, was directly responsible for the failure of Lifemark: "*the current model was torpedoed by the high cost structure, which prevented Lifemark from reaching the required level of assets in light of its debts*"; and

(2) Lifemark had a liquidity problem:

"*It could be thought that Lifemark issued bonds each time liquidity was at risk. This situation was inevitable given the significant fees which had been paid. … If the fees had been less significant, then the available funds would normally have been used to:*

- retain a cash reserve, as provided for in the general conditions

- acquire more policies (which would therefore potentially have generated more mortalities and therefore more revenue)

In simple terms, the initiators probably pushed their luck a bit too much and the survival link became considerably weaker."

4.20. The Lifemark Portfolio operated on the basis of a 2:1 RAC ratio (which is described at paragraph 4.9 above in relation to the SLS Portfolio). The Luxembourg Regulator closed Lifemark to new business in mid-2009 and Lifemark was subsequently put into administration and, on 11 May 2012, liquidation.

Failure of the SLS Products to perform

4.21. Mr Ford was aware from 13 November 2006 that there were problems with the performance of the SLS Portfolio, and accordingly that there could be problems with the SLS Products.

4.22. On that date Mr Ford attended a conference call with the Offshore Partnership and the SLS Investment Manager. The SLS Investment Manager advised that the RAC ratio for the SLS Portfolio was (in breach of the terms and conditions of the SLS Bonds) at 1.91:1 rather than the required 2:1. Mr Ford was advised by the Offshore Partnership that the SLS Bonds were likely not worth par at that time (i.e. investors would receive less than £1 for each £1 invested). The fact that the SLS Portfolio had breached the RAC ratio resulted in the non-payment of income owing under the SLS Bonds. These income payments were in turn used to fund the income payable under the SLS Products and fees to Keydata and IFAs.

4.23. On 6 January 2007 the Offshore Partnership informed Mr Ford that it had been told of a rumour that "*SLS will go into default in the next 20 days. This means that income payments will stop and capital will be recovered on a partial basis*". On 8 January 2007 Mr Ford was advised by Keydata's Compliance Officer that he, as Keydata's Compliance Officer, was duty bound to report the failure to the Authority should the rumour be confirmed. Keydata's Compliance Officer took the view that the rumour was not confirmed.

4.24. On 12 February 2007 Keydata's Compliance Officer wrote to Mr Ford: *"I think we*

need to ensure that we put steps in place to rectify the position with [SLS] *asap. I have discussed this with* [the Offshore Partnership] *and we think it would be best if Lifemark "took over"* [SLS]*. If this is what is decided we need to instruct* [the Offshore Partnership] *to proceed with matters".*

4.25. On 16 April 2007 the Offshore Partnership attended a conference call with the SLS Investment Manager to discuss, among other things, the failure of SLS to make an income payment in respect of the SLS Bonds which underpinned the SIB 3. On 24 April 2007 Mr Ford received an attendance note of the call in which it was noted that the SLS Investment Manager had advised the Offshore Partnership that this payment was missed due to the failure of the SLS Portfolio to meet the RAC ratio.

4.26. On 28 September 2007 the Offshore Partnership advised Mr Ford that SLS was now under the control of Mr Elias and stated that "*comments from* [the SLS Investment Manager] *about* the [SLS] [P]*ortfolio being turned sounds like it may be abused just for the* parties *around it to make money*". Later, on 28 September 2007, the Offshore Partnership advised Mr Ford that Mr Elias would lend US$50 million to SLS in order to ensure that the SLS Portfolio met the RAC ratio; it stated that this showed "a *commitment from David* [Elias]*, but also some holes in the ability of SLS to survive*".

4.27. On 22 November 2007, Mr Ford received an email from the Offshore Partnership, relating to a meeting with an adviser to SLS, in which the Offshore Partnership concluded that "*SLS is fairly fucked but* [Mr Elias] *will save the day… From a compliance standpoint the answers were not good,* [Keydata's Compliance Officer] *would lose his reason."* Keydata's Compliance Officer was not provided with this information by Mr Ford.

4.28. On 20 February 2008 the Offshore Partnership emailed Mr Ford with a list of points for him to raise at a meeting with Mr Elias, including the concern that the majority of the policies within the SLS Portfolio appeared to be due to mature after the SLS Products were due to mature and as such would "*not generate sufficient funds to redeem the* [SLS Bonds]". On 22 February 2008 Mr Ford attended the meeting, during which Mr Elias stated that SLS would not be seeking a listing of the SLS Bonds as it was not contractually required to do so, and that there was no currency hedge in place. Mr Elias also refused to provide information to Keydata on the status or performance of assets within the SLS Portfolio. Mr Ford did not inform Keydata's Compliance Officer about the outcome of this meeting.

4.29. On 14 April 2008 Mr Ford was advised by the Finance Director of Keydata that to date Keydata had funded £916,000 in missed income payments to investors for the SLS Products and there were £482,000 of unpaid fees. Keydata did not receive the income payable under the SLS Bonds but funded the income payments due under the SLS Products from its own corporate resources. The Finance Director stated that Keydata had funded the income payments to investors for the SIB 1 for 31 March 2008 and quarterly payments were due on the SIB 3 shortly. The minutes of meetings of the Keydata board of directors from 28 April 2008, 19 May 2008 and 14 July 2008 confirmed that Keydata's fees (which were also intended to be met from income payments made under the SLS Bonds) remained outstanding. Mr Ford was noted as having responsibility for addressing this.

4.30. On 10 October 2008 the minutes of the Keydata board of directors noted that Mr Ford had updated the board on SLS and that "[SLS] *have defaulted on income payments for SIB1/2 claiming under* contract *they have up to 8 weeks to fund.* [Keydata] *has funded income payments pending a meeting between* [Mr Ford] *and SLS to resolve*".

4.31. On 13 November 2008 the minutes of the Keydata board of directors noted that Mr Ford had advised the board that *"following discussion with David Elias of* [SLS]*,* [Mr Elias] *had intimated that there was insufficient liquidity in the fund to make income payments in* the *short term*".

4.32. On 5 February 2009 the minutes of the Keydata board of directors noted that Mr Ford had advised the board, in relation to SLS, that "[Keydata] *has funded £2.95m of income payments and IFA commission to date."* They continued: "[Mr Ford] *reported discussions were ongoing with SLS to resolve matters*".

4.33. On 30 April 2009 the minutes of the Keydata board of directors noted that Mr Ford had advised the board that no real progress was being made with SLS.

4.34. As Keydata's CEO, Mr Ford should have ensured the Authority was made aware that SLS was failing to make income payments on an ongoing and regular basis, that Keydata was funding income payments for the SLS Products and that there were serious concerns about the solvency of SLS. Mr Ford failed to disclose, or ensure that others within Keydata disclosed, these matters to the Authority.

4.35. Mr Ford would have been aware that Keydata's action in making payments in

lieu of SLS had the effect of concealing SLS's failures from investors in the SLS Products and from the IFAs who had been or who were still marketing the SLS Products, and took no steps to ensure the investors or IFAs were informed of the concerns over SLS's performance or solvency.

Financial promotions for the Products

4.36. In late 2005 Keydata instructed its legal advisers to assess the brochures for the SLS Products for the purposes of compliance with the Authority's financial promotion rules. Mr Ford received the final written advice of Keydata's legal advisers on 5 December 2005 (the "Brochure Advice").

4.37. The Brochure Advice stated: "[a]*s currently drafted we think the SIB brochures are not sufficiently compliant with the* [Authority's] *financial promotion rules and we think the brochure should not be used until certain amendments have been made*".

4.38. In particular the Brochure Advice stated that the comparison between the SIB and other income products (for example a bank account) lacked sufficient clarity and had the effect of suggesting that the risk of the SIB was "*low per se, which is not strictly accurate*". The Brochure Advice also pointed out that the brochures for the SLS Products did not adequately set out the risks of the investment, as the section entitled "*Is there any risk?*" was not comprehensive and later in the Key Features documents other risks were mentioned.

4.39. From 19 December 2005 Keydata issued financial promotions for the Lifemark Products which were materially similar in content to those for the SLS Products, despite the Brochure Advice, and were unclear, incorrect and misleading in a number of areas:

(1) the brochures for the Lifemark Products did not adequately explain the risks associated with the operation of the products. For example: that the Lifemark Products were inherently high risk, contrary to the brochures, which stated they were "*lower risk*" in comparison to other types of investments such as equities; that both income and capital were at risk; that the date of maturity of the policies in the Lifemark Portfolio was entirely uncertain; that the information about the projected future performance of the products was not based on reasonable assumptions supported by objective data, and did not make it clear that a forecast is not a reliable indicator of future performance; and that the risk warnings

that were given were misleading and were often undermined by positive language or by their positioning;

(2) a number of the brochures for the Lifemark Products failed to disclose the currency risk as one of the risks of the Product. The lack of a currency hedge would affect the valuation of the Lifemark Products upon redemption or maturity and the currency risk was an unknown quantity. However, the contractual arrangements to secure a currency hedge were not in place (from the launch of the Lifemark Products and the issue of the brochures) to mitigate the foreign exchange risk inherent in the Lifemark Products. Hedging arrangements using a US dollar to pound sterling currency swap were later put in place, between late 2007 and early 2008;

(3) the brochures for the SIB 4 contained references to the existence of a credit facility to provide the Lifemark Portfolio with liquidity funding to enable it to continue to pay the premiums due on the senior life settlement policies comprising the Lifemark Portfolio in the event that they did not generate a sufficient return to fund these expenses. No such credit facility was in place; and

(4) the brochures for each of the SIB 4, the SIP 1 to 4 and the DIP 1 to 8 stated that the investment was into a bond listed on the Luxembourg Stock Exchange and that this would make the Product eligible for ISA status. The SIB 4 and the SIP 1 to 4 (which were issued between 19 December 2005 and 31 July 2006) were not listed on the Luxembourg Stock Exchange until 6 June 2007 and the DIP 1 to 8 (which were issued between 5 March 2008 and 12 January 2009) were not so listed until 24 June 2009.

4.40. Mr Ford reviewed each brochure for the Lifemark Products before it was signed off by Keydata's Compliance Officer to assess whether it was clear and intelligible for a retail customer.

4.41. As Keydata's CEO (and particularly having been provided with a copy of the Brochure Advice), Mr Ford should have ensured that the Brochure Advice was followed in any further sales of the Products.

4.42. Keydata's Compliance Officer informed Mr Ford on 10 October 2007 that the reference to a credit facility had been made in the SIB 4 brochure but that there was no guarantee that a credit facility would be in place for the Lifemark Portfolio.

4.43. On 7 February 2008 Mr Ford received a review of the contents of the brochure for the SIP 14 from one of Keydata's professional advisers (the "February 2008 Brochure Report"). This advised: "[w]*e believe that the way this information is presented is not clear or fair enough and that it does not meet the standards applied by the* [Authority] *or the industry generally.… A number of the individual points we have raised may not seem that significant in isolation. Taken together, though, the effect is sufficiently serious that you should consider suspending sales on the basis of this material*".

4.44. Mr Ford permitted Keydata to continue to market the SIP 14 on the basis of the unamended brochure, and allowed investors who had already agreed to invest in the product to be placed into it until the SIP 14 closed to investment on 22 February 2008.

4.45. Following receipt of the February 2008 Brochure Report, on 19 February 2008 Keydata's Compliance Officer informed Mr Ford and Keydata's Sales Director that Keydata's professional advisers had advised Keydata to "*not issue SIP 15 until we receive the extra due diligence*". Keydata did not issue any further issues of the SIP. Instead, it renamed the product through which it offered investments in Lifemark as the DIP. The offer to invest in issue 1 of the DIP commenced on 5 March 2008. The DIP was in all material respects an identical product to the SIB 4 and the SIP. In an email to IFAs Keydata described it as a "*replacement product*" for the SIP, which "*has been set up in exactly the same way and utilises the same robust investment process and criteria as the SIP*".

4.46. Keydata's professional advisers issued a further report to Keydata on 18 June 2008 (the "June 2008 Extract Review") which considered a report Keydata had obtained on the Lifemark Portfolio. In the June 2008 Extract Review the professional advisers advised Keydata that they agreed with the professional firm that had written the report on the Lifemark Portfolio that the number of senior life settlement policies within the Lifemark Portfolio (229 lives) was small, and commented that this "*directly contradicts assertions made by Keydata in its financial promotions for the SIP that the portfolio contains a large pool of lives and is therefore less exposed to the random fluctuations associated with small pools of lives*".

4.47. Mr Ford permitted Keydata to launch the DIP on 5 March 2008 and to continue to issue new financial promotions for the Lifemark Products which were materially similar in content to those for the earlier Lifemark Products, despite the February 2008 Brochure Report and the June 2008 Extract Review.

4.48. As a director and the beneficial owner of Lifemark, Mr Ford would have been aware that the statements by Keydata on issues such as whether there was a credit facility could not be correct and therefore that the brochures were unclear, incorrect or misleading.

4.49. Mr Ford failed to ensure that Keydata took adequate steps to address the deficiencies which had been identified as set out above.

Due Diligence for the Lifemark Products and Mr Ford's Conflict of Interest

4.50. The Authority considers that Keydata's due diligence into the Lifemark Products was limited and was not completed prior to the launch of the Lifemark Products. Mr Ford was aware of the limitations of the due diligence which Keydata had performed and of various matters which posed a risk to the performance of the Lifemark Products, which the due diligence exercise had failed to uncover, but failed to ensure that the other Keydata directors and Keydata's Compliance Officer were aware of these matters.

4.51. Keydata developed and packaged the Lifemark Products, produced promotional material and selected the IFAs who were to market them, and therefore had responsibility for (among other things): having systems and controls to manage adequately the risks imposed by the product design; and, when providing information to distributors, ensuring the information was sufficient, appropriate and comprehensible in substance and form, including considering whether it would enable distributors to understand it enough to give suitable advice (where advice was given) and to extract any relevant information and communicate it to the end customer.

4.52. The first of the Lifemark Products, the SIB 4, was launched on 19 December 2005. As at that date, several key elements of the Lifemark structure had not been put in place, including that:

(1) Lifemark was not incorporated until 12 January 2006;

(2) the selection, and contractual commitment of, the Lifemark Investment Manager was only confirmed in January 2006;

(3) the development of the financial and actuarial model for the management of the Lifemark Portfolio remained incomplete until February/March 2006;

(4) the identification of a counterparty to source the policies for the Lifemark Portfolio did not take place until May 2006; and

(5) the counterparties did not sign their respective service contracts in respect of the Lifemark structure until 11 July 2006. At this time, the SIB 4, the SIP 1 and the SIP 2 had all been marketed to investors and the investments had "struck" in the sense that investors' funds were committed to the Products by the purchase of Lifemark Bonds (on 10 March 2006, 28 April 2006 and 30 June 2006 respectively).

4.53. As a director and the beneficial owner of Lifemark, Mr Ford was aware of these matters but deliberately allowed the launch of the Lifemark Products to go ahead without these matters being addressed.

4.54. Mr Ford deliberately failed to disclose to the other Keydata directors or to Keydata's Compliance Officer his Conflict of Interest; for example, after sending Mr Ford and Keydata's Compliance Officer the promotion and distribution agreement between Lifemark and Keydata, the Offshore Partnership sent to Mr Ford alone an agreement between Lifemark and the Offshore Promoter, commenting that this was similar to the other agreement but "*just not shown to* [Keydata's Compliance Officer]". Mr Ford also deliberately failed to put in place arrangements to manage adequately his Conflict of Interest. In particular, he failed to address the fact that the high levels of fees being paid to the Lifemark Companies were bound to have an adverse effect on the risk to investors in the Lifemark Products that they would not receive the income that they were led to expect and the return of their capital.

4.55. On 3 March 2008 Mr Ford received a copy of advice from one of Keydata's professional advisers (the "March 2008 Due Diligence Report") which concluded that Keydata's due diligence in relation to the SIP was inadequate and incomplete. The March 2008 Due Diligence Report concluded that Keydata's due diligence did not evidence:

(1) the roles of, or contractual arrangements with, various counterparties within the Lifemark structure;

(2) the terms, including the impact and cost, of any currency hedge;

(3) whether Keydata had tested whether the rates of return on the Lifemark

Products were achievable or the risk parameters within which they were achievable and the costs which were payable under the Lifemark structure;

(4) whether Keydata had considered all the risks to the return of investor capital; and

(5) what protections existed within the Lifemark Portfolio to deal with a cross-subsidy risk: "*In the event that losses are suffered, it is not clear from the papers whether any procedures exist to ensure that investors in earlier issues would not receive returns at the expense of investors in later issues*".

4.56. Further, the March 2008 Due Diligence Report advised Keydata that while it was not possible to be definitive about the quantity or nature of the due diligence required, *"as a high level indicator"*, as Keydata was "*marketing and distributing this complex offshore product to UK investors who are generally unable to penetrate the product's structures*", its due diligence should have been sufficient to:

(1) "*be assured that the product will, in the normal course of events and within reasonable parameters, perform as intended*";

(2) "*be able to describe those characteristics and risks to potential investors in terms that are clear, fair, not misleading and are likely to be understood by potential investors*"; and

(3) "*enable the directors to explain the characteristics and risks and to describe and evidence the processes that have been put in place to manage those risks*".

4.57. The March 2008 Due Diligence Report concluded that a number of Keydata's failings in respect of its due diligence were connected to potentially misleading statements in its financial promotions. For example:

(1) in order to ensure that the principal risks to the Lifemark Products were adequately explained in the brochures, Keydata should undertake (or commission a third party to undertake) some additional work to:

(a) model the Lifemark Products – to show the expected returns "*allowing for all charges deducted by the various parties at each stage*";

(b) run a number of test scenarios to assess the probability of investor capital being returned in full: "*Keydata then needs to demonstrate that the probability of investor expectations not being met is acceptably low and is presented appropriately in promotions*";

(c) obtain quarterly valuations of the Lifemark Portfolio on a market value basis;

(d) regularly review the actuarial model "*especially before embarking on a series of purchases or sales*" from the Lifemark Portfolio;

(e) review the currency hedging arrangements: "*check that these are appropriate to the underlying risks and that the underwriting organisation has the financial strength to honour its obligations. If the whole currency risk is not hedged, assess the probability of exchange impairment and whether this is acceptable*"; and

(f) address a concern about cross-subsidy between investors: "*as all assets are held in one fund and the demarcation of assets between tranches of business is opaque, Keydata should consider how the demarcation operates and how it can ensure and demonstrate that final payouts to investors are a true reflection of the assets held on their behalf*";

(2) references in the brochures were unsubstantiated: "*We note also that Keydata's marketing material* [in fact, only the brochure for the SIB 4] *referred to a bank overdraft facility. We have not seen any papers relating to the overdraft facility and so we recommend that any such arrangements should be properly documented, as it has been alleged that this facility is available to provide liquidity in adverse trading conditions*".

4.58. Following the March 2008 Due Diligence Report Keydata obtained a series of reports by the Lifemark Investment Manager, including a summary report dated 31 March 2008 (the "Summary Report"). The Summary Report was provided by Keydata to its professional advisers to address the matters raised in the March 2008 Due Diligence Report. On 16 April 2008 Mr Ford was provided with a copy of Keydata's professional advisers' review of the Summary Report. Keydata's professional advisers concluded that the Summary Report did not provide enough information to deal with their concerns raised in the March 2008 Due Diligence

Report, stating "*In our view, none of the recommendations in our report have been addressed adequately in this document.*" The professional advisers recommended that Keydata address each of the outstanding matters, but Keydata did not do so.

4.59. Mr Ford failed to ensure that Keydata responded adequately to the recommendations in the March 2008 Due Diligence Report and allowed Keydata to continue to market certain of the Lifemark Products (the Income Plan 12 and 14 and the DIP 1 to 9) after 3 March 2008. The DIP 1 and Income Plan 12 were launched on 5 and 7 March 2008 respectively.

4.60. Mr Ford was, from 15 June 2008, aware of the Authority's concern that any potential conflict of interest arising from Mr Ford's dual role as director of both Keydata and Lifemark (including any financial benefit) should be properly managed by Keydata. Notwithstanding this, he did not disclose to the Authority, the other Keydata directors or Keydata's Compliance Officer the true extent of his involvement with Lifemark and the Lifemark Companies.

The risk of failure of the Lifemark Products

4.61. On 23 May 2007 Mr Ford received from the Lifemark Investment Manager a Lifemark Portfolio forecast which predicted that if only 30% of investors in the Lifemark Products rolled over their investments at the end of the term into new investments in Lifemark Products, the Lifemark Portfolio would face a deficit of US$35 million in 2011, which was the time the Lifemark Products would start to mature.

4.62. In light of this information, Mr Ford would have been aware of the significance of the rollover rate, but he took no steps to ensure that Keydata managed the risk that the proportion of investors rolling over their investments would be insufficient to avoid the Lifemark Portfolio facing a deficit.

4.63. On 12 March 2008 Mr Ford was provided with the first of the Lifemark Investment Manager's reports mentioned in paragraph 4.58. This report was based on a 0% rollover assumption. It indicated that the Lifemark Portfolio could not return investors' capital in full unless a number of steps were taken, including ensuring that a low interest credit facility was put in place, and that there were cross-subsidy concerns about investors buying different Lifemark Products at different times. The Lifemark Investment Manager concluded that "*If the portfolio is maintained using a buy and hold strategy, we expect that the* [Lifemark]

[P]*ortfolio will experience a negative cumulative cash flow at year end 2009 of ($6,567,351) and will continue to be impacted negatively at an increasing rate until year 2014*".

4.64. The report contained a list of recommendations from the Lifemark Investment Manager to manage liquidity risk which included:

"*A. Reestablish a reserve from new funds/bond tranches which could be utilized to mitigate some of the shortfall in the early stages of bond maturity and life policy seasoning.*

B. Obtain a credit line or credit facilities which can be drawn upon as needed at a low interest rate and with repayment terms appropriate to the asset/liability payment and mortality schedules."

and

"D. Sell part or all of the current Lifemark portfolio to meet the cost of the early bond redemptions".

4.65. A further report was provided by the Lifemark Investment Manager to Mr Ford on 25 March 2008, containing substantially the same recommendations. On 28 March 2008 Mr Ford requested that the Lifemark Investment Manager amend the report as it "*gave the reader the impression*" that the Lifemark Products would not pay out, that a credit facility was required but there were no assets to secure the loan against, that there was a significant currency risk and there was a cross-subsidy risk. Mr Ford told the Lifemark Investment Manager that "*we need to show that various scenarios have been tested and there is a small risk that certain events happen that cause capital not to be repaid*".

4.66. On 30 March 2008 the Offshore Partnership drafted a report (the "Offshore Partnership Report") for provision to Keydata's professional advisers which directly contradicted the earlier report from the Lifemark Investment Manager in key respects. The Offshore Partnership Report stated:

(1) "*The current views of the investment manager are that Lifemark does not need to engage a credit facility for its asset portfolio because liquidity is managed from reserved funds*";

(2) "*Currency hedging arrangements are reviewed constantly by the*

[Lifemark] Investment Manager. Whilst the existing cross currency swap structure works adequately for the financing structure, newly available opportunities are always being assessed for value by the investment manager" and "the risk of USD depreciation against GBP is managed by the [Lifemark] Investment Manager… using cross currency interest rate swap transactions with the custodian matching bond maturity dates"; and

(3) "*Cross Subsidy Risk …a risk exists that one tranche could cross subsidise another which could lead to one or more investors suffering a loss not attributed wholly to that tranche… It is important to observe that a large asset pool has better asset diversification than a small asset pool and therefore better performance expectation, if assets were ring fenced to investor bond tranches then investors would be exposed to the performance of smaller asset pools which would on balance deliver lower returns*".

4.67. The Offshore Partnership provided the Lifemark Investment Manager with the Offshore Partnership Report on 31 March 2008 (by email copied to Mr Ford) and directed the Lifemark Investment Manager to note the different approach the Offshore Partnership had taken to describing the risks to the Lifemark Portfolio and how those risks were managed. On 1 April 2008 the Lifemark Investment Manager provided Mr Ford with the Summary Report which contained a number of new paragraphs which were reproduced substantially verbatim from the Offshore Partnership Report (relating to currency risk, performance of the Lifemark Portfolio, product modelling and cross-subsidy risk).

4.68. As mentioned in paragraph 4.58, Keydata sought its professional advisers' views on the Summary Report. Keydata's professional advisers raised a number of queries (through Mr Ford) with the Lifemark Investment Manager. These queries focused on the performance of the Lifemark Portfolio, currency risk and cross-subsidy concerns. In their review of the Summary Report, a copy of which was received by Mr Ford on 16 April 2008, the professional advisers concluded that the report "*suggests that the portfolio will experience negative cashflow but no arrangements are currently in place to address this*".

4.69. Keydata was advised by its professional advisers on 25 April 2008 (in an email addressed to Mr Ford) that the Summary Report failed to provide adequate comfort as:

(1) the cost associated with the Lifemark structure was "*still too opaque*";

(2) they disagreed with a number of the conclusions of the Lifemark Investment Manager. For example the Lifemark Investment Manager stated "*The extension of the life-expectancy for the entire portfolio is a negligible possibility*"; however, Keydata's professional advisers considered that this statement "*contradicts global mortality trends and other statements made in this and other documents*";

(3) the information from the custodian bank "*implies that Keydata are exposed should* [Lifemark] *not be holding sufficient assets to meet their obligations under the swap arrangement*"; and

(4) the Lifemark models had not been independently reviewed.

4.70. On or around 30 April 2008 the Lifemark Investment Manager provided to Keydata (including Mr Ford) a further version of its report which had been further amended in the following key respects:

(1) it now concluded: "*As a result of running the various tests on Reserve Requirements, we determined that a 30% reserve should be adequate. While periods of negative cash flow may occur, the overall program remains cash flow positive with the ability to pay coupons and return capital as anticipated*";

(2) additional paragraphs had been added, including "*We expect that the investors will receive all coupons and a total return of capital as specified*" and "*The FX investment program is overseen by the investment manager. Furthermore the cross–currency swap is utilized as a hedge for the various tranches. This allows for direct hedging of currency risk from the time the tranche is in place to maturity*"; and

(3) the wording of the section titled "*Bank overdraft facility*" had been amended. The previous version stated: "*The current views of the investment manager are that Lifemark does not need to engage a credit facility for its asset portfolio because liquidity is managed from reserve funds. In the event a credit facility will be considered, a revised financial model will be produced to model the cash flows and identify potential benefits*". This wording was amended to: "*When the portfolio was constructed, the investment manager felt that Lifemark did not need to engage a credit facility for its asset portfolio because liquidity is managed*

from reserved funds. Furthermore, such lines of credit carry a cost which, in the opinion of the investment manager, is unnecessary at this time. In the event a credit facility will be considered, a revised financial model will be produced to model the cash flows and identify potential benefits".

4.71. On or around 30 May 2008 the Lifemark Actuary provided Keydata with a draft valuation of the Lifemark Portfolio (the "Draft Lifemark Valuation Report"). The Draft Lifemark Valuation Report projected that the Lifemark Portfolio would face a deficit of approximately US$172 million to US$84 million between 2011 and 2013 and stated that the number of lives in the Lifemark Portfolio was small. It confirmed that any deviations from its assumptions in respect of currency rates, interest rates or life expectancies could have a significant impact on the overall profitability of the Lifemark Portfolio. Mr Ford was aware of the Draft Lifemark Valuation Report.

4.72. On 19 June 2008 Mr Ford received Keydata's professional advisers' review of the information regarding the SIB and SIP provided to the Authority by Keydata on 21 May 2008 in response to statutory information requirements. Keydata's professional advisers advised Keydata that the RAC ratio was a "*red herring*", and that a more useful indicator of value would be the market value of the policies within the portfolio versus the obligations owed under the relevant bonds. Keydata's professional advisers also commented that the SLS Portfolio was very small in size and that "*luck will play a key role unless Lifemark/Keydata insures against light mortality*".

4.73. The June 2008 Extract Review, also received by Mr Ford on 19 June 2008, concluded that:

(1) the extract would "*lead an informed reader to conclude that the probability of Keydata meeting investors' expectations is not better than 50:50, and potentially a lot less*";

(2) the number of senior life settlement policies within the Lifemark Portfolio (229 lives) was small; and

(3) "*Lifemark will have to sell a significant proportion of the policies to meet redemption payments, and it is therefore materially exposed to market conditions at that time, costs of disposal and changes to mortality assumptions*".

4.74. During July 2008 Mr Ford was involved in the amendment and approval by Keydata of the Lifemark Investment Manager's update on the Lifemark Portfolio (which was produced every six months) which stated that the Lifemark Portfolio was "*expected to provide a steady stream of returns covering the bond coupon payments as well as the return of principal and capital to bond investors in a timely manner*". Mr Ford had good reason to doubt that the Lifemark Investment Manager's update gave an accurate impression of the risks to the performance of the Lifemark Portfolio in light of the various reports produced by the Lifemark Investment Manager, the Draft Lifemark Valuation Report and the June 2008 Extract Review. Mr Ford was aware that Keydata would circulate the Lifemark Investment Manager's update to IFAs, which it did on or around 25 July 2008. Mr Ford failed to ensure that this update gave an accurate impression of the risks to the performance of the Lifemark Portfolio.

4.75. On 10 September 2008 the Offshore Partnership indicated to Mr Ford that the Luxembourg Regulator was concerned about the current financial situation of the Lifemark Portfolio and had requested a meeting with the directors of Lifemark.

4.76. On 3 November 2008 Keydata, by an email copied to Mr Ford, provided its professional advisers with a further report by the Lifemark Investment Manager dated 30 October 2008 (the "October 2008 Lifemark Report"), which considered a draft of an actuarial review conducted by the Lifemark Actuary dated 12 October 2008. This report concluded that the Lifemark Portfolio would face a very significant negative cash balance between 2009 and 2014 (during which time the majority of the Lifemark Products would be due to mature) that would peak at minus $196 million and that thereafter the cumulative cashflow of Lifemark would be negative until 2023 but the Lifemark Portfolio would hold a positive cash balance at 2027. The Lifemark Investment Manager expressed the view that the Lifemark Portfolio could meet all of its obligations and that the risk to bondholders' capital was minimal.

4.77. Mr Ford was therefore aware that the Lifemark Actuary and the Lifemark Investment Manager had projected that the Lifemark Portfolio would face a deficit during 2009 to 2014, when the majority of the Lifemark Products were due to mature, but that the Lifemark Portfolio would be in surplus by 2027 when he, as the ultimate beneficial owner of Lifemark, would be entitled to any surplus.

4.78. On 5 November 2008 the Lifemark Actuary produced the final text of the yearly actuarial review of the Lifemark Portfolio (the "2008 Actuarial Review"). This

gave a 97.5% probability of the Lifemark Portfolio having a positive cumulative cash surplus in 2027. The 2008 Actuarial Review concluded that the Lifemark Portfolio would need a substantial credit facility from 2012 to 2023 as it projected that it would face the negative cash flow referred to in paragraph 4.76 above. The 2008 Actuarial Review stated that the directors of Lifemark had confirmed that a credit facility was in place with a large financial institution. Mr Ford, however, must have known that Lifemark did not have a credit facility as the reports of the Lifemark Investment Manager confirmed that there was no credit facility in place and Mr Ford was, moreover, a director of Lifemark. In addition, the 2008 Actuarial Review appeared not to take account of the fees paid by Lifemark to the Offshore Arranger (one of the Lifemark Companies) which amounted to 10% of the amount invested in each Lifemark Product, and which further affected the liquidity of the Lifemark Portfolio. The 2008 Actuarial Review also reflected the assurance that had been given to the Lifemark Actuary that the exchange risk on the principal value of the bonds had been hedged.

4.79. On 4 December 2008, in a report copied to Mr Ford, Keydata's professional advisers concluded that the October 2008 Lifemark Report raised concerns that the Lifemark Investment Manager did not understand the Lifemark Products and contained "[a] *lot of negatives; lack of understanding, holes in logic and warning signs*". Keydata's professional advisers concluded that the October 2008 Lifemark Report "*could (or should) lead a reader to question the viability of the product*".

4.80. On 20 January 2009 Mr Ford, the other directors of Lifemark and the Lifemark Investment Manager attended a conference call with the Luxembourg Regulator to discuss its concerns over the Lifemark Portfolio.

4.81. In March 2009, the Luxembourg Regulator temporarily suspended Lifemark's permission to issue further Lifemark Bonds in order to assess further the financial position of Lifemark. Mr Ford permitted Keydata to continue to market and sell Lifemark Products to retail customers during the suspension (the DIP 8 was marketed from 12 January 2009 to 3 April 2009 and struck on 17 April 2009).

4.82. On 4 May 2009 the Lifemark Investment Manager produced a further update on the Lifemark Portfolio which stated that the Lifemark Portfolio might require a credit facility in 2013 to cover any potential cash shortfalls that might or might not arise and concluded that the Lifemark Portfolio "*continues to experience superior performance*". Mr Ford had good reason to doubt that the Lifemark Investment Manager's update was evidence that the Lifemark Portfolio was in a

position to deliver the performance that investors in the Lifemark Products had been led to expect in light of the October 2008 Lifemark Report, the 2008 Actuarial Review and the liquidity risk to the Lifemark Portfolio. Mr Ford failed to ensure that this update gave an accurate impression of the risks to the performance of the Lifemark Portfolio.

4.83. At no time during the Relevant Period did Mr Ford:

(1) ensure that Keydata suspended or ceased the promotion or sales of the Lifemark Products;

(2) ensure that Keydata took steps to address the risks in the Lifemark Products that were not adequately identified in its due diligence for the Lifemark Products, or ensure that the Authority, investors and IFAs were notified of these risks;

(3) take any effective action, or ensure that Keydata took effective action, to manage the risks that had been clearly identified by Keydata's advisers and which threatened the ability of the Lifemark Products to deliver the investment returns that had been promised and permit a return of capital, or consider or address the need to ensure that the Authority, investors and IFAs were notified of these risks;

(4) consider or address the actions that Keydata could or should take to mitigate the potential loss to investors who had invested in the Lifemark Products; or

(5) notify the Authority of the concerns of the Luxembourg Regulator.

4.84. The Authority concludes that Mr Ford permitted Keydata to proceed with the promotion and sale of the Lifemark Products to investors with a reckless disregard to the risks that they posed to such investors and the risks that had been identified by Keydata's professional advisers, and despite being aware that IFAs and investors were unaware of such risks. As a result of the professional advice and other information that he received, Mr Ford could not have been in any doubt that material risks to the performance of the Lifemark Portfolio existed and needed to be addressed as a matter of urgency. Despite this knowledge, Mr Ford took no effective steps to ensure that such risks were managed or that others, including the Authority, IFAs and investors, were alerted to the existence of such risks. He thereby recklessly exposed investors in the Lifemark Products to very

significant risks.

4.85. The failure of Mr Ford, from mid-2007 onwards, to commit as much time to Keydata's business as would reasonably be expected of a CEO, or to find a replacement CEO who would do so, also shows his reckless approach to the management of risk and the discharge of his and Keydata's regulatory responsibilities.

4.86. Mr Ford's role as a director and the beneficial owner of Lifemark further underlines his culpability for Keydata's reckless actions in respect of the Lifemark Products, as Mr Ford personally benefited from the ongoing sales of the Lifemark Products and the purchase of US senior life settlement policies by Lifemark, because of the fees paid to the Lifemark Companies on such sales and purchases. Mr Ford therefore had a substantial personal interest in ensuring that the Lifemark Products continued to be sold.

Failure of the Products to comply with the ISA Regulations

4.87. Keydata offered the Products for investment with the benefit of a tax-efficient ISA wrapper. In order to be eligible for ISA status the Products had to comply at all times with the ISA Regulations. The ISA Regulations provided that in order to be a qualifying investment for a stocks and shares ISA the securities in question must have at least a five year investment term and must be listed on the official list of a recognised stock exchange. For the purposes of the ISA Regulations the main market of the Luxembourg Stock Exchange was a recognised stock exchange.

4.88. The brochures for the Products stated either that the relevant bonds were listed on the Luxembourg Stock Exchange or that they would be so listed and (in many cases) stated that they were therefore eligible for ISA status. However at the time the Products were sold the counterparties had not listed the relevant bonds.

4.89. Keydata was aware at the time of the launch of the Products that listing was necessary to ensure that the investments were eligible for investment with an ISA wrapper. However, Keydata's Compliance Officer wrongly understood that if the relevant bonds were listed at some stage within the five year investment term of the Products, the ISA requirements would be met. Mr Ford relied upon that view and Keydata did not seek professional advice on this point prior to the launch of the Products.

4.90. Keydata also failed to ensure that each individual issue of the Products would comply with the requirement under the ISA Regulations that the investment had at least a five year term. In respect of one tranche of the SIB 2 the relevant SLS Bond was issued five days later than Keydata had expected, and hence had a maturity date falling less than five years after its inclusion in the relevant ISA. Keydata did not notice this mistake at the time, and it was only discovered in June 2008.

4.91. Mr Ford was aware at the time of the launch of the SIB 1 on 26 July 2005 that the SLS Bonds were not listed on the Luxembourg Stock Exchange. He was also aware at the time of the launch of the SIB 4 on 19 December 2005 that the Lifemark Bonds were not listed on the Luxembourg Stock Exchange.

4.92. Keydata did not obtain a contractual commitment from SLS or any of the other counterparties involved in the SLS Products to list the SLS Bonds. Accordingly when SLS failed to list the SLS Bonds (and later advised Mr Ford in February 2008 that it would not list the SLS Bonds as it was not contractually obliged to do so) Keydata itself had no ability to enforce the listing.

4.93. Keydata also did not obtain a contractual commitment from Lifemark or any of the other counterparties involved in the Lifemark Products to list the Lifemark Bonds. Accordingly Keydata was unable to ensure that the Lifemark counterparties would list the Lifemark Bonds and Keydata had no ability to enforce the listing.

4.94. Mr Ford was aware (even on his incorrect understanding of the ISA Regulations) that there was a risk to the ISA status of the SLS Products and the consequences of the listing not being in place. For example, on 14 November 2006 the Offshore Partnership informed Mr Ford that Keydata's Compliance Officer was under pressure from the Authority and that Keydata needed to obtain a prospectus for the SLS Bonds to "*protect the status of the investors for PEP & ISA investment structures*" and to "*evidence to the* [Authority] *that the bonds issued to Keydata for its SIB 1, 2 & 3 investors will be listed on the Lux SE*".

4.95. On 20 February 2008 Mr Ford was advised by the Offshore Partnership to seek written confirmation from SLS that the SLS Bonds would be listed on the Luxembourg Stock Exchange. The Offshore Partnership explained that this was required to ensure that the SLS Products were compliant and that representations made by Keydata in its financial promotions were correct. SLS informed Mr Ford

on 22 February 2008 that it would not be seeking a listing of the SLS Bonds as it was not contractually required to do so. Therefore from this date Mr Ford was aware that it was highly likely that the SLS Products would not fulfil the conditions set out in the ISA Regulations. However, despite being aware of this, Mr Ford did not inform Keydata's Compliance Officer, or ensure that the Authority, IFAs and investors were made aware.

4.96. Mr Ford was aware by 23 December 2008 (when he received a letter from the Authority) that the Authority was extremely concerned by the risk of the SLS Products not fulfilling the conditions of the ISA Regulations (following confirmation from Keydata's Compliance Officer during a compelled interview on 18 November 2008 that the SLS Bonds remained unlisted and that listing was necessary to secure ISA status) and was insisting that Keydata urgently refer the matter to HMRC as the proper agency to determine the tax status of the Products. When the Authority followed this up in January 2009, however, Keydata's Compliance Officer advised the Authority that Keydata would only take the matter up with HMRC once the SLS Bonds were in fact listed. The Authority advised Keydata that the delay in dealing with this matter was an unacceptable risk to retail investors and asked that Keydata consent to the Authority referring the matter to HMRC. Despite Keydata's representations to the Authority that the matter had been reported to HMRC, Keydata did not make the formal notification to HMRC until 4 March 2009. Keydata's letter of notification to HMRC acknowledged that if the relevant bonds were not listed then this would amount to a breach of the ISA Regulations.

4.97. On 22 May 2009 HMRC wrote to Keydata confirming that the SLS Bonds were not qualifying investments for an ISA and that there had therefore been a breach of the ISA Regulations. In addition, HMRC stated that the SIB 2 also breached the ISA Regulations as the SLS Bonds would mature within 5 years of the date on which they were first held in the SIB. The letter stated that as these investments were not qualifying ISA investments, any return on them was not exempt from tax and consequently HMRC would be seeking to recover the tax.

4.98. Despite being aware by 23 December 2008 that the Lifemark Products had either not been listed or had not been listed for the full five year investment term, and so it was highly likely that they failed to comply with the ISA Regulations, Mr Ford recklessly permitted Keydata to continue to sell the Lifemark Products to investors with an ISA wrapper. On and after 23 December 2008 Keydata sold the DIP 7, DIP 8 and DIP 9 to 2,213 investors, amounting to a further £18 million in ISA investment.

Misleading the Authority

4.99. Mr Ford (and Keydata's Compliance Officer, to the knowledge of Mr Ford) misled the Authority about the performance of the Products. Mr Ford deliberately provided factually incorrect and misleading answers during a compelled interview and failed to instruct Keydata's Compliance Officer not to mislead the Authority at a meeting.

4.100. On 12 November 2008 Mr Ford attended a compelled interview with the Authority. The Authority asked Mr Ford how the Products were currently performing. Mr Ford responded "*They're on target to meet their obligations*". When he made that statement, Mr Ford could not have held any honest belief that either the SLS Products or the Lifemark Products were performing well, as he was aware that SLS had failed to make income payments and was facing severe liquidity problems and that the Lifemark Portfolio faced very significant and unresolved risks to achieving the performance that investors had been led to expect. Mr Ford was also aware that it was highly likely that the SLS Bonds would not be listed, and that therefore it was highly likely that the SLS Products would not fulfil the conditions set out in the ISA Regulations. In responding as he did, Mr Ford deliberately misled the Authority.

4.101. Mr Ford was aware that Keydata's Compliance Officer was intending to mislead the Authority about the performance of the Products and to withhold key information during a meeting with the Authority on 23 January 2009. On 18 January 2009 Keydata's Compliance Officer informed Mr Ford by email that he intended to confirm that the "[c]*urrent financial position of Lifemark is good*" and that the "[c]*urrent financial position on bonds is good – all income paid and up to date*", and added "*I do not propose talking about the* [2008 Actuarial Review] *at this stage*". Mr Ford was therefore aware that the Authority continued to be concerned about the performance of the Products and that Keydata's Compliance Officer intended to mislead the Authority in this regard by making incorrect statements and withholding relevant information. He deliberately failed to instruct Keydata's Compliance Officer not to misrepresent the position in this way.

4.102. On 5 June 2009 by an email from Keydata's solicitors (which was copied to Mr Ford), in response to a direct question from the Authority as to when Keydata would receive the next income payments for the SLS Bonds which underpinned the SLS Products, Keydata sent the Authority a spreadsheet setting out

forthcoming payments dates in 2009 and 2010 on which Keydata "*will receive income for distribution"* from SLS. The spreadsheet clearly represented that future income was expected from SLS. At the time this spreadsheet was sent, however, Mr Ford knew that SLS had not been paying income since March 2008 and that it was highly unlikely that it would do so in future. Therefore, Mr Ford would have known that the information provided to the Authority was highly likely to mislead the Authority, but failed to correct the information provided.

5. FAILINGS

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

Statement of Principle 1

5.2. The Authority considers that Mr Ford failed to act with integrity in carrying out his controlled functions at Keydata in breach of Statement of Principle 1.

5.3. Mr Ford was aware by 13 November 2006 that there were problems with the performance of the SLS Portfolio and from 14 April 2008 that SLS was failing to make income payments on an ongoing and regular basis, which indicated a significant risk of potential consumer detriment. Despite being aware of these matters, Mr Ford deliberately concealed, or caused Keydata to conceal, the problems with SLS's performance and solvency from Keydata's Compliance Officer, the Authority, investors and IFAs.

5.4. Mr Ford was aware from 22 February 2008 that it was highly likely that the SLS Bonds would not be listed and that therefore it was highly likely that the SLS Products would not fulfil the conditions set out in the ISA Regulations. Despite being aware of these risks, Mr Ford recklessly failed to ensure that Keydata's Compliance Officer, the Authority, investors and IFAs were made aware of these risks.

5.5. Mr Ford was aware that Keydata's due diligence for the Lifemark Products was not adequate and fell below the relevant regulatory standards and had failed to uncover various matters which posed a risk to the performance of the Lifemark Products. He was also aware that, as a result, the other Keydata directors and Keydata's Compliance Officer were unaware of these matters. In particular, these included his Conflict of Interest. Mr Ford was aware that no arrangements were in place to manage adequately his Conflict of Interest. Despite being aware of all these

matters, Mr Ford deliberately caused Keydata to market and sell the Lifemark Products from 19 December 2005.

5.6. Mr Ford received professional advice on 5 December 2005 (in relation to the SLS Products) and professional advice or other information on 10 October 2007, 7 February 2008 and 19 June 2008 (in relation to the Lifemark Products) that Keydata's financial promotions contained unclear, incorrect and misleading statements (and as such were not clear, fair and not misleading). He received professional advice on 3 March 2008 that Keydata's due diligence in relation to the Lifemark Products was inadequate. He received professional advice or other information on 23 May 2007, 12 March 2008, 25 March 2008, 16 April 2008, 25 April 2008, 30 May 2008, 19 June 2008, 3 November 2008, 5 November 2008 and 4 December 2008 that identified risks to the ability of the Lifemark Products to perform in the manner that investors had been led to expect by Keydata's financial promotions.

5.7. Mr Ford was aware that the issues with the due diligence and the financial promotions set out in paragraph 5.6 had not been addressed, and that the risks set out in that paragraph of the Lifemark Portfolio not performing were not being effectively managed and that investors and IFAs were not aware of these risks. Mr Ford acted recklessly, from the launch of the Lifemark Products on 19 December 2005 onwards in that, despite being aware of these matters, he failed either to ensure that Keydata addressed the issues and risks that had been identified or to stop Keydata from marketing and selling the Lifemark Products until effective remedial steps were taken.

5.8. From the launch of the Lifemark Products on 19 December 2005, and despite becoming increasingly aware thereafter of the severe risks affecting the Lifemark Portfolio, Mr Ford recklessly failed to ensure that Keydata took steps to explain or mitigate the risk to existing and potential investors, and that material circulated to such investors gave an accurate impression of the risks to the performance of the Lifemark Portfolio. For example, he failed to ensure that either the Lifemark Investment Manager's update on the Lifemark Portfolio, which was approved by Keydata and circulated to IFAs on or around 25 July 2008, or the further update of 4 May 2009, gave an accurate impression of the risks to the performance of the Lifemark Portfolio.

5.9. Mr Ford recklessly permitted Keydata to continue marketing and selling the Lifemark Products as fulfilling the conditions set out in the ISA Regulations after becoming aware by 23 December 2008 that it was highly likely that they did not

do so.

5.10. Mr Ford deliberately misled the Authority by representing to it in a compelled interview on 12 November 2008 that the Products were on target to meet their obligations, despite being aware of the ongoing failure of SLS to make income payments, that it was highly likely that the SLS Products would not fulfil the conditions set out in the ISA Regulations and of the severe liquidity issues with the Lifemark Portfolio, and deliberately failed to instruct Keydata's Compliance Officer not to misrepresent the position regarding the Products at a meeting with the Authority on 23 January 2009.

Statement of Principle 4

5.11. The Authority considers that Mr Ford failed to deal with the Authority in an open and cooperative way and failed to disclose appropriately information of which the Authority would reasonably expect notice in breach of Statement of Principle 4.

5.12. The Authority has reached this conclusion having regard to the matters set out at paragraphs 5.3, 5.4 and 5.10 above, and to the following matters.

5.13. On 5 June 2009 Keydata (through an email from its solicitors which was copied to Mr Ford) provided the Authority with a detailed spreadsheet which represented that Keydata was anticipating receipt of payments throughout 2009 and 2010 from SLS (income under the SLS Bonds) which would fund income payments for the SLS Products. The spreadsheet clearly represented that future income was expected from SLS. However, at this time Mr Ford was aware that SLS had not been paying income since March 2008 and that it was highly unlikely that it would do so in future. Therefore, Mr Ford would have known that the information provided to the Authority was highly likely to mislead the Authority, but failed to correct the information provided.

5.14. Mr Ford did not disclose to the Authority his true involvement as the director and the beneficial owner of Lifemark and the fact that he and/or his family, through trusts that he set up on behalf of his family, were the beneficial owner(s) of, or entitled to the full benefit from, the Lifemark Companies despite, from 15 June 2008, knowing of its concern over his role as director of Keydata and Lifemark.

5.15. From 10 September 2008 Mr Ford was increasingly aware that the Luxembourg Regulator had concerns with the financial situation of the Lifemark Portfolio, but failed to ensure that the Authority was made aware of the Luxembourg Regulator's

concerns.

5.16. Mr Ford failed to ensure that the Authority was made aware at any stage: that SLS was failing to make income payments under the SLS Bonds on an ongoing and regular basis; that Keydata was funding income payments for the SLS Products; that there were serious concerns about the solvency of SLS; that it was highly likely that the SLS Products would not comply with the conditions set out in the ISA Regulations; that Keydata had identified problems with the due diligence for the Lifemark Products; or of the clear risk that the Lifemark Portfolio might not perform as investors had been led to expect due to severe liquidity risks and other risks which were not being effectively managed.

Fit and Proper

5.17. By reason of the facts and matters set out above, the Authority considers that Mr Ford is not fit and proper, because he lacks integrity and has failed to demonstrate a readiness and willingness to comply with the requirements and standards of the regulatory system.

5.18. Mr Ford's misconduct included many instances of deliberate and reckless behaviour, it extended throughout the whole of the Relevant Period, and his actions were material and as such contributed to the extensive consumer detriment which has arisen from the sale of the Products. In addition, Mr Ford's involvement in the Lifemark Companies demonstrates that Mr Ford consistently acted in his own interests.

6. SANCTION

Financial penalty

6.1. The Authority has decided to impose a financial penalty on Mr Ford for his breaches of Statements of Principle 1 and 4.

6.2. The Authority's policy on the imposition of financial penalties is set out in Chapter 6 of DEPP, which came into force on 28 August 2007.

6.3. In determining whether a financial penalty is appropriate, and the appropriate level of any financial penalty, the Authority is required to consider all the relevant circumstances of a case. Applying the criteria set out in DEPP 6.2, the Authority considers that a financial penalty is an appropriate sanction in this case, in

particular given the serious nature of Mr Ford's breaches, the amount by which he personally benefited as a direct result of his breaches, the risk of loss to which UK consumers were exposed as a result of his breaches and the actual loss which they have suffered.

6.4. DEPP 6.5 sets out a non-exhaustive list of factors that may be of relevance in determining the appropriate level of financial penalty to be imposed on a person under the Act. The Authority considers that the following factors are particularly relevant in this case.

Deterrence

6.5. The Authority has had regard to the need to promote high standards of regulatory conduct by deterring those who have committed breaches from committing further breaches and by helping to deter others from committing similar breaches.

If the person has made a profit or avoided a loss as a result of the breach

6.6. The Authority has considered the extent to which Mr Ford benefited from his breaches and considers that, through the payments made to the Lifemark Companies, Mr Ford personally benefited by over £72.4 million. The Authority has also had regard to Mr Ford's earnings from Keydata over the Relevant Period, which amounted to over £1.3 million.

The nature, seriousness and impact of the breach

6.7. The Authority has had regard to the seriousness of Mr Ford's breaches, including their nature, number and long duration, the number of investors who were exposed to risk of loss as a result of the breaches, and the significant amount of investor loss actually caused. For the reasons set out above the Authority considers that Mr Ford's breaches are of the most serious nature.

The extent to which the breach was deliberate or reckless

6.8. In most of the instances set out above Mr Ford either deliberately or recklessly contravened or disregarded regulatory requirements or permitted Keydata to do so.

Difficulty of detecting the breach

6.9. The Authority may impose a higher penalty where it considers that a person committed a breach in such a way as to avoid or reduce the risk that the breach would be discovered. Mr Ford's deliberate efforts to mislead the Authority meant that his (and Keydata's) breaches were harder to detect.

Conduct following the breach

6.10. The Authority has taken account of the fact that Mr Ford failed to make the Authority aware of his (and Keydata's) breaches.

Disciplinary record and compliance history

6.11. Mr Ford has not previously been the subject of disciplinary action by the Authority.

Other action taken by the Authority

6.12. The Authority has taken into account action taken by the Authority in respect of other approved or authorised persons for similar behaviour.

6.13. In light of these factors, but especially the amount of over £72.4 million by which Mr Ford personally benefited as a direct result of his breaches, the seriousness of the misconduct, the length of time over which it took place, the risk of loss to which UK consumers were exposed and the actual loss which they have suffered, the Authority has decided to impose a penalty of £75 million on Mr Ford.

Prohibition

6.14. Mr Ford's misconduct demonstrates that he is not fit and proper. As a result the Authority, having regard to its statutory objectives, including protecting and enhancing the integrity of the UK financial system, and securing an appropriate degree of protection for consumers, has decided to prohibit him from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.

7. REPRESENTATIONS

7.1 Annex B contains a brief summary of the key representations made by Mr Ford 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 Mr Ford, whether or not set out in Annex B.

8. PROCEDURAL MATTERS

Decision maker

8.1. The decision which gave rise to the obligation to give this Notice was made by the Regulatory Decisions Committee.

8.2. This Decision Notice is given to Mr Ford under sections 57 and 67 and in accordance with section 388 of the Act. The following statutory rights are important.

The Tribunal

8.3. Mr Ford has the right to refer the matter to which this Decision Notice relates to the Tribunal. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, Mr Ford has 28 days from the date on which this Decision Notice is given to him to refer the matter to the Tribunal. A reference to the Tribunal is made by way of a signed reference notice (Form FTC3) filed with a copy of this Decision Notice. The Tribunal's current contact details are: The Upper Tribunal, Tax and Chancery Chamber, 45 Bedford Square, London WC1B 3DN (tel: 020 7612 9730; email fs@hmcts.gsi.gov.uk), but from 17 November 2014 the Tribunal's address will be: Fifth Floor, Rolls Building, Fetter Lane, London EC4A 1NL. Further information on the Tribunal, including guidance and the relevant forms to complete, can be found on the HM Courts and Tribunal Service website: http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal

8.4. A copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to Alexandra Stableforth at the Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Access to evidence

8.5. Section 394 of the Act applies to this Decision Notice. In accordance with

section 394, Mr Ford is entitled to have access to:

(1) the material upon which the Authority has relied in deciding to give him this Notice; and

(2) the secondary material which, in the opinion of the Authority, might undermine that decision.

Third Party Rights

8.6. A copy of this notice is being given to SLS and Lifemark as third parties identified in the reasons above and to whom in the opinion of the Authority the matter is prejudicial. Those parties have similar rights of reference to the Tribunal, and of access to material, in relation to the matters which identify them.

Confidentiality and publicity

8.7. 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 of the Act provides that a person to whom this 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.

8.8. However, the Authority must publish such information about the matter to which a decision notice or final notice relates as it considers appropriate. Mr Ford, SLS and Lifemark should be aware, therefore, that the facts and matters contained in this Notice may be made public.

Contacts

8.9. For more information concerning this matter generally, contact Alexandra Stableforth at the Authority (direct line: 020 7066 5866).

Peter Hinchliffe
Acting Chairman, Regulatory Decisions Committee

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. RELEVANT STATUTORY PROVISIONS

1.1. The Authority's statutory objectives, set out in section 1B(3) of the Act, include protecting and enhancing the integrity of the UK financial system, and securing an appropriate degree of protection for consumers.

1.2. 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 that individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or exempt professional firm. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.

1.3. Section 66 of the Act provides:

"*(1)* [The Authority] *may take action against a person under this section if –*

(a) it appears to the [Authority] *that he is guilty of misconduct; and*

(b) the [Authority] *is satisfied that it is appropriate in all the circumstances to take action against him.*

(2) …a person is guilty of misconduct if, while an approved person –

(a) the person has failed to comply with a statement of principle issued by the [Authority] *under section 64…*

(3) If the [Authority] *is entitled to take action under this section against a person, it may…*

(a) impose a penalty on him of such amount as it considers appropriate…

(4) [The Authority] *may not take action under this section after the end of the period of three years beginning with the first day on which the* [Authority] *knew of the misconduct, unless proceedings in respect of it against the*

person concerned were begun before the end of that period.

(5) For the purposes of subsection (4) –

(a) [the Authority] *is to be treated as knowing of misconduct if it has information from which the misconduct can reasonably be inferred; and*

(b) proceedings against a person in respect of misconduct are to be treated as begun when a warning notice is given to him under section 67(1)."

1.4. The three-year period in section 66(4) took effect from 8 June 2010, following an amendment made to that section by section 12(1) of the Financial Services Act 2010. Prior to that amendment, the period provided for in section 66(4) was two years.

1.5. Throughout the Relevant Period, the ISA Regulations provided as follows:

"7.— Qualifying investments for a stocks and shares component

(1) This regulation specifies the kind of investments ("qualifying investments for a stocks and shares component") which may be purchased, made or held under a stocks and shares component…

(2) Qualifying investments for a stocks and shares component to which paragraph (1) refers are–

…

(b) securities ("qualifying securities") –

(i) issued by the company wherever incorporated…

(ii) which satisfy at least one of the conditions specified in paragraph (5) and the condition specified in paragraph (6)…

…

(5) The conditions specified in this paragraph are –

(a) that the shares in the company issuing the securities are listed on the official list of a recognised stock exchange;

(b) that the securities are so listed;

(c) that the company issuing the securities is a 75 per cent. subsidiary of a company whose shares are so listed.

(6) The condition specified in this paragraph is that, judged at the date when each of the securities is first held under the account, the terms on which it was issued do not –

(a) require the loan to be repaid or the security to be re-purchased or redeemed, or

(b) allow the holder to require the loan to be repaid or the security to be repurchased or redeemed except in circumstances which are neither certain nor likely to occur,

within the period of five years from that date."

2. RELEVANT REGULATORY PROVISIONS

2.1. The Statements of Principle are issued under section 64 of the Act.

2.2. During the Relevant Period, Statement of Principle 1 stated:

"*An approved person must act with integrity in carrying out his controlled function.*"

2.3. During the Relevant Period, Statement of Principle 4 stated:

"*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.*"

2.4. One of the purposes of FIT is to set out and describe the criteria that are relevant in assessing the continuing fitness and propriety of approved persons.

2.5. FIT 1.1.1G provides that it applies to an approved person.

2.6. FIT 1.3.1G sets out that the Authority will have regard to a number of factors when assessing the fitness and propriety of a person to perform a

particular controlled function. One of the most important considerations will be the person's honesty, integrity and reputation.

2.7. FIT 2.1.1G sets out that in determining a person's honesty, integrity and reputation the Authority will have regard to all relevant matters including, but not limited to, those set out in FIT 2.1.3G. FIT 2.1.3G(13) includes, as one of the relevant matters the Authority will consider, whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards.

2.8. The Authority's general approach to determining whether to impose a financial penalty and the appropriate level of any such penalty is set out in DEPP. The principal purpose of imposing a financial penalty is to promote high standards of regulatory conduct by deterring persons who have breached regulatory requirements from committing further contraventions, helping to deter others from committing similar breaches and demonstrating generally the benefits of compliant behaviour (DEPP 6.1.2G). DEPP 6.2 sets out a non-exhaustive list of factors that may be relevant to determining whether to impose a financial penalty. DEPP 6.5.2G sets out a non-exhaustive list of factors that may be relevant to determining the appropriate level of financial penalty.

2.9. In considering whether to impose a financial penalty and the amount of the penalty to impose, the Authority has also had regard to the provisions of ENF which were in force during the Relevant Period.

2.10. Guidance relating to prohibition orders is contained in EG at EG 9. This states that the Authority may exercise its power to prohibit individuals where it considers that, to achieve any of its statutory objectives, it is appropriate to prevent an individual from performing any function in relation to regulated activities (EG 9.1).

2.11. EG 9.8 provides:

"*When the* [Authority] *has concerns about the fitness and propriety of an approved person, it may consider whether it should prohibit that person from performing functions in relation to regulated activities, withdraw its approval, or both. In deciding whether to withdraw its approval and/or make a prohibition order, the* [Authority] *will consider in each case whether its statutory objectives can be achieved adequately by imposing disciplinary sanctions, for example, public censures or financial penalties, or by issuing a private warning*".

2.12. EG 9.3 provides:

"*In deciding whether to make a prohibition order… the* [Authority] *will consider all the relevant circumstances including whether other enforcement action should be taken*".

2.13. When deciding whether to make a prohibition order, the Authority will consider all relevant circumstances of the case which may include but are not limited to the following criteria set out in EG 9.9:

"*(2) Whether the individual is fit and proper to perform functions in relation to regulated activities.* [The criteria for assessing this are set out in FIT.]

(3) Whether and to what extent the approved person has:

(a) failed to comply with the Statements of Principle issued by the [Authority] *with respect to the conduct of approved persons;*

…

(5) The relevance and materiality of any matters indicating unfitness.

(6) The length of time since the occurrence of any matters indicating unfitness.

(7) The particular controlled functions the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates.

(8) The severity of the risk which the individual poses to consumers and to confidence in the financial system."

2.14. EG 9.5 provides:

"*The scope of a prohibition order will depend on the range of functions which the individual concerned performs in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk which he poses to consumers of the market generally.*"

2.15. EG 9.10 provides:

"*The* [Authority] *may have regard to the cumulative effect of a number of factors which, when considered in isolation, may not be sufficient to show that the individual is fit and proper to continue to perform a controlled function or other function in relation to regulated activities. It may also take account of the particular controlled function which an approved person is performing for a firm, the nature and activities of the firm concerned and the markets within which it operates.*"

2.16. EG 9.12 provides a non-exhaustive list of examples of behaviours which have previously resulted in a prohibition order:

"(1) Providing false or misleading information to the [Authority]*; including information relating to identity, ability to work in the United Kingdom, and business arrangements;*

…

(3) Severe acts of dishonesty, e.g. which may have resulted in financial crime;

(4) Serious lack of competence; and

(5) Serious breaches of the Statements of Principle for approved persons, such as failing to make terms of business regarding fees clear or actively misleading clients about fees; acting without regard to instructions; providing misleading information to clients, consumers or third parties; giving clients poor or inaccurate advice; using intimidating or threatening behaviour towards clients and former clients; failing to remedy breaches of the general prohibition or to ensure that a firm acted within the scope of its permissions."

ANNEX B

REPRESENTATIONS

1. Mr Ford made the following representations.

The Authority's conduct

1.1. The Authority acted improperly in the following respects.

(1) It failed to publicise its concerns about life settlement based products early enough. If it had publicised the findings of its 2007 thematic review into life settlement backed products and its 2008 review of traded life settlement products, firms such as Keydata, IFAs and consumers would have been able to take better informed decisions about the merits of such investments.

(2) It took over-aggressive action against Mr Ford (and Keydata) as a result of criticisms about its alleged over-leniency arising out of the global banking crisis.

(3) It intervened to prevent HMRC from resolving the ISA issue by using the "simplified voiding" process.

(4) It blocked efforts by Mr Ford or persons introduced by him to rescue Lifemark by providing a financial rescue package.

(5) It intervened with the Luxembourg Regulator, causing it to close Lifemark to new business.

(6) It engineered the administration of Keydata in order to put in place an administrator who would co-operate with the Authority.

(7) It intervened with SLS to frustrate attempts to mitigate losses, by rejecting rescue proposals.

(8) It conducted a dishonest investigation in order to attach blame to Mr Ford (and Keydata) and to conceal its own failures.

(9) In relation to the FSCS's decision in November 2009 that Keydata was in default and that investors with eligible claims against the firm could therefore claim compensation from the FSCS, the Authority instructed the

FSCS to attribute blame to Keydata (and, by inference, its management) for unspecified and unproven breaches of the Authority's rules.

Time bar

1.2. Section 66(4) of the Act required the Authority to issue a warning notice against an individual proposing action under section 66 no more than two years after it became aware of facts suggesting he was guilty of misconduct. The Memorandum of Appointment of Investigators of 29 August 2008 evidenced awareness by the Authority of the relevant facts in relation to Mr Ford's alleged misconduct as at that date and so a warning notice should have been issued by 29 August 2010 at the latest. The Warning Notice in these proceedings was not issued until 26 October 2010.

Standard of proof

1.3. As the allegations against Mr Ford were of a serious nature, the Authority should apply the criminal standard and require matters to be proved beyond reasonable doubt (as was the approach of some other disciplinary bodies). Further, the more serious the allegation, the stronger the evidence should be before the Authority could find it to be proven on the balance of probabilities.

Nature of Products

1.4. Neither the SLS Products nor the Lifemark Products were high risk, highly illiquid and expensive to maintain. Furthermore, the Authority had only stated since the end of the Relevant Period that it considered life settlement backed products to be high risk; in these proceedings it was applying standards retrospectively in respect of such products.

Mr Ford's role within Keydata

1.5. He was not the CEO of Keydata throughout the Relevant Period. From April 2007 he stepped down from that role and became a non-executive director, relocating to Switzerland and ceasing to have day-to-day involvement with the firm or the responsibilities of a chief executive. He remained on the Authority's register thereafter in relation to his previous controlled functions but this was a purely technical matter due to the difficulty in finding a replacement given that the firm was under investigation by the Authority. Thereafter, in his own mind he had ceased to be a regulated person. Further, his responsibilities as CEO up to April 2007 were overstated by the Authority.

1.6. Keydata was a well-staffed company with a strong management team and reputable professional advisers on whom he relied, whereas the Authority had treated it as if he and Keydata were one and the same.

Conflict of Interest

1.7. His involvement in Lifemark did not create a conflict of interest with Keydata: his interest in Lifemark was only theoretical, as the interests of shareholders were subordinated to those of Lifemark bondholders and deferred for at least 20 years, and his interest was at the discretion of the "blind" trusts that owned the company. On setting Lifemark up, he cleared any potential conflict relating to it with Keydata's Chairman, and stepped down as CEO of Keydata; all Keydata's directors were aware of the reason for this change and happy with the arrangement. If (contrary to his primary representations on this issue) he did have a conflict of interest, it was his honest belief at the time that he did not.

1.8. He did not have an interest in the Offshore Arranger, the Offshore Consultancy or the Offshore Promoter, as they were owned by a family trust for the benefit of his family.

1.9. He had no connection with the Offshore Partnership; the Authority was confusing this company with an associated company for which he was a consultant.

1.10. The amounts taken from the Lifemark structure in fees had been overstated by the Authority. The Lifemark fee structure was not excessive; the Lifemark model was based on that of SLS, but the level of fees paid to third parties was reduced. The fees received by the Offshore Consultancy by reason of its participation in the Lifemark structure were not a cost to Lifemark, as it had negotiated terms for fee sharing with the lead originator of policies for the Lifemark Portfolio, which did not affect Lifemark's ability to acquire the policies at the price it required under its business model. The disclosure of fees payable in the Lifemark structure was in accordance with legal advice.

1.11. The Offshore Arranger, the Offshore Consultancy and the Offshore Promoter were all performing genuine services in relation to their participation in the Lifemark structure, in return for their fees. Between 2007 and 2009 he spent approximately 700 hours travelling the world on the business of the Offshore Arranger for Lifemark, and the Offshore Arranger had put in place an extensive distribution network. The business of the Offshore Consultancy was not limited to acting in relation to Lifemark.

Failure of the SLS Products to perform

1.12. The SLS Portfolio was performing and not defaulting on an ongoing and regular basis. In any event, he honestly believed it was performing well, and he had good

grounds for thinking so, including the fact that RAC certificates were regularly issued in respect of the SLS Portfolio. The delays in payment of income by SLS were short term and believed to be due to Mr Elias exploiting provisions in the terms and conditions of the bonds.

1.13. In late 2008 and early 2009, when he became suspicious about the conduct of Mr Elias, he attempted to resolve the SLS issues by securing assets belonging to Mr Elias for the benefit of investors in the SLS Products. He felt it was a problem which it fell to him to resolve.

Financial promotions for the Products

1.14. The production and verification of brochures were the responsibility of Keydata's Compliance Officer and his team.

1.15. The Brochure Advice was wrong and Keydata did not agree with it. The brochures did not lack clarity, they were accurate and it was for IFAs to advise their clients on risk, as to which Keydata did not express a view. However, the Brochure Advice was implemented in full for the subsequent Products.

1.16. The February 2008 Brochure Report was in draft, and expressed only a preliminary view. It was only concerned with presentation of information in the brochures, not with their substance. He disputed its conclusions insofar as it suggested that risks had not been adequately presented in the brochures.

Due diligence in relation to the Lifemark Products

1.17. Keydata was a distributor, not a product provider, and its due diligence responsibilities were limited accordingly. This view of Keydata's role was supported by statements made in the Authority's first investigation report into Keydata, and in its 2008 review of traded life policy investments.

1.18. Keydata's due diligence was appropriate and thorough, and the Authority's criticisms of it were unjustified. The March 2008 Due Diligence Report was concerned with records of due diligence work performed, not the substance of that work, and the Authority had misrepresented its conclusions in this regard.

1.19. Nevertheless, he disputed the conclusions of that report which were relied upon by the Authority. It had been the view of the Keydata compliance team at the time (which he had supported) that it contained material errors. Notwithstanding this, the advice was to an extent followed and he gave some details of work recommended by the report which Keydata had carried out.

The risk of failure of the Lifemark Products

1.20. The Lifemark Portfolio was performing well until the Authority intervened, after the end of the Relevant Period, and was not suffering from liquidity problems. The various reports by the Lifemark Investment Manager and others, relied on by the Authority, set out stress-testing scenarios, not forecasts of what was expected to happen. The projections based on particular rollover percentages were not predictions that those percentages would occur. There was virtually no possibility of a 0% rollover. The professional advisers who reviewed information for Keydata did not understand that this information related to stress-testing, and that the Lifemark Portfolio was performing in line with its model.

1.21. In 2008 there was a possibility that Lifemark might need a short-term credit facility at some stage in the next four years but it was clear at the time it would have no difficulty securing one, should the need arise.

Failure of the Products to comply with the ISA Regulations

1.22. The problems with the ISA Regulations were merely technical and could have been resolved with HMRC using the "simplified voiding" process, had the FCA not intervened to prevent this.

Misleading the Authority

1.23. He did not deliberately mislead the Authority in interview about the performance of the SLS Bonds and the Lifemark Bonds. In relation to the SLS Bonds, there was no ongoing default, and he was unaware that the assets of the SLS Portfolio had been replaced by a guarantee. He honestly believed any issues with SLS had been, or would be, resolved. The Lifemark Bonds did not have a liquidity problem.

1.24. His limited role as a non-executive director from April 2007 meant that he did not have knowledge of all the matters on which the Authority considers he misled it.

1.25. He had no recollection of receiving the email from Keydata's Compliance Officer dated 18 January 2009 setting out what Keydata's Compliance Officer intended to say to the Authority, and that was a matter for that individual.

1.26. In a number of instances, his and/or Keydata's alleged failure to provide the Authority with documentation they ought to have provided (or details of the conclusions contained in those documents), was due to the fact the documents were (or were at the time advised by Keydata's lawyers to be) subject to legal professional privilege which Keydata had been advised by its lawyers not to waive.

2. The Authority has reached the following conclusions.

The Authority's conduct

2.1. The Authority does not consider that any of Mr Ford's complaints against the Authority undermine the evidence relied upon by it in reaching its decision (which has been made by the Regulatory Decisions Committee, a committee of the Authority which is independent from the Authority's Enforcement and Financial Crime Division). Mr Ford's complaints about the conduct of the Authority may be pursued by him using the Complaints Scheme established under the Financial Services Act 2012, and the Authority does not address their substance in this Notice.

Time bar

2.2. With effect from 8 June 2010, the two-year period in section 66(4) of the Act was replaced by a period of three years. The Authority's position is that if the case against the individual was already time-barred under section 66(4) by that date, the two-year period still applies, but if not, then the three-year period applies. On Mr Ford's own case, the Authority had not, by 8 June 2008, acquired information from which the misconduct set out in this Notice could reasonably be inferred.

2.3. Even if (contrary to the Authority's position) the correct approach were to apply a strict two-year period in all cases where the limitation period started running prior to the change to section 66(4), the defence that the case was time-barred would not apply in this case. On that approach, the Authority would be precluded from taking action in respect of misconduct if it knew of the misconduct (i.e. it had information from which the misconduct could reasonably be inferred) two years before the issue of the Warning Notice (that is, by 26 October 2008). However, the fact that the Authority commenced an investigation in August 2008 into whether Mr Ford had committed misconduct does not mean that it knew at that time that he had committed the misconduct set out in this Notice and, as a matter of fact, it did not know.

Standard of proof

2.4. The Authority recognises that the allegations against Mr Ford are of a serious nature.

2.5. While there are some civil cases in which the criminal standard of proof (proof beyond reasonable doubt) is applied, the Authority takes the same approach as the

Upper Tribunal (to which Mr Ford may refer this matter following the issue of this Notice, should he wish to do so) in cases brought by the Authority under Part V of the Act. Accordingly, it applies the ordinary civil standard whereby allegations must be proved on the balance of probabilities (that is, whether it is more likely than not that the misconduct occurred), whether or not they involve allegations of a serious nature. This is also consistent with the practice of some other bodies which impose disciplinary sanctions.

2.6. The Authority has considered carefully the evidence and is satisfied that it is sufficiently strong for the Authority to reach the conclusions set out in this Notice.

Nature of the Products

2.7. The Authority is satisfied that (regardless of the fact that, to an extent, the risks might be mitigated) the Products were high risk, being long-term, highly illiquid and expensive to maintain, for the reasons set out in this Notice; in particular, in paragraphs 4.8 (in relation to the SLS Products) and 4.16 to 4.19 (in relation to the Lifemark Products). Mr Ford did not produce any evidence that demonstrated that this view was incorrect. As set out in this Notice, during the Relevant Period Mr Ford was aware of numerous pieces of advice from Keydata's own professional advisers which mentioned the risks of the Products. The Authority therefore does not accept that it is applying standards retrospectively to life settlement backed products.

Mr Ford's role within Keydata

2.8. For the reasons set out at paragraph 4.3 of this Notice, the Authority considers that Mr Ford was the CEO of Keydata throughout the Relevant Period. The findings set out in this Notice reflect the responsibilities which the Authority considers Mr Ford, accordingly, would have had. While he remained on the Authority's register in respect of the Controlled Function 3 (Chief Executive) and other controlled functions it was not appropriate for Mr Ford to regard his role in holding those controlled functions as at an end, even if it was his (or Keydata's) intention to seek a replacement to hold those functions.

2.9. While Mr Ford, as CEO, was entitled to delegate tasks to others within Keydata and to seek advice from professional advisers, this does not absolve him of his responsibility for the performance of delegated tasks, nor of his overall responsibility for the conduct of Keydata's business.

Conflict of Interest

2.10. The Authority does not accept Mr Ford's claim that his interest in Lifemark was only theoretical; the use of trusts is a common device for channelling funds to a beneficial owner and this was the effect of the arrangement in this case. The deferral of Mr Ford's interest (via this mechanism) in the assets of Lifemark to those of the bondholders does not mean he did not have that interest. Mr Ford did not produce any evidence to support his assertion that he cleared his potential conflict of interest relating to Lifemark with Keydata's Chairman on setting Lifemark up, and his representations were vague as to what the "clearance" entailed, including whether the Chairman was told about the Lifemark Companies. In any event, any acceptance of the position in principle by Keydata's Chairman would not have been sufficient to manage the conflict, which Mr Ford should have disclosed to Keydata's other directors and Keydata's Compliance Officer when discussing Keydata's dealings with Lifemark. The Authority does not find it credible that Mr Ford could not have realised that he had a conflict of interest in relation to Lifemark.

2.11. Mr Ford personally and/or his family, through trusts he set up on behalf of his family, were the beneficial owner(s) of, or entitled to the full benefit from, the Lifemark Companies.

2.12. The Authority is satisfied that Mr Ford was a consultant with the Offshore Partnership.

2.13. The Authority is satisfied that it has correctly stated the fees taken by the Lifemark Companies. For the reasons set out in this Notice (in particular, paragraphs 4.17 and 4.18), these fees were excessive. The representation that the fees received by the Offshore Consultancy were not a cost to Lifemark misses the point that it presented a conflict of interest in that it was Mr Ford's decision that Lifemark should follow a business model that precluded it from buying US senior life settlement policies as cheaply as possible in order that the Offshore Consultancy could receive fees for providing little or no service. In the absence of the fees paid to the Offshore Consultancy, the cost of the policies to Lifemark would have been reduced and its liquidity improved. The information that the largest shareholder in Keydata was receiving very significant benefits as a consequence of the sale of the Lifemark Products through the operation of the Lifemark Companies would be relevant to investors who were considering buying the Lifemark Products and to IFAs who were marketing the Lifemark Products. The Authority is not privy to either the instructions given to the lawyers advising Lifemark on the disclosure of

fees, nor of any details of the advice given, but in the Authority's view these fees should have been disclosed, and a person of integrity would have been aware of that.

2.14. Mr Ford did not produce any documentary or other independent evidence of any services actually performed by the Offshore Arranger. The details of the distribution network which he said the Offshore Arranger had put in place for Lifemark were therefore unverified. In any event, as Mr Ford was the owner and a director of Lifemark, he could have represented Lifemark in that capacity without interposing a separate company into the structure. All fees paid to the Offshore Arranger arose in respect of sales of Lifemark Products effected through Keydata. The Authority has concluded that the Offshore Arranger was involved in the structure in order that Mr Ford could charge Lifemark for services actually or purportedly provided by himself on behalf of Lifemark or Keydata. Whether or not it is correct that the Offshore Consultancy had a wider business than merely acting in relation to Lifemark, that is not relevant to whether it performed any meaningful services for Lifemark. Mr Ford asserted that it did perform real services for Lifemark, but did not provide any degree of detail, and again did not verify this by reference to documentary or other independent evidence. Further, the Offshore Promoter contracted with Lifemark to perform exactly the same services which Keydata performed for Lifemark, and for which Keydata received commission; Mr Ford did not provide any evidence of work actually performed by the Offshore Promoter in relation to transactions for which it received payment.

Failure of the SLS Products to perform

2.15. It is not credible for Mr Ford to deny that the SLS Bonds went into default or that he believed otherwise. For example, in February 2008 he had been made aware of concerns that the SLS Products would not generate enough funds to redeem the SLS Bonds, and attended a meeting with Mr Elias at which Mr Elias refused to provide information on the performance of the SLS Portfolio; he was informed on 14 April 2008 that SLS had not made income payments and the minutes of meetings of the Keydata board of directors thereafter regularly reported that this issue, for which he was responsible, had not been resolved. It must have been clear to Mr Ford that the problems with income payments were not short term. The Authority accepts that Mr Ford would not have been aware that RAC certificates were issued after April 2008 without any proper basis, but in June 2008 he saw advice which described the RAC cover as a "red herring" and not a very useful indicator of value.

2.16. The Authority accepts that Mr Ford attempted to resolve the issues with SLS by securing assets of Mr Elias but does not accept that it was appropriate to limit Keydata's response to attempting to remedy the situation in this way. Given the risk to investors' funds which the situation posed, he should have ensured that the Authority was made aware of the position. He should not have permitted Keydata to conceal the failure by SLS to make payments under the SLS Bonds when due.

Financial promotions for the Products

2.17. The Authority accepts that the production and signing off of brochures for the Products were the primary responsibility of Keydata's compliance team. However, Mr Ford admitted reviewing each brochure to assess whether it was clear and intelligible for a retail customer, to which extent he played a practical role in their production and would have been aware of their contents as at the time of such review. Further, as Keydata's CEO he retained overall responsibility for the activities of the compliance team and should have ensured that issues with the financial promotions of which he was aware were properly addressed. Throughout the Relevant Period, as a result of advice received from Keydata's professional advisers, Mr Ford was aware of specific defects in the financial promotions and failed to ensure they were adequately addressed.

2.18. The Authority is satisfied that the Brochure Advice was correct in identifying that the brochures which it reviewed lacked clarity and did not properly describe the risks of the SLS Products. It was the responsibility of Keydata to ensure the brochures it produced provided IFAs with information that would enable them to give suitable advice and extract relevant information for the end customer. Mr Ford was wrong, therefore, to suggest that because IFAs would advise their clients on the risk of the Products, Keydata did not need to express a view on risk in the brochures. The Brochure Advice should have been taken into account and acted upon when the financial promotions for the Lifemark Products were produced. Instead, these were materially similar in content to those for the SLS Products.

2.19. The fact that the February 2008 Brochure Review was marked as a draft and described as a preliminary review does not mean that a person of integrity could dismiss it and not consider what changes were required to assist IFAs and investors. Mr Ford was wrong to dismiss as unimportant its comments on presentation of information in the brochures because the way information is presented in financial promotions is important.

Due diligence in relation to the Lifemark Products

2.20. Even if it might properly be regarded for some purposes as a "distributor", Keydata's role in relation to the Products was to design, launch and distribute via IFAs (rather than, in general, direct to investors) the Products. As such, it was a "provider" within the meaning of the Authority's July 2007 Policy Statement (PS07/11) on "Responsibilities of providers and distributors for the fair treatment of customers". The responsibilities of providers (set out in that publication) on which the Authority relies, are as described in paragraph 4.51 of this Notice, and Mr Ford should have been aware of these during the Relevant Period. (While PS07/11 was published, like its preceding Discussion Paper (DP06/4), during the Relevant Period, it was summarising the existing position rather than introducing new requirements.) Further, there is contemporaneous evidence from Keydata's records that both it and advisers to the firm considered it to have those responsibilities during the Relevant Period. For example: the March 2008 Due Diligence Report regarded it as Keydata's responsibility to consider all the risks to the return of investor capital; and Keydata's Compliance Officer sent an email to Mr Ford on 30 March 2007 commenting on Keydata's responsibilities as outlined in PS07/11 from the perspective of its being a provider. In practice, Keydata did package the Lifemark Products, select the IFAs who were to sell the Lifemark Products and provide them with promotional material in respect of the Lifemark Products.

2.21. The Authority does not dispute that some due diligence was carried out by Keydata in relation to the launch of the Lifemark Products; however, it was inadequate in the respects set out in this Notice; in particular, in paragraphs 4.55 to 4.57. While it appears that the authors of the March 2008 Due Diligence Report based their conclusions on a review of what was contained in Keydata's documentary records in relation to the due diligence performed, the report addressed the substance of the due diligence and it is not accurate to characterise it as concerned only with record-keeping.

2.22. Mr Ford did not produce evidence of the errors which he said he and Keydata's compliance team had considered the report contained, and his reasons for disputing its conclusions retrospectively were largely based on his limited view (which the Authority does not accept) of Keydata's due diligence responsibilities. Mr Ford should have ensured that Keydata knew all relevant information about Lifemark and the Lifemark Products given that he set up, and was the beneficial owner of, Lifemark. The March 2008 Due Diligence Review made it clear, if it was not clear already, that others in Keydata did not have all of the information that

was required for them to carry out their roles in ensuring that systems and controls were in place to manage adequately the risks imposed by the product design; and in ensuring that information provided to investors and potential investors was sufficient, appropriate and comprehensible in substance and form, including considering whether such information would enable distributors to understand it sufficiently to give suitable advice (where advice was given) and to extract any relevant information and communicate it to their end customer. The work recommended by the report which Mr Ford said Keydata had carried out was in fact largely carried out by Lifemark or its advisers, rather than Keydata, and did not adequately address the matters identified in the report.

The risk of failure of the Lifemark Products

2.23. For the reasons set out in this Notice (particularly in paragraphs 4.61 to 4.82), the Lifemark Portfolio faced a number of risks which, if they were not adequately addressed, would mean that investors would not receive the expected returns. The Authority agrees that mention of particular rollover rates in the various reports produced in relation to the Lifemark Portfolio did not equate to a forecast that any of those rates would actually occur; nevertheless, a number of the rollover projections indicated potentially serious consequences if they did occur, and Mr Ford was not in a position to assess the likelihood of this happening. He should not have dismissed the significance of the projections.

2.24. The Authority does not agree that it would necessarily have been a simple matter to secure a credit facility at short notice; the availability of credit is always subject to some uncertainty. The Authority considers that it was reckless of Mr Ford to cause Keydata to continue promoting and selling the Lifemark Products when he was aware that Lifemark did not have a credit facility in place, was committed to continuing to buy US senior life settlement policies and was highly unlikely to maintain a positive cashflow.

Failure of the Products to comply with the ISA Regulations

2.25. While HMRC does have a "simplified voiding" process by which it is sometimes possible to resolve issues over compliance with the ISA Regulations, it is not applicable in all cases. It was HMRC's decision whether to apply that process to the Products. It was not guaranteed that HMRC would agree to allow the non-compliance to be remedied, and the Authority considers that Mr Ford acted recklessly in not taking steps to cease or suspend sales of the Lifemark Products or otherwise act to protect the position of investors in the face of this substantial risk.

Misleading the Authority

2.26. While the Authority accepts that Mr Ford was not aware of the fact that the assets of the SLS Portfolio had been replaced by a guarantee, the Authority is satisfied that at the time of his interview on 12 November 2008 the SLS Bonds were in default and Mr Ford was well aware of this; for example, prior to that date the minutes of meetings of the Keydata board of directors had regularly recorded Mr Ford updating the board on the default by SLS in making income payments under the SLS Bonds. It is therefore not credible that he believed these issues had been resolved. Even if it was his intention, or hope, that the issues would be resolved, the issues were sufficiently serious that there was no reasonable basis for him to state that the SLS Products were on target to meet their obligations. He was also well aware of the liquidity issues with the Lifemark Bonds (as set out at paragraphs 4.61 to 4.82 of this Notice).

2.27. As set out at 2.8 above, the Authority does not accept that Mr Ford ceased to have responsibility as Keydata's CEO from April 2007. It has confined its findings that he misled the Authority to matters of which it is satisfied he had knowledge at the relevant times.

2.28. The Authority does not accept that Mr Ford did not see the email from Keydata's Compliance Officer of 18 January 2009. This set out in some detail Keydata's Compliance Officer's proposed approach to an impending visit from the Authority, with a request to discuss it, and this would have been regarded as an important meeting. Mr Ford would have seen the email in his capacity as CEO. What Keydata's Compliance Officer proposed to say to the Authority on such an important matter was not a matter only for him, and Mr Ford should have intervened to prevent the Authority from being misled.

2.29. The fact that Keydata took legal advice (or other professional advice which it mistakenly believed at the time to be subject to legal professional privilege) does not excuse it, or Mr Ford, from the responsibility to make appropriate disclosure to the Authority of issues that gave rise to the need to take advice which the Authority would expect to be told about (as distinct from the advice itself). The privilege (insofar as it existed) related to the advice, not to the issues underlying it.