
FINAL NOTICE

To: Peter Joseph Halpin

IRN: PJH01326

Date of birth: 9 November 1962

Date: 5 November 2014

1. ACTION

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

- (a) imposes on Mr Halpin a financial penalty of £412,700; and
- (b) makes an order prohibiting Mr Halpin from performing the CF3 significant influence function in relation to any regulated activities carried on by any authorised or exempt persons. This order takes effect from 5 November 2014.

1.2. Mr Halpin agreed to settle at an early stage of the Authority's investigation. Mr Halpin therefore qualified for a 30% (stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £589,600 on Mr Halpin.

2. SUMMARY OF REASONS

2.1. On the basis of the facts and matters described below, the Authority has concluded that Mr Halpin failed to take reasonable steps to ensure that the business of Swinton for which he was responsible in his significant influence functions of CF1 (Director) and CF3 (Chief Executive) during the relevant period complied with the relevant requirements and standards of the regulatory system,

in breach of Principle 7 of the Authority's Statements of Principle for Approved Persons. Specifically, he:

- (a) failed adequately to deal with compliance risks and warnings relating to the monthly add-on products;
- (b) failed in respect of his oversight responsibility (as CEO and Chairman of the Compliance Board) for ensuring that compliance MI was sufficiently accurate, reliable and fit for purpose to enable Swinton adequately to monitor and deal with compliance issues, including in relation to the monthly add-on products;
- (c) failed to ensure that controls put in place in relation to the monthly add-on products were adequate to properly monitor whether customers were being treated fairly; and
- (d) failed to recognise the risk that the directors' share scheme might give rise to a culture in which the delivery of profit might negatively impact upon TCF.

2.2. Mr Halpin held a number of relevant responsibilities during the relevant period. These included: taking reasonable care to ensure that the firm's systems and controls, and the operation of the business, were appropriate from a regulatory standpoint; ensuring that the firm's business strategy did not conflict with its regulatory obligations; oversight responsibility for compliance issues; oversight responsibility for Swinton's TCF performance; oversight responsibility for ensuring that MI reviewed by Swinton's Compliance Board was reliable and fit for purpose; and, together with Swinton's other directors, taking reasonable care to ensure that the firm treated its customers fairly.

2.3. Mr Halpin failed to discharge these duties to a reasonable standard. During the relevant period he did not fully recognise and respond sufficiently to indications that there were compliance problems with the monthly add-on products and a risk that Swinton was not treating customers fairly in respect of these products. He did not step back to assess those indicators in the round and failed, therefore, to act decisively enough to address the risks to customers. He also failed to recognise the risk that the directors' share scheme might engender a culture in which the delivery of profit might negatively impact upon TCF.

- 2.4. The risks were significant. During the period April 2010 to December 2011, Swinton sold approximately 1.9 million monthly add-on insurance policies. It launched three types of monthly add-on product: personal accident insurance, breakdown insurance and home emergency insurance. The launch of each monthly add-on product was followed by a sharp rise in sales compared to the previous annual or multi-year version of the product. Personal accident insurance sales alone increased from 6,000 (for the previous multi-year product) to around 55,000 policies per month. The increase in sales was not accompanied by a sufficient increase in the level of compliance monitoring. In its branch network, for most of the relevant period Swinton monitored an average of 19 telephone sales of personal accident insurance per month, representing only 0.04% of the average number of personal accident insurance policies sold per month. Sales of the monthly add-on products had a significant impact on Swinton's profits.
- 2.5. The Authority has made no finding that Mr Halpin was improperly motivated by Swinton's incentive scheme for directors. The firm's operating profit was at the core of this scheme, which focused on profit generated in a specific year (2011). The scheme, put in place by Swinton's parent company, meant that, for every £10 million of operating profit generated above £62.2 million in 2011, the total bonus payment to Swinton's participating directors would increase by approximately £15 million. Whilst Mr Halpin was aware that incentive schemes for Swinton's sales executives had to be accompanied by appropriate checks and balances, he did not recognise the risk that the directors' share scheme might give rise to a culture in which the delivery of profit might negatively impact upon TCF.
- 2.6. In October 2009, Swinton was disciplined by the Authority for breaches of the Principles for Businesses in relation to the sale of PPI during the period from December 2006 to March 2008 (when Mr Halpin was Swinton's Deputy CEO). Failings identified in respect of Swinton's mis-selling of the monthly add-on products reflected similar failings found to these by the Authority in relation to PPI. Whilst Swinton's sales process for monthly PA was reviewed for compliance issues, including issues that arose from PPI mis-selling, Mr Halpin failed to recognise similar risk indicators in relation to Swinton's sales of the monthly add-on products.
- 2.7. As a consequence of these matters, Mr Halpin failed to take reasonable steps to perform his significant influence functions in accordance with regulatory requirements. The lack of competence demonstrated by Mr Halpin has led the

Authority to conclude that he is not a fit and proper person to perform the CF3 significant influence function in relation to regulated activities carried on by an authorised person or exempt person, and that he should be prohibited from doing so.

- 2.8. The Authority has therefore decided to impose a financial penalty on Mr Halpin in the amount of £412,700 pursuant to section 66 of the Act and make a prohibition order pursuant to section 56 of the Act.
- 2.9. This action supports the Authority's regulatory objective of securing an appropriate degree of protection for consumers and is consistent with the importance placed by the Authority on the accountability of senior management in the operation of their business.

3. DEFINITIONS

3.1. The definitions below are used in this Final Notice:

- (a) the "Act" means the Financial Services and Markets Act 2000;
- (b) the "Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;
- (c) the "Compliance Board" means the subsidiary board of Swinton's executive board responsible for identifying, reviewing and addressing the key compliance indicators of Swinton's business, identifying key compliance issues and deciding on appropriate corrective action;
- (d) the "core products" means motor or home insurance products;
- (e) "DEPP" means the Decision Procedure and Penalties Manual section of the Handbook;
- (f) the "DSS" means Swinton's directors' share scheme in operation during the relevant period;
- (g) "EG" means the Enforcement Guide part of the Handbook;
- (h) the "Handbook" means the Authority's Handbook of rules and guidance;
- (i) "HEP" means Swinton's home emergency insurance;

- (j) "LTV" means lifetime value, which was the method Swinton used to account for sales of the monthly add-on products;
- (k) "MI" means management information;
- (l) the "monthly add-on products" means the monthly HEP, PA and SBI add-on products sold by Swinton;
- (m) "PA" means Swinton's personal accident insurance;
- (n) "PPI" means payment protection insurance;
- (o) the "relevant period" means the period between 1 April 2010 and 12 December 2011;
- (p) "SBI" means Swinton's breakdown insurance;
- (q) the "Statements of Principle" means the Statements of Principle and Code of Practice for Approved Persons;
- (r) "Swinton" means Swinton Group Limited;
- (s) "TCF" means the Authority's Treating Customers Fairly initiative, which is based on Principle 6 of the Authority's Principles for Businesses. Principle 6 requires firms to pay due regard to the interests of their customers and treat them fairly; and
- (t) the "Tribunal" means the Upper Tribunal (Tax and Chancery Chamber).

4. FACTS AND MATTERS

- 4.1. Swinton is a large general insurance intermediary which has been authorised by the Authority since 14 January 2005.

The monthly add-on products

- 4.2. During the relevant period, Swinton sold the monthly add-on products to existing customers with core products, being home insurance or motor insurance, and to new customers alongside these core products. It migrated existing customers from annual or multi-year PA, SBI and HEP policies to the monthly add-on products as their existing policies came up for renewal. It also sold the monthly add-on products on a stand-alone basis to customers who had purchased core products through other brokers.

- 4.3. Customers were offered free cover for an initial period of three or four months before monthly premiums became payable and were automatically taken from their bank accounts if they did not cancel. Customers were not tied into annual or multi-year contracts and could cancel their policies at any time without incurring charges.
- 4.4. Swinton launched the monthly PA product in April 2010. PA was designed to provide cover for accidental physical injury or the disappearance of an insured person who was presumed dead as a result of accidental injury. PA offered three levels of cover, which could be extended to include the insured person's partner or unmarried dependent children. The monthly premiums for PA ranged from £7.98 to £17.99.
- 4.5. In February 2011, Swinton launched its monthly SBI product. SBI was designed to provide cover for motor breakdown assistance. SBI offered four levels of cover for vehicle recovery within the UK and Europe. The monthly premiums for SBI were determined by the level of cover and specific product options selected.
- 4.6. Swinton launched its monthly HEP product in July 2011. HEP was designed to provide cover in cases where a skilled tradesman was required to attend and repair a home emergency. HEP offered two levels of cover which provided different amounts of reimbursements for repairs. The monthly premiums for HEP were £4.99 or £6.99.
- 4.7. During the relevant period, Swinton sold the monthly add-on products on a non-advised basis to customers face to face in its high street branches (which at that time numbered more than 500) and by telephone from its branches and nine call centres. Swinton changed its sales processes from advised to non-advised over the course of the period November 2009 to February 2010, due in part to its experience with PPI (described in paragraph 2.6 above).
- 4.8. Swinton used a computer software package for both telephone and face to face sales to capture customer details and search for quotes on the core products. The computer software package prompted sales executives to introduce the monthly add-on products during sales of the core products and provided links to the relevant sales scripts.
- 4.9. Sales of the monthly add-on products were particularly profitable for Swinton in the year the sale was made, due to the method Swinton used to account for them. Swinton accounted for the monthly add-on products on a LTV basis. This

meant that a notional value for the lifetime of the product was ascribed to its sale on day one and accounted for in that month. This value was based on an actuarial calculation arrived at by making various assumptions about the premium income and cancellation rates applicable to each product.

- 4.10. During the relevant period, Swinton sold approximately 1.9 million monthly PA, SBI and HEP policies. Sales of the monthly PA product alone averaged around 55,000 policies per month during this period. In September 2011, Swinton estimated that the monthly PA and SBI products were due to generate approximately £43.5 million of a forecasted total operating profit figure of £110.4 million in 2011.
- 4.11. On 16 July 2013, the Authority fined Swinton £7,380,400 for breaching its Principles for Businesses in respect of its sales of monthly add-on products between April 2010 and April 2012. The fine was reduced by 30% from £10,543,500 as Swinton agreed to settle at an early stage of the investigation.
- 4.12. Half of the Authority's main findings about the mis-selling of the monthly add-on products reflected similar failings found at Swinton previously in relation to the mis-selling of PPI, even though PPI was sold on an advised basis whereas the monthly add-on products were sold on a non-advised basis. On 28 October 2009, the Authority had fined Swinton £770,000 for breaching its Principles for Businesses during the period December 2006 to March 2008 in relation to PPI sales.

Mr Halpin's role and responsibilities

- 4.13. Mr Halpin was CEO of Swinton during the relevant period, having been appointed to this position in April 2009 from his previous role as Deputy CEO. He held a number of roles that gave him oversight responsibility for Swinton's compliance with regulatory standards. As a director and CF1, he was responsible for taking reasonable steps to ensure that the firm treated its customers fairly. As CEO, he was responsible for taking reasonable steps to ensure that the firm's systems and controls, and the operation of the business, were appropriate from a regulatory standpoint, and that the firm's business strategy did not conflict with its regulatory obligations. As Chairman of Swinton's Compliance Board, he had oversight responsibility for compliance issues and measuring Swinton's TCF performance. He also had oversight responsibility for ensuring that MI reviewed by the Compliance Board was reliable and fit for purpose (with day-to-day

responsibility for designing, collating and presenting the MI resting with Swinton's Compliance Department).

Structure of the DSS

- 4.14. The DSS provided that, where the operating profit as stated in Swinton's audited financial statements for the year ended 31 December 2011 exceeded the equivalent figure at 31 December 2008, the beneficiaries would be entitled to a payment of 15% of the difference between the 2011 and 2008 profit figure multiplied by a price to earnings ratio of 12 – the Threshold Excess. Where the 2011 operating profit figure exceeded £62.2 million, the percentage payable rose from 15% to 16.25% on the whole of the Threshold Excess.
- 4.15. The terms of the DSS gave rise to a potential bonus for the participating directors based on profits made in one specific year: 2011. For every £10 million of operating profit generated above £62.2 million in 2011, the DSS payment would increase by approximately £15 million.
- 4.16. Mr Halpin received a salary and in addition was a beneficiary of the DSS. The Authority has not identified any evidence that Mr Halpin was improperly motivated by the DSS. However, he failed to recognise a risk that this incentive scheme might unduly promote a culture in which the delivery of profit might negatively impact upon TCF.

Compliance Board monitoring

- 4.17. Swinton's Compliance Board monitored compliance within the business and took decisions on compliance issues based upon information presented to it by others, primarily by members of Swinton's Compliance Department. The main sources of MI relied upon by the Compliance Board for these purposes related to (i) Swinton's call monitoring programme, (ii) records of customer complaints, and (iii) Swinton's process control framework.
- 4.18. Mr Halpin, as CEO and Chairman of the Compliance Board, had an oversight responsibility to ensure the adequacy of these sources of MI. During the relevant period, however, all three main forms of MI were characterised by weaknesses in the data relating to sales of the monthly add-on products. Whilst on occasion Mr Halpin challenged the MI he received, he failed adequately to challenge the MI presented to the Compliance Board and failed to fully identify its weaknesses. This meant that throughout the relevant period, Swinton's Compliance Board

relied upon inadequate MI to obtain assurance that the risks of mis-selling the monthly add-on products had been adequately contained.

- 4.19. Mr Halpin placed too much reliance on external compliance-related assessments commissioned by Swinton that were limited in scope.

Failure to address quantitative weaknesses in Swinton's call monitoring programme adequately

- 4.20. Telephone sales calls in Swinton's call centres were monitored for compliance purposes by dedicated Quality Teams, which reported in to Swinton's Operations Department. In parallel, sales calls in the branch network were monitored by Customer Assistance, a team of three people who reported in to Swinton's Compliance Department.
- 4.21. Mr Halpin and the other members of Swinton's Compliance Board received aggregated call monitoring MI in the form of monthly Compliance Board Reports, which were circulated in advance of each Compliance Board meeting. At those meetings, a member of Swinton's Compliance Department also presented MI showing the underlying call monitoring data relating to the monthly add-on products. The underlying call monitoring MI was also circulated to Mr Halpin and others periodically by email. Both the aggregated and the underlying MI set out the call monitoring results from Swinton's branch network.
- 4.22. The level of call monitoring performed in Swinton's branch network was disproportionately low. Mr Halpin was aware of this issue from at least May 2010, through discussions at Compliance Board meetings. The level of call monitoring performed within Swinton's call centres was significantly higher, but this data was not fed into the MI reviewed by the Compliance Board.
- 4.23. For most of the relevant period, the aggregated call monitoring MI presented in the Compliance Board Reports was based on a small sample size. In the period from April 2010 to September 2011, the average number of monitored telephone sales calls aggregated in the Compliance Board Reports was 130 per month, across all product lines (i.e. both core and add-on products). During the same period, the average number of monitored PA telephone sales calls aggregated in the Compliance Board Reports was 19 per month. This represented only 0.04% of the average number of PA policies sold per month in the same period (52,000).

- 4.24. Compliance Board meeting minutes indicate that Mr Halpin was aware of the issue relating to the sample size of the call monitoring MI from at least July 2010. The solution proposed was to include in the Compliance Board Report (which, at that point, presented call monitoring MI relating to Swinton's branch network) the call monitoring MI relating to all of Swinton's call centres. However, the change was not implemented until October 2011, some 15 months later. The effect was a significant increase in the average number of monitored calls (across all product lines) aggregated in the Compliance Board Report, from 130 to 3,239 per month.
- 4.25. In April 2011, during a supervisory visit, the Authority identified as a weakness the "*relatively small volume of call monitoring carried out in respect of [Swinton's] branch network*". A follow up letter from the Authority in May 2011 noted that the low level of call monitoring performed in Swinton's branches compromised the firm's ability to identify compliance weaknesses. Minutes of a Compliance Board meeting in April 2011 noted that the installation of an enhanced call recording system, which would significantly increase the ability to perform call monitoring activity, was "*imminent*", and that further updates would be provided at future meetings.
- 4.26. The Compliance Board was updated on this again in June 2011, when it discussed the planned roll out of the new call recording system to provide greater coverage in the branch network. Mr Halpin also reported on this to Swinton's Audit Committee. However, the initiative to increase call monitoring volumes had still not been implemented by the end of the relevant period and was seen as an ongoing area for development.
- 4.27. The steps that Mr Halpin took to address these quantitative weaknesses in the level of call monitoring performed in Swinton's branches and the sample size of the call monitoring MI presented to Swinton's Compliance Board were not adequate. Consequently, the MI was insufficient for the Compliance Board to draw adequate comfort about the risk of mis-selling the monthly add-on products and was inadequate for the purpose of measuring the fair treatment of customers.

Failure to address qualitative weaknesses in Swinton's call monitoring programme adequately

- 4.28. Swinton's call monitoring MI was based on the assessment of telephone sales calls against 'scorecards' developed by Swinton's Compliance Department. Call monitors listened to recorded calls and scored various aspects based on questions

asked in the scorecard, with different scorecards used for different products. Calls were given an overall compliance score of 'red', 'amber' or 'green', with 'red' denoting performance falling significantly below the required standard, 'amber' denoting performance falling below the required standard, and 'green' denoting that the required standard had been achieved.

- 4.29. Initially the scorecard for monthly PA consisted of only one question, which asked whether the sales executive had followed the terms and conditions script for the product. A revised scorecard, which included 10 PA-related questions, was implemented in June 2010. Call monitoring MI based on the revised PA scorecard was included in the July 2010 Compliance Board Report.
- 4.30. The revised PA scorecard did not include a qualitative assessment of whether the customer had been treated fairly during the call. At the September 2010 Compliance Board meeting, Mr Halpin and the other members of the Compliance Board discussed whether to include a TCF assessment and raised an action point to follow up on this suggestion. However, this change was not implemented during the relevant period.
- 4.31. At no stage during the relevant period did the scorecards for monthly PA, monthly SBI or monthly HEP include qualitative questions to assess:
 - (a) the manner in which information was provided to customers;
 - (b) how far customers understood the product they were buying;
 - (c) the order in which information was given to customers (i.e. whether product exclusions were explained before customer authority to proceed with the sale was obtained);
 - (d) whether it was made clear to the customer that the monthly add-on product was a separate, optional policy (although sales scripts positioned the monthly add-on products after payment had been made for the core product sale); and
 - (e) the frequency with which sales executives employed techniques to handle customer objections (e.g. on the grounds of duplicate cover or the cost of the policies), or the nature of the objection handling.
- 4.32. The call monitoring MI presented to Swinton's Compliance Board contained an inadequate evaluation of TCF concerns and was not sufficiently reliable to

measure TCF. As CEO and Chairman of the Compliance Board, Mr Halpin had an oversight responsibility to take reasonable steps to ensure that this MI was fit for purpose. After the suggestion was made to consider including a qualitative TCF assessment in the call monitoring scorecards, he should have followed up this point to ensure that a separate qualitative TCF element, covering issues such as those highlighted above, was incorporated into the scorecards in a consistent fashion such that TCF failures were appropriately reflected in the call monitoring MI. This would have assisted the Compliance Board in measuring Swinton's TCF performance. Mr Halpin failed sufficiently to recognise the inherent weaknesses in the nature of the MI and instead placed reliance on an external consultant's review of Swinton's TCF culture, which was limited in scope.

- 4.33. In July 2007, the Authority published a TCF guide to MI. The publication gave high level guidance about what constitutes good and poor practice in terms of disseminating, challenging, analysing, acting on and recording MI. In relation to challenging MI, the guide stated:

"As well as challenging the current content of MI, we would expect management to consider the substance and quality of the MI itself. Challenges might include [...] Is the MI still relevant to what the firm is trying to do?"

- 4.34. Mr Halpin should have recognised that, what he perceived to be positive results, did not necessarily mean customers were being treated fairly. In relation to analysing MI, the TCF guide continued, *"firms should aim to avoid using the absence of poor results as a sign that the consumer outcomes are being delivered"*. The guide also contained illustrations of how organisations might measure TCF, demonstrate successful customer outcomes, and act on and record relevant MI. Although Mr Halpin did on occasion challenge the content of MI, he failed to ascertain that the MI received by the Compliance Board was not a reliable measure for assessing whether Swinton was treating its customers fairly.

Change to the basis of the underlying call monitoring MI

- 4.35. As noted at paragraph 4.21 above, MI showing the data underlying the aggregated call monitoring results presented in the Compliance Board Reports was presented at Compliance Board meetings. This MI assigned a 'red', 'amber' or 'green' rating to each telephone sales call monitored, with a 'red' rating indicating significant compliance failings in the sale.

- 4.36. Initially, the underlying call monitoring MI only reported telephone calls in which an actual sale of a monthly add-on product had been completed. Call monitoring results circulated on 29 November 2010 indicated that the proportion of monitored PA telephone sales calls rated 'red' was high, at approximately 30%.
- 4.37. At a Compliance Board meeting the following day, Mr Halpin requested that the basis of the MI be revised to include telephone calls in which the customer had declined, or was not eligible for, the product (i.e. in which PA had not been sold). Mr Halpin made this suggestion in order to increase the number of calls being monitored (even if a full sale of a monthly add-on product had not been completed), as he thought it would provide Swinton with an opportunity to assess whether important parts of the sales scripts (for example, those relating to payment terms or customer authority to proceed with the sale) were being followed.
- 4.38. However, the inadvertent effect of this change was that it expanded the population of telephone calls reported in the underlying call monitoring MI, resulting in a significant increase in the proportion of monitored calls rated 'green' and a fall in the proportion of calls rated 'red'. This was evident from the underlying call monitoring MI for November 2010, which reported that 90% of monitored PA telephone sales calls were rated 'green', 3% were rated 'amber', and 7% were rated 'red'.
- 4.39. The result of the change was an apparent improvement in the quality of monthly PA sales compared to previous call monitoring results. However, analysis of the underlying data shows that this was not the case. When looking only at monitored calls in which PA was actually sold, the results show that 63% of calls were rated 'green' (well below Swinton's target of 85%), 11% were rated 'amber' and 26% were rated 'red'. The ratio of mis-sales to compliant sales, therefore, remained reasonably static.
- 4.40. Underlying call monitoring MI subsequently circulated to Mr Halpin showed that the proportion of monitored PA sales calls rated 'red' or 'amber' remained consistently between 20% and 40% throughout the rest of the relevant period.
- 4.41. Mr Halpin failed sufficiently to appreciate that the change he requested to the underlying call monitoring MI would negatively impact Swinton's ability to monitor compliance in respect of monthly PA sales.

Failure adequately to address weaknesses in Swinton's complaints MI

- 4.42. During the relevant period, the volume of complaints recorded by Swinton in respect of the monthly add-on products was very low. However, the seemingly low number of complaints could not be relied upon to accurately measure whether Swinton was treating its customers fairly.
- 4.43. Complaints received in Swinton's branches and dealt with before the end of the next business day (i.e. non-reportable complaints) were not centrally recorded unless an *ex gratia* payment was made to the customer. Complaints that went to Swinton's SAVE team (a customer retention team) and that were dealt with without completing a complaints form were also not centrally recorded. Further, Swinton offered a "no quibble" refund guarantee in respect of the monthly add-on products, and complaints resolved under this guarantee were not always centrally recorded. Mr Halpin was aware of at least some of these practices but failed sufficiently to appreciate their impact. He did not take adequate steps to satisfy himself that Swinton's processes for recording complaints were fit for purpose.
- 4.44. Between April 2010 and December 2011, Swinton refunded 23,690 monthly PA customers. Many of these refunds would have related to customer complaints and would have been given under the "no quibble" refund policy. However, the number of actual PA-related complaints recorded over the same period was only 3,780. The complaints MI was not comprehensive as it understated the true number of complaints received. It was not, therefore, an appropriate data source for the Compliance Board to rely on for the purpose of assessing whether Swinton was treating its monthly add-on customers fairly. Mr Halpin should have appreciated, and taken adequate steps to manage, this risk.

Failure to address weaknesses in Swinton's process control framework

- 4.45. Swinton implemented a 'process control' framework to monitor sales compliance in respect of the monthly add-on products. Under this framework, data from a range of sources (including sales, call monitoring and complaints MI) was analysed to identify sales executives considered to present a higher compliance risk. Where a staff member was identified under this process, Swinton contacted a maximum of six customers of the sales executive in question to conduct a telephone survey. The purpose of the survey was to establish the customer's experience and to gauge their understanding of the terms and conditions of the monthly add-on product purchased. Depending on the results of the customer surveys, the sales executive might be subject to further action.

- 4.46. The telephone survey did little to enable Swinton to assess TCF. As Swinton took the view that customers generally preferred not to undertake customer surveys, it designed a short set of questions that gave the customer the opportunity to raise any concerns regarding the sale. However, as with the scorecards used in the call monitoring process, the survey did not include any questions to assess the manner in which sales executives gave information to customers, how far customers understood the product they had purchased, the order in which information was provided to customers, or customers' experience of objection handling. While the survey was useful in measuring customer satisfaction, Mr Halpin failed to consider its usefulness in measuring TCF.
- 4.47. The answers to particular questions in the telephone survey determined whether the call was deemed to be a pass or a fail, with the number of failed calls determining the sales executive's compliance risk rating ('red', 'amber' or 'green'). In August 2010, four months after the launch of monthly PA, the process control framework was amended such that two failed calls, rather than one or two, would result in an 'amber' rating. If one call out of the maximum of six surveyed was deemed to be a fail, the sales executive was rated 'green'. This meant that where the process control identified that in one out of six cases the sales executive had failed to explain the cover provided or the cost of the policy after the initial free period, or if the customer had indicated that the policy was set up against their wishes, no further action would be taken in respect of that sales executive.
- 4.48. The PA process control framework, complete with the weaknesses described above, was replicated for the monthly SBI product, which was launched in February 2011. There was no similar or alternative control for the monthly HEP product, which was launched in July 2011.
- 4.49. Although Mr Halpin, in Compliance Board discussions, considered the further development of the process control framework for the monthly add-on products, he failed to consider whether the framework was adequate to assess TCF or sufficiently robust to ensure that sales executives posing a compliance risk were being identified appropriately.

Other compliance risks and warnings

- 4.50. Mr Halpin received a number of indications outside his Compliance Board role that should have alerted him to the risk of mis-selling of the monthly add-on products. While he responded to some of these risks and warnings, he did not sufficiently

consider them in the context of information he was receiving on the monthly add-on products across the business. Consequently, he failed to take reasonable steps to satisfy himself that the compliance issues had been adequately addressed.

Call monitoring MI received outside the Compliance Board

- 4.51. As noted at paragraph 4.21 above, in addition to the aggregated call monitoring MI presented in the monthly Compliance Board Reports, Mr Halpin was also presented (at his request) with spreadsheets showing the underlying call monitoring data which formed the basis of these reports. This MI was circulated to him and others by email regularly each month.
- 4.52. Following the launch of monthly PA, initial call monitoring MI received by Mr Halpin suggested that there were serious compliance problems with the sale of the product. In response to these concerns, the Compliance Board decided on a number of measures to address what was described as an “*unsatisfactory position*”. These included providing immediate feedback where mis-selling was identified, disciplining staff where necessary, introducing additional MI, reiterating correct sales procedures in staff communications, reinforcing the need to adhere to approved sales scripts, additional call monitoring, and conducting a customer telephone survey.
- 4.53. The measures taken failed to have any significant immediate impact. This was illustrated by subsequent call monitoring MI received by Mr Halpin, which pointed to continuing compliance failings in the sale of monthly PA. In particular, MI circulated in June and July 2010 indicated that over 85% of monitored PA telephone sales calls were rated ‘red’.
- 4.54. By September 2010, the proportion of ‘red’ PA sales had fallen but was still high, ranging from 27% to 45%. At that time, and in light of Swinton’s previous history with PPI, representatives of Swinton’s parent company expressed concern about the regulatory implications of monthly PA and sought reassurance on the matter.
- 4.55. Call monitoring results received by Mr Halpin in respect of monthly PA remained poor throughout the rest of 2010 and well into 2011, and deteriorated after the launch of the next monthly add-on product, SBI, in February 2011.

- 4.56. Call monitoring results for SBI in the four months following the product launch were also very poor, with the proportion of monitored SBI telephone sales calls rated 'red' ranging from 40% to 67%. A similar pattern followed the launch of monthly HEP in July 2011. Call monitoring results for the period August to November 2011 indicated that the proportion of monitored HEP telephone sales calls rated 'red' ranged from 23% to 50%, indicating a significant risk that the product was being widely mis-sold.

Complaints MI received outside the Compliance Board

- 4.57. During the relevant period, Mr Halpin regularly received email updates on the number of PA-related complaints made each month. Although call monitoring MI pointed to significant compliance problems in the sale of monthly PA, Mr Halpin took comfort from the fact that, as a proportion of total product sales, the number of complaints was low.
- 4.58. The majority of PA-related complaints received by Swinton during this period related to the inception of policies without customer knowledge or consent. This pattern suggested that other customers may have been sold PA policies in similar circumstances but may have been unaware of this and, therefore, unaware of their right to complain. Accordingly, the nature of the complaints suggested that the problem of mis-selling was wider than indicated by the number of complaints. Mr Halpin failed to direct sufficient qualitative analysis of the complaints data that could have identified this issue and led to Swinton taking appropriate action to address its root causes.

Cancellations MI

- 4.59. In September 2010, Mr Halpin reported to Swinton's Audit Committee that the overall cancellation rate for monthly PA, at 11.5%, was below expectations and was not a cause for concern. Emails he received at that time, however, highlighted that policy maturity had an impact on cancellation rates. In particular, he was made aware that the cancellation rate for PA policies sold in April 2010 (i.e. in the first month following launch) was running at 39%, compared to 4.6% for policies sold in August 2010.
- 4.60. The data indicated a spike in the cancellation rate for monthly PA after expiry of the initial free period. This pattern was potentially indicative of a failure to treat customers fairly. It should have alerted Mr Halpin to the possibility that customers were cancelling because they did not have a genuine need for the

product, and/or that they were not aware that they had purchased the product until Swinton began to take payment.

Customer surveys

- 4.61. As noted at paragraphs 4.45 to 4.46 and 4.52 above, Swinton performed internal telephone surveys of monthly add-on customers as part of its compliance monitoring programme. Mr Halpin was reassured by the results of the surveys, which were provided to him by the Compliance Department. His report to the Audit Committee in September 2010 stated, in respect of monthly PA, *“customer surveys suggested that the vast majority of customers (91%) had received a satisfactory service and were happy with the product”*.
- 4.62. In July 2006, the Authority published guidance on TCF and customer outcomes that stated, *“it is essential that firms use measures that distinguish between customer satisfaction and fair treatment of customers”*. Specifically in relation to customer satisfaction surveys, the guidance stated:
- “Many firms use customer satisfaction surveys to understand the customer experience. To enable them to capture fairness firms may find it useful to refine their questions. For example, rather than simply asking a customer if they are satisfied with or understand a product or service – or in addition to doing that – firms could frame questions designed to test how far the customer understands the product or service”*.
- 4.63. The survey questions asked by Swinton were limited in scope. While Mr Halpin was not directly involved in the design of the internal surveys, he was present at Compliance Board meetings during which they were discussed and should, therefore, have been aware of their content.
- 4.64. Mr Halpin’s September 2010 assurance to Swinton’s Audit Committee was, to some extent, balanced by references to call monitoring results and weaknesses in adherence to sales processes and scripts. Given this, and other indications of potentially serious compliance problems with the sale of the product, he should not reasonably have relied on the survey results provided to him by Swinton’s Compliance Department as an indicator that customers who had purchased the monthly PA product had been treated fairly.

Warnings about over-pressuring staff

- 4.65. In the month following the launch of the monthly PA product, Mr Halpin was warned that the number of changes being introduced into the business was putting sales executives under too much pressure, and that this was having a negative impact on Swinton's sales culture.
- 4.66. In particular, on 28 April 2010 he was forwarded an email highlighting this pressure and the fact that people were "*crossing the line*" on processes. In May 2010, during an informal meeting of Swinton's directors, he was told that sales staff could not cope with the number of new business initiatives and that things were "*coming off the rails*". During a meeting on 12 May 2010, one member of the Compliance Board indicated that staff had too much to do and were "*cutting corners*" as a result.
- 4.67. These warnings alerted Mr Halpin to the need to take reasonable steps to manage the risk that excess pressure could potentially result in mis-selling of the monthly add-on products.

Risk of manipulation of Swinton's sales incentive scheme

- 4.68. Under Swinton's internal audit framework, those audits that identified issues deemed to be particularly serious were graded 'pink'. Mr Halpin received a number of 'pink' audit reports during the relevant period, some of which highlighted compliance issues relating to the monthly add-on products. For example, a 'pink' audit report received in February 2011 identified "*serious concerns over the validity of Personal Accident and other add-on policies*". Another 'pink' audit report received that month identified suspected manipulation of Swinton's sales incentive scheme. June 2011 saw four 'pink' audit reports relating to suspected manipulation of the sales incentive scheme. By October that year, there had been an increase in the number of such 'pink' audit reports.
- 4.69. These audit results alerted Mr Halpin to the potential for Swinton's sales incentive scheme to motivate improperly sales executives to mis-sell products in order to achieve targets and claim bonuses. He should have taken further steps to manage this risk.

The impact of the DSS

- 4.70. Swinton's business strategy during the relevant period was to maximise profit levels in 2011. This strategy was underpinned by the DSS. A presentation for a May 2010 strategy meeting of Swinton's directors emphasised ways to increase profits the following year (2011). The presentation forecasted an increase in Swinton's operating profits from £38.64 million in 2010 to £56.34 million in 2011, followed by a fall back to £50.19 million in 2012. The presentation also highlighted the potential for the 2011 operating profit to be as high as £105.8 million. By February 2011, Mr Halpin was aware that Swinton was forecasting a 2011 pre-tax profit of £89.4 million. By June 2011, Swinton was forecasting a pre-tax profit of £110 million. If 2011 pre-tax profits were to total £110 million, the DSS payment due to the scheme participants would be approximately £90 million.
- 4.71. Mr Halpin was aware that the participants of the DSS stood to receive significant sums and were in a position to influence the culture at Swinton. He ought reasonably to have been aware, both from the structure of the DSS and from indications he received, of the risk that the DSS might unduly promote the delivery of profit and negatively impact upon TCF. He should have realised that checks and balances were needed to mitigate this risk.
- 4.72. Mr Halpin was aware of the risk that Swinton's sales incentive scheme might motivate sales executives to put sales ahead of the fair treatment of customers. However, he did not sufficiently recognise that the DSS might pose a similar risk in respect of its participating directors.
- 4.73. The risk was amplified by the high level of sales of the monthly add-on products which, by September 2011, were expected to account for approximately £43.5 million of an anticipated 2011 operating profit of £110.4 million. Mr Halpin did not take reasonable steps to manage this risk.

5. FAILINGS

- 5.1. The regulatory provisions relevant to this Final Notice are referred to in Annex A.
- 5.2. Mr Halpin failed to comply with Statement of Principle 7 whilst carrying out his controlled functions at Swinton in that he failed to take reasonable steps to ensure that the business of Swinton for which he was responsible in his

accountable functions complied with the relevant requirements and standards of the regulatory system.

5.3. In particular, Mr Halpin:

- (a) did not adequately deal with a number of important compliance risks and warnings relating to the monthly add-on products, including poor call monitoring results;
- (b) failed in respect of his oversight responsibility (as CEO and Chairman of the Compliance Board) for ensuring that compliance MI was sufficiently accurate, reliable and fit for purpose, in that it enabled the Compliance Board and others responsible for monitoring compliance adequately to monitor and deal with compliance issues;
- (c) failed in respect of his oversight responsibility for ensuring that the process control framework put in place in relation to the monthly add-on products, and the questions customers were asked as part of the process, were adequate to properly monitor whether customers were being treated fairly; and
- (d) failed to recognise the risk that the DSS and the business strategy to maximise profit in 2011 might give rise to a culture in which the delivery of profits might negatively impact upon TCF. The Authority has not identified any evidence that Mr Halpin was improperly motivated by the DSS.

Mr Halpin's compliance responsibilities

5.4. Mr Halpin held a number of positions that gave him responsibility for Swinton's compliance with regulatory standards. In particular:

- (a) as an executive director and CF1, he was responsible for taking reasonable steps to ensure that Swinton treated its customers fairly;
- (b) as CEO, he was responsible for taking reasonable steps to ensure that Swinton's systems and controls were appropriate in light of regulatory standards and that all areas of the business were operated and managed in accordance with those standards; and

- (c) as its Chairman, he was responsible for leading and directing the work of the Compliance Board. This included oversight of compliance issues and the measurement of Swinton's performance against TCF objectives.

Failure adequately to address compliance risks and warnings

- 5.5. During the relevant period, Mr Halpin received a number of indicators of compliance problems relating to the monthly add-on products. Poor call monitoring results suggested that there were compliance failings in the sale of the products and that, in respect of monthly PA, efforts to address the problem had not been successful.
- 5.6. Complaints MI indicated that the number of customer complaints relating to monthly PA was generally low, but the majority of complaints related to the inception of policies without customer knowledge or authorisation. The nature of the complaints suggested that a problem of PA mis-selling might have been potentially wider than indicated by the number of complaints. Due to their lack of awareness, customers who had been sold policies in similar circumstances may not have known that they had the right to complain.
- 5.7. Cancellations data should also have caused Mr Halpin to examine the data more closely. After expiry of the initial free period for monthly PA, the cancellation rate soared. This indicated two potential compliance problems:
- (a) Swinton was selling monthly PA to customers who had no real need for the product and who chose to cancel rather than pay for it; and
- (b) Swinton was selling monthly PA to customers without their knowledge or authorisation. The taking of payment alerted customers to the existence of the policies and prompted them to cancel.
- 5.8. Reports of 'pink' branch audits alerted Mr Halpin to the potential for Swinton's sales incentive scheme to motivate improperly sales executives to mis-sell products in order to achieve targets and claim bonuses. He also received indications of a possible cause of the problem, when he was warned about excessive pressure on Swinton's sales staff.
- 5.9. These indicators pointed to a risk of widespread mis-selling of the monthly add-on products. While Mr Halpin, together with the other members of the Compliance Board, took steps to address some of these indicators, his approach was to address each issue in isolation. Despite receiving warning signs from various

sources and in various forms, he did not take a step back to assess whether those indicators, when considered as a whole, pointed to fundamental problems in Swinton's sale of the monthly add-on products. The actions he took were inadequate and fell short of what was necessary to address the risk that widespread mis-selling of the monthly add-on products to customers may have been taking place. Accordingly, Mr Halpin failed adequately to address the compliance risks and warnings that he received in respect of the monthly add-on products.

Failure to ensure the accuracy, reliability and fitness for purpose of the MI presented to the Compliance Board

- 5.10. Mr Halpin's positions as CEO and Chairman of the Compliance Board gave him an oversight responsibility to ensure the accuracy, reliability and fitness for purpose of the MI presented to the Compliance Board. In this regard, he failed to identify and act on weaknesses when he ought reasonably to have done so.
- 5.11. Between April 2010 and October 2011, the sample size of the aggregated call monitoring results reported in the Compliance Board Report was too small for the Compliance Board to identify the risk of mis-selling the monthly add-on products. Although Mr Halpin discussed increasing the level of call monitoring in Swinton's branch network, he failed adequately to follow up the implementation of this change. Consequently, the aggregated call monitoring MI in the Compliance Board Report was not adequate to enable the Compliance Board to accurately measure Swinton's TCF performance.
- 5.12. The design of the scorecards used to measure sales compliance in respect of the monthly add-ons was flawed. The scorecards did not include any qualitative questions that would enable call monitors to assess whether customers had been treated fairly. Although Mr Halpin and the other members of the Compliance Board considered the inclusion of a TCF assessment in the scorecards, and raised an action point in this regard, this change was never implemented. Consequently, call monitoring MI based on the scorecards did not provide an accurate and comprehensive picture of the TCF aspects of telephone sales calls and was not a reliable data source for the purpose of measuring TCF.
- 5.13. Mr Halpin requested changes to the underlying call monitoring MI in respect of monthly PA that had the effect of diluting the results, thereby inadvertently disguising the proportion of non-compliant sales. Consequently, the underlying

call monitoring MI was not a reliable indicator for the purpose of assessing whether Swinton was treating its monthly add-on customers fairly.

- 5.14. Swinton's processes for recording customer complaints were not adequate, as not all complaints received were properly recorded as complaints. This meant that the complaints MI presented to the Compliance Board understated the true level of customer complaints in respect of the monthly add-on products. The complaints MI was not, therefore, a reliable data source for measuring the fair treatment of customers.

Failure to ensure the adequacy of the process control framework

- 5.15. Mr Halpin's positions as an executive director, CEO and Chairman of the Compliance Board gave him oversight responsibilities for Swinton's compliance with regulatory standards. These included oversight responsibilities in respect of compliance MI, to enable the Compliance Board to measure Swinton's TCF performance.

- 5.16. One of the methods used by Swinton to measure sales compliance in respect of the monthly PA and SBI add-on products was the process control framework. Mr Halpin failed to ensure that this framework was adequate for the purpose of measuring compliance and TCF. He ought reasonably to have been aware of this weakness, particularly in light of the Authority's regulatory guidance on TCF.

Failure to recognise the risk posed by the DSS

- 5.17. Mr Halpin had responsibilities for Swinton's compliance with regulatory standards. He also had a responsibility to ensure that Swinton's business strategy did not come into conflict with its regulatory obligations, including TCF. The business strategy, and the DSS, created a risk that the delivery of profit might work against the fair treatment of customers. Mr Halpin ought reasonably to have been alert to the risk that the DSS, like other incentive schemes, could drive non-compliant behaviour among its participants, although the Authority has found no evidence that he was improperly motivated by it.

- 5.18. Particularly after Swinton had been disciplined by the Authority for mis-selling PPI, TCF should have been at the forefront of his mind. Mr Halpin failed to take sufficient steps to mitigate the risk that the DSS posed to the culture of the firm. He should have done more to ensure it was clear to the directors that the fair treatment of customers was paramount.

6. SANCTION

Financial penalty

- 6.1. The Authority imposes a financial penalty on Mr Halpin for breaching Statement of Principle 7. As his misconduct took place after 6 March 2010, the Authority's new penalty regime applies.
- 6.2. The principal purpose of a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally compliant behaviour.
- 6.3. In determining whether a financial penalty is appropriate, the Authority is required to consider all the relevant circumstances of a case. A financial penalty is an appropriate sanction in this case, given the nature of the breach and the need to send out a deterrent message.
- 6.4. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In respect of conduct occurring on or after 6 March 2010, the Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5B sets out the details of the five-step framework that applies in respect of financial penalties imposed on individuals in non-market abuse cases.

Step 1: disgorgement

- 6.5. Pursuant to DEPP 6.5B.1G, at Step 1 the Authority seeks to deprive an individual of the financial benefit derived directly from the breach where it is practicable to quantify this.
- 6.6. The Authority has not identified any financial benefit that Mr Halpin derived directly from the breach.
- 6.7. The Step 1 figure is therefore £0.

Step 2: the seriousness of the breach

- 6.8. Pursuant to DEPP 6.5B.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. That figure is based on a percentage of the individual's relevant income. The individual's relevant income is the gross amount of all benefits received by the individual from the employment in connection with which the breach occurred, and for the period of the breach.

- 6.9. The period of Mr Halpin's breach was from 1 April 2010 to 12 December 2011. Mr Halpin's relevant income for this period was £2,680,158.
- 6.10. In deciding on the percentage of the relevant income that forms the basis of the Step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 40%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach. The more serious the breach, the higher the level. For penalties imposed on individuals in non-market abuse cases there are the following five levels:
- (a) Level 1 – 0%
 - (b) Level 2 – 10%
 - (c) Level 3 – 20%
 - (d) Level 4 – 30%
 - (e) Level 5 – 40%
- 6.11. In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly.
- 6.12. DEPP 6.5B.2G lists factors the Authority will consider in assessing the level of seriousness. Of these, the Authority considers the following factors to be relevant:
- (a) whether the breach was committed negligently or inadvertently (DEPP 6.5B.2G(13)(d));
 - (b) whether the individual held a senior position within the firm (DEPP 6.5B.2G(9)(k));
 - (c) whether the individual made significant financial gains indirectly from the breach (DEPP 6.5B.2G(8)(a)); and
 - (d) whether the individual took at least some steps to comply with the Authority's rules (DEPP 6.5B.2G(9)(n)).
- 6.13. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 3 and so the Step 2 figure is 20% of £2,680,158.

6.14. The Step 2 figure is therefore £536,032.

Step 3: mitigating and aggravating factors

6.15. Pursuant to DEPP 6.5B.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breach.

6.16. Mr Halpin was aware of the Authority's concerns about the mis-selling of PPI at Swinton, as he was CEO at the time Swinton was fined for mis-selling PPI. The Authority's Final Notice in relation to PPI mis-selling was published on 28 October 2009.

6.17. Having taken into account this aggravating factor, the Authority considers that the Step 2 figure should be increased by 10%.

6.18. The Step 3 figure is therefore £589,635.

Step 4: adjustment for deterrence

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

6.20. The Authority considers that the Step 3 figure of £589,635 represents a sufficient deterrent to Mr Halpin and others, and so has not increased the penalty at Step 4.

6.21. The Step 4 figure is therefore £589,635.

Step 5: settlement discount

6.22. Pursuant to DEPP 6.5B.5G, if the Authority and the individual on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the individual reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

6.23. The Authority and Mr Halpin reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.

6.24. The Step 5 figure is therefore £412,744.

Penalty

6.25. The Authority therefore imposes a total financial penalty of £412,700 on Mr Halpin for breaching Statement of Principle 7.

Prohibition

6.26. It is appropriate and proportionate in all the circumstances to prohibit Mr Halpin from performing the CF3 significant influence function in relation to any regulated activity carried out by an authorised person or exempt person, because he is not a fit and proper person in terms of his competence and capability.

6.27. The Authority has had regard to the guidance in Chapter 9 of EG in proposing that Mr Halpin be prohibited from performing the CF3 significant influence function. The relevant provisions of EG are set out in the Annex to this Notice.

6.28. Given the nature and seriousness of the failures outlined above, Mr Halpin's conduct demonstrated a serious lack of competence such that he is not fit and proper to perform the CF3 significant influence function in relation to regulated activities carried on by any authorised person or exempt person. In the interests of consumer protection, it is appropriate and proportionate in all the circumstances to impose the prohibition order on Mr Halpin in the terms set out above.

7. PROCEDURAL MATTERS

Decision maker

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

7.2. This Final Notice is given under, and in accordance with, section 390 of the Act.

Manner of and time for payment

7.3. The financial penalty must be paid in full by Mr Halpin to the Authority by no later than 19 November 2014, 14 days from the date of the Final Notice.

If the financial penalty is not paid

- 7.4. If all or any of the financial penalty is outstanding on 20 November 2014, the Authority may recover the outstanding amount as a debt owed by Mr Halpin and due to the Authority.

Publicity

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

Authority contacts

- 7.7. For more information concerning this matter generally, contact Rachel West (direct line: 020 7066 0142 / fax: 020 7066 0143) of the Enforcement and Financial Crime Division of the Authority.

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Bill Sillett
Head of Department, Enforcement and Financial Crime Division
for and on behalf of the Authority

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. RELEVANT STATUTORY PROVISIONS

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

2. RELEVANT REGULATORY PROVISIONS

Statements of Principle and Code of Practice for Approved Persons

- 2.1. The Authority's Statements of Principle and Code of Practice for Approved Persons have been issued under section 64 of the Act.
- 2.2. Statement of Principle 7 states:

An approved person performing an accountable significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his accountable function complies with the relevant requirements and standards of the regulatory system.
- 2.3. The Code of Practice for Approved Persons sets out descriptions of conduct which, in the opinion of the Authority, do not comply with a Statement of Principle. It

also sets out factors which, in the Authority's opinion, are to be taken into account in determining whether an approved person's conduct complies with a Statement of Principle.

The Fit and Proper Test for Approved Persons

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

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

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

Financial penalty

- 2.8. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In respect of conduct occurring on or after 6 March 2010, the Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5B sets out the details of the five-step framework that applies in respect of financial penalties imposed on individuals in non-market abuse cases.