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## FINAL NOTICE

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To: Timothy Adrian Hughes  
Individual  
Reference  
Number: TAH00016

To: 1 Stop Financial Services  
Firm  
Reference  
Number: 407894

Address: 20 High Street  
Haverfordwest  
Pembrokeshire  
SA61 2DA

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Pembrokeshire  
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Date: 17 April 2014

### **1 ACTION**

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

- (1) publishes a statement of Mr Hughes' misconduct for failing to comply with Statement of Principle 7;
- (2) withdraws the approvals granted to Mr Hughes to perform the CF4 (Partner), CF10 (Compliance oversight) and CF11 (Money Laundering Reporting) controlled functions at 1 Stop; and
- (3) makes an order prohibiting Mr Hughes from performing any significant influence function in relation to any regulated activity carried on by any

authorised person, exempt person or exempt professional firm. This order takes effect from 17 April 2014.

- 1.2 The Authority would have imposed a financial penalty of £393,079 on Mr Hughes (reduced to £275,100 as Mr Hughes agreed to settle at an early stage of the Authority's investigation and therefore qualified for a 30% (stage 1) discount under the Authority's executive settlement procedures). However, the Authority recognises that there may be significant liability for redress for 1 Stop's customers which will fall to the FSCS. The amount of any such liability is currently unknown but is being investigated by the FSCS. In these circumstances, the Authority has not imposed this financial penalty after agreement from Mr Hughes that these assets are instead transferred to the FSCS to contribute towards any redress that may become due to 1 Stop's customers. In light of the above, and taking into account all the circumstances, the Authority publishes a statement of Mr Hughes' misconduct.
- 1.3 This statement of misconduct will be issued on 17 April 2014 and will take the form of this Final Notice, which will be published on the Authority's website.

## **2 SUMMARY OF REASONS**

- 2.1 Mr Hughes was one of two partners at 1 Stop, a firm that provided advice to customers seeking to transfer their pension to unregulated investments such as diamonds and overseas property via SIPPs.
- 2.2 During the period 1 October 2010 to 10 November 2012 inclusive, Mr Hughes failed to take reasonable steps to ensure that the business of 1 Stop for which he was responsible in his controlled function complied with the relevant requirements and standards of the regulatory system. Specifically, Mr Hughes failed to take reasonable steps to ensure that 1 Stop assessed the suitability of the underlying investment for the customer. Instead, 1 Stop's business model focussed solely on providing advice on the most suitable SIPP wrapper for the underlying investment.
- 2.3 Further, Mr Hughes failed to take reasonable steps to ensure that 1 Stop gathered sufficient information to be able to assess the suitability of the underlying investment for its customers. In particular, Mr Hughes failed adequately to take reasonable steps to ensure that 1 Stop:
  - (1) established customers' investment aims and objectives;
  - (2) assessed customers' attitude to risk; and

- (3) ascertained customers' knowledge and experience in relation to financial products.
- 2.4 Mr Hughes also failed to take reasonable steps to ensure that 1 Stop's customers understood fully the information provided to them, and therefore understood fully the key features of their investment, including both the operation of the SIPP that they were investing in (and the risks associated with that SIPP) and the underlying investment.
- 2.5 As a result of Mr Hughes' actions, 1,959 of 1 Stop's customers during the Relevant Period were at risk of having invested a total of £112,331,229, mostly from pension funds including some final salary schemes, into SIPPs which may not have been suitable for them. 49% of those customers invested in overseas property developments operated by Harlequin.
- 2.6 EGI was a separate, unregulated company that introduced customers to 1 Stop. Mr Hughes was also a director and shareholder of EGI and benefitted financially from both the fees paid by customers for the advice given by 1 Stop and also from the commission received by EGI from the underlying product provider for EGI's part in the facilitation of the sale of the product to the customer. This created a conflict of interest, in that Mr Hughes was advising customers to transfer their pensions into a SIPP in order to purchase an underlying investment (through 1 Stop) when he had also a financial interest in facilitating the sale of that investment to the customer (through EGI). However, Mr Hughes failed to disclose, manage and mitigate adequately this conflict of interest.
- 2.7 Mr Hughes was also responsible for ensuring compliance with the Authority's rules at 1 Stop. However, Mr Hughes delegated all of his compliance oversight responsibilities to an external compliance consultant, without adequate oversight of that consultant. Mr Hughes therefore failed to take reasonable steps to discharge adequately his CF10 (Compliance oversight) responsibilities.
- 2.8 Mr Hughes therefore breached Statement of Principle 7 by failing to:
- (1) take reasonable steps to ensure that 1 Stop assessed the suitability of the underlying investment within the SIPP for the customer;
  - (2) take reasonable steps to ensure that 1 Stop established adequately customers' investment objectives, assessed adequately customers' ATR and ascertained adequately customers' knowledge and experience in relation to financial products;

- (3) take reasonable steps to ensure that 1 Stop's customers understood fully the information provided to them in relation to their SIPP;
- (4) disclose, manage and mitigate adequately the conflict of interest that existed as a result of Mr Hughes' ownership of and roles at both 1 Stop and EGI; and
- (5) take reasonable steps to ensure sufficient oversight of the compliance function within 1 Stop in order to discharge adequately his CF10 (Compliance oversight) responsibilities.

2.9 As a consequence of his actions, Mr Hughes failed to meet minimum regulatory standards in terms of performing significant influence controlled functions. He is therefore not fit and proper to perform significant influence controlled functions at any authorised person, exempt person or exempt professional firm.

2.10 The Authority hereby withdraws the approvals given to Mr Hughes to perform the CF4, CF10 and CF11 controlled functions at 1 Stop and makes an order prohibiting Mr Hughes from performing significant influence controlled functions at any authorised person, exempt person or exempt professional firm.

2.11 The Authority would have imposed a financial penalty on Mr Hughes of £275,100. However, the Authority recognises that there may be significant liability for redress for 1 Stop's customers which will fall to the FSCS. The amount of any such liability is currently unknown but is being investigated by the FSCS. In these circumstances, the Authority has not sought to impose this financial penalty after agreement from Mr Hughes that these assets are instead transferred to the FSCS to contribute towards any redress that may become due to 1 Stop's customers. The Authority therefore has not imposed any financial penalty on Mr Hughes as a result of this action but publishes a statement of Mr Hughes' misconduct for failing to comply with Statement of Principle 7.

2.12 The FSCS is currently investigating such claims for redress at present and will be in communication with 1 Stop's customers in due course. However, in the interim, and at the Authority's request, Mr Hughes has agreed to contact all of 1 Stop's SIPP customers to inform them of the Authority's action (as detailed in this Final Notice) and to notify them of the FSCS' investigation.

### **3 DEFINITIONS**

3.1 The definitions below are used in this Final Notice.

"1 Stop" or the "Firm" means 1 Stop Financial Services, a partnership authorised and regulated by the Authority;

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

"ATR" means attitude to risk;

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

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

"COBS" means the Authority's Conduct of Business Sourcebook;

"DEPP" means the Authority's Decision Procedure and Penalties Manual;

"EG" means the Authority's Enforcement Guide;

"EGI" means Exclusive Global Investments Limited;

"FSCS" means the Financial Services Compensation Scheme;

"Harlequin" means the Harlequin group of companies including, but not limited to, Harlequin Management Services (South East) Limited, an unregulated, limited company (in administration with effect from 3 May 2013);

"IFA" means independent financial adviser;

"Introducer" means an entity/individual that referred new SIPP business to 1 Stop;

"Mr Hughes" means Timothy Adrian Hughes;

the "Principles" means the Authority's Principles for Businesses;

the "Relevant Period" means 1 October 2010 to 10 November 2012 inclusive;

"SIPP" means self-invested personal pension;

"SIPP Operator" means the legal entity responsible for operating and administering the SIPP scheme;

"Statements of Principle" means the Authority's Statements of Principle and Code of Practice for Approved Persons;

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

"TVAS" means a transfer value analysis system.

## **4 FACTS AND MATTERS**

### **Background**

#### *The Firm*

- 4.1 1 Stop is a partnership, set up and operated by Mr Hughes and another partner. 1 Stop has been authorised and regulated by the Authority since 11 November 2004.
- 4.2 Throughout the Relevant Period, 1 Stop had permission to carry on the following regulated activities:
- (1) agreeing to carry on a regulated activity;
  - (2) advising on investments (except Pension Transfers and Pension Opt Outs) and advising on regulated mortgage contracts;
  - (3) arranging (bringing about) deals in investments and arranging (bringing about) regulated mortgage contracts; and
  - (4) making arrangements with a view to transactions in investments and making arrangements with a view to transactions in regulated mortgage contracts.
- 4.3 At the request of the Authority, 1 Stop voluntarily varied its permissions, such that with effect from 5pm on 10 November 2012, 1 Stop was no longer permitted to carry on any regulated activities. On 14 March 2013, 1 Stop voluntarily applied to cancel its permissions.

#### *Mr Hughes*

- 4.4 Mr Hughes has been approved to hold the controlled functions CF4 (Partner), CF10 (Compliance oversight) and CF11 (Money laundering reporting) at 1 Stop since 11 November 2004. He has also been approved to hold the CF30 (Customer) controlled function since 1 November 2007. Mr Hughes continued to hold all of these controlled functions throughout the Relevant Period. Mr Hughes is one of 1 Stop's financial advisers (only some of whom, including Mr Hughes, advised on SIPPs) and advised customers on SIPP products throughout the Relevant Period.

4.5 Alongside his fellow partner, during the Relevant Period Mr Hughes had active management and day to day responsibility for the business of 1 Stop. He was also jointly responsible for establishing and implementing the business model of 1 Stop. As the CF10 (Compliance oversight) controlled function holder, Mr Hughes had sole responsibility for compliance at 1 Stop.

#### *Non-regulated Introducer company*

4.6 For all but one month of the Relevant Period, Mr Hughes was also a shareholder and director of EGI, an unregulated company that facilitated the sale of investment products to customers. These investment products were often unregulated products and included overseas property investments such as those operated by, amongst others, Harlequin. EGI also acted as an Introducer to 1 Stop throughout the Relevant Period; EGI regularly introduced customers to 1 Stop in order that the customer could receive regulated advice on the most suitable SIPP wrapper for the unregulated investment product promoted by EGI.

4.7 During the Relevant Period, EGI introduced 480 customers to 1 Stop. This amounted to 24.5% of 1 Stop's total SIPP customers during the Relevant Period.

4.8 EGI was dissolved with effect from 20 August 2013.

#### *SIPPs*

4.9 Prior to and during the Relevant Period, 1 Stop shifted the focus of its business from advising on a mix of mortgage, insurance and standard retail investment products to providing advice in relation to SIPPs. In April 2010, mortgage and insurance advice accounted for 52% of the revenue earned by 1 Stop. By October 2012 however, 97% of 1 Stop's revenue was derived from its SIPP business.

4.10 A SIPP is a trust-based wrapper for an individual's pension investment. It gives tax relief on an individual's contributions and tax-free growth and offers a wider range of investments and options for extracting benefits than are ordinarily available in a life policy type investment. In addition, a SIPP offers a greater degree of control over where and when funds are invested or moved than is permitted by traditional pension arrangements run by life assurance companies.

4.11 For 1 Stop's customers, a SIPP was a way of investing their pension into unregulated investments such as diamonds and overseas property which were typically not permitted by their existing pension schemes. These investments

often provided the potential for higher returns than customers' existing pension schemes, but often carried a higher risk.

4.12 The typical investments purchased by the SIPPs taken out by 1 Stop's customers also held additional risks for those customers because:

- (1) they were more likely to be deemed liable to tax by HM Revenue & Customs and thereby incur significant additional tax charges; and
- (2) they may have been an inappropriate investment for the customer to hold in their SIPPs on the basis that they were not readily realisable in the event of the customer's death, or if the customer required that they be sold at short notice.

4.13 In total, 1 Stop advised 1,959 customers to invest in or via a SIPP. Those customers transferred £112,331,229 in total into SIPPs. The vast majority of this money came from the customers' existing pensions. The fees earned from its SIPP business by 1 Stop during the Relevant Period were £4,307,901. Mr Hughes' total income received during the Relevant Period was £1,511,846.

4.14 As a result of the risks posed by the non-standard investments within the SIPPs, it was especially important that 1 Stop ensured – and Mr Hughes took reasonable steps to ensure – that when making investment decisions, customers understood fully how their SIPPs operated and also understood fully the potential increased risks associated with the underlying investments within them.

4.15 It was also essential that 1 Stop assessed both the suitability of the SIPP wrapper and the proposed underlying investment for the customer, to ensure that customers only invested in investments which were suitable for them.

4.16 The Authority has reviewed the investments made by some of 1 Stop's customers who received advice on SIPPs. This review included, but was not limited to, a review of the documentation recorded on 15 of 1 Stop's customer files.

#### *1 Stop's SIPP advisory process*

4.17 A 1 Stop customer seeking advice on moving their pension would typically be one looking to invest their pension into an unregulated product such as an overseas property investment. Such customers would typically have been introduced to the investment product by an unregulated Introducer (for example, perhaps by EGI), who would, on behalf of the underlying investment company, present marketing



materials and/or provide presentations to the customer on which the customer based their decision to invest. The customer would then be introduced by the Introducer to 1 Stop in order to obtain advice on using their pension to facilitate the investment via a SIPP. During the Relevant Period, every customer was referred to 1 Stop by an Introducer.

4.18 Upon referral to 1 Stop, the customer would:

- (1) complete a brief 'fact find' or 'pension profiler questionnaire' document that included very high level questions regarding their investment aims and objectives, ATR and knowledge and experience of financial products. In some cases, the fact find would be completed by the Introducer for the customer, with no input from 1 Stop;
- (2) receive 1 Stop's complimentary 'pension review report', setting out details of their existing pension(s) and projected yield. If the customer had a final salary pension, a specialist company would be instructed by 1 Stop to produce a report on that final salary pension which would be provided to the customer;
- (3) at the same time as the pension review report or shortly thereafter, receive 1 Stop's 'suitability report', which contained 1 Stop's recommendation for the most suitable SIPP wrapper for the proposed investment. Typically, when selecting the most suitable SIPP for the customer, 1 Stop assessed, amongst other things, the set up and ongoing fees of the SIPP provider, the standard of administrative assistance and whether the SIPP was able to invest into the underlying investment product; and
- (4) receive a SIPP application pack that would enable the customer to purchase a SIPP from the SIPP Operator recommended by 1 Stop. This application pack would be submitted to the SIPP Operator, processed and then the customer's pension funds would be transferred. Those funds would then be used to purchase the underlying investment.

4.19 For the services provided by 1 Stop, a customer would typically pay a fee of between £75 and £3,995 – but most commonly of £2,995 - which was usually taken out of the funds being transferred into the SIPP, typically from existing pension schemes.

4.20 The vast majority of correspondence between 1 Stop and the customer was conducted via email, post or via the Introducer. Typically, 1 Stop would send the

documents outlined above to the customer without providing any further explanation and/or clarification. 1 Stop instead relied on the customer to proactively contact it if the customer required further clarification.

## **Conduct in Issue**

### ***Advising on the underlying investment***

- 4.21 If an IFA is advising on an investment wrapper product, such as a SIPP, that IFA will generally have to consider the suitability of the overall proposition i.e. the suitability of both the SIPP wrapper and the underlying investment, in order to be able to provide suitable advice to the customer. In circumstances where the customer is selling existing investments (including transferring their existing pension) in order to invest in another investment via a SIPP, the IFA *must* assess the suitability of that underlying investment for the customer prior to recommending a SIPP. The regulatory provisions relevant to these requirements are referred to in Annex A.
- 4.22 The advisory model established at 1 Stop by Mr Hughes and his partner however did not take into account any consideration of the suitability for the customer of the underlying investment within the SIPP. In fact, 1 Stop's customer documentation contained numerous disclaimers that as a business, 1 Stop did not advise on, or have any involvement in considering, the underlying investment.
- 4.23 None of the 15 customer files reviewed by the Authority contained any evidence that 1 Stop took any steps to consider the suitability of the underlying investment for the customer as part of its suitability assessment of the SIPP.
- 4.24 As a result of this deficient business model, all 1,959 of 1 Stop's SIPP customers were at risk of investing a total of £112,331,229 into an investment which may not have been suitable for them.
- 4.25 Some of 1 Stop's customers may have chosen to proceed with the investment regardless of the advice they received from 1 Stop. However, in those circumstances 1 Stop remained under the obligation to provide advice to the customer on both the SIPP wrapper and the underlying investment product; it would then be up to the customer whether they accepted that advice or not.

- 4.26 In January 2013, after 1 Stop had voluntarily ceased to conduct SIPP business, the Authority published an alert affirming its expectations of IFAs advising on overseas property investments, including those sold by Harlequin, through a SIPP. The Authority's alert noted that IFAs have to ensure that they give careful consideration to the particular features of the investment in question and that, if recommending a SIPP knowing that the customer will sell current investments to invest in an overseas property, the suitability of the overseas property investment must form part of the advice to the customer.
- 4.27 Of the 1,959 SIPP customers advised by 1 Stop during the Relevant Period, 958 invested into overseas property investments operated by Harlequin (one of the overseas property investment operators that 1 Stop's customers invested in). This represented 49% of all investments made by 1 Stop's SIPP customers. None of those customers received any advice from 1 Stop on the suitability of that overseas property investment when 1 Stop advised on and recommended their SIPP.
- 4.28 In addition to the above, as part of the process for determining whether or not an investment is suitable for their customer, an IFA must obtain the necessary information regarding, amongst other things, the customer's investment aims and objectives, ATR and knowledge and experience of relevant financial products. Mr Hughes failed to take reasonable steps to ensure that 1 Stop assessed adequately these key aspects of its customers' investment profiles in order to establish if the SIPP was suitable for them. Each of these suitability aspects are considered in more detail below.

#### ***Establishing customers' investment aims and objectives***

- 4.29 1 Stop sought to establish the customer's investment aims and objectives by requiring the customer to answer some questions in a fact find document or a pension profiler questionnaire.
- 4.30 The fact find document contained a basic table to cover different aims and objectives which could be categorised on a scale from '1 - *Essential*' to '5 - *Not Disclosed*'.
- 4.31 On ten of the 15 files reviewed by the Authority the aims and objectives of the customer were noted as '*Planning a secure retirement: 1 - Essential*'. A further two files had the aim and objective noted as '*Pensions - Maintaining your standard of living in retirement*'.

- 4.32 *'Planning a secure retirement'* and *'Maintaining your standard of living in retirement'* are not compatible with the potentially high risk nature of many of the investments made by 1 Stop's customers. Such investments could result in customers losing some or all of the pension funds that they had used to purchase them.
- 4.33 The Authority therefore considers that the fact find had the potential to mislead customers into believing that they may be receiving advice on a product that would allow them to fulfil their aim and objective of *'Planning a secure retirement'* or *'Maintaining [their] standard of living in retirement'*.
- 4.34 As a result of this, it was particularly important that Mr Hughes took reasonable steps to ensure that 1 Stop clarified this potential inconsistency in their customers' aims and objectives to ensure that the underlying investment which they had selected was compatible with them.
- 4.35 In the files reviewed by the Authority however, where customers had indicated that they wanted to plan a secure retirement or maintain their standard of living in retirement, 1 Stop failed to clarify adequately the customer's aims and objectives in eight (67%) of the 12 cases.
- 4.36 For example, 1 Stop advised customer A, a 51 year old publican earning approximately £20,000 per year, to invest in a SIPP through which the customer purchased an overseas property. Customer A used in excess of £64,000, funded by a transfer of funds from their existing pension schemes, as a down payment on the overseas property. Although customer A had selected *'Planning a secure retirement'* as their objective on their fact find document, 1 Stop took no further steps to clarify the customer's aims and objectives to ensure that they advised the customer to invest in a suitable SIPP.
- 4.37 In establishing and implementing a business model that failed to establish adequately the customer's investment aims and objectives, Mr Hughes therefore failed to take reasonable steps to ensure that 1 Stop had a sufficient understanding of their customers' aims and objectives to be able to advise them effectively on a suitable SIPP product.

#### ***Establishing customers' ATR***

- 4.38 A customer's ATR was typically recorded on the fact find document. Where customers completed a pension profiler questionnaire instead of a fact find however, that document did not record or refer to a customer's ATR.

- 4.39 The fact find contained a basic table to cover the customer's ATR on a scale of 'Low Risk', ("You will not accept any risk to capital and require fixed/guaranteed returns typically available from deposits") through to 'High Risk', ("You accept a very high level of risk to capital to achieve maximum growth potential"). A slightly different risk rating system was also used by 1 Stop at points during the Relevant Period whereby ATR was measured on a scale of 'Conservative', ("You prefer not to invest in the stock market and are prepared to accept potentially lower returns from investments where your capital is not at risk") through to 'Speculative', ("You are happy to invest in individual equities, with the aim of potentially higher returns, accepting the increased risk of loss on your capital").
- 4.40 On all 12 files reviewed by the Authority where there was a fact find document, the customer's ATR was recorded as being 'High' or 'Speculative', (i.e. the highest risk rating on the respective fact find document). The three remaining files of the 15 reviewed by the Authority contained a pension profiler questionnaire, which did not address the customer's ATR at all.
- 4.41 The customer's ATR was typically also stated as 'High' risk in the suitability report produced by 1 Stop. All 15 customer files reviewed by the Authority contained a suitability report which stated that the customer's ATR was 'High'.
- 4.42 Mr Hughes confirmed that 1 Stop's customers were stated as having a 'High' ATR because of the types of underlying investment that the customers were investing into through their SIPPs. A customer's ATR was therefore inferred from his proposed underlying investment, as opposed to 1 Stop taking steps to confirm that the customer was indeed willing to accept a high level of risk in his investment, and therefore confirm whether that investment was suitable for the customer.
- 4.43 Mr Hughes' failure to take reasonable steps to ensure that 1 Stop adequately assessed and confirmed the customer's ATR would have presented a particular risk to customers who were at or near retirement age, and were therefore unlikely to have capacity to replenish their pension funds in the event that they lost some or all of their money as a result of investing in these investments. Customer B was 58 years old at the time they used a SIPP recommended by 1 Stop to invest in an overseas property development, using approximately £60,000 of funds from their existing pension funds. Despite this, 1 Stop took no steps to confirm the level of risk that the customer was willing to accept from their investment.

- 4.44 Further, in cases where the customer was moving funds from a final salary pension scheme into the SIPP, 1 Stop would request that an independent company produce a TVAS report, which was provided to the customer, with a copy also provided to 1 Stop. The TVAS report would typically contain an assessment of the customer's ATR. However, there were sometimes inconsistencies between the stated ATR of the customer as disclosed on the TVAS report documentation compared to the ATR of the customer as recorded on 1 Stop's documentation. In those instances, Mr Hughes did not take any steps to ensure that 1 Stop investigated and reconciled the conflicting ATRs of the customer.
- 4.45 As a result, for all 15 (100%) customers whose files and investments were reviewed by the Authority, 1 Stop failed to establish adequately the ATR of that customer. Mr Hughes did not therefore take reasonable steps to ensure that 1 Stop understood fully the level of risk that its customers were willing and able to take to enable 1 Stop to advise on a suitable SIPP.

***Assessing customers' knowledge and experience in relation to financial products***

- 4.46 The customer's knowledge and experience of financial products was set out in the 1 Stop suitability report. All 15 (100%) of the customer files reviewed by the Authority noted that the customer had a "*high level of understanding*" of financial services products.
- 4.47 Mr Hughes confirmed that the statements in the suitability report regarding the customer's "*high level of understanding*" of financial services products related solely to the customer's understanding of the underlying investment – for example, the overseas property investment – as opposed to the customer's understanding of the SIPP. Mr Hughes confirmed that the customer's understanding of that underlying investment product would be what he perceived to be as 'high', based on the customer having received promotional material from the Introducer. However, the business model established by Mr Hughes required no further steps to be taken to confirm the customer's knowledge and experience of financial products, including taking no further steps to confirm whether the customer actually understood the promotional material they had been provided with.
- 4.48 The customers whom 1 Stop advised included, amongst others, a builder, a joiner, a window cleaner and a publican. None of those individuals provided any information to 1 Stop to confirm that they knew anything about SIPPs or other financial services products. Nevertheless, all of these customers were recorded in

1 Stop's suitability report as having a "*high level of understanding*" of financial services products, and invested subsequently in potentially high risk investments through their SIPPs.

4.49 Mr Hughes failed to take reasonable steps to ensure that 1 Stop adequately assessed its customers' knowledge and experience in relation to financial products. None of the 15 files reviewed by the Authority demonstrated that 1 Stop had taken sufficient steps to assess its customers' knowledge and experience in relation to financial products. This information was required in order for 1 Stop to be able to understand sufficiently whether or not the SIPP product (including both the SIPP wrapper and the underlying investment product) would be suitable for the customer.

#### ***Customer understanding of advice received***

4.50 Given that the vast majority of 1 Stop's customers were retail investors with limited knowledge and experience of financial services products (and in particular often potentially high risk, unregulated investments facilitated through a SIPP), it was essential for those customers to be provided with information about their investment that was clear and comprehensible to them to assist in the process of deciding whether to invest. 1 Stop's documentation did not always meet this standard.

4.51 The suitability report produced by 1 Stop was the key document on which a typical customer would be expected to base their decision to enter into a SIPP. The suitability report should have clarified the customer's aims and objectives, and explained why 1 Stop had concluded that the SIPP product (including the underlying investment) was suitable for the customer. It should also have explained, in greater detail, any possible disadvantages of the investment to the customer.

4.52 Mr Hughes considered that the customer would have a sufficient understanding of the advice given by 1 Stop just based on the customer reading the contents of the suitability report issued by 1 Stop.

4.53 However, the suitability report was a lengthy document, typically between 26 and 37 pages long. It contained relatively complex information, for example on the general structure of a SIPP, and its advantages and disadvantages. It also contained technical information, for example regarding contribution allowances and

the treatment of SIPPS for taxation purposes, which would not be readily understandable to inexperienced investors.

- 4.54 Throughout the course of their relationship, 1 Stop also requested that its customers sign a number of disclaimers. These disclaimers covered a wide variety of issues, including but not limited to declarations on the customer's proposed retirement age, the fees to be charged by 1 Stop and a declaration self-certifying the customer as a sophisticated investor. Across the 15 files reviewed by the Authority, 1 Stop's customers signed at least 82 disclaimers. Again, some of these disclaimers contained important yet complex information, which a customer with limited knowledge and experience of financial services products may not have understood fully.
- 4.55 For example, one declaration signed by all 15 customers whose files were examined stated that the unregulated investments to be entered into by the customer were not covered by the FSCS. However, the customer may not have fully appreciated the consequences of this i.e. that the customer may not have recourse to the FSCS' statutory compensation scheme in the event that the company providing the underlying investment opportunity went into liquidation.
- 4.56 In circumstances in which the documentation provided to customers (including but not limited to suitability reports and disclaimers) was not clear and easily understood, Mr Hughes should have taken reasonable steps to ensure that 1 Stop could satisfy itself that the customer understood the information provided to them. However, 1 Stop merely provided large quantities of documentation to the customer, typically without further explanation or clarification and relied on the customer to proactively contact 1 Stop if the customer required further clarification.
- 4.57 As a result, the information provided to 1 Stop's customers, and in particular the suitability report, could not necessarily be understood fully by inexperienced investors without further explanation and/or clarification. Mr Hughes therefore failed to take reasonable steps to ensure that all of 1 Stop's customers understood fully the information provided to them, and therefore understood fully the key features of their investment, including the operation of the SIPP they were investing in, and the risks associated with that product.



### ***Conflict of interest***

- 4.58 As noted at paragraph 4.6 above, throughout the vast majority of the Relevant Period, Mr Hughes was a shareholder and director of EGI. EGI acted as an Introducer to 1 Stop and introduced 24.5% of 1 Stop's total SIPP customers during the Relevant Period. As a result, EGI was the most prolific Introducer to 1 Stop during the Relevant Period.
- 4.59 Mr Hughes benefitted financially from both the fees paid by customers for the advice given by 1 Stop on the SIPP transfer and also from the commission received by EGI from the underlying product provider for EGI's part in the facilitation of the sale of that product to the customer. This receipt of financial benefit created a conflict of interest, in that Mr Hughes was advising customers to transfer their pensions into a SIPP in order to purchase an underlying investment (through 1 Stop) when he also had a financial interest in facilitating the sale of that investment to the customer (through EGI). This conflict of interest should have been disclosed in full to customers prior to the customer obtaining advice on the SIPP product from 1 Stop.
- 4.60 1 Stop's client agreement notified customers explicitly that occasions could arise where 1 Stop could have an interest in business that 1 Stop was transacting for the customer. That document noted that if this did happen, 1 Stop would inform the customer and obtain the customer's consent before carrying out the customer's instructions. However, despite the wording of the client agreement, Mr Hughes' involvement with both EGI as the Introducer and 1 Stop as the adviser was not disclosed to any customers prior to 18 January 2012 at the earliest.
- 4.61 On 18 January 2012, a declaration document was put in place by 1 Stop to be used where the customer had been introduced to 1 Stop by EGI. The declaration noted that 1 Stop and EGI were related entities. The declaration did not however explain that Mr Hughes was involved with both entities, or that he would benefit financially from his roles at both 1 Stop and EGI as a result of the customer's investment. This declaration document did not therefore disclose adequately Mr Hughes' conflict of interest.
- 4.62 The Authority therefore considers that throughout the Relevant Period, Mr Hughes failed to disclose, manage and mitigate adequately the conflict of interest.

## **Compliance**

- 4.63 Throughout the Relevant Period, Mr Hughes was approved as the CF10 (Compliance oversight) controlled function holder at 1 Stop.
- 4.64 1 Stop employed the services of an external compliance consultant throughout the Relevant Period. The external compliance consultant was contracted to perform all SIPP-related compliance tasks at 1 Stop throughout the Relevant Period.
- 4.65 The responsibility for ensuring that 1 Stop complied with regulatory requirements, including but not limited to those identified above in relation to suitability of SIPP advice given, rested with Mr Hughes (both in his role as a compliance officer and partner of 1 Stop). However, Mr Hughes delegated all of his responsibilities as compliance officer to an external compliance consultant, without sufficient oversight of that consultant's activities. For example, throughout the Relevant Period, Mr Hughes conducted no assessment of the conduct of the compliance consultant to ensure that 1 Stop was complying with the Authority's regulatory requirements, and that he was discharging adequately his responsibilities as a CF10 (Compliance oversight) controlled function holder.
- 4.66 Mr Hughes failed to take reasonable steps to ensure sufficient oversight of the compliance function within 1 Stop. Mr Hughes confirmed that he *"...put too much trust in [the compliance consultant's] competency to deliver what was expected from regulators. ...he [the compliance consultant] went along with everything and we deemed to see it as correct..."*.

## **5 FAILINGS**

- 5.1 The regulatory provisions relevant to this Final Notice are referred to in Annex A.
- 5.2 Throughout the Relevant Period, Statement of Principle 7 stated that:
- An approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system.*
- 5.3 By reason of the facts and matters referred to above, during the Relevant Period Mr Hughes breached Statement of Principle 7 by failing to:
- (1) take reasonable steps to ensure that 1 Stop assessed the suitability of the underlying investment within the SIPP for the customer;

- (2) take reasonable steps to ensure that 1 Stop established adequately customers' investment objectives, assessed adequately customers' ATR and ascertained adequately customers' knowledge and experience in relation to financial products;
- (3) take reasonable steps to ensure that 1 Stop's customers understood fully the information provided to them in relation to their SIPP;
- (4) disclose, manage and mitigate adequately the conflict of interest that existed as a result of Mr Hughes' ownership of and roles at both 1 Stop and EGI; and
- (5) take reasonable steps to ensure sufficient oversight of the compliance function within 1 Stop in order to discharge adequately his CF10 (Compliance oversight) responsibilities.

5.4 As a consequence of his actions, Mr Hughes failed to meet minimum regulatory standards in terms of performing significant influence controlled functions. He is therefore not fit and proper to perform significant influence controlled functions at any authorised person, exempt person or exempt professional firm.

## **6 SANCTION**

### **Financial penalty**

6.1 The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. 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. As Mr Hughes' misconduct occurred after that date, the Authority has assessed the financial penalty wholly under the regime in force after 6 March 2010. DEPP 6.5B sets out the details of the five-step framework that applies in respect of financial penalties imposed on individuals in non-market abuse cases.

#### ***Step 1: disgorgement***

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

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

6.4 Step 1 is therefore £0.

## ***Step 2: the seriousness of the breach***

- 6.5 Pursuant to DEPP 6.5B.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. That figure is based on a percentage of the individual's relevant income. The individual's relevant income is the gross amount of all benefits received by the individual from the employment in connection with which the breach occurred, and for the period of the breach.
- 6.6 The period of Mr Hughes' breach was from October 2010 to November 2012. The Authority considers Mr Hughes' relevant income for this period to be £1,511,846.
- 6.7 In deciding on the percentage of the relevant income that forms the basis of the step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 40%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on individuals in non-market abuse cases there are the following five levels:

Level 1 – 0%

Level 2 – 10%

Level 3 – 20%

Level 4 – 30%

Level 5 – 40%

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

### *Impact of the breach*

- 6.9 Mr Hughes' failings meant that all of 1 Stop's customers investing in a SIPP were at risk of having invested a total of £112,331,229 into SIPPs which were not suitable for them. The obligation of 1 Stop to assess the suitability of the underlying investment product applied notwithstanding the fact that some customers may have proceeded with the investment regardless of 1 Stop's advice. The majority of 1 Stop's customers invested into potentially high risk investments that were unregulated and not necessarily covered by the FSCS. Customers investing in

unregulated investments are therefore at risk of potentially losing all of their investments. There is therefore significant risk of loss associated with Mr Hughes' failings.

6.10 Mr Hughes' failings did not have an adverse effect on markets.

*Nature of the breach*

6.11 Mr Hughes' failings occurred throughout the Relevant Period, during which 1 Stop advised 1,959 customers to invest via a SIPP.

6.12 Mr Hughes did not fail to act with integrity or abuse a position of trust.

6.13 Mr Hughes was jointly responsible with his partner for the business model put in place by 1 Stop which led to the breaches occurring.

*Whether the breaches were deliberate and/or reckless*

6.14 The Authority has not found that the breaches by Mr Hughes were deliberate or reckless.

6.15 Mr Hughes relied on the advice of an external compliance consultant regarding the business model put in place at 1 Stop, as well as for compliance support (although he failed to oversee adequately the work of that compliance consultant).

6.16 The breaches were negligent rather than intentional and there was no attempt by Mr Hughes to conceal the breaches.

6.17 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 £1,511,846.

6.18 Step 2 is therefore £302,369.

***Step 3: mitigating and aggravating factors***

6.19 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.

6.20 The Authority does not consider there to be any factors that aggravate or mitigate the breach.

6.21 As a result, the Authority considers that the Step 2 figure should remain.

6.22 Step 3 is therefore £302,369.

***Step 4: adjustment for deterrence***

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

6.24 The Authority considers that the Step 3 figure of £302,369 does not represent a sufficient deterrent to Mr Hughes and others, and so has increased the penalty at Step 4. This is on the basis that the figure reached after Step 3 is insufficient to deter Mr Hughes, or others, from committing further or similar breaches, in light of the further monies received by Mr Hughes from the activities carried on by EGI (including the introduction of customers to 1 Stop) in addition to his relevant income from 1 Stop. The Authority therefore has increased the Step 3 figure by 30%.

6.25 Step 4 is therefore £393,079.

***Step 5: settlement discount***

6.26 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.

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

6.28 Step 5 is therefore £275,155 (rounded down to £275,100).

***Penalty***

6.29 The Authority therefore proposes to impose a total financial penalty of £275,100 on Mr Hughes for breaching Statement of Principle 7.

### **Conclusion as to financial penalty**

6.30 Having applied the five-step framework set out in DEPP, the appropriate level of financial penalty to be imposed on Mr Hughes is £275,100.

6.31 The Authority would have imposed a financial penalty on Mr Hughes of £275,100. However, the Authority recognises that there may be significant liability for redress for 1 Stop's customers which will fall to the FSCS. The amount of any such liability is currently unknown but is being investigated by the FSCS. In these circumstances, the Authority has not imposed this financial penalty after agreement from Mr Hughes that these assets are instead transferred to the FSCS to contribute towards any redress that may become due to 1 Stop's customers.

### **Statement of Misconduct**

6.32 The Authority's policy in relation to the imposition of a public censure is set out in Chapter 6 of DEPP. DEPP sets out non exhaustive factors that may be of particular relevance in determining whether it is appropriate to issue a public censure rather than impose a financial penalty. DEPP 6.4.2G (5) includes that it may be a factor (depending on the nature and seriousness of the breach) in favour of a public censure rather than a financial penalty including but not limited to where a person has taken steps to ensure that those who have suffered loss due to the breach are fully compensated for those losses. Whilst the full amount of any losses due to Mr Hughes' breaches are not yet quantified, they may be significant. In light of this, and the ongoing FSCS investigation of liability, the Authority has agreed that the sums otherwise due as a financial penalty should be transferred to the FSCS.

6.33 The Authority has had regard to the fact that Mr Hughes has agreed to transfer to the FSCS assets that would otherwise be used to satisfy any financial penalty imposed by the Authority to be used towards any redress that may become due to 1 Stop's customers. On that basis, the Authority has not imposed a financial penalty on Mr Hughes but instead issues a statement of Mr Hughes' misconduct under section 66 of the Act.

### **Withdrawal of approvals and Prohibition**

6.34 The Authority has had regard to the guidance in Chapter 9 of EG and considers that it is appropriate and proportionate in all the circumstances to withdraw Mr Hughes' CF4 (Partner), CF10 (Compliance oversight) and CF11 (Money Laundering Reporting) controlled functions at 1 Stop and to prohibit Mr Hughes from performing any significant influence function in relation to any regulated activity

carried on by any authorised person, exempt person or exempt professional firm because he is not a fit and proper person in terms of competence and capability.

## **7 PROCEDURAL MATTERS**

### **Decision maker**

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

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

### **Publicity**

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

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

### **Authority contacts**

7.5 For more information concerning this matter generally, contact Kate Tuckley at the Authority (direct line: 020 7066 7086 / fax: 020 7066 7087).

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**Bill Sillett**

Financial Conduct Authority, Enforcement and Financial Crime Division



## **ANNEX A**

### **RELEVANT STATUTORY AND REGULATORY PROVISIONS**

#### **1 Relevant Statutory Provisions**

- 1.1 The Authority's operational objectives, set out in section 1B(3) of the Act, include the consumer protection objective.
- 1.2 Section 63 of the Act provides that the Authority may withdraw an approval issued under section 59 of the Act in relation to the performance by a person of a function if the Authority considers that the person is not a fit and proper person to perform the function. If the Authority proposes to withdraw an approval, it must give each of the interested parties a Notice. Each interested party may refer the matter to the Tribunal.
- 1.3 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.
- 1.4 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 exempt professional person. 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 have been issued under section 64 of the Act.

2.2 Statement of Principle 7 states:

*"An approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system."*

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

2.3 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.

2.4 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**

2.5 The Authority's policy in relation to prohibition orders is set out in Chapter 9 of EG.

2.6 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.

**The Authority's policy for imposing financial penalties**

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

*The following provisions are also relevant with regard to the conduct explored in this Notice:*

**Principles for Businesses**

2.8 The Principles are a general statement of the fundamental obligations of firms under the regulatory system and are set out in the Authority's Handbook. They derive their authority from the Authority's rule making powers set out in the Act.

2.9 Principle 9 states:

*"A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment."*

### **Conduct of Business**

2.10 The following rules in COBS are relevant regarding suitability of advice given to customers:

COBS 2.1.1R

(1) A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).

...

COBS 9.2.1R

(1) A firm must take reasonable steps to ensure that a personal recommendation, or a decision to trade, is suitable for its client.

(2) When making the personal recommendation or managing his investments, the firm must obtain the necessary information regarding the client's:

(a) knowledge and experience in the investment field relevant to the specific type of designated investment or service;

(b) financial situation; and

(c) investment objectives;

so as to enable the firm to make the recommendation, or take the decision, which is suitable for him.

COBS 9.2.2R

(1) A firm must obtain from the client such information as is necessary for the firm to understand the essential facts about him and have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of managing:

(a) meets his investment objectives;

- (b) is such that he is able financially to bear any related investment risks consistent with his investment objectives; and
  - (c) is such that he has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.
- (2) The information regarding the investment objectives of a client must include, where relevant, information on the length of time for which he wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.
- (3) The information regarding the financial situation of a client must include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments.

#### COBS 9.2.3R

The information regarding a client's knowledge and experience in the investment field includes, to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved, information on:

- (1) the types of service, transaction and designated investment with which the client is familiar;
- (2) the nature, volume, frequency of the client's transactions in designated investments and the period over which they have been carried out;
- (3) the level of education, profession or relevant former profession of the client.