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**FINAL NOTICE**

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**To: Mr Colin J McIntosh**

**IRN: CJM01220**

**Address: 309 Mill Studio  
Business Centre  
Crane Mead  
Ware  
Hertfordshire  
SG12 9PY**

**Date: 1 February 2016**

**To: Coverall Worldwide Ltd**

**IRN: 307681**

**Address: 309 Mill Studio  
Business Centre  
Crane Mead  
Ware  
Hertfordshire  
SG12 9PY**

**ACTION**

1. For the reasons given in this notice, the Authority hereby:
  - a) imposes on Colin McIntosh a financial penalty of £51,600;
  - b) withdraws the approvals granted to Mr McIntosh to perform the CF1 (Director), CF11 (Money Laundering Reporting) and CF28 (Systems and Controls) controlled functions at Coverall Worldwide Limited ("Coverall"); and
  - c) makes an order prohibiting Mr McIntosh from performing any controlled function in relation to any regulated activity carried on by a FCA-authorized person or by an exempt person or exempt professional firm in respect of any FCA-regulated activity.
2. Mr McIntosh 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. Were it not for this discount, the Authority would have imposed a financial penalty of £73,949.

**SUMMARY OF REASONS**

3. The Authority considers that Mr McIntosh breached:
  - a) Statements of Principle 1 and 7 while performing the CF1 (Director)

controlled function at Coverall during the period from 1 December 2010 to 23 September 2013 ("the Coverall Relevant Period"); and

- b) Statement of Principle 4 while performing the CF1 (Director) and CF3 (Chief Executive) controlled functions at Millburn Insurance Company Limited (In Administration) ("Millburn") during the period from 3 January 2013 to 9 August 2013 ("the Millburn Relevant Period").

### **Misconduct at Coverall**

4. Coverall is a UK insurance intermediary. During the Coverall Relevant Period, Mr McIntosh was responsible for oversight of the activities of Coverall's appointed representative ("AR"), Aderia UK Limited ("Aderia"), which acted as a managing general agent for a number of insurers.

### **Breach of Statement of Principle 1**

5. The Authority considers that Mr McIntosh breached Statement of Principle 1 by recklessly failing to mitigate the risks to potential policyholders arising from the contracts entered into by Aderia.
6. During May 2013 and June 2013, Aderia entered into ten binding authority agreements (BAAs), purportedly authorising various Coverholders to write insurance policies on behalf of a German insurer, Berliner Versicherung Aktiengesellschaft ("Berliner") - including solicitors' professional indemnity insurance ("Solicitors' PII") policies. However, Aderia did not have authority from Berliner to do so at that time. Mr McIntosh knew about this and recognised the risk that Coverholders would sell insurance policies purportedly underwritten by Berliner but by which Berliner was not bound. Despite this, Mr McIntosh failed unreasonably to take any steps to mitigate that risk.

### **Breach of Statement of Principle 7**

7. The Authority considers that Mr McIntosh breached Statement of Principle 7 by failing to take reasonable steps to ensure that the business of Coverall (including that carried out on its behalf by its AR, Aderia), for which he was responsible in his controlled function, complied with the relevant requirements and standards of the regulatory system.
8. In particular, the Authority considers that Mr McIntosh failed to take reasonable steps to ensure that Coverall had adequate controls over the regulated activities of Aderia for which it was responsible. For example, Mr McIntosh failed to take reasonable steps to ensure that Coverall had adequate controls in place to mitigate the conduct risks associated with a delegated authority given by Aderia, to third parties, to sign insurance documents on its behalf.
9. Mr McIntosh also failed to take reasonable steps to ensure that Coverall had appropriate controls in place to ensure that client money held and disbursed by Aderia was handled in accordance with the Authority's rules as set out in Chapter 5 of the Client Assets Sourcebook.

### **The seriousness of Mr McIntosh's misconduct at Coverall**

10. Mr McIntosh's breach of Statement of Principle 7 was particularly serious because

it effectively allowed Mr Shay Reches ("Mr Reches"), an individual not approved by the Authority to perform a controlled function, to exercise a significant degree of influence over Aderia's activities which went beyond the scope of the delegated authority granted to him. This increased the risk that Coverall (through Aderia) would not treat customers fairly.

11. A particular risk to consumers arose when Coverall effectively allowed Mr Reches to instruct Aderia to enter binding authority agreements (which purported to bind Berliner) without the requisite authority from Berliner to do so. Approximately 1,300 firms of solicitors were exposed to the significant risk that they would hold themselves out as being covered by business-critical Solicitors' PII provided by Berliner when this was not the case. Without valid Solicitors' PII, those firms would have been unable to practise.
12. Further, in failing to ensure that Aderia adequately protected client money it held - including over £13.2 million in Solicitors' PII premiums for policies underwritten by a Latvian insurer, Balva Insurance Company AAS ("Balva") - Mr McIntosh exposed consumers to the significant risk that funds would not be available to pay claims or refund premiums in the event of Balva's failure, leaving them dependent on compensation from the Financial Services Compensation Scheme ("FSCS"). This risk was increased by Coverall's lack of controls over Aderia's regulated activities, which included effectively allowing Aderia to disburse premiums - including over £11 million of premiums for policies underwritten by Balva - for purposes unconnected with the policyholders for whom the funds were held. Balva entered liquidation and consequently, the FSCS has paid £3.8 million in claims and has an estimated future liability of £10 million in respect of Solicitors' PII policies alone.

#### **Misconduct at Millburn**

13. Millburn is a UK insurance company, which was placed into administration on 9 December 2013. During the Millburn Relevant Period, Mr McIntosh was its CEO and performed CF1 (Director) and CF3 (Chief Executive) controlled functions.

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

14. The Authority considers that Mr McIntosh breached Statement of Principle 4 by not disclosing information which was plainly material to questions and matters raised by the Authority with Millburn, and by providing an inaccurate and misleading response to a direct question asked by the Authority.
15. The Authority asked Millburn to provide information about a reinsurance treaty ("the Reinsurance Treaty") between Millburn and Balva, including whether it was in force and in respect of the communications between the parties to the Reinsurance Treaty. Mr McIntosh responded to the Authority's enquiries in his role as Millburn's CEO. In his responses, Mr McIntosh:
  - a) told the Authority that there were no written communications between the parties about the Reinsurance Treaty when in fact there had been a number of highly relevant written communications, including one on the morning the Authority requested the information from Millburn;
  - b) did not disclose information which was clearly material to the questions and matters raised by the Authority. Notably he did not disclose information or material which would have revealed that Millburn - in negotiating, drafting

and signing the Reinsurance Treaty - was extensively influenced by Mr Reches; and

- c) deliberately and selectively disclosed only material which showed that the relevant parties did not consider the Reinsurance Treaty to be in force. He did not disclose information which showed that Balva and Mr Reches in fact had considered the Reinsurance Treaty to be in force.
16. By virtue of Mr McIntosh not being open and cooperative with the Authority about the circumstances of the signing of the Reinsurance Treaty, Millburn avoided further regulatory scrutiny at that time. In particular, Mr McIntosh's breach concealed significant failings in Millburn's systems and controls. The effect of the breach was to hinder the Authority in taking timely action to protect consumers.

### **Lack of fitness and propriety**

17. As a result of the misconduct described above, the Authority considers that Mr McIntosh's conduct has fallen short of minimum regulatory standards and that he is not a fit and proper person - in terms of his honesty and integrity, and his competence and capability - to carry out any controlled function.
18. The Authority therefore considers that, in the interests of consumer protection, it is appropriate and proportionate in all the circumstances to withdraw Mr McIntosh's approvals to perform controlled functions at Coverall and to impose a prohibition order on Mr McIntosh in the terms set out in this Final Notice.

### **The Authority's objectives**

19. This action supports the Authority's objectives in terms of protecting consumers and the integrity of the UK financial system. It emphasises the need for approved persons in the retail distribution chain to ensure that adequate steps are taken to satisfy themselves that robust and effective arrangements are in place to mitigate risks to customers and to treat them fairly. It also emphasises the requirement for regulated entities to provide accurate information to the Authority and to deal with the Authority in an open and cooperative way.
20. This action recognises that failure by one or more firms to comply with regulatory requirements that safeguard consumers and/or protect market integrity can distort competition. Tackling conduct failures (such as those detailed in this Final Notice) in order to ensure firms act with integrity, implement appropriate systems and controls and arrange adequate protection for client assets, therefore supports the Authority's operational objective to promote effective competition in the interests of consumers.

### **DEFINITIONS**

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

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

"Aderia" means Aderia UK Limited, an AR of Coverall and Millburn, now known as II&B UK Limited and previously known as JCM Insurance Brokers Limited and JCM Brokers Ltd;

"AR" means appointed representative;

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

"BAA" means a binding authority agreement, an agreement whereby an insurer (or its MGA) delegates underwriting authority to another party known as the Coverholder (often an insurance broker) which will act on behalf of the insurer to the extent permitted by the agreement, which frames the responsibilities, entitlements and obligations of the parties;

"Balva" means Balva Insurance Company AAS, a Latvian insurer and a Passported Firm;

"Balva MGA Agreement" means the MGA Agreement between Balva and Aderia, which was signed on and effective from 18 August 2011";

"Bar" means Bar Professions Limited (in liquidation), (and its AR, Apro Management Limited), UK-based Coverholders;

"Berliner" means Berliner Versicherung Aktiengesellschaft, a German insurer and Passported Firm;

"Berliner MGA Agreement" means the MGA Agreement, which was signed between Berliner and Aderia on 15 July 2013, and which took effect retrospectively from 1 June 2013";

"CASS" means the Authority's Client Assets Sourcebook;

"Coverall" means Coverall Worldwide Ltd, a UK insurance intermediary;

"Coverholder" means a company (often an insurance broker) authorised to enter into contracts of insurance, on behalf of an insurer, in accordance with the terms of a BAA;

"the Coverall Relevant Period" means the period from 1 December 2010 to 23 September 2013;

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

"dual-regulated" means that a firm is regulated by the FCA and the PRA;

"EG" means the Enforcement Guide;

"the FCA" means the Financial Conduct Authority;

"the FCMC" means the Financial and Capital Market Commission of Latvia, the Latvian regulatory authority, also known as Finanšu un Kapitāla Tirgus Komisija (the FKTK);

"the First BAA" means the BAA between Aderia and Bar signed on 20 February 2013 governing the marketing and sale of Solicitors' PII policies underwritten by Balva;

"FIT" means the Authority's Fit and Proper test for Approved Persons;

"the FSCS" means the Financial Services Compensation Scheme;

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

"MGA" means a Managing General Agent, an insurance intermediary which has contractual authority from one or more insurers to provide underwriting services on their behalf;

"MGA Agreement" means a contractual agreement giving an MGA contractual authority from one or more insurers to provide underwriting services, including negotiating and entering into binding authorities with Coverholders for the sale and fulfilment of policies, on behalf of the insurers;

"Millburn" means Millburn Insurance Company Limited (in administration), a UK insurer;

"the Millburn Relevant Period" means the period from 3 January 2013 to 9 August 2013;

"Mr McIntosh" means Mr Colin J McIntosh;

"Mr Reches" means Mr Shay Jacob Reches, an individual not approved by the Authority under the act to perform a controlled function;

"Part 4A Permission" means the permission given by the Authority under Part 4A of the Act to carry on certain regulated activities;

"Passported Firm" means a European Economic Area firm exercising its right to conduct activities and services regulated under EU legislation in the UK on the basis of its authorisation in its European Economic Area home state;

"the PRA" means the Prudential Regulation Authority;

"Principal" means an authorised firm which permits its appointed representative(s) to carry on regulated activities under its Part 4A permission given by the Authority under Part 4A of the Act to carry on certain regulated activities;

"the Reinsurance Treaty" means a signed, dated document identified on its title page as an "*Excess of Loss Reinsurance Treaty*" containing terms for an Excess of Loss reinsurance agreement pursuant to which Millburn would offer reinsurance to Balva;

"the Second BAA" means the BAA between Aderia and Bar signed on 17 May 2013 purportedly governing the marketing and sale of Solicitors' PII policies underwritten by Berliner;

"Solicitors' PII" means professional indemnity insurance provided to solicitors; and

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

## **FACTS AND MATTERS**

### **Background**

22. Coverall is a UK insurance intermediary based in Hertfordshire. During the Coverall Relevant Period, its business included entering into agreements with underwriters and Coverholders for the marketing of underwriters' insurance products, via Coverholders, to customers.
23. Millburn is a dual-regulated UK insurance company based in London. During the Millburn Relevant Period, it was authorised to effect and carry out contracts of insurance in certain insurance classes.
24. Coverall and Millburn appointed Aderia as their AR by way of an agreement dated 1 December 2010 (signed by Mr McIntosh on behalf of Aderia). The agreement provided that:
  - a) Millburn was the principal responsible for Aderia in respect of insurance mediation activities relating to policies underwritten by Millburn; and
  - b) Coverall was the principal responsible for Aderia in respect of insurance mediation activities relating to policies underwritten by any insurer other than Millburn.
25. Aderia also operated, at various times, as an MGA for a number of insurers with whom it had signed respective MGA Agreements (including Milburn, Balva and Berliner). The MGA Agreements gave Aderia the authority to negotiate and enter into BAAs with Coverholders for the sale and fulfilment of policies on behalf of the respective insurers.
26. Mr McIntosh established Aderia in October 2010 and was its sole shareholder. In early 2011, the ownership structure changed so that, during the majority of the Coverall Relevant Period, Mr Reches held 95% of the shares of Aderia and Mr McIntosh held the remaining 5%.

### **Misconduct at Coverall**

#### **Role and responsibilities**

27. Mr McIntosh established Coverall in 2005 and owned 50% of its shares. He was approved by the Authority to perform a number of controlled functions at Coverall, including that of CF1 (Director).
28. Throughout the Coverall Relevant Period, Mr McIntosh was the approved person at Coverall with responsibility for oversight of the activities of Coverall's AR, Aderia:
  - a) from December 2010 to mid-2012, Mr McIntosh had day-to-day responsibility for the running of Aderia and he told the Authority at interview that his involvement in that role represented the extent of Coverall's controls over Aderia's regulated activities; and
  - B) from around mid-2012, following the expansion of Aderia's business activities, new infrastructure was put in place at Aderia to carry out the day-

to-day running of its business. Whilst Mr McIntosh stepped back from the day-to-day running and management of Aderia from this time, this did not change the regulatory responsibilities he held in respect of Aderia and he still remained the approved person at Coverall with responsibility for oversight of Aderia's activities.

### **Recklessness regarding BAAs issued without authority**

#### *Background*

29. In respect of the 2012/2013 Solicitors' PII policy year (1 October 2012 to 30 September 2013), Aderia, as the MGA of Balva, authorised Bar to write Solicitors' PII business on behalf of Balva pursuant to the First BAA. Bar issued policies to approximately 1,300 firms of solicitors.
30. Midway through the 2012/2013 policy year, Balva's operating licence was suspended by its home state regulator (the FCMC) and was subsequently withdrawn. As a consequence, policyholders were exposed to the risk that they may have no valid insurance in place. Without valid Solicitors' PII cover, those firms of solicitors would be unable to practise.
31. Accordingly, Aderia entered into negotiations with Berliner to act as a replacement insurer for policies underwritten by Balva. Aderia and Berliner had not previously transacted insurance business with each other. Aderia's intention was that it would be appointed as Berliner's MGA and thus be authorised to enter into BAAs with Coverholders for the sale and fulfilment of policies underwritten by Berliner. At that time, prior to its appointment as Berliner's MGA, Aderia was not authorised to bind Berliner to contracts of insurance.
32. However, on 17 May 2013 - despite not having been appointed as Berliner's MGA at that time - Aderia entered into the Second BAA with Bar, purportedly authorising Bar to market and sell Solicitors' PII policies underwritten by Berliner. Aderia did not enter into the MGA agreement with Berliner until 15 July 2013, and thus was not authorised to enter into BAAs with Coverholders prior to that date.
33. This created a significant risk that Bar would issue Solicitors' PII policies to customers in respect of cover with Berliner, including replacing and renewing approximately 1,300 existing policies held, at that time, with Balva, when Berliner had not given Aderia authority to bind it to those policies. Customers would therefore hold themselves out to be covered by business-critical Solicitors' PII when that might not be the case.

#### *Mr McIntosh's knowledge*

34. During May, June and July 2013, Mr Reches continued to negotiate with Berliner in relation to the proposed MGA agreement. Mr McIntosh had little knowledge of the negotiations, though he told the Authority at interview that at the time he thought an agreement would be reached. Mr McIntosh told the Authority at interview that he did not recall ever discussing the matter with Mr Reches and that he was updated only on an informal basis, by Aderia. He was not aware of important potential obstacles to the signing of an MGA Agreement, including the fact that Berliner had made the agreement contingent upon investment from Mr Reches.



35. In May 2013, Aderia made Mr McIntosh aware that it was entering into the BAAs with Coverholders, including Bar, for the marketing and sale of policies purportedly underwritten by Berliner. At this time, Mr McIntosh knew that there was no MGA Agreement in force between Aderia and Berliner which would have provided Aderia with the authority to enter into the BAAs. Mr McIntosh was aware of the on-going nature of the problem presented by the lack of a signed MGA Agreement - he attended an Aderia board meeting on 20 June 2013 at which it was stated that no MGA agreement had yet been signed on behalf of Aderia. Mr McIntosh recognised the risk to potential policyholders. Mr McIntosh confirmed to the Authority during interview that he had "*concerns*" about the arrangements. However, despite those concerns, Mr McIntosh did not take any steps to contact Bar to prevent them from finalising policies purportedly underwritten by Berliner, nor did he take any steps to ensure that Aderia did so, or otherwise mitigated the risk to consumers. This was unreasonable in the circumstances. Mr McIntosh stated during interview that the risk was taken due to the "*commercial pressure*" that Aderia was under.

*The impact of Mr McIntosh's recklessness*

36. The extent of the risk involved was demonstrated in late May 2013 when, pursuant to the Second BAA, Bar wrote to approximately 1,300 firms of solicitors offering to replace the Solicitors' PII cover previously offered by Balva with cover to be provided by Berliner for the remainder of the 2012/2013 policy year. Over 900 firms of solicitors accepted the replacement cover on offer, although no agreement was in place to bind Berliner to those policies.
37. Furthermore, the Second BAA provided for an annual premium income limit of £50 million, whereas the Berliner MGA Agreement (signed on 15 July 2013 and which retrospectively authorised Aderia to issue BAAs to Coverholders from 1 June 2013) set an annual premium income limit of €5 million, representing the maximum exposure that Berliner was prepared to underwrite. This disparity represented a significant risk to consumers, namely that Bar, unaware of the terms of the Berliner MGA Agreement, would sell policies to customers pursuant to the Second BAA in volumes over and above what Berliner was prepared to underwrite. In fact, the annual premium income limit of €5 million would have been exhausted by the replacement cover for Balva's Solicitors' PII policies alone meaning that there would have been no capacity available for renewal into the 2013/2014 policy year.
38. Ultimately, the Berliner MGA Agreement was annulled on 23 September 2013. In the event, Solicitors' PII policies underwritten by Balva remained in force until the end of the 2012/2013 policy year and solicitors firms were required to find alternative cover for the 2013/2014 policy year or cease practising.

*Other insurance policies*

39. In addition to the Second BAA, during May 2013 and June 2013 Aderia entered into a further nine BAAs with various Coverholders purporting to authorise Coverholders to market and sell other liability insurance policies (such as public, product and employer's liability) underwritten by Berliner. Again, as these BAAs were entered into prior to Aderia's appointment as the MGA of Berliner, Aderia had created a risk that Coverholders would purportedly bind Berliner to contracts of insurance without authority and in volumes which would potentially have significantly exceeded the annual premium income limit of €5 million set by Berliner.

40. Mr McIntosh knew that Aderia was entering into BAAs without authority being in place, at that time, from Berliner and he understood the risks to potential policyholders. However, Mr McIntosh, unreasonably, did not take any steps to ensure that Aderia mitigated that risk or that it did not enter into BAAs with Coverholders on behalf of Berliner until it had authority to do so under a valid MGA Agreement.

#### **Control over Aderia's regulated activities**

41. Throughout the Coverall Relevant Period, Mr McIntosh was the senior individual at Coverall with responsibility for the control and oversight of Aderia's regulated activities.
42. The Authority would have expected Mr McIntosh, in performing his CF1 (Director) controlled function at Coverall, to have taken reasonable steps to ensure that Coverall established and implemented adequate controls over the regulated activities of its AR - Aderia - for which Coverall was responsible, to ensure that Coverall and Aderia complied with the relevant requirements and standards of the regulatory system. The Authority had previously published guidance to the senior management of small firms that have AR's, emphasising the importance of assessing the risks posed by an AR and of close and continuous supervision of an AR by its principal.
43. During the period from December 2010 to mid-2012, Mr McIntosh was responsible for the day-to-day running of Aderia. Aderia's business as an MGA expanded during this period, particularly after its appointment as the MGA of Balva in August 2011. However, Mr McIntosh's involvement in Aderia represented the full extent of Coverall's controls over Aderia's regulated activities during this period. Mr McIntosh did not put in place any formal processes or procedures for Aderia to provide Coverall with management information in respect of its activities and he did not ensure that any general or financial appraisals of Aderia were carried out on behalf of Coverall. As a result, Coverall had inadequate controls over the regulated activities of its AR, Aderia, for which it was responsible.
44. Aderia's increased business activity included receiving premium funds and handling administrative matters such as arrangements for the payment of Insurance Premium Tax. As a result, a new infrastructure was put in place at Aderia to manage its day-to-day running in mid-2012. Once the new infrastructure was in place, from mid-2012, Mr McIntosh stepped back from the day-to-day running and management of Aderia. However, this did not affect his continuing status as the approved person at Coverall responsible for oversight of Aderia.
45. The new infrastructure at Aderia led to a reduction in the already limited level of oversight that Mr McIntosh, on behalf of Coverall, had over Aderia's activities. Mr McIntosh continued to have access to Aderia's files and had a standing invitation to its meetings. However, his now reduced involvement in Aderia continued to represent the full extent of Coverall's controls over Aderia's regulated activities. Mr McIntosh confirmed to the Authority that from mid-2012 he spent what amounted to approximately one day a week working on Coverall matters (including oversight of Aderia), and that no additional time was allocated to oversight of Aderia's activities.
46. Despite his reduced involvement in Aderia's business from mid-2012, Mr McIntosh still did not take any reasonable steps to establish or maintain any systems and

controls at Coverall to ensure adequate control over those of Aderia's regulated activities for which Coverall was responsible. For example, Mr McIntosh still did not require Aderia to provide Coverall with any formal management information. Moreover, throughout the Coverall Relevant Period, no formal management meetings were held between Aderia and Coverall and no general or financial appraisals of Aderia were carried out by Coverall (despite Mr McIntosh accepting during interview that such appraisals were important).

*Delegated authority*

47. On 23 November 2010, Mr McIntosh (acting in his capacity as a director of Aderia) authorised Mr Reches to sign insurance documents on behalf of Aderia. Mr Reches was not approved by the Authority to perform a controlled function. Mr McIntosh told the Authority at interview that he intended this delegated authority to be utilised by Mr Reches to "*sign insurance documents*" that Mr McIntosh had already agreed on behalf of Aderia.
48. When Coverall appointed Aderia as its AR on 1 December 2010, the delegated authority was therefore already in place. However, Mr McIntosh failed to take reasonable steps to ensure that Coverall established any, or any appropriate, processes or controls to ensure that it identified, managed, monitored and controlled the conduct risks associated with Mr Reches' use of the delegated authority and influence over Aderia's activities.

*The impact of Mr McIntosh's failure to ensure Coverall maintained adequate controls over Aderia*

49. Mr McIntosh's failure to ensure that Coverall established and implemented adequate processes, or controls, over the regulated activities of Aderia increased the risk that Coverall (through Aderia) would not treat customers fairly, leading to customers receiving poor outcomes and suffering detriment.
50. Mr Reches was able to exercise a significant degree of influence over Aderia and its regulated activities beyond the scope of the delegated authority. In particular, he was effectively allowed to conduct Aderia's negotiations with Berliner and with Bar. He was also effectively allowed to instruct Aderia to enter into the Second BAA with Bar and a further nine BAAs with other Coverholders in respect of the marketing and sale of insurance policies underwritten by Berliner. This occurred despite the fact that Aderia was not authorised at that time to bind Berliner to contracts of insurance. Mr Reches negotiated key terms in the Second BAA including the premium limit (see paragraph 37 above) without Aderia's input. Mr McIntosh told the Authority that he (and therefore Coverall) was not aware of the terms of the Second BAA until after the signing of the subsequent MGA Agreement with Berliner.
51. As referred to in the paragraph above, Mr Reches also controlled Aderia's negotiation of the subsequent Berliner MGA Agreement. A feature of the negotiations was that Mr Reches was also negotiating to invest in Berliner with a view to acquiring the firm and that Berliner had made the MGA Agreement contingent upon this investment. An annual premium income limit of €5 million was included in the Berliner MGA Agreement. As referred to at paragraph 37 above, this was considerably below the £50 million annual premium income limit Aderia purportedly authorised Bar to write on Berliner's behalf. Mr McIntosh told the Authority at interview that, he (and therefore Coverall) was not aware of the

substance of Mr Reches' negotiations with Berliner or the terms of the Berliner MGA Agreement and that he did not request any information about the process. Mr McIntosh told the Authority at interview that he did not become aware of the discrepancy until August 2012.

#### **Client Money: Coverall's failure to comply with CASS 5**

52. As set out above, Mr McIntosh was the approved person at Coverall with responsibility for oversight of Aderia's activities during the Coverall Relevant Period.
53. The Authority would have expected Mr McIntosh, in performance of his CF1 (Director) controlled function, to have taken reasonable steps to ensure that Aderia's handling of funds, particularly client money, complied with the relevant requirements and standards of the regulatory system. This should have included ensuring that:
  - a) Coverall recognised if or when Aderia was holding client money; and
  - b) Aderia, as Coverall's AR, held and distributed client money in accordance with CASS 5.
54. In its role as Balva's MGA, Aderia received premiums in respect of insurance policies underwritten by Balva. In April 2012, Mr McIntosh was instructed to make arrangements for Aderia to begin receiving Solicitors' PII premiums from Bar in respect of policies issued on behalf of Balva for the 2012/2013 policy year. Between 23 July 2012 and 8 March 2013, Aderia received over £13.2 million of premiums from Bar in relation to Solicitors' PII policies underwritten by Balva.
55. The premiums Aderia received were client money (as defined in CASS) and, as the Balva MGA Agreement did not provide for a transfer of risk from Aderia to Balva, Coverall was required to ensure that Aderia paid the premiums into Coverall's segregated client account in accordance with CASS 5 (or, in the alternative, Coverall was required to hold equivalent sums in its own client bank accounts (conducting a periodic reconciliation in accordance with CASS 5)).
56. However, Mr McIntosh erroneously believed that risk transfer provisions were in place and that the premiums were not client money. Mr McIntosh therefore took no action to ensure that Coverall segregated equivalent sums in its own accounts or to establish and maintain procedures to ensure that Aderia paid the premiums into Coverall's segregated client account as soon as was practicable. Aderia instead held them together with Aderia's own funds, in breach of CASS 5.
57. Mr McIntosh therefore did not take reasonable steps to ensure that the premiums held by Aderia, as Coverall's AR, were held in compliance with the Authority's requirements under CASS. This created a risk that, in the event of Balva's insolvency, funds would not be available to pay claims or refund premiums and so policyholders would be reliant on compensation from the FSCS.
58. Mr McIntosh told the Authority at interview that he, as the individual at Coverall with responsibility for the oversight of Aderia, did not establish or implement any approvals process in respect of payments to, or receipts from, Aderia's accounts. Despite being the sole individual in charge of the day-to-day management of Aderia's activities during the December 2010 to mid-2012 period, Mr McIntosh was not always aware of the source of monies that Aderia received or of the

financial arrangements in place pertaining to Aderia.

59. Although Mr McIntosh stepped back from the day-to-day running of Aderia in mid-2012 – which included relinquishing control of Aderia’s bank accounts - this did not remove his responsibility for the oversight of Aderia’s activities in performance of his CF1 (Director) controlled function at Coverall.
60. However, as with other aspects of the operation of Aderia, the changes in Aderia’s infrastructure led to a reduction in the already limited oversight exercised by Mr McIntosh over Aderia’s distribution of client money.
61. As a result of the lack of adequate controls in place over client money, the premium funds held by Aderia were disbursed from Aderia’s bank accounts for purposes unconnected to either the policyholder clients for whom the money was held or Balva’s responsibilities to meet and pay any claims due under those policies. These disbursements of client money were in breach of CASS 5.

#### *The impact of Coverall’s failure to comply with CASS*

62. Over £11 million in premiums was disbursed in breach of CASS (approximately £9.8 million to parties other than Balva). Later in 2013, Balva went into liquidation. As client money had not been protected in accordance with CASS 5, but had in fact been disbursed, funds were not available to pay claims or refund premiums to Balva’s Solicitors’ PII policyholders. Policyholders are therefore reliant on recovery from the FSCS, which has classed Balva as being in default and, to date, has paid out over £3.8 million to Balva’s Solicitors’ PII policyholders. The FSCS estimates further liabilities to Balva’s policyholders to be £10 million.

#### **Misconduct at Millburn**

63. During the Millburn Relevant Period, Mr McIntosh was the CEO of Millburn and performed the CF1 (Director) and CF3 (Chief Executive) controlled functions (amongst others).
64. The Authority would have expected Mr McIntosh to deal with the Authority in an open and cooperative way and to disclose information of which the Authority would have reasonably expected notice.

#### **Background**

65. On 1 November 2010, Mr Reches entered into an agreement (on behalf of a company he controlled) to purchase 100% of Millburn’s share capital in tranches, and subsequently purchased (through NMSIM Group Limited, another company that he controlled) 9.9% of Millburn on 31 December 2011. Mr Reches entered into a similar agreement on 18 August 2011 to purchase Balva, and by December 2012 became its majority shareholder (via NMSIM Group Limited).

#### **Negotiation of the Reinsurance Treaty**

66. On 28 November 2011, Balva became a Passported Firm and was therefore able to carry out insurance business in the UK. Balva did so operating through Aderia which was acting as its MGA. Seeking to obtain reinsurance in respect of its expanding portfolio of risks in the UK and the European Economic Area, in 2012 Balva began negotiations with Millburn for the potential provision of this

reinsurance. Mr Reches (who had an interest in both Millburn and Balva, as referred to above) played a significant role in discussions, including conveying communications between Millburn and Balva.

67. Whilst Mr McIntosh, on behalf of Aderia (Millburn's MGA), had delegated authority to Mr Reches on 26 January 2011 to effect contracts of insurance on Millburn's behalf, this did not give Mr Reches authority to bind Millburn to a reinsurance agreement with Balva, without prior approval from Millburn.
68. Between 19 July and 24 July 2012, three versions of a document, identified as an "*Excess of Loss Reinsurance Treaty*", were drafted. Drafts were exchanged between Balva and Millburn via emails from Mr Reches. Balva made amendments. Mr McIntosh, on behalf of Millburn, also made amendments to the drafts at the request of Mr Reches. Mr McIntosh and Mr Reches discussed the arrangements via email, including Mr Reches' hopes to achieve an agreed draft which could be signed.
69. On 24 July 2012, Mr McIntosh remitted a third draft of the Reinsurance Treaty to Mr Reches by email, asking whether his amendments were acceptable. Later on that day, Balva sent an email to Mr McIntosh stating that a copy of the "*R/I Treaty*" was attached. It is unclear whether Mr McIntosh, on behalf of Millburn, saw the email and its attachment at that time.
70. On 28 December 2012, Balva sent an email to Mr Reches attaching a signed version of the Reinsurance Treaty (which contained terms otherwise identical to the draft attached to Mr McIntosh's email of 24 July 2012). The email was later forwarded to Mr McIntosh, at Millburn, on 7 January 2013. The email suggested that Balva believed the Reinsurance Treaty to be in force.
71. Mr Reches had signed the Reinsurance Treaty, purportedly on behalf of Millburn on 2 January 2012. Balva had signed and stamped the document, purportedly on 4 January 2012. The Reinsurance Treaty covered the period from 1 January to 31 December 2012 and the agreement was said to be subject to renewal from 1 January 2013.
72. The terms of the Reinsurance Treaty were such that any cover provided by Millburn to Balva would have been within the regulated activity of effecting and carrying out contracts of insurance in the "General Liability" class, which was outside of the regulated activities for which Millburn was authorised to write pursuant to its Part 4A Permission.
73. In its capacity as Balva's MGA, Aderia had entered into agreements with various Coverholders for the marketing and sale of policies underwritten by Balva. In the 2012/2013 Solicitors' PII policy year alone, policies worth over £23 million in premiums were written on behalf of Balva.

#### **The Authority's first request for information**

74. On 3 January 2013, the Authority contacted Millburn following receipt of a copy of the Reinsurance Treaty from the FCMC. The Authority requested that Millburn explain how the activities envisaged by the Reinsurance Treaty fell within the regulated activities for which Millburn had Part 4A Permission. A reply was requested by 9 January 2013.
75. The Authority would have expected Mr McIntosh to have dealt with the Authority in an open and cooperative way, ensuring that responses he provided on

Millburn's behalf to this, and subsequent, enquiries were factually accurate and contained anything of which the Authority would reasonably expect notice.

76. Throughout the Millburn Relevant Period, Mr McIntosh, as Millburn's CEO, was responsible for liaising with the Authority and responding to any requests for information relating to the Reinsurance Treaty on its behalf.

#### **Correspondence with Balva and Mr Reches**

77. The Authority's request was forwarded to a number of senior individuals at Millburn including Mr McIntosh. Mr McIntosh and Mr Reches exchanged emails regarding the Authority's request and correspondence was sent to Balva in an attempt to understand the situation. Balva's responses were communicated, via email, to Mr McIntosh on 7 January 2013.
78. Also on 7 January 2013, Mr McIntosh met an individual representing Balva and stated that Mr Reches did not have the authority to enter into the Reinsurance Treaty on behalf of Millburn and that he had not given such permission to Mr Reches. Mr McIntosh wrote to Balva on 7 January 2013, stating that Millburn was not authorised to provide the cover and that he believed the previous discussions between the parties had not been finalised. Mr McIntosh informed Mr Reches that his understanding was that the Reinsurance Treaty had not been concluded and also of his intention to communicate this to the Authority.
79. Mr Reches objected to this approach on the basis that it would be damaging to Balva if it was to inform the FCMC that the reinsurance arrangements for its UK and EEA portfolio were not in force. Mr Reches referred to having to choose between his interests in Millburn and Balva (both of which he had agreed to purchase through a company he controlled).
80. Mr McIntosh and Mr Reches debated the situation in email correspondence on 8 January and 9 January 2013. Mr McIntosh re-drafted his response to the Authority to try to take account of Mr Reches's concerns but Mr Reches prevented him from sending a response to the Authority at that time and told him to instead seek an extension of time from the Authority. This was so that Mr Reches and Mr McIntosh could work on a response.
81. On 9 January 2013, instead of providing an open and factually accurate response, or explaining the situation that had arisen, as the Authority would have expected, Mr McIntosh followed the instructions of Mr Reches and requested an extension of time to respond partly on the basis that his colleagues were on holiday. The Authority granted an extension, to 16 January 2013.
82. Mr McIntosh drafted a number of further responses over the following days during which time the matter was discussed further. On 15 January 2013, a Millburn management meeting was held at which Mr Reches was present. Mr McIntosh put to Millburn's board his view that the Reinsurance Treaty was not in force.

#### **Response to the Authority's first information request**

83. On 16 January 2013, Mr McIntosh responded to the Authority on Millburn's behalf. The Authority would have expected to have been informed of the full extent of what had occurred and, in particular, that Mr Reches had negotiated and signed the Reinsurance Treaty on Millburn's behalf. Further, the Authority would have expected to have been informed that Balva had subsequently believed the

Reinsurance Treaty to be in force. However, Mr McIntosh's response made no mention of these matters, asserting simply that the Reinsurance Treaty was a draft document produced during negotiations, signed in error and which should not have been filed by Balva as no contract had been concluded. Mr Reches was not mentioned at all.

### **The Authority's second request for information**

84. On 17 January 2013, the Authority responded with a request for information:

*"Given that the [Reinsurance Treaty] appears to have been signed and dated by both parties, we require further evidence to demonstrate that both parties consider that no contract has been concluded. Please provide copies of any communications between Millburn and Balva which demonstrate this, and communications showing that Balva understands no reinsurance contract is/was in-force".* A response was requested by 22 January 2013.

### **Response to the Authority's second information request**

85. On 17 January 2013, Mr McIntosh discussed with Mr Reches the Authority's request for further information. Mr McIntosh suggested that a communication could be drafted for Balva, which could then be provided to the Authority to demonstrate that Balva considered that no contract had been concluded. This was done although Mr McIntosh was asked to examine what was produced to ensure it did not present a "contradictory" message.
86. On 21 January 2013, Balva contacted Mr McIntosh via email, stating that Balva was "disappointed" that the reinsurance facility could not be provided and that it had "entered in good faith into what it thought was a valid contract". Balva noted that Millburn had raised no "alerts" about the contract since it was signed – although Balva accepted that no premiums had been paid.
87. On the same day, Mr McIntosh forwarded Balva's email to Mr Reches stating again that he believed it had been agreed that the Reinsurance treaty had not been finalised. Mr McIntosh noted that, "This will not satisfy [The Authority]". Mr Reches responded later on 21 January 2013 and disagreed with Mr McIntosh. He stated that any mistake in the signing of the Reinsurance Treaty had been Millburn's and that Balva had signed the document "in good faith".
88. On 22 January 2013, in an email sent to recipients including Mr McIntosh, it was stated that what had been received from Balva was a draft response and that a compromise was being sought. Mr McIntosh responded to the Authority later on the same day by email, on Millburn's behalf: "Millburn's discussions with Balva in this matter were verbal such there are no written communications between Balva and Millburn". This was false and misleading.
89. Mr McIntosh's response to the Authority attached correspondence dated 22 January 2013 in which both Millburn and Balva confirmed that the Reinsurance Treaty was not, and never had been, in force. This was the reverse of Balva's position the previous day (as described at paragraph 86 above). Contrary to what the Authority would have expected, no mention was made, in Mr McIntosh's response, of the role of Mr Reches or the circumstances surrounding how the present situation had arisen.
90. On the basis of the information provided, the Authority did not investigate the



matter further. However, on 29 January 2013, the Authority wrote to Millburn expressing concern about what the Authority had been told and about Millburn's lack of oversight in allowing a draft Reinsurance Treaty to be signed. The Authority also communicated the results of its investigations to the FCMC, which later suspended Balva's licence to write new business in the UK (on 16 April 2013).

### **The Authority's section 165 requirement to provide specific information**

91. Further information came to the Authority's attention and on 25 July 2013, the Authority issued a request for information to Millburn, pursuant to section 165 of the Act, which included a requirement to provide:

*"Full details of the circumstances in which it was decided to enter into the reinsurance treaty with Balva and the reasons for the decision (including any documents recording those decisions), details of the signatories to the treaty and the identity and roles of the individuals responsible for drafting the treaty."*

### **Response to the Authority's section 165 requirement**

92. On 1 August 2013, Mr McIntosh responded to the Authority's information requirement via email. He referred the Authority to his letter dated 16 January 2013 and stated that Millburn believed Mr Reches was not an authorised signatory and that the Reinsurance Treaty had never been in force. He also stated that:

- a) as a result of "no decision" having been taken to enter into the Reinsurance Treaty, there were "no documents recording decisions"; and
- b) he believed that the "original wording" of the document came from an insurance broker. Whilst this was correct, Mr McIntosh made no mention of his own role in creating the further drafts. Mr McIntosh stated that he had not seen the document before January 2013.

93. Mr McIntosh sent a further e-mail to the Authority on 9 August 2013 stating that he had reviewed a "dormant" e-mail account and discovered that he had in fact received an email from Balva on 24 July 2012 (see paragraph 69 above) attaching "a PDF of the document which I advised in my earlier email I was not aware had come into existence". Attached to this email was a copy of the signed Reinsurance Treaty. Mr McIntosh apologised for failing to recall this previously. Again, he made no mention of his own role in drafting the terms of the Reinsurance Treaty.

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

94. The Authority's investigation into Mr McIntosh's conduct at Millburn commenced on 12 December 2013. The full extent of the communications between Balva, Mr Reches and Millburn in relation to the draft and signed versions of the Reinsurance Treaty was brought to light by the examination of email communications provided by Millburn's administrators in response to a request for information by the Authority in January 2014, pursuant to its investigation.

### **FAILINGS**

95. The regulatory provisions relevant to this Final Notice are referred to in Annex A.

96. On the basis of the facts and matters described above, the Authority considers that Mr McIntosh failed to comply with:
- a) Statements of Principle 1 and 7 while performing the CF1 (Director) controlled function at Coverall during the Coverall Relevant Period; and
  - b) Statement of Principle 4 while performing the CF1 (Director) and CF3 (Chief Executive) controlled functions at Millburn during the Millburn Relevant Period.

### **Misconduct at Coverall**

#### **Breach of Statement of Principle 1**

97. The Authority considers that Mr McIntosh failed to act with integrity in carrying out his controlled function, in breach of Statement of Principle 1, by recklessly failing to mitigate the risks to potential policyholders arising from contracts entered into by Coverall's AR, Aderia, during the Coverall Relevant Period. In particular:
- a) Aderia entered into ten BAAs during May 2013 and June 2013, including the Second BAA with Bar on 17 May 2013. These BAAs purportedly authorised Coverholders to write insurance policies - including Solicitors' PII policies - on behalf of Berliner, without authority, at that time, from Berliner to do so;
  - b) Mr McIntosh knew that Aderia was entering into the BAAs without having authority, at that time, from Berliner and he recognised the risk that Coverholders would sell insurance policies purportedly underwritten by Berliner but by which Berliner was not bound; and
  - c) despite his awareness of the risk, Mr McIntosh unreasonably failed to ensure that Aderia took any steps, particularly in relation to Bar and Solicitors' PII, to mitigate that risk, and therefore acted recklessly.

#### **Breach of Statement of Principle 7**

98. The Authority considers that Mr McIntosh breached Statement of Principle 7 during the period 1 December 2010 to 23 September 2013 by failing to take reasonable steps to ensure that the business of Coverall (including that carried out on its behalf by its appointed representative, Aderia), for which he was responsible in his controlled function, complied with the relevant requirements and standards of the regulatory system.
99. In particular, the Authority considers that Mr McIntosh failed to take reasonable steps to ensure:
- a) that Coverall had adequate controls over the regulated activities of its AR, Aderia, for which it was responsible;
  - b) that Coverall identified, managed, monitored and controlled the risks associated with Aderia's delegation of authority to sign insurance documents, including the risk that the authority would be exceeded; and
  - c) that Coverall had appropriate systems and controls to ensure that client money held and disbursed by Aderia was handled in accordance with the

Authority's rules set out in CASS 5.

100. The Authority considers Mr McIntosh's failings to be particularly serious because Mr McIntosh did not appropriately mitigate the conduct risks associated with Mr Reches's significant influence over Aderia's operations and, in particular, with the delegated authority granted to him. Mr Reches negotiated key terms of the Second BAA and purportedly bound Berliner without authority to do so.
101. As a result, approximately 1,300 firms of solicitors were exposed to the significant risk that they would be issued Solicitors' PII policies by Bar, purportedly underwritten by Berliner, when Berliner was not bound to provide such cover. These potential policyholders were therefore at risk of holding themselves out as covered by business-critical Solicitors' PII provided by Berliner when this was not the case. Without valid Solicitors' PII, those firms would have been unable to practise legitimately.
102. A particularly important consequence of Mr McIntosh's failure to ensure that Aderia complied with CASS 5 was that client money, including over £13.2 million in Solicitors' PII premiums for policies underwritten by Balva, was not adequately protected. Aderia disbursed approximately £11 million (approximately £9.8 million to parties other than Balva) for purposes unconnected with the policies held by consumers with Balva. This exposed consumers to the significant risk that, in the event of Balva's failure, funds would not be available to pay claims or refund premiums and so they would be dependent on compensation from the FSCS. This risk crystallised when Balva entered liquidation. In respect of Solicitors' PII policies alone, the FSCS has paid £3.8 million in claims and has an estimated future liability of £10 million.

### **Misconduct at Millburn**

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

103. The Authority considers that, in performing his controlled functions during the Millburn Relevant Period, Mr McIntosh failed to deal with the Authority in an open and cooperative way and failed to disclose appropriately information of which the Authority would reasonably expect notice, in breach of Statement of Principle 4. Mr McIntosh understood, as did Millburn, that he was responding to the request in his role as CEO.
104. Specifically, Mr McIntosh was materially misleading when responding to the Authority's enquiries relating to the Reinsurance Treaty (purportedly agreed between Millburn and Balva). In particular Mr McIntosh:
  - a) provided an inaccurate and misleading response to a question posed by the Authority regarding the existence of written communications between Millburn and Balva regarding the Reinsurance Treaty. Mr McIntosh stated that there had been no written communications when, in fact, there had been a number of highly relevant written communications, the most recent of which had been discussed within Millburn that morning; and
  - b) did not disclose information that was plainly material to the questions and issues raised by the Authority. For example:
    - i) Mr McIntosh did not disclose material tending to reveal the role and influence of Mr Reches (to whom Millburn had delegated a limited

authority) particularly regarding the negotiation, drafting and signing of the Reinsurance Treaty; and

- ii) by not being open and co-operative with the Authority, Mr McIntosh did not disclose material which suggested that Balva, and Mr Reches, believed the Reinsurance Treaty to be in force. Mr McIntosh selectively and deliberately disclosed only material which suggested that the Balva did not believe the Reinsurance Treaty was in force.

105. The Authority considers Mr McIntosh's failings to be particularly serious because they:

- a) concealed serious failings in Millburn's systems and controls, particularly regarding the influence and activities of Mr Reches who signed the Reinsurance Treaty, purportedly acting on behalf of Millburn;
- b) avoided further scrutiny (which may have resulted in further regulatory action at that time) into the circumstances surrounding the Reinsurance Treaty and the insurance arrangements of Millburn and Balva. Both firms have now been declared to be in default by the FSCS; and
- c) prevented the Authority from having all relevant information in order to respond fully to a request from the FCMC, which was investigating the validity of the Reinsurance Treaty.

106. Had the Authority been provided with all relevant information regarding the communications between Millburn and Balva regarding the Reinsurance Treaty, it may have taken regulatory action at that time in respect of Millburn's systems and controls failings and/or the role of Mr Reches, in order to protect consumers.

#### **Lack of fitness and propriety**

107. The relevant sections of FIT are set out in Annex A to this Notice. FIT 1.3.1G states that the Authority will have regard to, among other things, a person's honesty and integrity, and competence and capability, when assessing the fitness and propriety of a person to perform a particular controlled function. As a result of the failings described above, the Authority considers that Mr McIntosh's conduct has fallen short of minimum regulatory standards and that he is not a fit and proper person to carry out any controlled function.

108. In particular, Mr McIntosh's conduct demonstrates a lack of honesty and integrity in respect of:

- a) his recklessness in failing to prevent Aderia signing BAAs, without authority;
- b) his providing the Authority with an inaccurate and misleading responses in relation to questions posed by the Authority regarding the existence of written communications between Millburn and Balva regarding the Reinsurance Treaty; and
- c) his general failure to be open and cooperative with the Authority.

109. In addition, Mr McIntosh's failure to take reasonable steps to ensure that Aderia complied with the relevant requirements and standards of the regulatory system demonstrates a lack of competence and capability.

## **The Authority's objectives**

110. This action supports the Authority's operational objectives of protecting consumers and the integrity of the UK financial system. It emphasises the need for approved persons in the retail distribution chain to ensure that adequate steps are taken to satisfy themselves that robust and effective arrangements are in place to mitigate risks to customers and to treat them fairly. It also emphasises the requirement for regulated entities to provide accurate information to the Authority and to deal with the Authority in an open and cooperative way.
111. This action recognises that failure by one or more firms to comply with regulatory requirements that safeguard consumers and/or protect market integrity can distort competition. Tackling conduct failures (such as those detailed in this Final Notice) in order to ensure firms act with integrity, implement appropriate systems and controls, and arrange adequate protection for client assets, therefore supports the Authority's operational objective to promote effective competition in the interests of consumers.

## **SANCTION**

### **Financial penalty**

112. 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.
113. The application of the Authority's penalty policy is set out in Annex B to this Notice in relation to:
  - a) Mr McIntosh's breaches of Statements of Principle 1 and 7 in respect of his conduct at Coverall; and
  - b) Mr McIntosh's breach of Statement of Principle 4 in respect of his conduct at Millburn.
114. In determining the financial penalty to be attributed to Mr McIntosh's misconduct, the Authority had particular regard to the following matters as applicable to his conduct at Coverall and his conduct at Millburn:
  - a) the need for credible deterrence;
  - b) the nature, seriousness and impact of the breaches;
  - c) the risk of consumer detriment as a result of Mr McIntosh's failings;
  - d) the extent to which the breaches were deliberate or reckless; and
  - e) any applicable settlement discount for agreeing to settle at an early stage of the Authority's investigation.
115. The Authority therefore imposes a total financial penalty of £51,600 on Mr McIntosh, comprising:

- a) a penalty of £23,900 relating to Mr McIntosh's breaches of Statements of Principle 1 and 7 in respect of his conduct at Coverall; and
- b) a penalty of £27,700 relating to Mr McIntosh's breach of Statement of Principle 4 in respect of his conduct at Millburn.

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

116. The Authority has had regard to the guidance in Chapter 9 of EG (the relevant provisions of which are set out in Annex A to this notice) and considers that it is appropriate and proportionate in all the circumstances to:
- a) withdraw Mr McIntosh's CF1 (Director), CF11 (Money Laundering Reporting) and CF28 (Systems and Controls) controlled functions at Coverall; and
  - b) make an order prohibiting Mr McIntosh from performing any controlled function in relation to any regulated activity carried on by a FCA-authorized person or by an exempt person or exempt professional firm in respect of any FCA-regulated activity.
117. Given the nature and seriousness of the failures outlined above, the Authority considers that Mr McIntosh's conduct demonstrated a serious lack of integrity, and competence and capability, for an individual performing controlled functions such that he is not fit and proper to perform any controlled function in relation to any regulated activity carried on by a FCA-authorized person or by an exempt person or exempt professional firm in respect of any FCA-regulated activity. Therefore, in the interests of consumer protection, the Authority withdraws Mr McIntosh's approvals to perform controlled functions at Coverall and imposes a prohibition order on Mr McIntosh in the terms set out above.

### **PROCEDURAL MATTERS**

#### **Decision maker**

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

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

120. The financial penalty must be paid in two instalments by Mr McIntosh to the Authority, as follows:
- a) £24,790 to be paid by no later than 15 February 2016, 14 days from the date of the Final Notice; and
  - b) £26,810 to be paid on 25 April 2016.

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

121. If any, or any part of, an instalment is outstanding on the day after it is due to be paid to the Authority (in accordance with paragraph 120 above), the Authority may recover the full outstanding amount of the financial penalty as a debt owed

by Mr McIntosh and due to the Authority.

**Publicity**

122. 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. 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.
123. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

**Authority contacts**

124. For more information concerning this matter generally, contact Paul Howick at the Authority (direct line: 020 7066 7954 / email: [paul.howick@fca.org.uk](mailto:paul.howick@fca.org.uk)) of the Enforcement & Market Oversight Division of the Authority.

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**Bill Sillett**

**Financial Conduct Authority, Enforcement and Market Oversight Division**

## ANNEX A

### RELEVANT STATUTORY AND REGULATORY PROVISIONS

#### RELEVANT STATUTORY PROVISIONS

1. The Authority's statutory objectives, set out in section 1B(3) of the Act, include the consumer protection and integrity objectives.
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.
3. Section 63 of the Act provides that the Authority may withdraw an approval given under section 59 of the Act if it considers that the person in respect of whom it was given is not a fit and proper person to perform the function to which the approval relates. When considering whether to withdraw its approval, the Authority may take into account any matter which it could take into account if it were considering an application made under section 60 in respect of the performance of the function to which the approval relates.
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 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.

#### RELEVANT REGULATORY PROVISIONS

##### Statements of Principle and Code of Practice for Approved Persons

5. The Authority's Statements of Principle and Code of Practice for Approved Persons ("APER") have been issued under section 64 of the Act.
6. Statement of Principle 1 states:  
  
*"An approved person must act with integrity in carrying out his accountable functions."*
7. Statement of Principle 4 states:

*"An approved person must deal with the FCA, the PRA and other regulators in an open and cooperative way and must disclose appropriately any information of which the FCA or the PRA would reasonably expect notice."*



8. 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."*

9. 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**

10. 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.
11. 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**

12. The Authority's policy in relation to prohibition orders and withdrawal of approval is set out in Chapter 9 of the EG.
13. 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.

### **DEPP**

14. 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.

### **CASS**

15. CASS, in the Authority's Handbook, sets out the Authority's requirements in relation to holding client assets and client money.
16. CASS 5.5.3 R states:
- "A firm must, except to the extent permitted by CASS 5.5, hold client money separate from the firm's money."*
17. CASS 5.5.5R states:

*"A firm must segregate client money by either:*

- (1) paying it as soon as is practicable into a client bank account; or*
- (2) paying it out in accordance with CASS 5.5.80 R."*

18. CASS 5.5.19 R states:

*"A firm must establish and maintain procedures to ensure that client money received by its appointed representatives, field representatives, or other agents of the firm is:*

- (1) paid into a client bank account of the firm in accordance with CASS 5.5.5 R; or*
- (2) forwarded to the firm, or in the case of a field representative forwarded to a specified business address of the firm, so as to ensure that the money arrives at the specified business address by the close of the third business day."*

19. CASS 5.5.20 G states:

*"For the purposes of CASS 5.5.19 R, the client money received on business day one should be forwarded to the firm or specified business address of the firm no later than the next business day after receipt (business day two) in order for it to reach that firm or specified business address by the close of the third business day. Procedures requiring the client money to be sent to the firm or the specified business address of the firm by first class post no later than the next business day after receipt would meet the requirements of CASS 5.5.19 R."*

20. CASS 5.5.21 R states:

*"If client money is received in accordance with CASS 5.5.19 R, the firm must ensure that its appointed representatives, field representatives or other agents keep client money (whether in the form of premiums, claims money or premium refunds) separately identifiable from any other money (including that of the firm) until the client money is paid into a client bank account or sent to the firm."*

21. CASS 5.5.23 R states:

*"(1) A firm must, on a regular basis, and at reasonable intervals, ensure that it holds in its client bank account an amount which (in addition to any other amount which it is required by these rules to hold) is not less than the amount which it reasonably estimates to be the aggregate of the amounts held at any time by its appointed representatives, field representatives, and other agents.*

*(2) A firm must, not later than ten business days following the expiry of each period in (1):*

*(a) carry out, in relation to each such representative or agent, a reconciliation of the amount paid by the firm into its client bank account with the amount of client money actually received and held by the representative or other agent; and*

*(b) make a corresponding payment into, or withdrawal from, the account."*

22. CASS 5.5.34 R states:

*"A firm may allow another person, such as another broker to hold or control client money, but only if:*

- (1) the firm transfers the client money for the purpose of a transaction for a client through or with that person; and*
- (2) in the case of a consumer, that customer has been notified (whether through a client agreement, terms of business, or otherwise in writing) that the client money may be transferred to another person."*

**ANNEX B**  
**PENALTY ANALYSIS**

1. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In respect of any misconduct 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.
2. The application of the Authority's penalty policy is set out below in relation to:
  - a) Mr McIntosh's breaches of Statements of Principle 1 and 7 in respect of his conduct at Coverall; and
  - b) Mr McIntosh's breach of Statement of Principle 4 in respect of his conduct at Millburn.

**MR MCINTOSH'S BREACHES OF STATEMENTS OF PRINCIPLE 1 AND 7**

**Step 1: Disgorgement**

3. 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. The Authority has not identified any personal financial benefit that Mr McIntosh derived directly from the breach.
4. Step 1 is therefore £0.

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

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. The Authority considers Mr McIntosh's relevant income during the Coverall Relevant Period to be £24,833.
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%
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.

9. DEPP 6.5B.2G(12) lists factors likely to be considered 'level 4 or 5 factors'. Of these the Authority considers the following factors to be relevant:
  - a) Mr McIntosh's failings meant that potential policyholders were exposed to the risk that Coverholders would issue Solicitors' PII policies purportedly underwritten by Berliner when Berliner was not bound to provide such cover. Potential policyholders were therefore at risk of holding themselves out as covered by business critical Solicitors' PII provided by Berliner when this was not the case. Without valid Solicitors' PII, those firms would be unable legitimately to practise (DEPP 6.5B.2G(8)(c));
  - b) Balva's policyholders were exposed to the significant risk that they would be dependent on compensation from the FSCS in the event of Balva's failure, since its MGA, Aderia, did not adequately protect policyholders' premiums and made disbursements, including to parties other than Balva, for purposes unconnected with Balva's policies. Following Balva entering administration, the FSCS has paid over £3.8 million in respect of Solicitors' PII policies and estimates its future liability to be £10 million. Not all policyholders are able to recover funds under the FSCS compensation scheme and those that can recover receive 90% of the sums lost. Although loss to individual consumers has not been identified or quantified at this stage, policyholders have therefore suffered some consumer detriment as a result of Mr McIntosh's breaches (DEPP 6.5B.2G(8)(c));
  - c) Mr McIntosh's breach in respect of oversight of Aderia's compliance with CASS 5 and his failure to ensure that Shay Reches' actions were subject to effective control increased the scope for potential financial crime to be facilitated, occasioned or otherwise occur (DEPP 6.5B.2G(9)(d)); and
  - d) The Authority considers that Mr McIntosh's breach of Statement of Principle 1 was committed recklessly as Mr McIntosh appreciated at the time that there was a risk that his inaction could result in a breach and he failed adequately to mitigate that risk (DEPP 6.5B.2G(9)(e)).
10. The Authority also considers that the following factors are relevant:
  - a) The Authority has not identified any direct or indirect benefit to Mr McIntosh, or loss avoided, as a result of his misconduct (DEPP 6.5B.2G(8)(a));
  - b) There was the potential for an adverse impact on the Solicitors' PII market and the confidence of consumers in that market was damaged and/or put at risk (DEPP 6.5B.2G(8)(f));
  - c) Mr McIntosh allowed Aderia to enter into 10 BAAs, between May and June 2013, prior to having authority to do so from Berliner. Numerous other contractual arrangements were entered into by Aderia during the Coverall Relevant Period without oversight or review by Mr McIntosh due to the lack of systems and controls in place (DEPP 6.5B.2G(9)(b));
  - d) Mr McIntosh held a senior position at Coverall. He has over 50 years' experience in the insurance industry and his prior experience includes management roles (DEPP 6.5B.2G(9)(j) and (k));

- e) Mr McIntosh was solely responsible for the oversight of Aderia on behalf of Coverall (DEPP 6.5B.2G(9)(l)); and
  - f) the steps Mr McIntosh took to comply with the Authority's rules in respect of oversight of Aderia and ensuring Mr Reches's actions were subject to effective control were not adequate in the circumstances (DEPP 6.5B.2G(9)(n)).
11. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 4 and so the Step 2 figure is 30% of £24,833.
  12. Step 2 is therefore £7,449.

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

13. 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 disgorged at Step 1, to take into account factors which aggravate or mitigate the breach.
14. The Authority does not consider there to be any factors that mitigate the breach.
15. The Authority considers that the following factor aggravates the breach:
  - (i) The Authority has previously issued guidance to firms regarding a principal's responsibilities in respect of its ARs. In particular, the Authority issued a factsheet for the senior management of small firms on 1 August 2011 entitled, '*Your responsibility over appointed representatives*'. Further, the Authority has issued guidance on how insurance intermediaries should comply with CASS 5, which includes sections on the requirements for effective risk transfer arrangements and client money handled by ARs.
16. Having taken into account this aggravating factor, the Authority considers that the Step 2 figure should be increased by 15%.
17. Step 3 is therefore £8,566.

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

18. Pursuant to DEPP 6.5B.4G, at Step 4 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.
19. The Authority considers that the Step 3 figure of £8,567.50 does not represent a sufficient deterrent to Mr McIntosh and others, and so has increased the penalty at Step 4. This is because the Authority considers the absolute value of the penalty too small in relation to the breach to meet its objective of credible deterrence (DEPP 6.5B.4G(a)). The Authority has therefore increased the Step 3 figure by a multiple of 4.
20. Step 4 is therefore £34,265.

### **Step 5: settlement discount**

21. 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 state at which the Authority and Mr McIntosh reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.
22. The Authority and Mr McIntosh reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.
23. Step 5 is therefore £23,900.

### **MR MCINTOSH'S BREACHES OF STATEMENT OF PRINCIPLE 4**

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

24. 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. The Authority has not identified any financial benefit that Mr McIntosh derived directly from the breach.
25. Step 1 is therefore £0.

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

26. 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.
27. The period of Mr McIntosh's conduct at Millburn was from 3 January 2013 to 9 August 2013. As the breach lasted less than a year, Mr McIntosh's relevant income will be the gross amount received during the 12 months preceding the end of the breach. The Authority considers Mr McIntosh's relevant income for this period to be £25,440.
28. 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%
29. In assessing the seriousness level of Mr McIntosh's breach, the Authority considers that the following factors to be relevant, which reflect the impact and nature of the breach and whether it was committed deliberately or recklessly.

30. DEPP 6.5B.2G(10) lists factors tending to show the breach was deliberate and DEPP 6.5B.2G(12) lists factors likely to be considered 'level 4 or 5 factors'. Of these the Authority considers the following factors to be relevant:
- a) The Authority considers that Mr McIntosh's breach was deliberate in that he must have foreseen that the potential consequences of his actions would result in a breach of Statement of Principle 4 (DEPP 6.5B.2G(10)(a) and DEPP 6.5B.2G(12)(g));
  - b) Mr McIntosh committed the breach in such a way as to avoid or reduce the risk that the breach would be discovered (DEPP 6.5B.2G(10)(e));
31. The Authority also considers that the following factors are relevant:
- a) The impact of the breach was such that Mr McIntosh avoided further scrutiny regarding the circumstances surrounding the Reinsurance Treaty, Balva's belief that it was in force and the role, influence and actions of Mr Reches. Had the Authority been provided with all relevant information, it may have taken regulatory action at that time in respect of Millburn's systems and controls failings and/or the role of Mr Reches, in order to protect consumers (DEPP 6.5B.2G(8)(a));
  - b) The breach was repeated during the Millburn Relevant Period (DEPP 6.5B.2G(9)(b));
  - c) Mr McIntosh held a senior position at Millburn. He has over 50 years' experience in the insurance industry and his prior experience includes management roles (DEPP 6.5B.2G(9)(j) and (k)); and
  - d) As CEO at Millburn, Mr McIntosh was the individual responsible at Millburn for communicating with the Authority. Mr McIntosh failed to discharge this responsibility to an appropriate standard (DEPP 6.5B.2G(9)(l)).
32. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 4 and so the Step 2 figure is 30% of £25,440.
33. Step 2 is therefore £7,632.

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

34. 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 disgorged at Step 1, to take into account factors which aggravate or mitigate the breach.
35. The Authority does not consider there to be any factors that mitigate the breach.
36. The Authority considers that the following factors aggravate the breach:
- a) Mr McIntosh failed to bring the breach to the attention of the Authority (DEPP 6.5B.3G(2)(a)); and
  - b) Mr McIntosh took no steps to rectify the breach (DEPP 6.5B.3G(2)(c)).
37. Having taken into account these aggravating factors, the Authority considers that the Step 2 figure should be increased by 30%.



38. Step 3 is therefore £9,921.

**Step 4: adjustment for deterrence**

39. Pursuant to DEPP 6.5B.4G, if at Step 4 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.

40. The Authority considers that the Step 3 figure of £9,922 does not represent a sufficient deterrent to Mr McIntosh and other senior individuals holding significant influence functions at insurance companies from failing to cooperate with, or from misleading, the Authority and other regulators. This is because the Authority considers the absolute value of the penalty too small in relation to the breach to meet its objective of credible deterrence (DEPP 6.5B.4G(a)). The Authority has therefore increased the Step 3 figure by a multiple of 4.

41. Step 4 is therefore £39,684.

**Step 5: settlement discount**

42. Pursuant to DEPP 6.5B.5G, if the Authority and Mr McIntosh, 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 state at which the Authority and Mr McIntosh reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

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

44. Step 5 is therefore £27,700.

**Total Financial Penalty**

45. The Authority therefore imposes on Mr McIntosh a total financial penalty of £73,949 (comprising £34,265 in respect of his misconduct at Coverall, and £39,684 in respect of his misconduct at Millburn).

46. Applying the 30% (stage 1) settlement discount, the Authority imposes on Mr McIntosh a total financial penalty of £51,600 (comprising £23,900 in respect of his misconduct at Coverall, and £27,700 in respect of his misconduct at Millburn).