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**FINAL NOTICE**

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To: **Mr Christopher Willford**

Individual Reference Number: **CXW01232**

11 December 2013

1. **ACTION**

1.1. For the reasons listed below, and pursuant to section 66 of the Financial Services and Markets Act 2000 ("the Act"), the FCA hereby imposes a financial penalty of £30,000 on Mr Willford for breaching Principle 6 of the FCA's Statements of Principle for Approved Persons ("APER").

2. **REASONS FOR THE ACTION**

**Summary of conduct**

2.1. The FCA has decided to take this action as a result of Mr Willford's conduct in his performance of the CF1 Director function as Group Finance Director at Bradford & Bingley plc ("BBG"). Mr Willford was responsible for leading the finance function at BBG, including oversight of the production of financial forecasts and overseeing the production of financial reports. As Group Finance Director he was also responsible for escalating relevant information to the Executive Committee

("ExCo") and the Board, and advising ExCo and the Board accordingly. His responsibilities did not change during the rights issue announced on 14 May 2008 ("the rights issue").

2.2. Between 16 May 2008 and 19 May 2008 ("the Relevant Period"), Mr Willford's conduct fell short of the FCA's regulatory standards for approved persons. In breach of Principle 6 of APER he failed to:

- (1) have proper regard to the available financial information, and its relevance to the aborted rights issue; and
- (2) advise appropriately the Board of BBG.

2.3. In particular, Mr Willford:

- (1) did not adequately review the financial information he received on 16 May 2008, and as a result he failed to appreciate from his review of the draft April 2008 Group Results pack and mortgage impairment paper that those documents indicated a possible material change in the financial outlook of BBG.
- (2) did not, prior to authorising the release of a circular of 19 May 2008 in connection with the rights issue ("the Circular"):
  - (a) adequately advise the Board of the deteriorating financial outlook of BBG;
  - (b) ensure the draft April 2008 Group Results pack and the mortgage impairment paper (or an analysis of these) were available for consideration by the Board; and
  - (c) ensure that any necessary follow up work to confirm the recent financial performance of BBG, and the outlook for its future performance, was urgently carried out and completed prior to authorising the release of the Circular; or alternatively defer release of the Circular until such work had been done.

2.4. Mr Willford's failures in this regard are serious because:

- (1) as the Group Finance Director of a large retail bank and a senior and experienced finance professional, Mr Willford was expected to understand and take full account of his responsibilities for overseeing financial reporting, and for advising the Board in relation to finance matters;
- (2) the conduct of the rights issue was of great importance to BBG, particularly in light of the difficult market conditions and the increased press speculation about BBG after it was forced in April 2008 to deny that it was considering a rights issue. It was, therefore, important that Mr Willford ensured that the Board was advised properly regarding the substance and significance of this information.

2.5. The FCA has decided that Mr Willford's failures merit the imposition of a financial penalty. In deciding upon the level of disciplinary sanction, the FCA has taken account of a number of factors, including that:

- (1) the relevant events occurred during a time of wider financial crisis, during a time of great pressure on BBG, and in particular on both Mr Willford and the finance function;
- (2) the degree of pressure on Mr Willford was exacerbated in May 2008 by the serious illness of BBG's CEO during the Relevant Period, which led to him stepping down from his position due to ill health on 1 June 2008;
- (3) other senior individuals in the BBG finance function who had access to the same information as Mr Willford received on 16 May 2008 also came to the conclusion that without further investigation it did not of itself indicate a significant deterioration in BBG's outlook; and
- (4) Mr Willford's failures did not result in a trading update amounting to a profits warning having to be issued by BBG on 2 June 2008, and they did not cause or contribute to the failure of the rights issue or BBG's subsequent nationalisation.

### 3. **RELEVANT STATUTORY PROVISIONS**

- 3.1. The FCA's regulatory objectives, set out in Part 1A section 1C, 1D and 1E of the Act, include protecting and enhancing the integrity of the UK financial system.
- 3.2. The UK financial regulator at the time of the Relevant Period was the Financial Services Authority ("FSA"). On 1 April 2013 the FSA became the Financial Conduct Authority ("FCA"). In this notice the term "FCA" is used throughout to mean both the FCA and, in the period prior to 1 April 2013, the FSA.
- 3.3. Under section 66(1) of the Act, the FCA may impose a financial penalty on an approved person if he is guilty of misconduct and if the FCA is satisfied that it is appropriate in the circumstances. Section 66(2)(a) provides that a person is guilty of misconduct if, whilst an approved person, he has failed to comply with a statement of principle under section 64(1) of the Act.

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

- 3.4. The relevant FCA Handbook provisions set out at paragraph 3.5 to 3.6 below were the provisions in force during the Relevant Period and are applicable to the conduct described in this notice. These provisions have since been amended and the new provisions came into force on 1 April 2013.
- 3.5. The FCA's Statements of Principle and Code of Practice for Approved Persons are issued by the FCA pursuant to section 64 of the Act.
- 3.6. Statement of Principle 6 during the Relevant Period stated that:  
  
*"An approved person must exercise due skill, care and diligence in managing the business of the firm for which he is responsible."*
- 3.7. Relevant guidance on the statutory provisions and the FCA's policy which applied during the Relevant Period is set out in Appendix A.

### 4. **FACTS AND MATTERS**

- 4.1. BBG was a specialist retail mortgage and savings bank authorised by the FSA and then the FCA since December 2001.

### **The Interim Management Statement**

- 4.2. On 21 April 2008, the Board approved a forecast for BBG's future performance referred to as the "Three Year Plan".
- 4.3. On 22 April 2008, BBG issued an Interim Management Statement (the "IMS"). The IMS was based on BBG's current position, as understood from the March 2008 Group Results, and the Board's view of BBG's likely future performance, as encapsulated in the Three Year Plan. Consistent with market practice, the IMS did not include any trading figures, nor were any trading figures disclosed during the course of the accompanying conference call held with market analysts. The messages contained in the IMS and conference call were intended to be downbeat, and to identify that BBG's achievable net interest margin was being reduced, and that rates of mortgage arrears were increasing.

### **The rights issue**

- 4.4. On 2 May 2008, BBG received advice that if it was to undertake a successful capital raising it needed to announce a rights issue as soon as possible.
- 4.5. Following a meeting of ExCo on 8 May 2008, and a Board meeting on 9 May 2008, BBG decided, consistent with the professional advice it had received, to proceed with a rights issue. The Board formally approved the rights issue at a Board meeting on 13 May 2008. The rights issue was based on the financial forecasts contained in the Three Year Plan.
- 4.6. The rights issue was announced on 14 May 2008. The announcement also stated that "Trading continues in line with the Interim Management Statement released on 22 April 2008."
- 4.7. Work was undertaken, starting before the public announcement of the rights issue on 14 May 2008, to prepare the Circular that would in due course be sent to all BBG shareholders, notifying them of an EGM in connection with the rights issue. That work included input from external advisers, underwriting banks, the UKLA and the FCA.

### **The financial information received by Mr Willford on Friday 16 May 2008**

- 4.8. At 08:48 on Friday 16 May 2008 Mr Willford received, by email, the draft April 2008 Group Results pack. During a conference call at approximately 09:00 on the same day, he discussed the draft April 2008 Group Results pack with the finance team.
- 4.9. It was apparent from the draft April 2008 Group Results pack that:
- (1) the estimated mortgage impairment charge for the 2008 year-to-date was £35.7 million, being 63% of the forecast yearly impairment charge in the Three Year Plan of £56.5m;
  - (2) total arrears over three months and possessions (as a proportion of the total) had risen to 2.16% (from 2.00% in March 2008, 1.89% in February 2008, 1.80% in January 2008 and 1.63% in December 2007);
  - (3) net interest margin had fallen to 0.90% (as compared with 1.06% for March 2008, 0.93% for February 2008 and 1.03% for January 2008); and
  - (4) the underlying profit before tax for the four months to April 2008 was £61.8 million, being only 24.3% of the full-year forecast contained in the Three Year Plan for the underlying profit before tax (£254.4m), and therefore indicating that BBG might struggle to achieve that forecast. The year to date mortgage impairment charge therefore had a material impact on the underlying profit before tax.
- 4.10. At 16:17 on Friday 16 May 2008 Mr Willford received, by email from the finance team, a paper containing a provisional full year impairment forecast ("the mortgage impairment paper"). The covering email, and this paper stated that the provisional full year impairment forecast was £106 million. This was £49.5 million above the forecast of £56.5 million contained in the Three Year Plan.
- 4.11. Together, the draft April 2008 Group Results pack and the mortgage impairment paper indicated a possible material change in BBG's financial outlook. A decision on whether a material deterioration had in fact occurred was a decision for BBG's Board. However, Mr Willford failed formally and urgently to escalate the

information available to him, so that the Board could consider it before the Circular was formally approved on 19 May 2008.

### **The approval of the 19 May Circular**

4.12. Following the announcement of the rights issue on 14 May 2008, work was undertaken to finalise (on 16 May 2008) the text of a Circular, to be sent to all BBG shareholders, notifying them of an EGM on 16 June 2008 at which they would be asked to vote on the rights issue.

4.13. At 09:25 on 19 May, acting under a delegated authority from the Board, Mr Willford and the Chief Executive met to approve the issuance of the Circular.

4.14. The Circular contained the following statement:

*"The Company released its Interim Management Statement on 22 April 2008 in respect of the first quarter of 2008; there has been no material change in the current trading and outlook of the Company since then".*

4.15. The delegated authority was subject to the following conditions:

*"11.10.1 that the Board be provided promptly with such information as may be necessary or desirable in the opinion of the Committee to enable the Board to monitor the conduct of the Committee;*

*11.10.2 that the Board be provided promptly with*

*(A) copies of all documents and announcements issued by or on behalf of the Company which bear on the Rights Issue [or proposed transactions]; and*

*(B) details of any agreements, expenditure (including fees) or other obligations entered into or incurred by or on behalf of the Company in the context of the Rights Issue [or the transactions] which do not relate to routine administrative matters;*

*11.10.3 that the Committee's members ensure that they are in a position to justify their actions and proposed courses of action; and*

11.10.4 *that the opinions of the Company's professional advisers be made available to the Board where appropriate".*

4.16. The Verification Notes were prepared with the assistance of external legal and professional advisers to record the steps taken to verify the key facts and bases for expressions of opinion and intention contained in the Circular. The Verification Notes, which were not to be made public, but were instead intended for BBG's own internal use, stated:

*"5. [t]he Verification Notes are designed to protect the Company, the Directors and others involved in the drafting of the Circular. In addition to examining the truth and accuracy of statements in the Circular, the Verification Notes draw attention to the implications which might be drawn from those statements and are designed to ensure that:*

*(a) no statement in the Circular is misleading in the form and context in which it is included and no incorrect or inaccurate statement is included by default (because each person engaged in the preparation of the Circular believes that some other person has checked it);*

*(b) no material facts are omitted which make any statement of fact or opinion in the Circular untrue; and*

*(c) the inferences which might reasonably be drawn from the statements in the Circular are true.*

...

*7. ... It is important that the whole of the Circular is carefully considered and approved by the appropriate individuals and, in particular, by the Directors, bearing in mind the standard of care required of them under general law for the contents of the Circular.*

*8. ... It is ... important that each Director should appreciate that he takes individual responsibility as well as collective responsibility with other Directors for ensuring that all material facts in relation to the Company are disclosed in the Circular."*

4.17. The Verification Notes further stated:

|     |  |        |   |   |
|-----|--|--------|---|---|
| 44. | Please confirm and provide evidence that there has been no material change in the current trading and outlook of the Company since the release of the Interim Management Statement | Page 8 | Directors<br><br>Internal responsibility:<br><br>Chris Willford | The Directors have so confirmed by their (or their attorney's) signature of these verification notes. |
|-----|--|--------|---|---|

4.18. Following legal advice, Mr Willford signed the Verification Notes on behalf of himself, and on behalf of all the other Directors apart from the Chief Executive. Mr Willford did not provide any evidence that there had been no material change in the current trading and outlook of BBG since the release of the IMS.

4.19. The issuance of the Circular was approved by Mr Willford and the Chief Executive.

4.20. The Board was not formally advised, prior to the approval of the Circular and signature of the Verification Notes, of any concerns arising from either the draft April 2008 Group Results pack or the mortgage impairment paper.

**Meeting of ExCo on 20 May 2008**

4.21. Following the approval of the Circular, a pack of materials was circulated to ExCo ahead of its meeting the next day (which Mr Willford was unable to attend). Those materials contained a revised pack of draft April 2008 group results, in which the estimate for year-to-date underlying profit before taxation was £55.7m (compared to the figure of £61.8m included in the version provided to Mr Willford on 16 May 2008) together with a summary of the mortgage impairment paper.

4.22. At the ExCo meeting on 20 May it was agreed that further work should be undertaken (a) to assess the likely full-year outturn, and (b) to assess the need to include further information regarding arrears and trading in the rights issue prospectus, due to be signed off by the Board around 2 June 2008.

4.23. Following the ExCo meeting, BBG's Chief Executive held a discussion with the Chairman, in which it was agreed that, in light of the further disclosures to be made in the rights issue prospectus, it was necessary to schedule a Board meeting for 27 May 2008 so that the Board could discuss (a) the latest version of the prospectus, including any further disclosures, (b) the progress of the rights issue, and (c) current trading. Mr Willford was involved in the work undertaken following the ExCo meeting to establish what further disclosures would be required in the rights issue prospectus.

#### **The 22 May 2008 cost of funds paper**

4.24. On 22 May 2008, ahead of the meeting of the Income Planning committee that was scheduled to take place the next day, the finance team circulated, to Mr Willford and a number of other executive Directors, a draft analysis of BBG's cost of funds ("the cost of funds paper"). The cost of funds paper showed that BBG was experiencing an imbalance between new savings business and new mortgage lending business as BBG could not pass on the increased cost of borrowing funds to mortgage customers. The result was that net interest margin was adversely affected, with a direct impact on underlying profit.

4.25. The report stated that BBG's cost of funding had increased, and was *"84bps higher than pre credit crunch and 19bps higher than the projections used for the April 1st paper, being an increased cost of £48m since the April 1 exercise."*

4.26. A set of actions were agreed at the Income Planning committee meeting on 23 May 2008, which included the production of a summary version of the cost of funds paper for presentation to the Board. The pricing of BBG's various savings and lending products was not a matter for which Mr Willford had oversight responsibility.

#### **Board Meeting on 27 May 2008**

4.27. Over the Bank Holiday weekend of 24 to 26 May 2008, Mr Willford, the Group Financial Controller and his team worked on a revised profit forecast, before discussing it together on the evening of 26 May 2008. At the 27 May 2008 Board meeting, following discussion of the Board's views on the key factors affecting BBG's future performance, the Board was provided with a provisional estimate of

£150-180 million for the revised profit forecast for 2008, subject to further work in forecasting net interest margin.

- 4.28. Following consideration of the available information, including the draft April 2008 Group Results pack, the cost of funds paper, the change in management's view of the forecast for arrears and impairment, together with consideration of the deteriorating macroeconomic outlook, the Board concluded that the outlook for BBG's financial performance had diverged from the Three Year Plan. On that basis, the Board requested that work be undertaken to draft additional disclosures on trading and outlook for the rights issue prospectus, for the Board's consideration.

### **Trading update**

- 4.29. In the days immediately following the 27 May 2008 Board meeting, work was undertaken to draft the additional disclosures. This work was undertaken in consultation with the FCA, at a meeting on 28 May 2008, and the rights issue underwriters. The FCA recognises that Mr Willford was involved in that work.
- 4.30. A trading update was announced on 2 June 2008, accompanied by the announcement of a restructured rights issue. Although some of the information said to underlie the trading update was not available to Mr Willford at the time of the failures identified in this notice, Mr Willford's failure when reviewing the information available to him to draw appropriate conclusions and escalate the information for urgent Board consideration meant that the Board learned of certain important information later than should have been the case.

## **5. CONCLUSIONS**

- 5.1. The FCA does not consider that Mr Willford met the standards required of a person in his position as Group Finance Director in relation to the matters described in paragraph 5.2 below during the Relevant Period. As the holder of CF1 Director function Mr Willford was subject to an obligation to exercise due skill, care and diligence in managing the business of BBG.
- 5.2. In order to discharge his obligations as the Group Finance Director of BBG, Mr Willford was required:

- (1) to ensure that he fully considered the relevant financial information, escalated promptly any necessary financial information to the Board, and advised the Board appropriately; and
  - (2) when approving the release of the Circular, to ensure that the contents of the Circular, for which he was responsible, were accurate, including ensuring that the Verification Notes, in relation to those contents were carefully considered and complied with.
- 5.3. In performing his controlled functions, Mr Willford's conduct fell short of the FCA's regulatory standard for Approved Persons. He failed to take a sufficiently proactive approach in relation to the emerging information throughout the relevant period. In doing so he failed to recognise the changes in the financial information provided to him on 16 May 2008, which indicated a possible material change in BBG's financial outlook.
- 5.4. Mr Willford breached Principle 6 of the FCA's Statements of Principle for Approved Persons in that he failed to exercise due skill, care and diligence in managing the business of BBG for which he was responsible in his controlled function because he:
- (1) failed to appreciate from his review of the draft April 2008 Group Results pack and mortgage impairment paper, both of which he received on 16 May 2008, that they indicated a possible material change in the financial outlook of BBG; and
  - (2) did not, prior to authorising the release of the Circular:
    - (a) adequately advise the Board of the deteriorating financial outlook of BBG;
    - (b) ensure the available financial information in relation to the April 2008 Group Results and the mortgage impairment paper (or an analysis of these) were available for consideration by the Board; and

- (c) ensure that any necessary follow up work to confirm the recent financial performance of BBG, and the outlook for its future performance, was urgently carried out and completed prior to authorising the release of the Circular; or alternatively defer release of the Circular until such work had been done.

**Failure adequately to review the financial information received on 16 May 2008**

- 5.5. Mr Willford failed to identify that the information contained in the draft April 2008 Group Results pack and mortgage impairment paper that he received on 16 May 2008 indicated a possible material change in the financial outlook of BBG.
- 5.6. In particular, BBG's financial outlook had diverged considerably from the position set out in the Three Year Plan. The mortgage impairment paper indicated mortgage impairment increasing to an amount that would, if proven correct, have a material negative impact on BBG's profit. It is accepted that the mortgage impairment paper was not finalised, and further work was required. However, the provisional full year impairment forecast of £106 million indicated that the profit forecasts in the Three Year Plan were unlikely to be achieved.

**Failure to advise the Board, prior to the signing of the Circular and the Verification Notes, of the deteriorating financial outlook of BBG and to ensure that any necessary follow up work to confirm the recent financial performance of BBG, and the outlook for its future performance, was urgently carried out**

- 5.7. Mr Willford did not advise the Board, prior to the signing of the Circular and the Verification Notes, of the possible material change in BBG's financial outlook, as indicated by the draft April 2008 Group Results pack and the mortgage impairment paper.
- 5.8. At this time the Board had not received the draft April 2008 Group Results pack or the mortgage impairment paper and Mr Willford failed to ensure that these documents (or an analysis of these) were available for consideration by the Board prior to the signing of the Circular and the Verification Notes.

- 5.9. The Board should have been formally advised or made aware of the deterioration in BBG's financial outlook in order that they could review the position and decide whether to issue the Circular, or to delay it in light of such deterioration.
- 5.10. In addition, under the terms of the delegated authority pursuant to which Mr Willford, and the Chief Executive, were authorised as a committee ("the Committee") to approve the issue of the Circular and sign the Verification Notes, the Board was to be advised with such information as may be necessary or desirable in the opinion of the Committee to enable the Board to monitor the conduct of the Committee. The deterioration in BBG's financial outlook was information that it was necessary for the Board to have in order to monitor the conduct of the Committee.

**Mr Willford's approval of the issue of the Circular and his signature of the Verification Notes**

- 5.11. In consequence of the above failings, Mr Willford approved the issuance of the Circular, despite the fact that the Circular inaccurately stated that there had been no material change in the outlook of BBG since the issuance of the IMS on 22 April 2008.
- 5.12. As identified in the Verification Notes, Mr Willford was individually responsible for confirming and providing evidence of no material change in the current trading and outlook of the Company since the release of the IMS. In consequence of the above failings, Mr Willford confirmed, by signing the Verification Notes, that there had been no material change in the current trading and outlook of BBG since the date of the IMS.

**Mitigating factors**

- 5.13. There were the following mitigating factors in relation to Mr Willford's failings:
- (1) the FCA's findings are confined to the period between 16 to 19 May 2008 only, a short but intensely busy period of time;
  - (2) the relevant events occurred during a time of wider financial crisis, during a time of great pressure on BBG and in particular on both Mr Willford and the finance function including in relation to the perceived need for the capital raising project to be implemented without delay;

- (3) the degree of pressure on Mr Willford was exacerbated in May 2008 by the serious illness of BBG's CEO, who on 1 June 2008 had to step down from his position due to ill health;
- (4) Mr Willford's failures did not result in a trading update amounting to a profits warning having to be issued by BBG on 2 June 2008 and they did not cause or contribute to the failure of the rights issue or BBG's subsequent nationalisation;
- (5) Mr Willford's role as Group Finance Director of BBG was not confined to the traditional finance function. Mr Willford's responsibilities went beyond a purely financial role, and included legal, group risk, compliance, and group treasury. Mr Willford accepted that he was ultimately responsible for the financial information produced by the finance team. However, responsibility for financial reporting to Mr Willford was held by the Group Financial Controller, whom Mr Willford regarded as wholly trustworthy and reliable and as such Mr Willford felt he could rely on his recommendations to him without further detailed enquiry;
- (6) the Board had considered whether further resources could be brought in to assist Mr Willford with his increased workload arising from the rights issue, but concluded that it would not be feasible to introduce such further resource within the required timescale. This, combined with the absence through illness of BBG's CEO, meant that Mr Willford's workload was significantly increased;
- (7) other senior individuals in the finance function who had access to the same information as Mr Willford received on 16 May 2008 also came to the conclusion that without further investigation it did not of itself indicate a significant deterioration in BBG's outlook;
- (8) certain other Executive Directors on the Board were aware prior to the Relevant Period of certain information suggesting a deterioration in BBG's arrears and savings positions. However, that information was not communicated to Mr Willford prior to the Relevant Period.

## 6. **SANCTION**

- 6.1. The FCA's policy in relation to the imposition of financial penalties is set out in Chapter 6 of the Decision Procedure and Penalties Manual (DEPP) which forms part of the FCA Handbook. In determining the appropriate level of financial penalty, the FCA has had regard to all the relevant circumstances of the case, the factors set out in DEPP 6.5.2G and the factors set out below.

### **Deterrence: DEPP 6.5.2G(1)**

- 6.2. The principal purpose for which the FCA imposes financial penalties is to promote high standards of regulatory conduct by deterring those who have breached regulatory requirements from committing further breaches, helping to deter others from committing similar breaches and demonstrating, generally, the benefits of compliant behaviour.
- 6.3. The breach of APER Principle 6 is sufficiently serious to merit the imposition of a financial penalty and is consistent with the FCA's focus on the conduct of those holding significant influence functions.

### **The nature seriousness and impact of the breach: DEPP 6.5.2G(2)**

- 6.4. The FCA considers that Mr Willford's breach of Statement of Principle 6 is of a serious nature.
- 6.5. As Finance Director, during a rights issue, Mr Willford was personally responsible for ensuring that the Board were appropriately informed and advised during the rights issue of BBG's financial position. It was particularly important, in the difficult financial conditions at that time, that the Board were so informed and advised.
- 6.6. Mr Willford was, or should have been, fully aware of his responsibility, but failed to discharge it properly.
- 6.7. The failings also resulted in an inaccurate statement being made to BBG's shareholders in the Circular. Mr Willford was personally responsible for the accuracy of this statement.

### **The extent to which the breach was deliberate or reckless: DEPP 6.5.2G(3)**

6.8. There is no evidence that the breach was either deliberate or reckless.

**Whether the person on whom the penalty is to be imposed is an individual: DEPP 6.5.2G(4)**

6.9. The FCA has taken into account the fact that as an individual, the imposition of a financial penalty is likely to have a significant impact on Mr Willford. The FCA considers the imposition of a financial penalty to be proportionate and appropriate in relation to the seriousness of his misconduct, especially in view of the seniority of his position at BBG.

**The financial resources and other circumstances of the person: DEPP 6.5.2G(5)**

6.10. There is no evidence to suggest that Mr Willford would be unable to pay the proposed financial penalty.

**The amount of the benefit gained or the loss avoided: DEPP 6.5.2G(6)**

6.11. There is no evidence that Mr Willford financially benefitted from the breach.

**Conduct following the breach: DEPP 6.5.2G(8)**

6.12. The FCA recognises that Mr Willford co-operated with the FCA's investigation.

**Disciplinary record and compliance history: DEPP 6.5.2G(9)**

6.13. The FCA has not previously taken any disciplinary action against Mr Willford.

**Previous action taken by the FCA: DEPP 6.5.2G(10)**

6.14. The FCA seeks to ensure consistency when it determines the appropriate level of penalty and has taken into account previous decisions.

**7. PROCEDURAL MATTERS**

**Decision maker**

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

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

### **Manner of and time for Payment**

- 7.3. The financial penalty must be paid in full by Mr Willford to the Authority by no later than 25 December 2013, 14 days from the date of the Final Notice.

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

- 7.4. If all or any of the financial penalty is outstanding on 26 December 2013, the Authority may recover the outstanding amount as a debt owed by Mr Willford and due to the Authority.

### **Publicity**

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

### **FCA contacts**

- 7.7. For more information concerning this matter generally, contact Matthew Hendin (direct line: 020 7066 0236 / fax: 020 7066 9748) of the Enforcement and Financial Crime Division of the FCA.

**Daniel Thornton**

**Financial Conduct Authority, Enforcement and Financial Crime Division**

## **APPENDIX A**

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

#### **Statutory provisions**

1. The FCA's regulatory objectives, set out in Part 1 section 1C, 1D and 1E of the Act, include protecting and enhancing the integrity of the UK financial system and securing an appropriate degree of consumer protection.
2. Under section 66(1) of the Act, the FCA may impose a financial penalty on an approved person if he is guilty of misconduct and if the FCA is satisfied that it is appropriate in the circumstances. Section 66(2)(a) provides that 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.
3. The relevant FCA Handbook provisions set out below were in force during the Relevant Period and are applicable to the conduct described in this notice. These provisions have since been amended pursuant to the Financial Services Act 2012.

#### **The Statements of Principle for Approved Persons**

4. The FCA's Statements of Principle and Code of Practice for Approved Persons ("APER") is issued by the FCA under section 64 of the Act. Statement of Principle 6 states that:

*"An approved person performing a significant influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his controlled function."*

#### **FCA guidance on fulfilling controlled function responsibilities and the circumstances in which personal liability is likely to arise**

##### **General guidance**

5. The Code of Practice for Approved Persons (APER 3 and APER 4) sets out descriptions of conduct which, in the opinion of the FCA, do not comply with a

Statement of Principle. It also sets out, in certain cases, factors which, in the opinion of the FCA, are to be taken into account in determining whether or not an approved person's conduct complies with a Statement of Principle. The specific examples given are not intended to be exhaustive.

6. APER 3.1.3 G provides:

"The significance of conduct identified in the Code of Practice for Approved Persons as tending to establish compliance with or a breach of a Statement of Principle will be assessed only after all the circumstances of a particular case have been considered. Account will be taken of the context in which a course of conduct was undertaken, including the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour to be expected in that function."

7. In accordance with APER 3.1.4 G (1), an approved person will only be in breach of a Statement of Principle where he is personally culpable. Personal culpability arises where an approved person's conduct was deliberate or where the approved person's standard of conduct was below that which would be reasonable in all the circumstances (see DEPP 6.2.4 G).

8. In determining whether an approved person's conduct was in breach of a Statement of Principle, the FCA will take into account the extent to which the approved person acted in a way that is stated to be in breach of a Statement of Principle (APER 3.1.5 G).

9. The Code of Practice for Approved Persons (and in particular the specific examples of behaviour which may be in breach of a generic description of conduct in the code) is not an exhaustive list of types of conduct that may contravene the Statements of Principle (APER 3.1.6 G).

10. A person performing a significant influence function is subject to the additional requirements set out in Statements of Principle 5 to 7 in performing that controlled function.

11. The nature, scale and complexity of the business under management, and the role and responsibility of the individual performing a significant influence function within the firm, will be relevant in assessing whether an Approved Person's conduct was reasonable (APER 3.1.8 G).
12. APER 3.3.1 E (Factors relating to Statements of Principle 5 to 7) provides:

"In determining whether or not the conduct of an approved person performing a significant influence function complies with Statements of Principle 5 to 7, the following are factors which, in the opinion of the FCA, are to be taken into account:

  - (i) whether he exercised reasonable care when considering the information available to him;
  - (ii) whether he reached a reasonable conclusion which he acted on;
  - (iii) the nature, scale and complexity of the firm's business;
  - (iv) his role and responsibility as an approved person performing a significant influence function; and
  - (v) the knowledge he had, or should have had, of regulatory concerns, if any, arising in the business under his control."

### **Specific guidance**

13. In relation to Statement of Principle 6, APER 4.6 provides specific guidance and examples of behaviour that may contravene the Principle.
14. The FCA's policy in relation to the imposition of financial penalties is set out in Chapter 6 of the part of the FCA Handbook entitled Decision Procedure and Penalties Manual ("DEPP"). DEPP sets out the factors that may be of particular relevance in determining the appropriate level of financial penalty. The criteria are not exhaustive and all relevant circumstances of the case are taken into consideration.
15. The regulatory provisions governing the determination of financial penalties changed on 6 March 2010. Mr Willford's misconduct occurred before 6 March

2010. The Authority has applied the penalty regime as set out in DEPP as it stood prior to 6 March 2010 and all references to DEPP in this section are references to the version of DEPP that was in force prior to that date.

16. DEPP 6.1.2G provides that the principal purpose of imposing a financial penalty or public censure is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches, and demonstrating generally the benefits of compliant behaviour. Financial penalties are therefore tools that the Authority may employ to help to achieve its regulatory objectives.
17. DEPP 6.5.1G(1) provides that the Authority will consider all the relevant circumstances of a case when it determines the level of financial penalty (if any) that is appropriate and in proportion to the breach concerned.
18. DEPP 6.5.2G sets out a non-exhaustive list of factors that may be relevant to determining the appropriate level of financial penalty to be imposed on a person under the Act. The following factors are most relevant to this case:

*Deterrence: DEPP 6.5.2G(1)*

19. When determining the appropriate level of financial penalty, the Authority will have regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business.

*The nature, seriousness and impact of the breach in question: DEPP 6.5.2G(2)*

20. The Authority will consider the seriousness of the breach in relation to the nature of the rule, requirement or provision breached, which can include considerations such as the duration and frequency of the breach, whether the breach revealed serious or systemic weaknesses in the person's procedures or of the management systems or internal controls relating to all or part of a person's business and the loss or risk of loss caused to consumers, investors or other market users.

*Whether the person on whom the penalty is to be imposed is an individual: DEPP 6.5.2G(4)*

21. The Authority will take into account that individuals will not always have the resources of a body corporate, that enforcement action may have a greater impact on an individual, and further, that it may be possible to achieve effective deterrence by imposing a smaller penalty on an individual than a body corporate. The Authority will also consider whether the status, position and/or responsibilities of the individual are such as to make a breach committed by the individual more serious and whether the penalty should therefore be set at a higher level.

*The size, financial resources and other circumstances of the person on whom the penalty is to be imposed: DEPP 6.5.2G(5)*

22. The degree of seriousness of a breach may be linked to the size of the firm. For example, a systemic failure in a large firm could damage or threaten to damage a much larger number of consumers or investors than would be the case with a small firm: breaches in firms with a high volume of business over a protracted period may be more serious than breaches over similar periods in firms with a smaller volume of business.

*Disciplinary record and compliance history: DEPP 6.5.2G(9)*

23. The Authority may take the previous disciplinary record and general compliance history of the person into account.