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**FINAL NOTICE**

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To: **Timothy Duncan Philip**  
IRN: TDP00009  
Date of birth: 17 February 1964

Date: 13 July 2016

**1. ACTION**

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

- (a) imposes on Mr Philip a financial penalty of £60,000; and
- (b) makes an order prohibiting Mr Philip from having any direct responsibility for client and/or insurer money in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

1.2. The prohibition will take effect from the date of this Final Notice.

- 1.3. Mr Philip agreed to settle at an early stage of the Authority's investigation. He 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 £85,817.97 on Mr Philip.

## **2. SUMMARY OF REASONS**

- 2.1. The Authority has decided to take action against Mr Philip for breaches of Statement of Principle 6 whilst performing the significant influence controlled function of CF1 (Director) at TUGL during the period from 23 August 2010 to 29 June 2012 (the "Relevant Period").
- 2.2. In summary, the Authority considers that Mr Philip failed to exercise due skill, care and diligence in managing the business of TUGL for which he was responsible in his controlled function, in breach of Statement of Principle 6, in that he:
- (a) instructed and/or approved withdrawals of money from TUGL's central client and insurer money accounts without following TUGL's processes and procedures for making such withdrawals. This resulted in TUGL not being able to accurately assess the level of the monies held and ultimately resulted in client and insurer money calculations overstating the client and insurer money resource by £5 million and £5.5 million respectively;
  - (b) failed to pay due regard to established client and insurer money processes at TUGL by failing to adhere to those processes;
  - (c) failed to adequately identify the risks created by his departure from the established client and insurer money processes; and
  - (d) failed to take adequate steps to ensure and/or failed to assure himself that those risks were appropriately managed.
- 2.3. As a consequence of these matters, the Authority considers that Mr Philip failed to exercise due skill, care and diligence in managing the business for which he was responsible in his controlled function.
- 2.4. By virtue of the breaches outlined above, the Authority considers that Mr Philip has failed to meet minimum regulatory standards in terms of competence and capability and that he is not a fit and proper person to have direct responsibility for client and/or insurer money.

2.5. The Authority considers Mr Philip's failings to be serious for the following reasons:

- (a) the Authority places a great deal of emphasis on the responsibilities of senior management as it is senior managers who are responsible for standards and conduct of the businesses they run;
- (b) Mr Philip, who was responsible for oversight of TUGL's Central Finance Department, repeatedly failed to follow established client and insurer money processes designed to ensure regulatory compliance;
- (c) as TUGL's CMO, Mr Philip ought to have appreciated the risks associated with such a failure to adhere to client and insurer money processes;
- (d) Mr Philip's actions and failings resulted in TUGL not being able to accurately assess the level of the monies held and ultimately resulted in client and insurer money calculations overstating the client and insurer money resource by £5 million and £5.5 million respectively and exposed insurers to the risk of loss in the event of TUGL becoming insolvent;
- (e) Mr Philip's failings caused TUGL to breach regulatory requirements and standards throughout the Relevant Period; and
- (f) Mr Philip's conduct fell below the standard which would have been reasonable in all the circumstances.

2.6. In making the findings above against Mr Philip, the FCA considers the following factors are relevant:

- (a) Whilst Mr Philip was the most senior individual and the main decision-maker to have been directly involved in the failings, there were other individuals at the Firm who carried out roles relevant to the failings and Mr Philip relied on those individuals to some extent; and
- (b) Mr Philip did not deliberately or recklessly breach regulatory provisions and no findings of dishonesty or lack of integrity are being made in relation to him.

2.7. Notwithstanding these matters, the Authority considers that Mr Philip's conduct was not sufficient to discharge his regulatory obligations.

- 2.8. The Authority has therefore decided to impose a financial penalty on Mr Philip in the amount of £60,000 pursuant to section 66 of the Financial Services and Markets Act 2000 (the "Act") and make a partial prohibition order pursuant to section 56 of the Act.
- 2.9. The action supports the Authority's operational objectives of securing an appropriate degree of protection for consumers, protecting and enhancing the integrity of the UK financial system and is consistent with the importance placed by the Authority on the accountability of senior management in the operation of their business.

### **3. DEFINITIONS**

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

"Business Units" means insurance intermediary firms acquired by TUGL;

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

"APER" means the Authority's Statements of Principle and Code of Practice for Approved Persons issued under section 64 of the Act;

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

"CASS" means the Client Assets Sourcebook contained in the Authority's Handbook;

"CASS Rules" means the rules contained in CASS;

"Central Finance Department" means TUGL's central finance function consisting of sub teams including the treasury team and finance team;

"Central Sweep Accounts" means the five central client and insurer money sweep accounts operated by TUGL during the Relevant Period;

"Central Transfers" means eight transfers from the Central Sweep Accounts made between August 2010 and January 2011;

"CF1" means the Authority's controlled function of Director;

"Client Money Manual" means the Group Finance and Operations Policy and its Client Money Procedures Manual which together detailed the client money policies and procedures applicable to TUGL during the Relevant Period;

"CMO" means Client Money Officer

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

"EG" means the Authority's Enforcement Guide;

“Firm” means TUGL;

“FIT” means the part of the Authority’s Handbook entitled “The Fit and Proper Test for Approved Persons”;

“Handbook” means the Authority’s Handbook of Rules and Guidance;

“Mr Philip” means Timothy Duncan Philip;

“Relevant Period” means 23 August 2010 to 29 June 2012;

“Statement of Principle” means the statements of principle set out in APER;

“Towergate Group” means the Towergate group of companies;

“Tribunal” means the Upper Tribunal (Tax and Chancery Chamber);

“TUGL” means Towergate Underwriting Group Limited.

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

##### **Background**

- 4.1. TUGL is an insurance intermediary. It is part of the Towergate Group, which is one of the largest general insurance networks in the United Kingdom. TUGL was incorporated on 31 July 2000, has been authorised and regulated by the Authority since 14 January 2005 and is permitted to hold and control client money in relation to its insurance mediation activities.
- 4.2. The principal activities of TUGL in the Relevant Period were the provision of insurance intermediary services. In the course of its business, TUGL arranged insurance cover for clients and received a payment in respect of each policy. A portion of the payment received was retained by TUGL as commission for its role in the transaction, whilst the remaining portion was payable to the insurer underwriting the relevant policy as a premium. TUGL held payments received from clients either as insurer money or as client money depending on the underlying contract in place with the insurer underwriting the policy. Where TUGL held money as an agent of an insurer, the monies could be held as insurer money in a separate account or held with client money provided that the insurer agreed to any claim on that money being subordinated to claims by a client. In the Relevant Period, TUGL held a substantial majority of payments received from clients as agent of an insurer, a proportion of which was held in insurer trust accounts and the remaining proportion held with client money in client non-statutory trust accounts. Insurer money that was held with client money was subject to the same rules as for client money.

### **Client and insurer money responsibility at TUGL**

- 4.3. Mr Philip, a chartered accountant, was approved to hold the controlled function of CF1 (Director) at TUGL from 27 October 2005 to 29 June 2012, when he left the Firm. As a CF1 of TUGL and the Finance Director of an intermediate parent company of TUGL, he was responsible for the day to day management of TUGL's Central Finance Department during the Relevant Period.
- 4.4. In addition to his general oversight responsibilities as CF1 and Finance Director, Mr Philip also had specific responsibility for TUGL's client money arrangements and its compliance with the Authority's CASS Rules and was TUGL's CMO throughout the Relevant Period. However, Mr Philip was not responsible for the design or development of TUGL's risk management framework.
- 4.5. His responsibilities included, but were not limited to: the management of client and insurer money activities centrally; oversight of local and regional client and insurer money activities; management and oversight of the Central Finance Department; and ensuring that accounting records were maintained in a way that allowed the ultimate production of true and fair financial statements. He was also responsible for managing TUGL's short term cash resources.
- 4.6. In addition to his responsibilities at TUGL, Mr Philip also had significant responsibilities for the wider Towergate Group. These additional responsibilities (which included leading on a major re-financing project) led to significant management stretch on Mr Philip's part during the Relevant Period.

### **TUGL's client and insurer money controls**

- 4.7. Following the classification of insurance mediation as a regulated activity from 14 January 2005, TUGL was required to comply with the CASS Rules and specifically those contained in Chapter 5 of CASS which apply to firms that receive or hold client money in the course of, or in connection with, insurance mediation activity. TUGL was also required to comply with Principle 10 of the Authority's Principles for Businesses which require firms to arrange adequate protection for clients' assets for which they are responsible.
- 4.8. Throughout the Relevant Period, TUGL operated through a large number of separate Business Units, which all formed part of the same legal entity, but operated their own client or insurer money and office bank accounts within the TUGL legal entity. TUGL's client money processes and procedures were designed around its relatively complex legal structure. Its client money policies during the

Relevant Period were set out in its Client Money Manual, which had been developed by external consultants in collaboration with Mr Philip and other persons within TUGL and the Towergate Group. Given Mr Philip's involvement in the Client Money Manual's development and his client money responsibilities, it is reasonable to expect him to have been aware of its provisions.

#### Banking (sweep) arrangements

- 4.9. TUGL's client money processes and procedures had been designed around its business model. To facilitate cash management, TUGL had in place an automated daily process, performed by the bank, whereby cleared funds in the client and insurer money bank accounts of the Business Units were transferred, or "swept", into central client and insurer money bank accounts ("Central Sweep Accounts"). At the relevant time, TUGL operated five Central Sweep Accounts.
- 4.10. The sweep arrangement meant that although client and insurer money calculations were performed by the individual Business Units, in accordance with the processes and procedures set out in the Client Money Manual, the majority of client, insurer and office money was in fact held centrally in separate client, insurer and office money accounts following the daily sweep process.

#### Client money calculations

- 4.11. The CASS Rules require an insurance intermediary firm to perform client money calculations at least every 25 business days by checking whether its client money resource (the amount of client money held separately in appropriate accounts) was at least equal to the client money requirement (the amount of money the Business Unit had to hold separately to meet its obligations to clients). Any shortfall identified from the client money calculation is required to be paid into a client bank account by the close of business on the day the client money calculation is performed. Likewise any excess is required to be withdrawn within the same time period (subject to certain exceptions).
- 4.12. In practice, client money calculations were performed by TUGL Business Units monthly on the first working day of the month using a prescribed template. The client money calculation worked out the Business Unit's client money resource and the client money requirement and then compared one with the other. When calculating its client money resource, a Business Unit principally relied on the nominal sweep account balance (which is the figure recorded in its ledgers as having been swept into Central Sweep Accounts and to which the Business Unit

is entitled) rather than rely on the actual cash balance since the actual client money was held centrally.

- 4.13. On a monthly basis, Business Units sent their client money calculations to TUGL's Central Finance Department to undertake a review of Business Units' compliance with prescribed processes including checking that reconciliations were performed as required and identify potential issues when they arose. The Central Finance Department collated all the client money calculations received from the Business Units on a central spreadsheet.

#### Reconciliation

- 4.14. As required by the CASS Rules, an insurance intermediary firm must within 10 days of performing the client money calculation, reconcile the balance on each client bank account as recorded by the firm with the balance on that account as set out in the statement or other form of confirmation used by the bank with which that money is held. During the Relevant Period TUGL performed this reconciliation at Business Unit level. It compared the relevant Business Unit's ledger balance against the balance in the Business Unit's client money account as shown on the bank statement for that account. Because of the sweep arrangement, both would typically show nil when the reconciliation was performed.
- 4.15. TUGL's client money process did not include an effective reconciliation which was necessary to ensure overall compliance with the CASS Rules. In this regard, one significant system weakness was that TUGL did not perform an effective reconciliation between the aggregated Business Unit ledger balances, in which the Business Units recorded their entitlement to the funds held in the Central Sweep Accounts, and the cash actually held in those Central Sweep Accounts.

#### Insurer money

- 4.16. Whilst insurer money held in an insurer non-statutory trust account is not subject to the provisions of the CASS Rules, Principle 3 of the Principles for Businesses requires firms to take reasonable care to organise and control their affairs responsibly and effectively, with adequate risk management systems. The systems and controls established by TUGL required Business Units handling insurer money to follow processes which effectively mirrored the client money processes described above.

#### Mid-month calculations

- 4.17. On occasion, in addition to the calculations carried out on the first working day of the month, TUGL would carry out mid-month client and insurer money calculations in order to meet businesses expenses. This was done to identify whether it was possible to withdraw commission due to TUGL mid-month rather than on the first working day of the month. During the Relevant Period, the process in place for mid-month calculations was in essence the same as the process carried out on the first working day of the month; the Central Finance Department would request individual Business Units within TUGL to prepare a client or insurer money calculation and transfer any surplus identified to its own local office account, which, where attached to a sweep account, would then be swept to the Central Sweep Accounts overnight.

#### **The Central Transfers**

- 4.18. Mr Philip left TUGL in June 2012. The following year, TUGL embarked on a comprehensive client money improvement programme. That programme included a review of the existing client and insurer money control environment at TUGL, during which a potential shortfall of several million pounds was identified in the client and insurer money accounts. Further investigation revealed that the bulk of the shortfall had been caused by eight transfers from TUGL's Central Sweep Accounts.
- 4.19. On four separate occasions in August 2010, November 2010, December 2010 and January 2011, round sums totalling £10.5 million were transferred from TUGL's Central Sweep Accounts to the office account of an intermediate parent company of TUGL for the purpose of meeting business expenses. Details of these Central Transfers are set out in the table below:

<b>Date</b>	<b>Client money transfer</b>	<b>Insurer money transfer</b>
24/08/2010	£1,500,000	£1,500,000
22/11/2010	£1,000,000	£1,000,000
22/12/2010	£1,000,000	£1,500,000
20/01/2011	£1,500,000	£1,500,000
<b>Total</b>	<b>£5,000,000</b>	<b>£5,500,000</b>

- 4.20. The Central Transfers were based on an analysis of all the Business Units' client and insurer money calculations on an aggregated basis. On this aggregated basis, the analysis indicated that, whilst Business Units had removed commission from the Central Sweep Accounts to the extent that cash was available, some had been unable to transfer the full amount specified by the client and insurer money calculations at the time they were performed. The analysis of the individual TUGL Business Units' client and insurer money calculations therefore indicated perceived surpluses that had not been removed which, when looked at on an aggregated basis, could be removed from the Central Sweep Accounts as commission belonging to TUGL.
- 4.21. This aggregated calculation and analysis was conceived and first prepared by Mr Philip and formed the basis of the eight Central Transfers. Mr Philip also gave instructions to staff in the Central Finance Department on how to account for the Central Transfers. Having personally prepared the aggregated calculation and analysis to support the transfers in August and November 2010 himself, he instructed staff in the Central Finance Department to perform calculations for subsequent transfers in line with the template he had created, which they did. Subsequent aggregated calculations consequently prepared to support the transfers in December 2010 and January 2011 were reviewed and approved by Mr Philip.
- 4.22. Based on Mr Philip's instructions and/or approvals as mentioned above, funds were transferred out of the Central Sweep Accounts as commission due and owed to TUGL.
- 4.23. TUGL's client money processes and procedures did not make provision for, or envisage, either an aggregated calculation or central withdrawals. Central withdrawals based on an aggregated calculation represented a significant departure from TUGL's established processes and procedures.
- 4.24. Notwithstanding the fact that existing processes and procedures provided for the client and insurer money calculations and transfer of commission due to TUGL to be performed at Business Unit level, round sums were withdrawn from the Central Sweep Accounts on the four occasions identified above. Following each of the Central Transfers, the sums removed from the Central Sweep Accounts were not allocated back to individual Business Units, nor reflected in aggregated calculations performed in subsequent months. As a result, those Business Units

whose perceived client and insurer surplus cash had been withdrawn were not aware of the Central Transfers and as a consequence subsequent monthly client and insurer money calculations prepared by individual Business Units did not recognise that surpluses had been previously withdrawn from the Central Sweep Accounts. Likewise, as the aggregated calculations did not reflect these transfers, TUGL consequently overstated the funds available in the Central Sweep Accounts for subsequent Central Transfers.

- 4.25. This departure from TUGL's existing processes and procedures, coupled with the failure to properly consider the potential implications of the Central Transfers and take appropriate steps to mitigate the risks so created, resulted in TUGL not being able to assess accurately the level of the monies held and ultimately resulted in client and insurer money calculations overstating the client and insurer money resource by £5 million and £5.5 million respectively.
- 4.26. The decision to depart from established processes and procedures was taken by Mr Philip. This departure created a significant risk that CASS Rules would be breached and insurer money left unprotected unless additional steps were taken to address its implications.
- 4.27. Mr Philip failed to recognise the need to reflect the Central Transfers in subsequent client and insurer money calculations and/or failed to take appropriate steps to address the implications including the CASS compliance risks created by the Central Transfers.
- 4.28. Having instructed and authorised the Central Transfers, Mr Philip took no further steps to assure himself that the risks associated with such a significant departure from established processes had been adequately addressed. This allowed the risks to crystallise and caused a shortfall in the client and insurer money resource which persisted throughout the duration of the Relevant Period.

## **5. FAILINGS**

- 5.1. The regulatory provisions relevant to this Final Notice are set out in the Annex to this Notice.
- 5.2. Based on the facts and matters described above, and for the reasons set out below, the Authority considers that in the Relevant Period Mr Philip breached Statement of Principle 6.

### **Statement of Principle 6**

- 5.3. Statement of Principle 6 in force at the Relevant Time required an approved person performing a significant influence function to exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his controlled function.
- 5.4. Mr Philip breached Statement of Principle 6 by failing to exercise due skill, care and diligence whilst acting as a CF1 who had client and insurer money responsibilities at TUGL. In particular, he:
- (a) instructed and/or approved withdrawals of money from TUGL's Central Sweep Accounts and by doing so, failed to follow TUGL's processes and procedures for making withdrawals from client and insurer money accounts, which resulted in TUGL not being able to assess accurately the level of the monies held and ultimately resulted in client and insurer money calculations overstating the client and insurer money resource by £5 million and £5.5 million respectively;
  - (b) failed to pay due regard to established client and insurer money processes at TUGL by failing to adhere to those processes;
  - (c) failed to adequately identify the risks created by his departure from the established client and insurer money processes; and
  - (d) failed to take adequate steps to ensure that those risks were appropriately managed and/or failed to assure himself that those risks had been appropriately managed.

### **Fit and Proper test for Approved Persons**

- 5.5. The Authority further considers that in failing to act with due skill, care and diligence in the manner described above, Mr Philip has demonstrated that he is not competent and capable of having direct responsibility for client and/or insurer money in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.
- 5.6. Significant influence function holders in positions where they hold responsibility for client and insurer money are a part of the regulatory system and perform an important role in protecting not only client but also insurer money. Mr Philip's conduct has shown that he lacks an appropriate level of understanding of the importance of adhering to agreed processes and procedures put in place to

protect client and insurer money. As such, he does not have the requisite levels of competence and capability required to be fit and proper to have direct responsibility for client and insurer money.

## **6. SANCTION**

- 6.1. The Authority has considered the disciplinary and other options available to it and has concluded that a financial penalty in conjunction with a partial prohibition is the appropriate sanction in the circumstances of this particular case.

### **Financial Penalty**

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

#### Step 1: Disgorgement

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

6.7. The Authority has not identified any financial benefit that Mr Philip derived directly from the breaches referred to in this Notice. The Step 1 figure is therefore nil.

Step 2: Seriousness of breach

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

6.9. The period of Mr Philip's breach was from 23 August 2010 to 29 June 2012. The Authority considers Mr Philip's relevant income for this period to be £817,314.06.

6.10. In deciding on the percentage of the relevant income that forms the basis of the Step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 40%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on individuals in non-market abuse cases there are the following five levels:

Level 1 – 0%

Level 2 – 10%

Level 3 – 20%

Level 4 – 30%

Level 5 – 40%

6.11. In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly. The Authority considers that the following factors are relevant:

Impact of the breach

6.12. Had TUGL become insolvent during the Relevant Period, the Central Transfers would have given rise to a risk of loss to other market users.

### Nature of the breach

- 6.13. Mr Philip's breach was ongoing from the date of his instructions and authorisation of the first Central Transfer and was not rectified before he departed TUGL on 29 June 2012. Mr Philip was an experienced industry professional, having qualified as a chartered accountant in 1987, and holding senior positions in the industry since at least 2002. He held a senior position within TUGL as CMO; he was also the Finance Director of TUGL's intermediate parent company, with responsibility for TUGL's Central Finance Department. Because of the position he held, he was able to authorise the Central Transfers. As CMO, he was responsible for ensuring that TUGL complied with the CASS Rules. Mr Philip failed to adequately discharge his responsibilities and his actions directly caused TUGL to breach the CASS Rules.

### Whether the breach was deliberate or reckless

- 6.14. There is no evidence to suggest that Mr Philip's breach was deliberate or reckless, but it was negligent in that he failed to exercise the care and attention required in the circumstances. His actions exposed insurers to the risk of loss in the event of TUGL becoming insolvent. His actions also caused TUGL to breach regulatory requirements and standards throughout the Relevant Period.
- 6.15. There is no evidence that Mr Philip directly or indirectly profited or avoided a loss as a result of his breaches.
- 6.16. Taking all of these factors into account, the Authority considers that seriousness of the breach to be level 2 and so the Step 2 figure is 10% of £817,314.06.
- 6.17. The Step 2 figure is therefore £81,731.40.

### Step 3: mitigating and aggravating factors

- 6.18. 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.
- 6.19. The Authority considers that the following factor aggravates the breach:
- (a) The Authority issued Final Notices to other firms and individuals for failures in respect of Principle 10 and the CASS Rules and the concerns raised in them about the protection of client money.

- 6.20. The Authority considers that there are no mitigating factors.
- 6.21. Having taken into account this aggravating factor, the Authority considers that the step 2 figure should be increased by 5%.
- 6.22. The Step 3 figure is therefore £85,817.97.

Step 4: adjustment for deterrence

- 6.23. Pursuant to DEPP 6.5B.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.
- 6.24. The Authority considers that the step 3 figure of £85,817.97 represents a sufficient deterrent to Mr Philip and others, and so has not increased the penalty at Step 4.
- 6.25. The Step 4 figure is therefore £85,817.97.

Step 5: settlement discount

- 6.26. Pursuant to DEPP 6.5B.5G if the Authority and the individual on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the individual reached agreement.
- 6.27. Mr Philip agreed to settle at Stage 1 of the settlement process, a 30% discount therefore applied and the Step 5 figure is £60,000.

Penalty

- 6.28. The Authority has therefore decided to impose a total financial penalty of £85,817.97 (reduced to £60,000 as settlement was reached and agreed at Stage 1 of the settlement process) on Mr Philip for breaching Statement of Principle 6.

**Partial prohibition**

- 6.29. The Authority considers it is appropriate and proportionate in all the circumstances to prohibit Mr Philip from having any direct responsibility for client and/or insurer money in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

- 6.30. The Authority has had regard to the guidance in Chapter 9 of EG in proposing this partial prohibition. The relevant provisions of EG are set out in the Annex to this notice.
- 6.31. Given the nature and seriousness of the failings outlined above, Mr Philip's conduct demonstrated a serious lack of competence such that he is not fit and proper to have direct responsibility for client and insurer money.
- 6.32. It is appropriate and proportionate in all the circumstances to impose the prohibition order on Mr Philip in the terms set out above.

## **7. PROCEDURAL MATTERS**

### **Decision maker**

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

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

- 7.3. The financial penalty must be paid in 24 instalments by Mr Philip to the Authority, as follows:
- (a) £2,500 to be paid on the 1<sup>st</sup> of each month following 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 the day after the due date for payment, the Authority may recover the outstanding amount as a debt owed by Mr Philip 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 you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

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

**Authority contacts**

- 7.7. For more information concerning this matter generally, contact Steve Page (direct line: 020 7066 1420; email [steve.page@fca.org.uk](mailto:steve.page@fca.org.uk)) of the Enforcement and Market Oversight Division of the Authority.

Rebecca Irving  
Financial Conduct Authority  
Enforcement and Market Oversight Division

## **ANNEX:**

### **RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND AUTHORITY GUIDANCE**

#### **RELEVANT STATUTORY PROVISIONS**

##### **Statutory objectives**

1. The Authority's operational objectives are set out in section 1B(3) of the Act. In relation to this case, the most relevant operational objective is the consumer protection objective.

##### **Disciplinary Powers**

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.

##### **Prohibition Order**

3. Section 56 of the Act provides that the Authority may make an order prohibiting an individual from performing a specified function, any function falling within a specified description or any function, if it appears to the Authority that that individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.

## RELEVANT REGULATORY PROVISIONS, GUIDANCE AND POLICY

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

4. The Authority's Statements of Principles and Code of Practice for Approved Persons ("APER") have been issued under section 64 of the Act.

5. APER 3.1.4G states:

*"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."*

#### Statement of Principle 6 (due skill, care and diligence)

6. During the Relevant Period, Statement of Principle 6 stated:

*"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."*

7. APER 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.

8. Relevant factors to be taken into account in determining whether or not the conduct of an approved person performing a significant influence function complies with Statement of Principles 5 to 7 are set out in APER 3.3.1E and include:

*"(1) whether he exercised reasonable care when considering the information available to him;*

*(2) whether he reached a reasonable conclusion which he acted on;*

*(3) the nature, scale and complexity of the firm's business;*

*(4) his role and responsibility as an approved person performing a significant influence function;*

*(5) the knowledge he had, or should have had, of regulatory concerns, if any, arising in the business under this control."*

9. APER 4.6 gives some examples of conduct which the Authority considers not to comply with Statement of Principle 6. These include:

(a) permitting transactions without a sufficient understanding of the risks involved;

- (b) inadequately monitoring ... unusual transactions or business practices;
- (c) delegating authority for dealing with an issue or a part of the business to an individual without reasonable grounds for believing that the delegate had the necessary capacity, competence, knowledge, seniority or skill to deal with the issue or to take authority for dealing with part of the business;
- (d) failing to take reasonable steps to maintain an appropriate level of understanding about an issue or part of the business that he has delegated to an individual;
- (e) disregarding an issue or part of the business once it has been delegated;
- (f) failing to supervise and monitor adequately the individual to whom responsibility for dealing with an issue has been delegated.

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

- 10. The part of the 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 include the person's competence and capability.

### **The Enforcement Guide**

- 12. The Enforcement Guide (EG) sets out the Authority's approach to exercising its main enforcement powers under the Act.
- 13. Chapter 7 of EG sets out the Authority's approach to exercising its power to impose a financial penalty.
- 14. Chapter 9 of EG sets out the Authority's policy in relation to prohibition orders.
- 15. EG 9.1 states that the Authority may exercise this power where it considers that, to achieve any of its statutory objectives, it is appropriate either to prevent an individual from performing any function in relation to regulated activities or to restrict the functions which he may perform.

## **Decision Procedure and Penalties Manual**

16. Chapter 6 of the Decision Procedure and Penalties Manual (DEPP) sets out the Authority's statement of policy with respect to the imposition of financial penalties under the Act. 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.
17. The relevant sections of DEPP are set out in the body of this Notice.