

This Decision Notice has been superseded by a Final Notice <https://www.fca.org.uk/publication/final-notice/charles-palmer-2017.pdf> dated 19 September 2017.

**Note:** the following clarification provides an update in relation to matters set out in this Decision Notice. Financial Limited and Investments Limited (“the Firms”) were acquired by Tavistock Investments plc, together with their parent company, Standard Financial Group Ltd, on 13 February 2015. Following an application by each of the Firms, their permissions have been cancelled, which took effect from 10 September 2015 for Investments Limited and 15 October 2015 for Financial Limited. The Firms and their parent company are now in liquidation. Tavistock Financial Limited is continuing to undertake the past business reviews referred to in this Notice that were previously being undertaken by Financial Limited.

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## DECISION NOTICE

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To: **Charles Anthony Llewellyn Palmer**

Address: **Colegate Farm  
Ham Road  
Cheltenham  
Gloucestershire  
GL54 4EZ**

IRN: **CAL00004 (inactive)**

Date: **25 September 2015**

### 1. ACTION

1.1. For the reasons given in this Decision Notice, the Authority has decided to:

- (1) impose on Mr Charles Palmer a financial penalty of £86,691; and
- (2) make an order prohibiting Mr Palmer from performing any significant influence function in relation to any regulated activity carried on by an authorised person, exempt person, or exempt professional firm.

## **2. SUMMARY OF REASONS**

- 2.1. During the period 24 February 2010 to 20 December 2012 (the "Relevant Period"), Mr Palmer held the CF1 (Director) controlled function at each of Financial and Investments (together, "the Firms").
- 2.2. The Firms are both subsidiaries of Standard Financial Group Ltd (the "Group"), which is not an authorised person and does not actively trade. Together, the Firms form an adviser network and are responsible for ensuring the fair treatment of underlying customers by their ARs and RIs, including that advice given to underlying customers by their ARs and RIs is suitable. During the Relevant Period, Mr Palmer was the majority shareholder and CEO of the Group, and a director and de facto CEO of each of the Firms.
- 2.3. From this position within the Group, Mr Palmer was the primary controlling influence of the Firms and was responsible for developing and maintaining the Firms' business model and, together with other members of the Firms' senior management, for how that business model was implemented in practice and for oversight of the general management and conduct of the Firms. As the Firms form an adviser network, there was an inherent risk that underlying customers would receive unsuitable advice from the Firms' ARs and RIs. Accordingly, Mr Palmer (together with other members of the Firms' senior management) was responsible for ensuring that the Firms' business model, and how it was implemented in practice, paid due regard to the fair treatment of underlying customers.
- 2.4. To the extent that the Firms' business model gave rise to material risks to underlying customers, Mr Palmer (together with other members of the Firms' senior management) had a responsibility to exercise due skill, care and diligence to ensure that he, the Board and the Firms were aware of and understood those risks, that appropriate controls and mitigating measures were in place in relation to them, that the effectiveness of the controls and mitigating measures was

being objectively assessed and that sufficient, relevant and reliable information was provided to him and the Board in relation to them.

- 2.5. The business model that Mr Palmer developed and maintained focused on serving ARs and RIs and allowed ARs and RIs to be afforded a high level of flexibility and freedom as to how they could operate within the adviser network. This business model thereby increased the risk to underlying customers inherent in an adviser network, and gave rise to material risks to underlying customers, including the increased risk that the Firms would be unaware of, or unable to prevent, ARs and RIs giving unsuitable advice or selling unsuitable investments.
- 2.6. Mr Palmer must have been aware that the Firms' business model gave rise to material risks to underlying customers, and of the need for appropriate controls and mitigating measures to be in place in relation to these risks, on account of the February 2010 Final Notice.
- 2.7. During the Relevant Period, the Firms failed to implement an effective risk management framework and control framework to ensure that: (i) the material risks to underlying customers arising from the Firms' business model were identified and understood by the Board; (ii) appropriate controls and mitigating measures were put in place in relation to these risks; (iii) the effectiveness of the controls and mitigating measures was being objectively assessed; and (iv) sufficient, relevant and reliable information was provided to the Board in relation to the controls and mitigating measures.
- 2.8. Although Mr Palmer was not responsible for the detailed risk management framework and compliance controls, his role as the de facto CEO of each of the Firms, and his awareness that the business model gave rise to material risks to underlying customers, meant that he could not simply rely on the Firms' directors responsible for risk management and compliance to ensure that these risks were being identified and effectively managed. Mr Palmer therefore had a responsibility to exercise due skill, care and diligence in overseeing the Firms' risk management framework and control framework to ensure they were effective and that they paid due regard to the fair treatment of underlying customers.
- 2.9. For the reasons outlined below, the Authority considers that, during the Relevant Period, Mr Palmer, as the primary controlling influence of the Firms, breached Statement of Principle 6 in carrying out his CF1 (Director) controlled

function at the Firms by failing to exercise due skill, care and diligence in managing the business of the Firms for which he was responsible in his controlled function:

- (1) Mr Palmer failed to take adequate steps to ensure that the risks in respect of underlying customers which arose from the business model that he had developed were being effectively managed by the Firms, that he and the Board were aware of and understood the risks, and that he and the Board received sufficient, relevant and reliable information and valid assurance that the controls and mitigating measures in place were effectively controlling or mitigating the risks;
- (2) Mr Palmer failed to take adequate steps to ensure that the Firms put in place an appropriate control framework and an appropriate risk management framework to control or mitigate adequately the material risks to underlying customers arising from the Firms' business model; and
- (3) in maintaining a business model for the Firms which offered a high level of freedom and flexibility to ARs and RIs, and which thereby increased the inherent risk that underlying customers would not be treated fairly and gave rise to material risks to underlying customers, without ensuring that the controls and mitigating measures in place were effectively controlling or mitigating these risks, Mr Palmer failed to respond with due skill, care and diligence to the risk that the Firms' processes and controls in respect of ARs and RIs were not fit for purpose and would negatively impact the fair treatment of underlying customers.

2.10. The Authority considers Mr Palmer's failings to be particularly serious because:

- (1) The Authority has previously taken enforcement action against him: the February 2010 Final Notice stated that Mr Palmer had breached Statements of Principle 5 and 7 in performing his CF1 (Director) and CF8 (Apportionment and Oversight) controlled functions at Financial.
- (2) Mr Palmer had been put on notice of the need for the fair treatment of underlying customers to be central to the Firms' business, and to control effectively the Firms' ARs and RIs in order to ensure they treated underlying customers fairly, in the following ways:

- i. PBRs in relation to the Firms' pension switching recommendations, one of which is ongoing, took place before and during the Relevant Period. Although actual loss to individual underlying customers has yet to be fully quantified, the Firms have identified high levels of potentially unsuitable advice by ARs and RIs and have made payments to affected customers by way of redress; and
  - ii. the Authority has repeatedly highlighted (by way of guidance it has published) the importance of the fair treatment of customers being central to a firm's business and of effective control over a firm's ARs to reduce the level of risk to consumers.
- (3) As an adviser network business, the Firms were responsible for the fair treatment of underlying customers by their ARs and RIs. Mr Palmer's failures, including his failure to take adequate steps to ensure that the Firms put in place an appropriate control framework and an appropriate risk management framework to control or mitigate adequately the material risks to underlying customers arising from the Firms' business model, meant that, during the Relevant Period, approximately 40,000 underlying customers were exposed to the significant risk that the Firms' ARs and RIs would give unsuitable advice (including in respect of high-risk products such as UCIS), which resulted in consumer detriment.

2.11. In the light of these failings, the Authority has decided to impose a financial penalty on Mr Palmer of £86,691, pursuant to section 66 of the Act.

2.12. Further, as a consequence of Mr Palmer's failings outlined above – which occurred despite his being put on notice that the fair treatment of underlying customers should be central to the Firms' business, of the importance of effective control over the Firms' ARs and RIs, and of the risks to underlying customers arising from the Firms' business model - the Authority considers that Mr Palmer's conduct demonstrates his lack of competence and capability as an approved person. The Authority therefore considers that Mr Palmer is not a fit and proper person to perform any significant influence function in relation to any regulated activity carried on by an authorised person, exempt person, or exempt professional firm, and has decided to make an order prohibiting him from doing so, pursuant to section 56 of the Act.

- 2.13. This action supports the Authority's consumer protection objective 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. In this Notice:

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

"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;

"Board" means the Group's board of executive and non-executive directors;

"CEO" means Chief Executive Officer;

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

"DIM" means discretionary investment management;

"EG" means the Authority's Enforcement Guide;

"February 2010 Final Notice" means the final notice given to Mr Palmer on 24 February 2010, described at paragraph 4.9 of this Notice;

"Financial" means Financial Limited;

"FIT" means the part of the Handbook entitled "The Fit and Proper Test for Approved Persons";

"the Firms" means Financial Limited and Investments Limited;

"the Group" means Standard Financial Group Ltd;

"Handbook" means the Authority's Handbook of Rules and Guidance;

"Investments" means Investments Limited;

"MI" means management information;

"PBR" means past business review;

"Principle" means one of the Authority's Principles for Businesses;

"Relevant Period" means 24 February 2010 to 20 December 2012;

"RI" means registered individual, a natural person employed by an AR and approved by the Authority under section 59 of the Act to perform the CF30 (Customer) controlled function in relation to investment business;

"Skilled Person's Report" means the report, dated 11 September 2013, referred to at paragraphs 4.15 to 4.17 of this Notice;

"Statement of Principle" means one of the Authority's Statements of Principle for Approved Persons set out in the Handbook;

"TCF" means treating customers fairly;

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

"UCIS" means unregulated collective investment scheme (as defined in Part XVII, Chapters I and II of the Act); and

"underlying customers" means the customers of the Firms' ARs and RIs.

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

##### **The Firms**

- 4.1. The Firms are subsidiaries of the Group, a holding company which is not authorised and does not actively trade. Together, the Firms form an adviser network operating nationally. At its peak in March 2011, the Firms' network comprised 397 ARs and 516 RIs. Financial is currently responsible for approximately 270 ARs and 250 RIs and Investments is currently responsible for four ARs and six RIs.
- 4.2. The permissions of each of the Firms allow their ARs and RIs to advise underlying customers on pensions, investments (including UCIS), mortgages and general insurance/protection products. Investments' permission is broader than Financial's as it also includes the regulated activity of dealing in investments, enabling Investments and its RIs to provide DIM services to underlying customers.

- 4.3. Historically, the ARs and RIs were split across three of the Group's subsidiaries but, following a Group restructuring in February 2010, the majority of ARs and RIs were transferred to Financial, with the exception of those RIs who wanted to be able to offer DIM services, who remained as RIs of Investments.
- 4.4. During the Relevant Period, the systems and controls (including the risk management framework) operated across both the Firms rather than separately for each, so that the advisory standards the ARs and RIs were required to meet, and the operating procedures they had to follow, were identical for both the Firms.
- 4.5. During the Relevant Period, the Firms' ARs and RIs collectively provided advice to approximately 40,000 underlying customers.
- 4.6. The Firms' governance structure operated at Group level. While the Firms had their own boards, these did not hold board meetings separate from the Group board meetings.

#### **Final Notice given to Mr Palmer in 2010**

- 4.7. Mr Palmer has previously been investigated by the Authority in connection with the Authority's 2008 thematic review of pension switching recommendations and the Firms' management, oversight and compliance monitoring of such advice (see further below).
- 4.8. Following the Authority's specific findings regarding the Firms, in January 2009 the Authority commenced an investigation into the conduct of Mr Palmer at the Firms, which resulted in enforcement action against him.
- 4.9. On 24 February 2010, the Authority published a Final Notice in relation to Mr Palmer and imposed on him a financial penalty for breaching Statements of Principle 5 and 7 in performing the significant influence functions of CF1 (Director) and CF8 (Apportionment and Oversight) between 6 April 2006 and 19 August 2008. The Authority found that, while performing these significant influence functions, Mr Palmer failed to:
  - (1) establish and maintain clear and appropriate reporting structures to ensure that Financial's senior managers understood and carried out their specific responsibilities to oversee and monitor Financial's ARs and RIs so that

Financial could be controlled effectively, in breach of Statement of Principle 5;

(2) take reasonable steps to ensure that the business of Financial was organised so that, during a period of rapid expansion of Financial's network of advisers (under the business model that he developed and maintained), it could be controlled effectively as it expanded, in breach of Statement of Principle 5; and

(3) take reasonable steps to ensure that Financial complied with the relevant requirements and standards in respect of advising on pension switching, in breach of Statement of Principle 7.

4.10. Mr Palmer was responsible for overseeing the establishment and maintenance of systems and controls at Financial. As Mr Palmer was also found to be the controlling mind behind the establishment and subsequent expansion of the Group, a financial penalty of £49,000 was imposed on him rather than Financial.

#### **Other previous reviews involving the Firms**

##### PBRs of pension switching advice

4.11. In August 2008, the Firms were visited by the Authority as part of the Authority's thematic review of pension switching advice. The Authority identified that there was a significant risk of consumer detriment as a result of weaknesses in the Firms' systems and controls. Financial subsequently undertook a PBR in relation to pension switching advice provided by the Firms' ARs and RIs between 6 April 2006 and 19 August 2008. This PBR was validated by a skilled person's report, commissioned in October 2010. The skilled person reported in March 2013 that it had identified potential customer detriment in ten out of the 34 cases concluded. The ten customers concerned have since received redress totalling £103,668.

4.12. In April 2012, as a follow-up to the Authority's 2008 visit, the Authority reviewed a random sample of the Firms' pension switching recommendations. The Authority found that the Firms' ARs and RIs continued to pose a risk of providing unsuitable advice to retail customers and had specific concerns about the way in which the customer's attitude to risk was assessed. As a result, on 5 September 2012, the Authority required Financial to conduct a further PBR related to pension switching advice provided by the Firms' ARs and RIs between

2008 and 2012. This PBR is ongoing and, although actual loss to individual customers has not been fully quantified, the Firms have identified high levels of potential unsuitability and made payments to affected customers by way of redress.

#### 2012 Risk Assessment

- 4.13. The Authority carried out a further risk assessment of the Firms in May 2012, identifying a number of significant issues, including significant weaknesses in adviser controls and the effectiveness of the Firms' risk management framework.

#### 2012 UCIS sales internal review

- 4.14. In June 2012, the Authority visited the Firms in connection with its thematic review of firms' practices in respect of the promotion and sale of UCIS. The Authority identified unacceptable levels of unsuitable advice, as well as weaknesses in the Firms' systems and controls. As a result, Financial is currently voluntarily conducting an internal PBR of the Firms' past sales and promotions of UCIS funds (comprising 346 transactions to 274 customers) under the supervision of the Authority's Supervision division. As at 16 July 2015, 94% of UCIS fund transactions that had been fully assessed had been found to be potentially unsuitable (296 of 314).

#### Skilled Person's Report

- 4.15. As a result of the serious concerns raised by the April, May and June 2012 assessments outlined at paragraphs 4.12 to 4.14 above, on 11 February 2013 the Authority required the Firms to commission a skilled person's report under section 166 of the Act to review the effectiveness of the Firms' systems and controls and risk management framework.
- 4.16. The Skilled Person's Report was issued on 11 September 2013 and identified:
- (1) material deficiencies with both the design of the Firms' systems and controls (particularly in relation to oversight of ARs and RIs) and the application of appropriate standards; and

(2) that the Firms had not implemented a robust risk management framework that enabled the Firms' senior management to identify and manage risk proactively.

4.17. The Skilled Person's Report attributed these failings to the high degree of flexibility afforded to the Firms' ARs and RIs by the Firms' business model, and to the cultural focus at the Firms which resulted in the ARs being treated as the Firms' customers, rather than the underlying customers who received the advice.

#### **Mr Palmer's role and responsibilities**

4.18. During the Relevant Period, Mr Palmer was approved by the Authority to perform the CF1 (Director) controlled function at Financial and at Investments.

4.19. At all times throughout the Relevant Period, Mr Palmer was the majority shareholder of the Group, holding 90% of the shares. He was also CEO of the Group. By virtue of his position within the Group, and as the Firms were managed at Group level, Mr Palmer acted as de facto CEO of each of the Firms.

4.20. Mr Palmer confirmed to the Authority during interview that he was responsible for setting the "tone" and "agenda" of the Group. He considered this to be his key responsibility, in addition to putting in place the right people to carry out the Board's objectives.

4.21. Mr Palmer's role also included presenting to the Board the Group's business plan each year during the Relevant Period, which included setting out his strategy for the Firms.

4.22. Given his position and role within the Group, Mr Palmer was the primary controlling influence of the Group and its subsidiaries. He was responsible for developing and maintaining the Firms' business model, setting the strategy and future plans of the Group and of the Firms and, together with other members of the Firms' senior management, for how the business model was implemented in practice and for oversight of the general management and conduct of the Firms. As the Firms form an adviser network, there was an inherent risk that underlying customers would receive unsuitable advice from the Firms' ARs and RIs. Accordingly, Mr Palmer was responsible (together with other members of the Firms' senior management) for ensuring that the Firms' business model, and

how it was implemented in practice, paid due regard to the fair treatment of underlying customers.

### **The Firms' business model**

#### Treating Customers Fairly

- 4.23. Since July 2006, the Authority has repeatedly made clear in published guidance the importance of the fair treatment of customers being central to a firm's business and of effective control over a firm's ARs to reduce the level of risk to consumers.
- 4.24. To the extent that the Firms' business model, which Mr Palmer was responsible for developing and maintaining, gave rise to material risks to underlying customers, Mr Palmer had a responsibility (together with other members of the Firms' senior management) to exercise due skill, care and diligence to ensure that he, the Board and the Firms were aware of and understood those risks, that appropriate controls and mitigating measures were in place to control or mitigate them, that the effectiveness of the controls and mitigating measures was being objectively assessed, and that sufficient, relevant and reliable information was provided to him and the Board in relation to them.

#### The nature of the business model

- 4.25. The Skilled Person's Report identified that the Firms' business model (which Mr Palmer developed and maintained at the Firms during the Relevant Period) allowed ARs and RIs to be afforded a high level of flexibility and freedom as to how they could operate within the adviser network. The business model had the following characteristics:
- (1) The business model was that of a "hybrid network" whereby, during the Relevant Period, commission was paid directly to the ARs and RIs from product providers, with the Firms receiving revenue from a fixed monthly membership fee from those AR and RI members. ARs and RIs recorded business written in the "new business register" on the Firms' web-based MI database.
  - (2) According to the Skilled Person's Report, there were no restrictions as to the forms of business model under which the Firms' ARs could operate and, upon joining the Firms' network, ARs were effectively permitted to

follow their own sales process and use their own adviser tools (including fact finds, customer risk profilers and research systems) which the Firms had not assessed as fit for purpose.

- (3) The Firms did not require their ARs and RIs to limit product recommendations to product providers that had been approved by the Firms on a product provider panel.
- (4) The Firms' network was marketed to ARs and RIs on the basis of providing a greater degree of flexibility than rival networks, offering "maximum assistance with minimum interference".
- (5) As is demonstrated by the Group's 2011/12 and 2012/13 Business Plans (see paragraphs 4.27 to 4.29 below), the Firms were focused on the interests of ARs and RIs in order to generate more business (and thus more profit).

#### **Risks arising from the Firms' business model**

4.26. As described above, the business model developed and maintained by Mr Palmer allowed ARs and RIs to be afforded a high level of flexibility and freedom as to how they could operate within the adviser network. It thereby increased the risk to underlying customers inherent in an adviser network, and gave rise to material risks to underlying customers (approximately 40,000 underlying customers during the Relevant Period). In particular:

- (1) As a hybrid network model, it carried a risk to underlying customers arising from the fact that the Firms were reliant on the quality and accuracy of information provided by their ARs and RIs in order to understand the level and nature of business being undertaken, and assess the quality of advice being provided by the ARs and RIs. This resulted in an increased risk that the Firms would be unaware of, or unable to prevent, ARs and RIs giving unsuitable advice or selling unsuitable investments, including in relation to high risk products.
- (2) Whilst the Firms were independent of product providers, ARs and RIs were given flexibility and freedom in selecting and recommending products to underlying customers, and the Firms had little prior knowledge of, or

control over, any conflicts of interest arising between ARs/RIs and product providers.

- (3) The Firms' focus on the interests of ARs and RIs in order to generate more business (and thus profit) meant that, where the interests of ARs and RIs did not align with underlying customers' interests, there was an increased risk of the Firms failing (through their ARs and RIs) to treat underlying customers fairly, with a corresponding increased need for controls to mitigate that risk.

#### The Group's Business Plans

- 4.27. In the Group's 2011/12 Business Plan, Mr Palmer stated that the Firms' goal was to double the size of the organisation by 2016 in terms of both gross profit and the number of ARs and RIs in the Firms' network.
- 4.28. In the same Business Plan, which he presented to the Board, Mr Palmer set a strategic priority for the Firms to "*Focus on what the IFA wants and needs. This means not doing what we think is right for them, but doing what they ask us for (sic)*". He also set the "strapline" for the Business Plan as: "*The year to focus on the IFA. Consider every decision and ask 'How will it benefit the IFA?'*"
- 4.29. The Group's 2012/13 Business Plan set out the goal to "*move the business from being compliance led to advice led*", which meant "*looking at the outcomes for customers more than the output of advisers.*" The Business Plan also stated that the Firms' business model "*would move towards customers and advice.*" However, Mr Palmer's presentation to the Board on the 2012/2013 Business Plan confirmed that, "*In terms of the main business model, there are no major changes to the services offered.*" Mr Palmer described the importance of raising the Firms' profile with the underlying customers and ensuring that they were fully aware of the Firms and their role. He proposed giving more prominence to the Firms on legal documents, building a client portal on the Firms' website and inviting clients to complete a short survey as ways to engage positively with underlying customers. Therefore, whilst the 2012/13 Business Plan demonstrated an intended significant shift in the Firms' focus to consumers, this was not reflected in Mr Palmer's presentation to the Board, or in the implementation of the Firms' business model.

### **Failures to control or mitigate the risks arising from the Firms' business model**

- 4.30. As the Firms' business model gave rise to material risks to underlying customers, the Firms should have implemented an effective risk management framework and control framework to ensure that these risks were identified and understood by the Board, appropriate controls and mitigating measures were put in place to control or mitigate the risks, the effectiveness of the controls and mitigating measures was being objectively assessed, and sufficient, relevant and reliable information was provided to the Board in relation to the controls and mitigating measures. However, the Firms failed to do so. As set out at paragraph 4.16 above, the Skilled Person's Report identified deficiencies with the Firms' controls and risk management framework.
- 4.31. The Authority considered that the Firms posed a high risk of consumer detriment as a result of the weaknesses identified in the Skilled Person's Report, namely that the Firms' ARs and RIs would make recommendations to underlying customers which were not suitable. Accordingly, the Authority commenced an investigation into the Firms.

#### 2014 action against the Firms

- 4.32. On 23 July 2014, the Authority issued Final Notices against the Firms finding that, between 20 August 2008 and 30 April 2013, the Firms breached Principle 3 because:
- (1) the Firms failed to establish and operate effective systems and controls sufficient to ensure that the Firms' ARs and RIs met applicable requirements and standards under the regulatory system, namely:
    - i. recruitment processes which assessed prospective ARs' business models and business practices to determine whether they were suitable to act for the Firms;
    - ii. effective training and suitability assessments which would have determined the competence of RIs before they began advising underlying customers;

- iii. effective supervisory processes which would have ensured that the Firms' ARs and RIs were appropriately and effectively supervised at all times; and
  - iv. adequate compliance and file checking arrangements appropriate to the size and types of business conducted by the Firms;
- (2) the Firms failed to implement effective processes to enable senior management to identify, measure, manage and control the risks that the Firms were, or might be, exposed to in that:
- i. the scope and quality of MI provided to the Board and its sub-committees was not sufficient to enable the Firms' senior management to identify and monitor risk effectively;
  - ii. the Board and the Firms' senior management team focused on dealing with incidents and issues that had already materialised, rather than proactively identifying and monitoring ongoing risks; and
  - iii. the absence of an internal audit function meant that there was no robust mechanism for assessing the effectiveness of the Firms' internal systems and controls.

4.33. The Authority found that the Firms' failings were directly attributable to the Firms' cultural focus which viewed the ARs and RIs, rather than underlying customers, as their customers. This culture created an environment which allowed poor standards of business to continue for a significant period of time.

4.34. For breaching Principle 3, the Authority publicly censured the Firms and imposed restrictions preventing the Firms from appointing any ARs or RIs for a period of 126 days commencing on 23 July 2014. Were it not for the Firms' financial positions, the Authority would have imposed penalties of £12,589,134 on Financial and £621,583 on Investments respectively.

#### 2015 action against the Firms' Compliance Director

4.35. The Authority issued a Final Notice against Mr Stephen Bell on 13 March 2015, finding him, in his position as Compliance Director at the Firms, to have been knowingly concerned in the Firms' breaches of Principle 3 insofar as they related to compliance systems and controls. The Authority imposed on Mr Bell a financial penalty of £33,800 and an order prohibiting him from performing the

CF10 (Compliance Oversight) controlled function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm. Mr Bell agreed to settle at an early stage of the investigation and so qualified for a stage 1 discount. Were it not for this discount, the Authority would have imposed a financial penalty of £48,389 on Mr Bell.

#### Mr Palmer's failures

- 4.36. On account of the February 2010 Final Notice, Mr Palmer must have been aware that the Firms' business model gave rise to material risks to underlying customers, and of the need for appropriate controls and mitigating measures to be in place in relation to these risks.
- 4.37. Mr Palmer was not responsible for the Firms' detailed risk management framework and compliance controls and therefore was not directly responsible for the systems and controls failings at the Firms. However, his role as the de facto CEO of each of the Firms, and his awareness that the business model gave rise to material risks to underlying customers, meant that he could not simply rely on Mr Bell and the Firms' director responsible for risk management to ensure that these risks were being identified and effectively managed. Instead, Mr Palmer had a responsibility to exercise due skill, care and diligence in overseeing the Firms' risk management framework and control framework to ensure they were effective and that they paid due regard to the fair treatment of underlying customers.
- 4.38. Mr Palmer therefore had a responsibility to take adequate steps to ensure that the material risks in respect of underlying customers which arose from the business model that he had developed were being effectively managed by the Firms, that he and the Board were aware of and understood the risks, and that he and the Board received sufficient, relevant and reliable information and valid assurance that the controls and mitigating measures in place were effectively controlling or mitigating the risks.
- 4.39. Mr Palmer failed to take such steps. Whilst he did take some steps to draw attention to the importance of the fair treatment of the Firms' underlying customers, he failed to take adequate steps to ensure that an appropriate control framework and an appropriate risk management framework were put in place to control or mitigate adequately the risks to underlying customers arising from the Firms' business model.

- 4.40. Likewise, in maintaining a business model for the Firms which offered a high level of freedom and flexibility to ARs and RIs, and which thereby increased the inherent risk that underlying customers would not be treated fairly and gave rise to material risks to underlying customers, without ensuring that the controls and mitigating measures in place were effectively controlling or mitigating these risks, Mr Palmer failed to address the risk that the Firms' processes and controls in respect of ARs and RIs were not fit for purpose and would negatively impact the fair treatment of underlying customers.
- 4.41. Mr Palmer's failures, including his failure to take adequate steps to ensure that the Firms put in place appropriate controls and an appropriate risk management framework to control or mitigate the material risks to underlying customers arising from the Firms' business model, meant that, during the Relevant Period, approximately 40,000 underlying customers were exposed to the significant risk that the Firms' ARs and RIs would give unsuitable advice (including in respect of high-risk products such as UCIS), which resulted in consumer detriment.

## **5. FAILINGS**

- 5.1. The statutory and regulatory provisions relevant to this Notice are referred to in Annex A.

### **Statement of Principle 6**

- 5.2. Based on the facts and matters described above, the Authority considers that, during the Relevant Period, Mr Palmer failed to exercise due skill, care and diligence in managing the business of the Firms for which he was responsible in performing his CF1 (Director) controlled function at each of the Firms, in breach of Statement of Principle 6.
- 5.3. As the primary controlling influence at the Firms (given his position as majority shareholder and CEO of the Group, and a director and de facto CEO of each of the Firms), Mr Palmer was responsible for developing and maintaining the Firms' business model and, together with other members of the Firms' senior management, for how that business model was implemented in practice and for oversight of the general management and conduct of the Firms. As the Firms form an adviser network, there was an inherent risk that underlying customers would receive unsuitable advice from the Firms' ARs and RIs. Accordingly, Mr

Palmer was responsible (together with other members of the Firms' senior management) for ensuring that the Firms' business model, and how it was implemented in practice, paid due regard to the fair treatment of underlying customers.

- 5.4. To the extent that the Firms' business model gave rise to material risks to underlying customers, Mr Palmer had a responsibility (together with other members of the Firms' senior management) to exercise due skill, care and diligence to ensure that he, the Board and the Firms were aware of and understood those risks, that appropriate controls and mitigating measures were in place in relation to them, that the effectiveness of the controls and mitigating measures was being objectively assessed and that sufficient, relevant and reliable information was provided to him and the Board in relation to them.
- 5.5. The business model that Mr Palmer developed and maintained focused on serving ARs and RIs and allowed ARs and RIs to be afforded a high level of flexibility and freedom as to how they could operate within the adviser network. This business model thereby increased the risk to underlying customers inherent in an adviser network, and gave rise to material risks to underlying customers, including the increased risk that the Firms would be unaware of, or unable to prevent, ARs and RIs giving unsuitable advice or selling unsuitable investments.
- 5.6. Mr Palmer must have been aware that the Firms' business model gave rise to material risks to underlying customers, and of the need for appropriate controls and mitigating measures to be in place in relation to these risks, on account of the February 2010 Final Notice.
- 5.7. During the Relevant Period, the Firms failed to implement an effective risk management framework and control framework to ensure that: (i) the material risks to underlying customers arising from the Firms' business model were identified and understood by the Board; (ii) appropriate controls and mitigating measures were put in place in relation to these risks; (iii) the effectiveness of the controls and mitigating factors was being objectively assessed; and (iv) sufficient, relevant and reliable information was provided to the Board in relation to the controls and mitigating measures.
- 5.8. Although Mr Palmer was not responsible for the detailed risk management framework and compliance controls, his role as the de facto CEO of each of the Firms, and his awareness that the business model gave rise to material risks to

underlying customers, meant that he could not simply rely on the Firms' directors responsible for risk management and compliance to ensure that these risks were being identified and effectively managed. Mr Palmer therefore had a responsibility to exercise due skill, care and diligence in overseeing the Firms' risk management framework and control framework to ensure they were effective and that they paid due regard to the fair treatment of underlying customers.

5.9. Mr Palmer fell below the standard the Authority would have expected of him in performing his CF1 (Director) controlled function at the Firms because he failed in his position as the Firms' de facto CEO to exercise due skill, care and diligence, as demonstrated by the following:

- (1) Mr Palmer failed to take adequate steps to ensure that the risks in respect of underlying customers which arose from the business model that he had developed were being effectively managed by the Firms, that he and the Board were aware of and understood the risks, and that he and the Board received sufficient, relevant and reliable information and valid assurance that the controls and mitigating measures in place were effectively controlling or mitigating the risks.
- (2) Mr Palmer failed to take adequate steps to ensure that the Firms put in place an appropriate control framework and an appropriate risk management framework to control or mitigate adequately the material risks to underlying customers arising from the Firms' business model.
- (3) In maintaining a business model for the Firms which offered a high level of freedom and flexibility to ARs and RIs, and which thereby increased the inherent risk that underlying customers would not be treated fairly and gave rise to material risks to underlying customers, without ensuring that the controls and mitigating measures in place were effectively controlling or mitigating these risks, Mr Palmer failed to respond with due skill, care and diligence to the risk that the Firms' processes and controls in respect of ARs and RIs were not fit for purpose and would negatively impact the fair treatment of underlying customers.

5.10. As a result, during the Relevant Period, approximately 40,000 underlying customers were exposed to the significant risk that the Firms' ARs and RIs would not treat customers fairly, including by providing unsuitable advice

(including in respect of high-risk products), which resulted in consumer detriment.

### **Fitness and propriety**

- 5.11. The relevant sections of FIT are set out in Annex A. FIT 1.3.1G states that the Authority will have regard to, among other things, a person's competence and capability when assessing the fitness and propriety of a person to perform a particular controlled function.
- 5.12. Mr Palmer's failings, as set out above, occurred despite him being on notice that the fair treatment of underlying customers should be central to the Firms' business, of the importance of effective control over the Firms' ARs and RIs, and of the risks to underlying customers arising from the Firms' business model. In the light of his failings, the Authority considers that Mr Palmer's conduct fell below the standards expected by the Authority of an individual holding a significant influence function and that he has demonstrated a lack of competence and capability to perform such functions.

## **6. SANCTION**

### **Financial penalty**

- 6.1. The Authority has decided to impose a financial penalty on Mr Palmer for breaching Statement of Principle 6. Since almost all of Mr Palmer's misconduct occurred after the changes in regulatory provisions governing the determination of financial penalties and public censures on 6 March 2010, the Authority has applied the provisions that were in place after that date.
- 6.2. The principal purpose of a financial penalty is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour.
- 6.3. In determining whether a financial penalty is appropriate, the Authority is required to consider all the relevant circumstances of a case. A financial penalty is an appropriate sanction in this case given the nature of the breach and the need to send out a deterrent message.

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

**Step 1: disgorgement**

- 6.5. Pursuant to DEPP 6.5B.1G, at Step 1 the Authority seeks to deprive an individual of the financial benefit derived directly from the breach where it is practicable to quantify this.
- 6.6. The Authority has not identified any financial benefit that Mr Palmer derived directly from breaching Statement of Principle 6.
- 6.7. Step 1 is therefore £0.

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

- 6.8. Pursuant to DEPP 6.5B.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. That figure is based on a percentage of the individual's relevant income. The individual's relevant income is the gross amount of all benefits received by the individual from the employment in connection with which the breach occurred, and for the period of the breach.
- 6.9. The period of Mr Palmer's misconduct was from 24 February 2010 to 20 December 2012. The Authority considers Mr Palmer's relevant income for this period to be £288,971.
- 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.
- 6.12. 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:
- (1) Mr Palmer's failure to discharge his responsibilities in carrying out his CF1 (Director) controlled function at the Firms exposed underlying customers to a significant risk of loss;
  - (2) no financial crime, or significant risk of financial crime, was facilitated, occasioned or otherwise attributable to Mr Palmer's breach;
  - (3) the Authority has not identified any evidence which suggests that Mr Palmer failed to act with integrity or abused a position of trust; and
  - (4) the Authority has not identified any evidence which suggests that Mr Palmer's misconduct was committed deliberately or recklessly.
- 6.13. DEPP 6.5B.2G(13) lists factors likely to be considered 'level 1, 2 or 3 factors'. Of these, the authority considers the following factors to be relevant:
- (1) the Authority has not identified any profits made, or losses avoided, either directly or indirectly as a result of Mr Palmer's misconduct;
  - (2) the Authority has not identified any actual or potential effects on the orderliness of, or confidence in, markets as a result of Mr Palmer's misconduct; and
  - (3) the Authority considers Mr Palmer's misconduct to have been committed negligently.
- 6.14. The Authority also considers that the following factors are relevant:

- (1) The Authority has required the Firms to conduct PBRs in relation to pension switching recommendations and is supervising the Firms' internal review of their promotion and sale of UCIS. Although actual loss to individual underlying customers has yet to be fully quantified, the Firms have identified high levels of potential unsuitability and made payments to affected customers by way of redress (DEPP 6.5B.2G(8)(c));
- (2) Mr Palmer is an experienced industry professional with over 20 years' experience in financial services. Mr Palmer was described in job descriptions and understood by senior management to be the CEO of the Group, and as the Firms were managed at Group level, Mr Palmer acted as de facto CEO of each of the Firms (DEPP 6.5B.2G(9)(i)-(k)); and
- (3) at all times throughout the Relevant Period, Mr Palmer was the primary controlling influence at the Firms and was responsible for developing and maintaining the Firms' business model (DEPP 6.5B.2G(9)(l)).

6.15. Taking all of these factors into account, and in particular because:

- (1) Mr Palmer's misconduct operated across all business areas throughout the Relevant Period and exposed approximately 40,000 underlying customers to a significant risk of loss; and
- (2) of Mr Palmer's experience in the industry and seniority within the Firms;

the Authority considers the seriousness of the breach to be level 3 and so the Step 2 figure is 20% of £288,971.

6.16. Step 2 is therefore £57,794.

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

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

6.18. The Authority considers that the following factors aggravate the breach:

- (1) the Authority has taken into account Mr Palmer's disciplinary record, specifically that he has previously been the subject of an Enforcement investigation and that he was given the February 2010 Final Notice (DEPP 6.5B.3(i)); and
- (2) during and prior to the Relevant Period, the Authority had repeatedly highlighted (by way of guidance it published) the importance of both the fair treatment of customers being central to a firm's business and effective control over its ARs to reduce the level of risk to customers (DEPP 6.5B.3(k)).

6.19. Having taken into account these aggravating factors, the Authority considers that the Step 2 figure should be increased by 50%.

6.20. Step 3 is therefore £86,691 (150% of £57,794).

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

6.21. 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.

6.22. The Authority considers that the Step 3 figure of £86,691 represents a sufficient deterrent to Mr Palmer and others, and so has not increased the penalty at Step 4.

6.23. Step 4 is therefore £86,691.

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

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

6.25. No settlement discount applies. The penalty figure after Step 5 is therefore £86,691.

## **Penalty**

- 6.26. The Authority therefore has decided to impose a total financial penalty of £86,691 on Mr Palmer for breaching Statement of Principle 6.

## **Prohibition**

- 6.27. The Authority considers that it is appropriate and proportionate in all the circumstances, and supports its consumer protection objective, to prohibit Mr Palmer from performing any significant influence function in relation to any regulated activity carried out by an authorised person, exempt person or exempt professional firm, because he is not a fit and proper person in terms of his competence and capability.
- 6.28. The Authority has had regard to the guidance in Chapter 9 of EG in deciding that Mr Palmer should be prohibited from performing functions involving the exercise of significant influence. The relevant provisions of EG are set out in the Annex to this Notice.
- 6.29. Given the seriousness and duration of the failures outlined above - in particular, that Mr Palmer's misconduct took place despite him being on notice that the fair treatment of customers should be central to the Firms' business, of the importance of effective control over the Firms' ARs and RIs, and of the risks to underlying customers arising from the Firms' business model - there was an increased risk that the Firms' 40,000 underlying customers during the Relevant Period would receive unsuitable advice from the Firms' ARs and RIs. The Authority therefore considers that Mr Palmer's conduct demonstrates a serious lack of competence and capability for an individual performing controlled functions involving the exercise of significant influence, and that if he performed such functions, he would pose a risk to the Authority's consumer protection objective.

## **7. REPRESENTATIONS**

- 7.1. Annex B contains a brief summary of the key representations made by Mr Palmer and how they have been dealt with. In making the decision which gave rise to the obligation to give this Notice, the Authority has taken into account all of the representations made by Mr Palmer, whether or not set out in Annex B.

## **8. PROCEDURAL MATTERS**

- 8.1. This Notice is given under sections 57 and 67 and in accordance with section 388 of the Act.

### **Decision maker**

- 8.2. The decision which gave rise to the obligation to give this Notice was made by the Regulatory Decisions Committee.

### **The Tribunal**

- 8.3. Mr Palmer has the right to refer the matter to which this Notice relates to the Tribunal. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, Mr Palmer has 28 days from the date on which this Notice is given to him to refer the matter to the Tribunal. A reference to the Tribunal is made by way of a signed reference notice (Form FTC3) filed with a copy of this Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, Fifth Floor, Rolls Building, Fetter Lane, London EC4A 1NL (tel: 020 7612 9730); email [fs@hmcts.gsi.gov.uk](mailto:fs@hmcts.gsi.gov.uk)).

- 8.4. Further information on the Tribunal, including guidance and a link to 'Forms and leaflets' which include Form FTC3 and notes on that form, can be found on the HM Courts and Tribunal Service website:  
<http://www.justice.gov.uk/tribunals/tax-and-chancery-upper-tribunal>.

- 8.5. A copy of Form FTC3 must also be sent to Paul Howick at the Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS at the same time as filing a reference with the Tribunal.

### **Access to evidence**

- 8.6. Section 394 of the Act applies to this Notice. In accordance with section 394, Mr Palmer has the right to access:

- (1) the material upon which the Authority has relied in deciding to give this Notice; and
- (2) the secondary material which, in the opinion of the Authority, might undermine that decision.

- 8.7. This material was enclosed with the Warning Notice given to Mr Palmer on 12 May 2015.

**Confidentiality and publicity**

- 8.8. This Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). Section 391 of the Act provides that a person to whom this Notice is given or copied may not publish the Notice or any details concerning it unless the Authority has published the Notice or those details.
- 8.9. However, the Authority must publish such information about the matter to which a decision notice or final notice relates as it considers appropriate. Mr Palmer should be aware, therefore, that the facts and matters contained in this Notice may be made public.

**Contact**

- 8.10. For more information concerning this matter generally, contact Paul Howick at the Authority (direct line: 020 7066 7954 / email: paul.howick@fca.org.uk).

**Peter Hinchliffe**

**Acting Chairman, Regulatory Decisions Committee**

**ANNEX A**  
**RELEVANT REGULATORY PROVISIONS**

1. The Authority's statutory objectives, set out in section 1B(3) of the Act, include 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 exempt professional firm. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.

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

4. Statement of Principle 6 states:  
  
"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."
5. 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**

6. 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.
7. 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**

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

10. 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.

## ANNEX B

### REPRESENTATIONS

1. Mr Palmer's representations (in italics), and the Authority's conclusions in respect of them, are set out below:

#### *Validity of the Authority's case*

2. *It is not possible to reconcile the Authority's case against Mr Palmer with the Authority's acknowledgement, either prior to or during the course of its investigation, that:*
  - a. *The Firms' business model did not necessarily entail regulatory failure;*
  - b. *Mr Palmer was not responsible for the establishment and maintenance of the systems and controls around ARs that were necessary to mitigate the risks arising from the Firms' business model; and*
  - c. *Mr Palmer did not fail properly to supervise those who were responsible for the establishment and maintenance of those systems and controls.*
3. *The Authority has not identified what were Mr Palmer's failings in managing the business of the Firms, which it needs to do in order to conclude he breached Statement of Principle 6. The Authority has not provided any evidence of negligent management.*
4. *The Authority's case against Mr Palmer can only stand if there is evidence that Mr Palmer knew the Firms' business model imposed constraints on Mr Bell which prevented Mr Bell from carrying out his role as the Firms' Compliance Director. There is no such evidence, in which case it cannot be concluded that Mr Palmer's maintenance of the business model demonstrates his lack of competence.*
5. The Authority does not consider that the acknowledgements made by it during the course of its investigation invalidate its conclusion that, during the Relevant Period, Mr Palmer breached Statement of Principle 6 in carrying out his CF1 (Director) controlled function at the Firms by failing to exercise due skill, care and diligence in managing the business of the Firms for which he was responsible. Mr Palmer's failings are set out in section 5 of this Notice and include his failure to take adequate steps to ensure that the Firms put in place an appropriate control framework and an appropriate risk management

framework to control or mitigate adequately the material risks to underlying customers arising from the Firms' business model.

6. The Authority's view is that, in order to act with due skill, care and diligence, Mr Palmer should have done more than simply avoid imposing constraints on Mr Bell. Mr Palmer also had a responsibility to take adequate steps to ensure that the Firms put in place an appropriate control framework and an appropriate risk management framework to control or mitigate adequately the material risks to underlying customers arising from the Firms' business model. Mr Palmer could not rely entirely on Mr Bell and the Firms' Risk Management Director as he must have been aware that the business model gave rise to material risks to underlying customers that he and the Board needed to ensure were adequately managed.

*Mr Palmer's role and responsibilities*

7. *It is not correct to say that Mr Palmer was the primary controlling influence of the Group, and he was not solely responsible for setting the Firms' business model. It was the Board which determined the business model and all Board members were actively involved in decisions taken by the Board throughout the relevant period, so he should not be held responsible for the Firms' failings.*
8. *Mr Palmer's key role during the relevant period was to work with the Board to deliver the objectives it set. This involved working with the other directors and overseeing them as they performed their roles for their respective functions.*
9. The Authority's view that during the Relevant Period Mr Palmer was the primary controlling influence of the Group and had responsibility for developing and maintaining the Firms' business model is based on the following reasons: (i) as 90% shareholder of the Group, CEO of the Group and de facto CEO of the Firms, Mr Palmer was in a position of control and influence at the Firms; (ii) Mr Palmer confirmed during interview that he was responsible for setting the "tone" and "agenda" of the Group; and (iii) Mr Palmer presented to the Board the Group's business plan each year during the Relevant Period, which set out his strategy for the Firms.
10. The Authority considers that as Mr Palmer was the primary controlling influence of the Firms, he had the responsibilities described in paragraph 4.22 of this Notice. While other members of the Firms' senior management were also responsible for how the Firms' business model was implemented in practice, it is the Authority's view that only Mr Palmer was responsible for developing and

maintaining the Firms' business model. The Authority has concluded that Mr Palmer failed to carry out his responsibilities with due skill care, and diligence, as described in paragraph 2.9 of this Notice.

11. Mr Palmer was required to do more than just appoint other directors to carry out functions; his role as the de facto CEO of each of the Firms, and his awareness that the business model gave rise to material risks to underlying customers, meant he had responsibilities once those directors were in place, including taking adequate steps to ensure that he and the Board were aware of and understood the material risks to underlying customers arising from the business model, that an appropriate control framework and an appropriate risk management framework were in place in relation to those risks, and that the effectiveness of the controls and mitigating measures was being objectively assessed.

*Risks arising from the Firms' business model*

12. *Mr Palmer did not dispute that by allowing ARs and RIs to be afforded a high level of flexibility, the business model increased the risk of consumer detriment through unsuitable advice, but argued that different controls, rather than stronger controls, were needed to mitigate this risk.*
13. *The Firms' business model did not change materially from the founding of the Group in 2001 up until Mr Palmer's departure as CEO in December 2012, and the same business model is in place today.*
14. *The Firms' business model, which allowed flexibility of process for ARs and RIs to deliver suitable customer outcomes, substantially reduced the risk to underlying customers in some respects. For instance, by allowing advisers to use their own fact finds and risk profilers which were not standardised and to choose the products they had researched as best for that customer, there was a reduced risk of concentrated product solutions (a narrow panel) being applied where they are not suitable for customers.*
15. *The Firms were aware of the risk arising from ARs and RIs making their own entries in the new business register on the Firms' web-based MI database, and sought to mitigate that risk through controls.*
16. *The Firms were aware of the risk to underlying customers arising from the fact that, on joining the Firms' network, ARs were effectively permitted to follow*

*their own sales process and use their own adviser tools, and sought to mitigate that risk through controls.*

17. *The risk to underlying customers arising from the fact that the Firms did not require ARs to limit recommendations to product providers that had been approved by the Firms was not referred to in the Skilled Person's Report, and the Authority has not provided any evidence as to whether and, if so, in what respects the Firms' controls were inadequate to mitigate this risk.*
18. The Authority's view is that the high degree of flexibility and freedom that the business model afforded to ARs and RIs gave rise to the need for effective analysis of the resulting risks and the need for controls and mitigating measures to be evaluated to ensure their effectiveness, and that the controls and mitigating measures that were put in place were inadequate.
19. The Authority's case is not that the business model necessarily meant that the Firms were unable to comply with their regulatory obligations, but rather that Mr Palmer failed during the Relevant Period to act with due skill, care and diligence to ensure that material risks which arose from the business model were being effectively managed by the Firms.
20. The Authority accepts that the business model potentially gave underlying customers a greater choice of products, but considers that it also gave rise to material risks to underlying customers which needed to be controlled or mitigated through adequate controls and mitigating measures. The Authority's view is that the controls and mitigating measures put in place were not sufficient and were not adequately monitored and evaluated.
21. The control for mitigating the risk arising from ARs and RIs making their own entries in the new business register was not in place. The Skilled Person's Report noted that the Group required ARs and RIs to submit copies of bank statements on a monthly basis, but did not reconcile them to the new business register, and so concluded that the Firms did not have a robust way of retrospectively checking that entries to the new business register were correct. Further, this was not an adequate control as it did not enable the Firms actually to know what product had been sold or what advice had been given.
22. The Firms carried out checks of the ARs' files. These were carried out post-sale and so were not effective controls as they did not prevent advice being given that was inappropriate.

23. The Authority's view is that the Firms did not put in place effective processes to mitigate the risk that ARs might choose to offer products that were outside of their competence or which were not suitable for the underlying customer.

*The Group's Business Plans*

24. *The quotes taken from the Group's 2011/12 and 2012/13 Business Plans are selective and used entirely out of context. When read in their entirety, it can be seen that the Group did focus on the key matters of compliant advice and good customer outcomes. Mr Palmer's proposals in his presentation to the Board on the 2012/13 Business Plan were merely examples of attempts to engage more with clients. Following this Business Plan, the Group made a number of further changes. The statement "In terms of the main business model, there are no major changes to the services offered" was referring to the services that the Firms were considering introducing through Investments, involving a different network model. It is therefore incorrect to state that the shift in the Firms' focus towards consumers was not reflected in Mr Palmer's presentation to the Board or in the implementation of the business model.*

25. The Authority considered the Group's Business Plans in their entirety and views the quotes taken from them as indicative of the business model and consistent with the conclusions of the Skilled Person's Report. While the Business Plans did include some references to the importance of customers and positive customer outcomes, this was not their focus, which the Authority would have expected given the nature of the Firms' business and their responsibility for ensuring advice given to customers by their ARs and RIs was suitable.

*The Firms' cultural focus*

26. *The Firms' business followed the motto: "Humility, Integrity, Discipline", recruiting primarily high quality and experienced ARs and RIs and requiring them to act in accordance with this motto and its philosophy. The Group was totally independent and expressly had no links to product providers. There were neither product provider incentives nor preferred panel lists. There was no additional profit generated by high adviser revenue levels nor any minimum advisor production targets or requirements. The culture was at all times advice driven rather than sales driven. In 2010 the Chairman of the Group set a target for the Firms to be ranked by the Authority in the upper quartile of its peers in 2012. The Board took, or was told of, the significant steps undertaken by and in the business which were designed to reach this target.*

27. The Firms' motto is high-level and generic and is not, in itself, indicative of a culture focused on the fair treatment of underlying customers. The strapline to this motto was "*This ethos drives the company in its objective of the provision of services to the Independent Financial Adviser.*" As an adviser network, the Firms were responsible for the service given to customers by their ARs and RIs, and thus the fair treatment of underlying customers should have been central to the Firms' ethos and corporate culture.
28. The independence of the Group from product providers meant that ARs and RIs were free to choose the most suitable product on the market, which should assist the underlying customer. However, this greater flexibility in recommending products to customers creates an obvious risk in respect of the competence and expertise of ARs and RIs in selecting a suitable product and a risk that the AR's or RI's choice may be influenced by inappropriate factors. The Firms therefore had to ensure that adequate controls were put in place in respect of these risks.
29. In an assessment of the Firms carried out in October 2012, the Authority found the Firms posed a high risk to the Authority's statutory objectives and the Firms scored worse than their peers in a number of categories.

*Failures to control or mitigate the risks arising from the Firms' business model*

30. *The Skilled Person's Report does not suggest that the Group had not put in place controls that would mitigate the risks to underlying customers arising from the Group's business model. Rather, the Skilled Person's Report identifies respects in which the controls that had been put in place required to be strengthened in order to be fully effective.*
31. *The Board did not allow flexibility of compliance standards. The Board recognised that the flexibility of process meant that enhanced systems and controls and monitoring over the ARs and RIs was required to ensure the business was taking proper steps to mitigate risks to underlying customers ("adviser risk"). The Board also recognised that the lack of narrow product panels potentially increased the risk of unsuitable advice on an individual basis due to an underlying customer receiving advice in respect of a "bad" product ("product risk").*
32. *In respect of adviser risk, the Board was concerned to ensure that it had sufficient information to conclude that customers were receiving suitable advice, given that advice was provided in respect of a large variety of products.*

*Effective processes were therefore put in place to ensure the Board received the necessary information. In respect of product risk, the Board believed the key issue was not so much the product selected, but whether the product was suitable for the customers' needs. This meant that they had to check the research done on the products chosen.*

33. *The risk of ARs and RIs reconciling their own commission was offset by checking their bank statements on a monthly basis and by checking the provider's records.*
34. *Throughout the relevant period, the Firms recruited only experienced and high quality ARs and RIs, which was a fundamental part of managing adviser risk. On average, the Group rejected approximately 60 of the 150-175 applications it received each year.*
35. The Authority accepts that some controls and mitigating measures were in place to control or mitigate the risks arising from the business model. However, the Authority's view is that these controls and mitigating measures were insufficient to control or mitigate adequately these risks, including the adviser risk and the product risk.
36. As set out in the Final Notices given to the Firms on 23 July 2014, the Authority has concluded that the Firms failed to implement effective processes to enable senior management to identify, measure, manage and control the risks (including the adviser risk and the product risk) that the Firms were, or might be, exposed to.
37. The control used in respect of the risk of ARs and RIs reconciling their own commission was not effective as the Firms did not know what products were being sold as they were not necessarily put on the Firms' MI database, and did not address the risk of treating underlying customers unfairly.
38. The Authority's view is that the Firms' policy of recruiting ARs and RIs with some experience was helpful but not sufficient to mitigate the risks to underlying customers. The Firms' responsibilities in respect of ensuring that the ARs and RIs were competent to advise on the products that they chose to offer and acted compliantly went further and the Firms should have put in place appropriate controls over the ARs and RIs to mitigate these risks.

*Mr Bell's role*

39. *Steps were taken at the start of, and during, the Relevant Period to help manage the risks arising from the Firms' business model. These included the appointment of a Compliance Director and a Risk Management Director, and the introduction of a Serious Business Threats Report which included, as "high/fundamental" and "unacceptable" the risk that "Advisers give unsuitable advice to clients", and listed existing controls and a further mitigation option. This risk was owned by Mr Bell, the Compliance Director.*
40. *The Group's Compliance Director, Mr Bell, was responsible for TCF within the network and, throughout the Relevant Period, was responsible for putting in place adequate systems and controls to reduce the risk of adverse outcomes for consumers. Mr Bell informed the Authority that he was particularly responsible for risks to underlying customers and systems and controls risks. It was therefore not Mr Palmer's responsibility to establish and strengthen the controls that would mitigate the risks to underlying customers that arose from the business model.*
41. *Mr Palmer was in contact with Mr Bell on a daily basis and believed Mr Bell was doing the right things in trying to manage the risks, as he was aware that a number of enhancements were being implemented by the Compliance Team. He believed that, until his departure from the Firms in January 2013, Mr Bell was effective in building a compliance framework around the business model to ensure good outcomes for customers.*
42. *Mr Bell did not suggest that the Firms' business model should be changed because regulatory compliance was not possible and did not mention any major concerns about his ability to address the compliance risks with the business model. These risks were addressed through the Compliance and Regulatory Committee meeting framework, which reported into Mr Bell rather than the Board. Mr Palmer believed this Committee was doing a good job and no major concerns were raised with him by Mr Bell.*
43. *Since Mr Bell left at the end of the Relevant Period, the persons who have since performed the Compliance Director role have not introduced any new systems and controls or other changes to attempt to mitigate either adviser risk or product risk due to any deficiencies identified; they have merely added further enhancements to the existing controls in respect of the same business model.*

44. *The Authority's reliance on evidence from Mr Bell, who agreed to settle the regulatory action taken against him, is potentially unfair.*
45. As is set out in the Final Notices given to the Firms on 23 July 2014, the Authority considers that the Firms failed to take adequate steps to manage the risks to underlying customers. The Authority acknowledges that Mr Bell was responsible for implementing and maintaining compliance systems and controls at the Firms during the relevant period, and that his responsibilities included mitigating customer risk. However, given Mr Palmer's awareness that the business model gave rise to material risks to underlying customers, this did not absolve Mr Palmer, as the de facto CEO of each of the Firms, from his responsibility to take adequate steps to ensure that the risks which arose from the Firms' business model were being effectively managed by the Firms, that he and the Board were aware of and understood the risks, and that he and the Board received sufficient, relevant and reliable information and valid assurance that the controls and mitigating measures in place were effectively mitigating the risks. By maintaining that business model, without ensuring that the controls and mitigating measures in place were effectively controlling or mitigating the material risks arising from the business model, Mr Palmer failed to respond with due skill, care and diligence to the risk that the Firms' processes and controls in respect of ARs and RIs were not fit for purpose and would negatively impact the fair treatment of customers.
46. The Authority considers that Mr Palmer should have ensured that the risk management framework was designed and operated so as to provide enough information for the Board to evaluate the effectiveness of the systems and controls that Mr Bell put in place to manage risk and ensure compliance.
47. Mr Bell's replacement performed the role of Risk and Compliance Director within a new senior management structure, including a highly experienced non-executive Chairman and two experienced non-executive directors, and the Firms have sought to implement 140 recommendations made by the Skilled Person's Report. This indicates the extent of 'enhancement' that was required to improve the effectiveness of the Firms' systems and controls in mitigating risks to underlying customers. The fact that no new controls have been implemented – if that is indeed the case – does not detract from the fact that the Firms' systems and controls during the Relevant Period were inadequate and below the required regulatory standard, as set out in the Final Notices issued to the Firms in July 2014 and to Mr Bell in March 2015.

48. The Authority notes Mr Palmer's concerns regarding Mr Bell's evidence. Whilst the Authority does not consider it inappropriate to take into account evidence from Mr Bell, that evidence has not made any material difference to the findings set out in this Notice.

*Penalty*

49. *The February 2010 Final Notice should not be treated as an aggravating factor as the findings set out in that Notice were of a different nature to those alleged in this case.*
50. The Authority's view is that Mr Palmer's disciplinary record is a factor that it is appropriate to take into account in calculating the penalty, and that the February 2010 Final Notice is particularly relevant given that it was given immediately prior to the start of the Relevant Period.

*Prohibition*

51. *There is no proper basis on which Mr Palmer should, or even could, be prohibited on the ground of lack of competence and capability.*
52. The Authority considers that Mr Palmer's failings, as set out in this Notice, demonstrate that Mr Palmer lacks the competence and capability to perform any significant influence function.