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FURTHER FINAL NOTICE

To: Robert Ian Shaw

Individual Reference Number: RIS00009

Date: 16 March 2020

1 ACTION

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

(1) imposes on Mr Shaw a financial penalty of £41,400; and

(2) makes an order prohibiting Mr Shaw from performing any senior management function or any significant influence function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. This order takes effect from 13 August 2015.

1.2 Mr Shaw agreed to settle at an early stage of the Authority's investigation. Mr Shaw therefore qualified for a 30% (Stage 1) discount under the

Authority's executive settlement procedures. Originally, settlement was reached on 31 July 2015, which resulted in the issue of a Decision Notice and Final Notice to Mr Shaw including the imposition of a financial penalty of £165,900 and the withdrawal from Mr Shaw of the approval he held at that time of the CF1 (Director) function at TailorMade Independent Limited ("TMI"). Were it not for this Stage 1 discount, the Authority would have imposed a financial penalty of £237,040 on Mr Shaw.

1.3 On 12 October 2015 the Authority decided to suspend enforcement of Mr Shaw's penalty, pending resolution of an issue which had arisen in the closely connected disciplinary case of Mr Alistair Rae Burns, another director of TMI. The issue concerned the Authority's jurisdiction to impose Mr Burns' penalty under section 66 of the Financial Services and Markets Act 2000 ("the Act"). Evidence had emerged that the limitation period for doing so may have expired before the issue of the Warning Notices against Mr Burns and the other TMI directors, including Mr Shaw. Therefore, given the factual similarities between the cases, the Authority wanted the question of limitation in the case of Mr Burns to be resolved before Mr Shaw paid his penalty in case the outcome of Mr Burns' case impacted the level of penalty that had been imposed on Mr Shaw.

1.4 Mr Burns' case was referred to the Upper Tribunal ("the Tribunal") on 7 September 2016 and on 5 July 2017 the Authority decided no longer to pursue a penalty against 31 July Mr Burns in respect of part of the misconduct case against him, on the basis that it was strongly arguable that its jurisdiction to do so had expired on the basis of evidence that had been found late in the enforcement process (and after the issuance of the Warning Notice to Mr Shaw) which concerned the timing of the Authority's knowledge of the misconduct. It was therefore strongly arguable that the Authority was time-barred from issuing Warning Notices in respect of that misconduct. On 31 July 2018 the Upper Tribunal decided that, partly in light of that concession, it would reduce the penalty imposed on Mr Burns to £60,000. This constituted a reduction of approximately 75% from Mr Burns' original penalty of £233,600. The Authority has decided to withdraw Mr Shaw's Decision Notice and Final Notice of 31 July 2015 and instead, via a further Decision Notice and this Final Notice, to impose on Mr Shaw a revised penalty proportionate to that imposed on Mr Burns by the Upper Tribunal (while taking proper account of the fact that Mr Shaw reached settlement with the Authority during Stage 1 of the Authority's investigation).

1.5 Accordingly, the Authority has decided to withdraw Mr Shaw's Decision Notice and Final Notice of 13 August 2015 and instead, via this Further Final Notice, to impose on Mr Shaw a revised penalty proportionate to that imposed on Mr Burns by the Upper Tribunal (while taking proper account of the fact that Mr Shaw reached settlement with the Authority during Stage 1 of the Authority's investigation). This course of action reflects the fact that evidence found after the settlement with Mr Shaw strongly indicated that the Authority was by that time time-barred from taking part of the original action against Mr Shaw. Mr Shaw's penalty is now £41,400. This amounts to 25% of the penalty of £165,900 imposed on him by his original Decision Notice. That penalty already incorporated a 30% reduction on the basis of Mr Shaw's agreement to settle during Stage 1 negotiations. The Authority considers it appropriate to maintain the Stage 1 discount in proportion to the newly adjusted penalty. As TMI was dissolved on 9 July 2016, the withdrawal of his approval as CF1 (Director) at TMI is no longer necessary.

2 SUMMARY OF REASONS

2.1 Mr Shaw was a Director and shareholder at TMI, a firm that provided advice to customers who were considering transferring their pension funds to unregulated investments such as biofuel oil, farmland and overseas property via SIPPs.

2.2 During the period 22 January 2010 to 20 January 2013, Mr Shaw failed to take reasonable steps to ensure that the business of TMI, for which he was responsible in his controlled function, complied with the relevant requirements and standards of the regulatory system. Specifically, Mr Shaw failed to take reasonable steps to ensure that TMI assessed the suitability of the underlying product contained within the SIPP for the customer. Instead, TMI's business model focussed solely on providing advice on the most suitable SIPP wrapper for the underlying product. Mr Shaw also failed to take adequate care to identify, manage, mitigate and disclose conflicts of interest that arose from TMI's business model, his role as a Director of TMI and his other business interests.

2.3 As a direct result of Mr Shaw's failings, during the Relevant Period 1,661 of TMI's customers were at significant risk of transferring their pension funds into SIPPs which were not suitable for them. These 1,661 TMI customers invested a total of £112,420,985, mostly from pension funds including some

final salary schemes, into SIPPs. Of the 1,661 customers, 923 invested in overseas property developments operated by Harlequin.

2.4 Mr Shaw and his co-directors chose to implement a business model at TMI that remained unchanged throughout the Relevant Period. Mr Shaw, in implementing the business model, did not realise that it was TMI's responsibility to advise on the underlying products to be placed in the SIPPs. The underlying products held in the SIPPs were typically high risk, esoteric investments which were not suitable for all retail customers. In his role promoting alternative investments at the Unregulated Introducer, Mr Shaw fully understood the nature of the underlying products which TMI's customers were investing in via their SIPP. He personally invested his own pension into some of those underlying products, including Harlequin. Mr Shaw also received a financial benefit from sales of the underlying products via the Unregulated Introducer. The financial benefit Mr Shaw received created a conflict of interest with his duty to TMI's customers to run the business compliantly so that it provided advice to its customers on the suitability of the underlying products as well as the SIPP wrapper. Mr Shaw did not ensure that TMI's business model considered the suitability of the product for each of its customers.

2.5 The vast majority of TMI's customers were referred to it by introducers, who were also agents of the Unregulated Introducer. The role of the Unregulated Introducer was to facilitate the sale to customers of alternative investment products. The Unregulated Introducer received a commission payment from the underlying product providers for its role in the facilitation of the sale to the customer of the underlying product. Mr Shaw was a director and shareholder of the Unregulated Introducer, and received a significant financial benefit, paid through a remuneration trust used by the Unregulated Introducer. In addition to his role with the Unregulated Introducer, Mr Shaw also made introductions in his personal capacity direct to TMI. Mr Shaw therefore benefitted financially from both the fees paid by customers for the advice given by TMI on the SIPP transfer and also from the commission paid to the Unregulated Introducer, for its role in the ultimate sale of the underlying product to the customer.

2.6 Mr Shaw failed to address the conflict of interest created between his duty to TMI's customers and his role at the Unregulated Introducer. TMI advised customers to transfer their pensions into a SIPP in order to purchase an

underlying product, where Mr Shaw also benefitted financially from the customer's purchase of that product through payments he received as a director and shareholder of the Unregulated Introducer. In these circumstances, Mr Shaw was responsible for ensuring that he firstly identified, and then managed, mitigated and disclosed that conflict of interest. The conflict could have been mitigated had TMI provided full, impartial advice in respect of the suitability of the underlying products for the customer. However, TMI did not advise its customers on the suitability of the underlying products, nor did TMI explain to its customers that the underlying products sold by the Unregulated Introducer were typically high risk, esoteric investments which were not suitable for all retail customers. Mr Shaw's failure to address this conflict of interest meant that TMI's customers were unable to make informed decisions in relation to waiving any conflict of interest surrounding commission payments and incentives.

2.7 In addition, in his role as a Director at TMI, Mr Shaw was responsible for ensuring that TMI identified, managed, mitigated and disclosed any potential conflict of interest which affected TMI as an authorised firm, including but not limited to conflicts between a client of TMI and its staff. A number of individuals at TMI were also owners of, or acted as agents of, the Unregulated Introducer. This created a conflict of interest at TMI, because TMI was advising customers to transfer their pensions into SIPPs (without advising on the suitability of those underlying products) when certain individuals at TMI also had a financial interest in facilitating the sale of the underlying products to the customer.

2.8 During the Relevant Period, Mr Shaw therefore failed to identify, manage, mitigate and disclose both his own personal conflicts of interest and those of TMI as an authorised firm. Mr Shaw accepted that TMI did not appreciate or address these conflicts of interest.

2.9 During the Relevant Period, Mr Shaw therefore breached Statement of Principle 7 in that he failed to:

(1) take reasonable steps to ensure that TMI assessed the suitability of the underlying product within the SIPP for the customer; and

(2) identify, disclose, manage and mitigate adequately his own personal conflicts of interest as well as the conflicts of interest that existed between individuals at TMI and the Unregulated Introducer.

2.10 As a consequence of his actions, Mr Shaw failed to meet regulatory standards with regard to performing significant influence controlled functions. He is therefore not fit and proper to perform any senior management function or any significant influence controlled functions in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

2.11 The Authority therefore imposes a financial penalty on Mr Shaw in the amount of £41,400 pursuant to section 66(3) of the Act and makes a prohibition order pursuant to section 56 of the Act prohibiting Mr Shaw from performing any senior management function or any significant influence functions in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

2.12 As a direct result of an alert issued by the Authority on 18 January 2013, TMI voluntarily suspended its business of providing advice to customers on SIPPs on 20 January 2013. This voluntary suspension of business was formalised on 13 March 2013 when TMI voluntarily varied its permissions such that with effect from that date, TMI was no longer permitted to carry on regulated activities. In addition to the variation of permissions, Mr Shaw cooperated with the Authority and proactively created a remediation plan to deal with the pipeline of TMI's customers who were affected by the variation of permissions. Between February and October 2013, Mr Shaw implemented the remediation plan, subsidising its costs from his own funds.

2.13 On 15 October 2013, TMI entered into liquidation. On 29 July 2014, the FSCS announced that it had declared TMI 'in default'. The FSCS is investigating claims made by TMI's customers (certain TMI investors have received funds already from the FSCS as a result of such investigation).

3 DEFINITIONS

3.1 The definitions below are used in this Final Notice.

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

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

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

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

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

"Director" means CF1 director;

"Direct Introduction" means the introduction to TMI by Mr Shaw personally of a number of customers from his existing customer bank;

"EG" means the Authority's Enforcement Guide;

"FSCS" means the Financial Services Compensation Scheme;

"Green Oil" means Green Oil Plantations Limited;

"Harlequin" means the Harlequin group of companies including, but not limited to, Harlequin Management Services (South East) Limited, an unregulated, limited company (in administration with effect from 3 May 2013 and in liquidation with effect from 20 October 2014);

"IFA" means independent financial adviser;

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

"Mr Shaw" means Robert Ian Shaw;

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

the "Relevant Period" means 22 January 2010 to 20 January 2013 inclusive;

"SIF" means significant influence functions;

"SIPP" means self-invested personal pension;

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

"TMI" or the "Firm" means TailorMade Independent Limited (In Liquidation) a company authorised and regulated by the Authority (in liquidation with effect from 15 October 2013);

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

the "Unregulated Introducer" means an unregulated company whose purpose was to facilitate the sale of alternative investment products to customers.

4 FACTS AND MATTERS

Background

The Firm

4.1 TMI was a limited company, authorised by the Authority on 22 January 2010. It voluntarily varied its permissions on 13 March 2013 and was dissolved on 9 July 2016.

4.2 Throughout the Relevant Period, TMI had permission to carry on the following regulated activities:

(1) agreeing to carry on a regulated activity;

(2) advising on investments, including advising on Pension Transfers and Pension Opt Outs;

(3) arranging (bringing about) deals in investments; and

(4) making arrangements with a view to transactions in investments.

4.3 In addition to the above permissions, TMI was authorised with effect from 4 January 2013 to perform certain activities in relation to regulated mortgage contracts and in relation to certain insurance mediation activities.

4.4 As a result of entering into a voluntary variation of permission on 13 March 2013, TMI was no longer permitted to carry on any regulated activities in relation to any new regulated pension contracts. In addition to the variation of permissions, Mr Shaw cooperated with the Authority and proactively created a remediation plan to deal with the pipeline of TMI's customers who were affected by the variation of permissions. This plan included: undertaking training to improve director competence and suitability; director conflicts of interest, suitability of advice, financial promotions, alternative investments and due diligence, governance and risk, systems and controls, the variation of permissions to remove permission and valuation and loss assessment. All but the assessment of valuation and loss and those ongoing

actions relating to the variation of permissions to remove permissions were completed in February and March 2013. Between April and October 2013, Mr Shaw implemented the rest of the remediation plan. The total costs of the plan were £507,000 and Mr Shaw injected £55,229 of his own funds to help TMI meet the costs of the plan.

4.5 On 29 July 2014, the FSCS announced that it had declared TMI 'in default'. The FSCS is investigating claims made by TMI's customers. So far, the FSCS has upheld 1,245 such claims against TMI.

Mr Shaw

4.6 Mr Shaw was approved to hold the controlled function CF1 (Director) at TMI from 22 January 2010 until TMI ceased to be regulated. In carrying out his CF1 role he relied on the advice of qualified, experienced and approved Board colleagues, internal staff and outside professional advisors.

4.7 During the Relevant Period, the Authority considers that, as a Director, Mr Shaw had active management and day to day responsibility for the business of TMI. The Authority also considers that Mr Shaw was jointly responsible for establishing and implementing the business model of TMI. He also had responsibility for the recruitment of introducers, liaising with introducers about TMI's service standards, and producing and managing TMI's sales materials and website. Mr Shaw, who had a number of other business interests apart from TMI, spent approximately 20-30% of his time at TMI.

Unregulated Introducer

4.8 TMI was one of a number of businesses operating under the 'TailorMade' name. The other businesses included the Unregulated Introducer. The role of the Unregulated Introducer was to facilitate the sale of alternative investment products to customers. The alternative investment products promoted by the Unregulated Introducer were often unregulated products and included overseas property investments such as those operated by, amongst others, Harlequin.

4.9 Mr Shaw was a shareholder and director of the Unregulated Introducer. In his role at the Unregulated Introducer, Mr Shaw oversaw the promotion and introduction of customers to the concept of investing in alternative investment products and provided information to those customers on which to base their decision on whether or not to invest. The Unregulated

Introducer used a number of 'agents', who also introduced customers to alternative investment products. In the event that the customer invested in one of its products, the product provider paid commission to the Unregulated Introducer. Mr Shaw received a proportion of that commission through his role as a director and shareholder of the Unregulated Introducer. Where those customers wanted advice on using their pension to make the investment, the customer was introduced by the Unregulated Introducer (or its agents) to TMI in order that the customer could receive regulated advice on the most suitable SIPP wrapper for the underlying product promoted by the Unregulated Introducer. In excess of 95% of TMI's customers were introduced to TMI by agents of the Unregulated Introducer.

4.10 Separately, Mr Shaw also personally introduced six customers to TMI. As a result of such Direct Introductions to TMI, Mr Shaw received a proportion of the commission for his part in facilitating the sale of investments to customers through the Unregulated Introducer. However, as a director and shareholder of the Unregulated Introducer, Mr Shaw did not take that commission directly, but left it as part of the financial resources of the Unregulated Introducer (which he subsequently benefitted from as a director and shareholder).

SIPPs

4.11 Since its authorisation, TMI focussed its business model solely on providing advice to customers in relation to SIPPs.

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

4.13 For TMI's customers, a SIPP was a way of investing their pension into esoteric, unregulated investments such as overseas property which were typically not permitted by their existing pension schemes. These investments often offered the potential for higher returns than customers' existing pension schemes, but carried a far higher risk, including the risk that unregulated products are not covered by the FSCS. Therefore it was vital that the consideration of such risks attaching to underlying products formed part of

TMI's suitability assessment of a SIPP for a customer. Throughout the Relevant Period Mr Shaw did not realise that it was necessary to advise on the underlying products and so did not take any steps to alter the business model until the Authority's alert of 18 January 2013.

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

(1) under certain scenarios they may be liable to tax by HM Revenue & Customs and therefore incur significant additional tax charges; and

(2) they may have been an inappropriate investment for the customer to hold in their SIPPs on the basis that they were not readily realisable in the event of the customer's death, or if the customer required that they be sold at short notice.

4.15 In total, TMI advised 1,661 customers to establish a SIPP to wrap the underlying products subsequently selected for investment by those customers, with amounts ranging from £5,000 to £440,000 each. Those customers transferred £112,420,985 in total into SIPPs. The vast majority of this money came from the customers' existing pensions. During the Relevant Period, TMI generated £3,081,740 in revenue from its SIPP business. Mr Shaw's total proceeds received from TMI's business were £329,221.98.

4.16 As a result of the risks posed by the alternative investments within the SIPPs, it was especially important that TMI ensured, and Mr Shaw as a Director of TMI took reasonable steps to ensure, that TMI assessed both the suitability of the SIPP wrapper and the proposed underlying product for the customer, to ensure that customers only invested their pension funds into investments which were suitable for them and that customers fully understood the increased risks associated with the underlying products held within their SIPP.

TMI's SIPP advisory process

4.17 A TMI customer seeking advice on moving their pension was typically considering investing their pension into an underlying product such as an overseas property investment. Such customers were typically introduced to the underlying product in seminars by an Introducer, who, on behalf of the product provider, presented marketing materials and/or provided presentations to the customer upon which the customer based their decision

to invest. The customer was then introduced by the Introducer to TMI in order to obtain advice from TMI on using their pension to facilitate the investment via a SIPP. During the Relevant Period, around 99% of customers were referred to TMI by an Introducer. Almost all of those customers were introduced by TMI introducers, who were also agents of the Unregulated Introducer.

4.18 Upon referral to TMI, the customer:

(1) was contacted by TMI and a 'fact find' would be completed in order to establish the customer's investment needs and objectives. This would also include the completion of an 'attitude to risk' questionnaire and knowledge and experience of financial products. The customer also received TMI's client agreement, which set out, amongst other things, TMI's advice fees;

(2) provided to TMI details about their existing pension providers so that TMI could gather information on those existing pensions;

(3) had an appointment with TMI where the TMI 'suitability report' and the SIPP provider's 'key features' document were discussed with the customer. This included an explanation to the customer of TMI's recommendation for the most suitable SIPP for the customer. Typically, when selecting the most suitable SIPP for the customer, TMI assessed, amongst other things, whether the SIPP was able to invest in the underlying product (if this was known to TMI), as well as the set-up and ongoing fees charged by the SIPP provider. The appointment was also an opportunity for TMI to answer any questions that the customer might have; and

(4) completed a SIPP application which TMI submitted to the SIPP provider on the customer's behalf. TMI then confirmed to the customer when the SIPP had been established.

4.19 For the initial advice service provided by TMI as described at paragraph 4.18, a customer paid a fee which was typically £1,000 per personal pension being transferred. However if a final salary pension was being transferred, the amount was 3% of the total transfer value or £1,500 (which ever was the greater). These amounts were usually deducted from the funds being transferred into the SIPP.

4.20 TMI also charged customers an annual management charge if the customer wished to have an annual review. The annual review service provided by TMI in return for that fee consisted of: on-going advice; review meetings; point of contact for enquiries; newsletter; consolidating bank statements from the SIPP provider; and providing an up to date statement of the customer's investments. Over 90% of TMI's customers opted to receive this annual review service and so paid to TMI between 1% and 1.25% of their net asset fund value for that service. For example, a customer with a net asset fund value of £100,000 typically paid between £1,000 and £1,250 per annum for this annual review service.

Conduct in Issue

Advising on the underlying investment

4.21 Throughout the Relevant Period, Mr Shaw held the position of Director at TMI. Along with his fellow Directors at TMI, Mr Shaw had responsibility for the business model implemented by TMI described at paragraph 4.18 above.

4.22 If an IFA, such as TMI, advises on an investment wrapper product, such as a SIPP, that IFA will generally have to consider the suitability of the overall proposition, namely the suitability of both the SIPP wrapper and the underlying product, in order to be able to provide suitable advice to the customer. In circumstances where the customer is selling existing investments (including transferring their existing pension) in order to invest in another investment via a SIPP, the IFA must assess the suitability of that underlying product for the customer prior to recommending a SIPP. The regulatory provisions relevant to these requirements are referred to in Annex A.

4.23 However, the business model established at TMI did not incorporate any consideration of the suitability for the customer of the underlying product within the SIPP. Mr Shaw did not take adequate steps to evaluate the effectiveness of the business model TMI adopted and did not realise that the advice model adopted by TMI was deficient. During the Relevant Period 1,661 TMI customers who had chosen to self-invest transferred their pension funds into SIPPs based on advice from TMI. These 1,661 customers invested a total of £112,420,985, mostly from pension funds including some final salary schemes, into SIPPs. As a result of TMI's deficient business model, all

1,661 customers were at risk of entering into an investment which may not have been suitable for them.

4.24 In January 2013, the Authority published an alert confirming its expectations of IFAs advising on overseas property investments, including those sold by Harlequin, through a SIPP. The Authority's alert noted that IFAs have to ensure that they give careful consideration to the particular features of the investment in question and that, if recommending a SIPP knowing that the customer will sell current investments to invest in an overseas property, the suitability of the overseas property investment must form part of the advice to the customer. It was at this point in January 2013, following the FCA's alerts, that Mr Shaw took immediate action and TMI ceased trading, as it was clear that TMI's business model was not compatible with the advice rules.

4.25 Of the 1,661 SIPP customers advised by TMI during the Relevant Period, 923 invested into overseas property investments operated by Harlequin. None of those customers received any advice from TMI on the suitability of that overseas property investment when TMI advised on and recommended their SIPP. As TMI's business model did not include the provision of advice on the suitability of these investments, TMI's staff were not trained to advise on the underlying products.

4.26 Mr Shaw's main role at TMI was to recruit and brief introducers on the history of TMI and what the business was trying to achieve. These introducers would then introduce customers to TMI in the event that those customers required advice on the most suitable SIPP wrapper for their investment. Mr Shaw did not have the relevant expertise to provide any effective challenge to the suitability of the advice model initially adopted by TMI. Instead, Mr Shaw assumed that TMI's model of not providing advice on the underlying product was the correct one and did not take steps to reassess TMI's business model until the FCA's alert in January 2013. In hindsight, Mr Shaw accepts that the advice model of TMI was not sufficient in terms of its scope in that it did not provide advice on the suitability of both the SIPP wrapper and the underlying investments.

4.27 TMI's customer documents, as referred to at paragraph 4.18, did contain a statement that suggested customers obtain advice on the underlying products elsewhere. Mr Shaw was unaware whether any customer did seek such advice (or from where they might receive such advice), and considered

the wording within the documents to be a legal disclaimer against TMI's responsibilities. However, Mr Shaw accepted that he only believed this was appropriate because he did not realise TMI should have been advising on the underlying products in any event.

4.28 Despite Mr Shaw's knowledge that TMI did not advise on the underlying products, as a promoter of alternative investments, Mr Shaw was fully aware of the products invested in by TMI's customers. Mr Shaw used his own existing pension funds to invest in some of these investments himself. The underlying products were typically high risk, esoteric investments which were not suitable for all retail customers. Mr Shaw did not ensure that TMI's business model considered the suitability of the product for each of its customers.

4.29 As a result of the above, in his role as CF1 at TMI, Mr Shaw failed to take reasonable steps to ensure that the business model at TMI complied with the relevant requirements and standards. Specifically, Mr Shaw failed to take reasonable steps to ensure that TMI assessed the suitability of the underlying product for the customer. Instead, TMI's business model focussed solely on providing advice on the most suitable SIPP wrapper for the underlying product.

4.30 The failings in TMI's business model were exacerbated by the fact that certain individuals at TMI, including Mr Shaw, received commission payments derived from sales of the underlying products. This led to a significant conflict of interest within the business. Had TMI's business model included the provision of individually-tailored, product specific advice to all customers, it is likely that those individuals may have received fewer payments from the sale of the underlying products.

4.31 Mr Shaw accepts that, with hindsight, the majority of TMI's customers should never have invested some types of product in their SIPPs.

Conflicts of Interest

Personal

4.32 Throughout the Relevant Period, and in addition to his role as a CF1 at TMI, Mr Shaw was a shareholder and director of the Unregulated Introducer, which through a number of agents introduced customers to the concept of investing in alternative investments and provided information to those customers on

which to base their decision on whether or not to invest. Mr Shaw also undertook six Direct Introductions to TMI. In either circumstance, when the customer invested in alternative investments, the product provider paid commission to the Unregulated Introducer. Mr Shaw benefitted from that commission given he was a director and shareholder of the Unregulated Introducer.

4.33 During the Relevant Period, Mr Shaw benefitted financially from both the fees paid by customers for the advice given by TMI on the SIPP transfer and also from the financial benefits he received from the Unregulated Introducer, for his role, and his firm's role, in the sale of that product to the customer. The receipt of these benefits created a conflict of interest with Mr Shaw's duty to TMI's customers.

4.34 Mr Shaw admitted that he, and TMI, did not consider conflicts of interest, and in particular the need to explain to the customer that he (and others) received financial benefits from their respective roles. Consequently, the Authority considers that Mr Shaw did not identify, disclose, manage and mitigate adequately the conflict arising from his role as a director and shareholder of the Unregulated Introducer to TMI's customers.

4.35 The Authority considers that the mere disclosure of Mr Shaw's respective roles at TMI and the Unregulated Introducer would not have mitigated the conflict of interest. The conflict could have been mitigated had TMI provided full impartial advice in respect of the suitability of investing in the underlying products. As customers had not been advised by TMI on the suitability to them of the products they would hold within the SIPPs, they could not make a fully informed decision in relation to waiving any conflict of interest surrounding commission payments and incentives.

Director

4.36 In his role as a CF1 at TMI, throughout the Relevant Period Mr Shaw was responsible for ensuring that TMI identified, disclosed, managed, and adequately mitigated any potential conflicts of interest which affected TMI as an authorised firm.

4.37 During the majority of the Relevant Period, TMI did not have in place a formal conflicts of interest register to assist it in identifying potential conflicts of interest within the firm. However, even when a conflicts of interest register was put in place at TMI towards the end of the Relevant Period, TMI failed to

use properly the information recorded on that register to ensure that it adequately managed, mitigated and disclosed those conflicts.

4.38 Throughout the Relevant Period, TMI's client agreement contained an express provision that any conflicts of interest would be disclosed to customers. Despite the wording of the client agreement, Mr Shaw accepted that TMI did not inform customers about commissions that were payable to agents at the Unregulated Introducer for their part in the facilitation of the sale of the underlying product to the customer. Mr Shaw felt that this situation was dealt with by the fact that as advisers at TMI were contracted on the basis that they were not remunerated for the volume of SIPPs they sold, they were therefore indifferent to whether or not a transfer of funds was made and so, the effects of any conflict of interest were negated.

4.39 As a Director of TMI, Mr Shaw failed therefore to ensure that the Firm identified conflicts of interest and, as a result, also failed to manage, mitigate and disclose adequately those conflicts of interest to customers. He also failed to ensure that TMI complied with its own client agreement concerning the handling of conflicts of interest.

4.40 Mr Shaw's failings are compounded by the fact that, during the Relevant Period, TMI's external compliance officer warned TMI of the need to disclose conflicts of interest within TMI. For example, in April 2012 a compliance report recommended that all TMI staff should be made aware of potential conflicts of interest issues, that these be discussed at regular board and compliance meetings and that TMI should ensure that an annual conflicts of interest questionnaire be completed. However, Mr Shaw only appears to have taken action in relation to this warning towards the end of October 2012 when conflicts of interest were first noted on a register. Mr Shaw accepts that, in hindsight, there was a lack of appropriate management of conflicts of interest.

4.41 The Authority therefore considers that, throughout the Relevant Period, Mr Shaw failed to identify, disclose, manage and mitigate adequately both his own personal conflicts of interest and those of TMI as an authorised firm.

5 FAILINGS

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

5.2 By reason of the facts and matters referred to above, during the Relevant Period, Mr Shaw breached Statement of Principle 7 by failing to:

(1) take reasonable steps to ensure that TMI assessed the suitability of the underlying product within the SIPP for the customer; and

(2) identify, disclose, manage and mitigate adequately the conflicts of interest that existed as a result of Mr Shaw's ownership of and roles at TMI and at the Unregulated Introducer, as well as the conflicts of interests of others at TMI.

6 SANCTION

Financial penalty

6.1 In determining the financial penalty, the Authority has had regard to its policy on the imposition of financial penalties which is set out in Chapter 6 of DEPP and forms part of the Authority's Handbook.

6.2 On 6 March 2010, the Authority's new penalty framework came into force.

6.3 Mr Shaw's misconduct covers a period across 6 March 2010. However, the Authority considers that most of his misconduct occurred after 6 March 2010. The Authority has therefore assessed the financial penalty under the regime in force after 6 March 2010.

6.4 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 Shaw derived directly from the breach in connection with regulated activities.

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 Shaw's breach was from 22 January 2010 to 20 January 2013 inclusive. The Authority considers Mr Shaw's relevant income for this period to be £329,221.98. This figure includes both monies Mr Shaw earned directly from TMI, as well as monies he received through a remuneration trust. The Authority has assessed that on the facts of this case, the monies that Mr Shaw received through the remuneration trust mechanism should be included in the monies that the Authority considers to be 'relevant income' for the purposes of assessing any financial penalty to be imposed on him (those monies being a benefit received by him from the employment in connection with which the breaches occurred).

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 the following factors to be relevant.

Impact of the breach

6.12 Mr Shaw's failings meant that all of TMI's customers investing in a SIPP were at risk of having invested a total of £112,420,985 into SIPPs with underlying products, which were not suitable for them. The majority of TMI's customers invested into high risk investments that are unregulated and therefore not typically covered by the FSCS. Customers investing in unregulated investments are therefore at risk of losing all of their investments. There was therefore a significant risk of loss associated with Mr Shaw's failings. The FSCS is continuing to investigate claims made by customers against TMI to determine whether the FSCS is able to pay compensation. Certain TMI investors have already received funds from the FSCS as a result of such investigation.

6.13 Mr Shaw's failings did not have an adverse effect on markets.

Nature of the breach

6.14 Mr Shaw's failings occurred over a sustained period (over three years) during which time TMI advised 1,661 customers to invest via a SIPP, resulting in the risk of loss of £112,420,985 for those customers.

Whether the breaches were deliberate and/or reckless

6.15 The Authority has not found that the breaches by Mr Shaw were deliberate or reckless. Mr Shaw relied on the advice of an external compliance consultant, plus qualified, experienced and approved TMI Board colleagues and staff, who did not raise concerns relating to TMI's business and advice model.

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

6.17 Mr Shaw did not fail to act with integrity or abuse a position of trust and has not previously been disciplined by the Authority. He has worked in the financial services sector since 1994.

6.18 Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 3 and so the Step 2 figure is 20% of £329,221.98.

6.19 Step 2 is therefore £65,844.

Step 3: mitigating and aggravating factors

6.20 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.

6.21 The Authority does not consider there to be any factors that aggravate the breach.

6.22 In assessing the potential mitigating factors that may apply, the Authority notes that as a direct result of the Authority's alert of 18 January 2013, Mr Shaw took immediate steps to address the issues it highlighted at TMI. As a result of his actions TMI voluntarily suspended advising customers on SIPPs on 20 January 2013 and on 13 March 2013 TMI voluntarily varied its permissions such that TMI no longer carried on regulated activities. In addition to the variation of permissions, Mr Shaw cooperated with the Authority and proactively created and implemented a remediation plan to deal with the pipeline of TMI's customers who were affected by the variation of permissions, subsidising its costs from his own funds.

6.23 The majority of Mr Shaw's actions immediately following the Authority's alert on 18 January 2013 represent steps the Authority would expect any Director of an authorised firm to take. However, the Authority notes that on 4 March 2013 Mr Shaw undertook a training course entitled 'Director of a Regulated Financial Services Company' in response the Authority's January 2013 alert. Mr Shaw successfully completed the course, and received an assessment of 'competent' from the provider of the training. The Authority considers that this aspect of the remediation plan is a factor which mitigates the breach.

6.24 As a result, the Authority considers that the Step 3 figure should be reduced by 10%.

6.25 Step 3 is therefore £59,260.

Step 4: adjustment for deterrence

6.26 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.

6.27 The Authority considers that the Step 3 figure of £59,260 does not represent a sufficient deterrent to Mr Shaw and others, and so has increased the penalty at Step 4. This is because of significant further monies received by Mr Shaw from activities relating to his conflicts of interest, as set out at paragraphs 4.32 to 4.35, in addition to his relevant income from TMI. These monies cannot be taken into account in Mr Shaw's relevant income. The Authority therefore has increased the Step 3 figure by a multiple of 4.

6.28 Step 4 is therefore £237,040.

Step 5: settlement discount

6.29 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.

6.30 The Authority and Mr Shaw reached agreement at Stage 1 and so a 30% discount was applied to the Step 4 figure.

6.31 Step 5 is therefore £165,928 (rounded down to £165,900).

Penalty

6.32 Having applied the five-step framework set out in DEPP, the Authority has determined on 31 July 2015 that the appropriate level of financial penalty to be imposed on Mr Shaw would be £165,900 for breaching Statement of Principle 7.

6.33 As explained earlier in this Notice, on 12 October 2015, the Authority informed Mr Shaw that it would not seek to enforce that penalty against him until the limitation issue which had arisen in the context of Mr Burns' case was resolved. On 5 July 2017, the Authority decided in the course of Tribunal proceedings against Mr Burns to concede that limitation issue.

6.34 On 31 July 2018, the Tribunal decided to reduce the penalty which the Authority had decided should be imposed on Mr Burns, partly in light of the Authority's concession, by approximately 75%. The Authority considers that a proportionate deduction should also be applied in Mr Shaw's case.

6.35 Accordingly, Mr Shaw's penalty is £41,400 (rounded down from £41,475).

Prohibition

6.36 The Authority has had regard to the guidance in Chapter 9 of EG and considers it is appropriate and proportionate to prohibit Mr Shaw from performing any senior management function or any significant influence function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. This is because he is not a fit and proper person to hold significant influence functions with regard to his lack of competence and capability (this in itself would not exclude Mr Shaw from carrying on in future a financial advisor (CF30) role, subject to the FCA determining he is fit and proper to hold any non-significant influence function through its normal authorisation process).

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 of £41,400 must be paid in full by Mr Shaw to the Authority in 60 monthly instalments of £690 as follows:

(1) the first payment of £690 to be made within 14 days from the date of this Final Notice; and

(2) each of the remaining 59 subsequent payments of £690 to be paid in monthly instalments on the same date each month as the first payment is made (or the next available working day).

If the financial penalty is not paid

7.4 If all or any of the financial penalty is outstanding on the day after due dates for payment, the Authority may recover the financial penalty in full (or the outstanding amount) as a debt owed by Mr Shaw 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 Richard Topham (direct line: 020 7066 1180 / email: richard.topham@fca.org.uk) of the Enforcement and Market Oversight Division of the Authority.

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Anthony Monaghan
Head of Department, Enforcement and Market Oversight Division
For and on behalf of the Financial Conduct Authority

ANNEX A

Relevant statutory and regulatory provisions

8 Relevant statutory provisions

8.1 The Authority's operational objectives, set out in section 1B(3) of the Act, include the consumer protection objective.

8.2 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.

8.3 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 person. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.

9 Relevant regulatory provisions

Principles for Businesses

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

9.2 Principle 6 states:

"A firm must pay due regard to the best interests of its customers and treat them fairly."

9.3 Principle 9 states:

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

Statements of Principle and Code of Practice for Approved Persons

9.4 The Authority's Statements of Principle have been issued under section 64 of the Act.

9.5 Statement of Principle 7 states:

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

The Fit and Proper Test for Approved Persons

9.6 The part of the Authority's Handbook entitled "The Fit and Proper Test for Approved Persons" ("FIT") sets out the criteria that the Authority will consider when assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.

9.7 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.

Conduct of Business

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

COBS 2.1.1R

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

(2) This rule applies in relation to designated investment business carried on:

(a) for a retail client; and

(b) in relation to MiFID or equivalent third country business, for any other client.

(3) For a management company, this rule applies in relation to any UCITS scheme or EEA UCITS scheme the firm manages.

COBS 9.2.1R

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

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

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

(b) financial situation; and

(c) investment objectives;

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

COBS 9.2.2R

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

(a) meets his investment objectives;

(b) is such that he is able financially to bear any related investment risks consistent with his investment objectives; and

(c) is such that he has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.

(2) The information regarding the investment objectives of a client must include, where relevant, information on the length of time for which he wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.

(3) The information regarding the financial situation of a client must include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments.

COBS 9.2.3R

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

(1) the types of service, transaction and designated investment with which the client is familiar;

(2) the nature, volume, frequency of the client's transactions in designated investments and the period over which they have been carried out;

(3) the level of education, profession or relevant former profession of the client.

COBS 19.1.6G

When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme whether to transfer or opt-out, a firm should start by assuming that a transfer or opt-out will not be suitable. A firm should only then consider a transfer or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer or opt-out is in the client's best interests.

COBS 19.1.9G

If a firm proposes to advise a retail client not to proceed with a pension transfer or pension opt-out, it should give that advice in writing.

COBS 19.2.2R

When a firm prepares a suitability report it must:

(1) (in the case of a personal pension scheme), explain why it considers the personal pension scheme to be at least as suitable as a stakeholder pension scheme; and

(2) (in the case of a personal pension scheme, stakeholder pension scheme or FSAVC) explain why it considers the personal pension scheme, stakeholder pension scheme or FSAVC to be at least as suitable as and facility to make additional contributions to an occupational pension scheme, group personal pension scheme or group stakeholder pension scheme which is available to the retail client.

The Authority's policy for exercising its power to make a prohibition order

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

9.10 EG 9.1 states that the Authority may exercise this power where it considers that, to achieve any of its regulatory objectives, it is appropriate either to prevent an individual from performing any functions in relation to regulated activities or to restrict the functions which he may perform.

The Authority's policy for imposing financial penalties

9.11 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.