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## FINAL NOTICE

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**To:** John Andrew Gerard Chiesa

**Individual Reference Number:** JAC00031

**Date of Birth:** 11 January 1954

**Date:** 12 October 2017

### 1. ACTION

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

- (1) make an order, pursuant to section 56 of the Financial Services and Markets Act 2000 ("the Act"), prohibiting Mr John Chiesa from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm; and

- (2) withdraw, pursuant to section 63 of the Act, the approval given to Mr Chiesa under section 61 of the Act to perform the CF4 (Partner), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting) and CF30 (Customer) controlled functions.
- 1.2. On 26 October 2016 the Authority gave Mr Chiesa a Decision Notice which notified him that it had decided to take the actions referred to in paragraphs 1.1 (1) and (2). On 23 November 2016 Mr Chiesa referred the Authority's Decision Notice to the Upper Tribunal (Tax and Chancery Chamber) ("the Tribunal"). On 19 September 2017, Mr Chiesa applied to withdraw his reference and on 28 September 2017 the Tribunal gave its consent to this withdrawal. A Further Decision Notice was given to him, pursuant to section 388(3) of the Act, in respect of the same matter as the Decision Notice dated 26 October 2016.
- 1.3. Following withdrawal of the reference to the Tribunal, the Authority has issued this Final Notice.

## **2. SUMMARY OF REASONS**

- 2.1. The Authority has decided to take the actions set out in paragraph 1.1 because it has concluded that Mr Chiesa is not fit and proper to perform any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm. The Authority has concluded that Mr Chiesa lacks fitness and propriety on account of his lack of integrity in his dealings with his trustee in sequestration. Paragraphs 2.2 to 2.10 summarise the reasons why the Authority has reached that conclusion.
- 2.2. Mr Chiesa, together with Mrs Chiesa, was a founding partner of Planners, an authorised firm which provided personal investment advice. Planners became insolvent and went into sequestration in October 2011 as a consequence of which, because they were partners at the firm (an unlimited liability partnership formed under Scots law), Mr and Mrs Chiesa were at the same time also placed in sequestration.
- 2.3. At the time of their sequestration Planners, and Mr and Mrs Chiesa as partners with unlimited liability for Planners' debts, had significant liabilities due to the need to pay compensation in respect of numerous valid complaints relating to the advice Planners gave on GTEP sales. These liabilities began to accrue about three years prior to their sequestration, and during those three years Mr and

Mrs Chiesa took steps to protect their assets and money from tax and from creditors' claims. These steps included:

- (1) the establishment of the WIFAR Trust, an off-shore remuneration trust, into which the profits of Planners were directed, and from which Mr and Mrs Chiesa received, between them, about £991,000 between December 2008 and March 2011, with the payments being made in the form of loans. The Authority's view is that those loans were never intended to be repaid during their lifetimes and that if they were ever repaid the funds would remain available to Mr and/or Mrs Chiesa;
- (2) the rearrangement of their personal expense payments, so that from June 2011 onwards they were met from the bank accounts of Westwood Trustees, a successful non-authorised business, founded by Mr and Mrs Chiesa, which specialised in establishing off-shore remuneration trusts for its clients. From June 2011, Mr and Mrs Chiesa also received funds directly from Westwood Trustees for their own spending; and
- (3) making changes to their ownership and control of Westwood Trustees. In March 2011, when they each owned 50% of Westwood Trustees, Mr and Mrs Chiesa decided that Westwood Trustees should issue new shares in itself directly to the WIFAR Fiduciary Management Company, an off-shore company which they owned and were the only directors of, which had the effect of transferring ownership of 98% of Westwood Trustees to the WIFAR Fiduciary Management Company. In August 2011, they then resigned as directors of Westwood Trustees and of the WIFAR Fiduciary Management Company, and transferred legal ownership of the WIFAR Fiduciary Management Company to the director of the off-shore corporate trustee of the WIFAR Trust, who also became its sole director. In fact, notwithstanding these actions, after August 2011 they each retained beneficial ownership of 50% of the WIFAR Fiduciary Management Company (and therefore of Westwood Trustees), and Mr Chiesa retained de facto control of Westwood Trustees.

2.4. As a result of these actions, Mr and Mrs Chiesa were able to access significant funds at a time when Planners was accruing significant liabilities (and therefore Mr and Mrs Chiesa were too). Mr and Mrs Chiesa have continued to have access to significant funds throughout their sequestration, including from the WTR Trust, an off-shore remuneration trust established by Westwood Trustees'

directors in February 2012, and into which the profits of Westwood Trustees were directed from that time onwards. Between August 2011 and December 2014, Mr and Mrs Chiesa jointly received, either directly or indirectly, a net benefit of around £2.6 million from the profits of Westwood Trustees.

2.5. In November 2011, a trustee in sequestration was appointed, whose role was to establish the value of Mr and Mrs Chiesa's assets and the level of their personal liabilities, realise those assets for the benefit of their creditors, and assess whether Mr and Mrs Chiesa were in the position to pay a regular financial contribution to the sequestrated estate for the benefit of their creditors during their sequestration. The Trustee's role was also to review any transactions at an undervalue that Mr and Mrs Chiesa had made in the five year period prior to the commencement of their sequestration. In the weeks following his appointment, the Trustee asked Mr and Mrs Chiesa to provide him with details of their financial circumstances, including at a meeting in December 2011. Mr Chiesa was aware that he and Mrs Chiesa had a duty to disclose fully and accurately all of their financial circumstances to the Trustee. However, Mr Chiesa lacked integrity in his dealings with the Trustee by making inadequate, incomplete and/or misleading disclosures, thereby failing adequately to disclose the true position, in relation to:

- (1) the changes they had made to their ownership and control of Westwood Trustees in order to protect their assets and money;
- (2) the scale of the funds they were receiving directly from Westwood Trustees;
- (3) Westwood Trustees' payment of significant personal expenses on their behalf;
- (4) the full extent of their high level of personal expenditure immediately before and around the time of their sequestration;
- (5) valuable assets that they still owned or had disposed of at an undervalue in the previous five years; and
- (6) their interest in any funds repaid under, and their control over, a £991,000 debt secured against two properties that they jointly owned.

2.6. Mr Chiesa was also aware that he and Mrs Chiesa had a duty to disclose fully and accurately to the Trustee any change in their financial circumstances during

their sequestration. However, Mr Chiesa misled the Trustee by failing to disclose, and/or making inadequate, incomplete and/or misleading disclosures so that the Trustee was unaware, that during their sequestration:

- (1) they had access to significant funds from Westwood Trustees, including via the WTR Trust;
- (2) Westwood Trustees was continuing to pay significant personal expenses on their behalf; and
- (3) the level of their personal expenditure was significantly higher than indicated.

2.7. The effect of Mr Chiesa's actions was to mislead the Trustee in order to avoid the Trustee inquiring into – and possibly recovering for the benefit of his, Mrs Chiesa's and Planners' creditors - assets which he and Mrs Chiesa legally or beneficially owned or in which they had some form of interest and/or control either directly or indirectly.

2.8. In contrast to his disclosures to the Trustee, which gave the Trustee the impression that he had limited income and expenditure and no material assets, Mr Chiesa had disclosed to banks, a few months before he was placed in sequestration and then during his sequestration, a high level of income, expenditure and assets. In the Authority's view, Mr Chiesa knowingly disclosed fundamentally different and contradictory information to the banks and to the Trustee, and in both cases the information he disclosed was that which would best support his objectives in supplying that information. The Authority considers that the conflict in the information provided by Mr Chiesa to the banks and to the Trustee is evidence of Mr Chiesa's lack of integrity when providing details of his and Mrs Chiesa's financial circumstances to the Trustee.

2.9. As a consequence of Mr Chiesa's misleading disclosures to the Trustee regarding his and Mrs Chiesa's financial circumstances, the Trustee was misled as to the true value of the assets in Mr and Mrs Chiesa's estates, transactions at an undervalue that Mr and/or Mrs Chiesa had made in the five year period prior to the commencement of their sequestration, their access to funds and the level of financial contributions to their sequestered estates for the benefit of their creditors that Mr and Mrs Chiesa were able to make. Planners, and therefore Mr and Mrs Chiesa, had over £5 million of liabilities, mainly arising from customer claims in respect of mis-sales of GTEPs by Planners. The FSCS has to date paid

out over £3.8 million to former customers of Planners; the FSCS's cap of £50,000 per claim has, however, meant that many of Planners' former customers have been unable to recover the full amount they were entitled to recover.

- 2.10. Mr Chiesa's lack of integrity in his dealings with the Trustee demonstrates that he is not a fit and proper person to perform any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm. Further, he poses a risk to consumers, as is demonstrated by his actions which had the effect of misleading the Trustee in order to avoid paying his creditors, including former customers of Planners who were owed compensation.
- 2.11. The Authority has therefore decided to make an order, pursuant to section 56 of the Act, prohibiting Mr Chiesa from performing any such function and has decided, pursuant to section 63 of the Act, to withdraw the approval given to Mr Chiesa under section 61 of the Act to perform the CF4 (Partner), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting) and CF30 (Customer) controlled functions.
- 2.12. This action supports the Authority's operational objectives of securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.

### **3. DEFINITIONS**

- 3.1. The definitions below are used in this 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;

"DEPP" means the Decision Procedure and Penalties Manual section of the Handbook;

"EG" means the Enforcement Guide part of the Handbook;

"FIT" means the Fit and Proper Test for Approved Persons section of the Handbook;

"FOS" means the Financial Ombudsman Service;

"FSCS" means the Financial Services Compensation Scheme;

"GTEP" means geared traded endowment policy;

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

"Mrs Chiesa" refers to Colette Marie Chiesa, Mr Chiesa's wife, also approved to perform the CF4 (Partner) controlled function at Planners, and formerly a director of Westwood Trustees;

"Planners" means the authorised firm called Westwood, which also traded as Westwood Independent Financial Planners and Westwood Independent Financial Advisers, which was formed with unlimited liability under Scots law;

"TEP" means traded endowment policy;

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

"the Trustee" means the trustee in sequestration appointed on 16 November 2011 in respect of Mr and Mrs Chiesa's sequestration;

"Westwood Trustees" means Asset House Piccadilly Limited (company number SC182931), which until 15 September 2016 was known as Westwood Trustees Limited;

"WIFAR Fiduciary Management Company" has the definition set out in paragraph 4.8 of this Notice;

"WIFAR Trust" means the Westwood Independent Financial Advisers off-shore remuneration trust;

"WTR Fiduciary Management Company" has the definition set out in paragraph 4.38 of this Notice; and

"WTR Trust" means the Westwood Trustees off-shore remuneration trust.

## **4. FACTS AND MATTERS**

### **Planners**

- 4.1. Mr and Mrs Chiesa founded Planners in 1994. They were both partners at the firm, which traded principally as Westwood Independent Financial Planners and Westwood Independent Financial Advisers. Mr Chiesa was approved to perform the CF4 (Partner), CF10 (Compliance Oversight) and CF11 (Money Laundering Reporting) controlled functions on 1 December 2001, and the CF30 (Customer) controlled function on 1 November 2007.
- 4.2. Until its sequestration on 18 October 2011, Planners provided personal investment advice from its office in Motherwell, Scotland. Mr and Mrs Chiesa opened a second Planners office in London in or around 2006. Mr Chiesa was the managing partner of Planners, occupying the lead advisory and customer-facing role. He shared responsibility for the strategic direction of the partnership with Mrs Chiesa, who occupied an operational management role.
- 4.3. In or around 2005, Planners began advising customers to invest in GTEPs. The nature of the sales of GTEPs by Planners formed the basis of later regulatory action taken by the Authority that resulted in a financial penalty of £100,000 being imposed on Planners on 17 December 2013 after the Tribunal upheld the Authority's decision to impose such a penalty. GTEPs involve an initial investment to buy a selection of TEPs and then the borrowing of a further amount to purchase additional TEPs (i.e. gearing, hence GTEP). The portfolio of TEPs acquired was used as security for a loan facility to buy the additional TEPs and to fund the various payments throughout the life of the GTEP plan. The Tribunal concluded that the GTEP plan sold by Planners was high-risk because of the gearing and other factors which, when taken together, raise the level of risk inherent in the plan. The Tribunal also held that, as the GTEP plan was high-risk, it was not suitable for those customers with a lower risk tolerance who were advised by Planners to invest in GTEPs.

### **Mr and Mrs Chiesa's financial affairs prior to their sequestration**

- 4.4. Between 2008 and their sequestration on 18 October 2011, Planners, and Mr and Mrs Chiesa in their capacity as partners with unlimited liability for Planners' debts, began to accrue significant liabilities due to the need to pay compensation in respect of numerous valid complaints relating to the advice



they gave on GTEP sales. During this period Mr and Mrs Chiesa began to take steps to protect their assets and money from tax and from creditors' claims.

- 4.5. In April 2008, the Authority commenced an investigation into Planners' sales of GTEPs. The investigation into Planners coincided with five other investigations by the Authority into firms selling GTEPs, which resulted in financial penalties of £10,500 and £35,000 being imposed on two firms in October 2008. In May 2010, the Authority publicly censured another firm and stated in the final notice that it would have imposed a financial penalty of £350,000 on that firm but for its insolvency.
- 4.6. In December 2008, the Authority advised Mr and Mrs Chiesa that it proposed to impose a significant financial penalty on Planners on the basis that Planners had failed to ensure it gave suitable advice in relation to GTEPs. Therefore, no later than December 2008, Mr and Mrs Chiesa were aware that it was possible Planners would be subject to a financial penalty imposed upon it by the Authority in addition to potential compensation payments to customers.

#### **Mr and Mrs Chiesa's first off-shore remuneration trust**

- 4.7. In November 2008, Mr and Mrs Chiesa, in their capacity as unlimited liability partners at Planners, together established the WIFAR Trust, an off-shore remuneration trust incorporated in Belize. Their purpose in establishing the trust was to reduce Planners' profits and therefore their tax liabilities, whilst permitting them to continue to gain access to the funds generated from Planners' trading activities, and whilst also protecting those funds from the claims of any future creditors.
- 4.8. Between December 2008 and November 2011, Mr and Mrs Chiesa directed the profits of Planners, as well as other assets of Mr and Mrs Chiesa or parties connected to them, into the WIFAR Trust. The WIFAR Trust was administered by an off-shore trustee company, which delegated control of the trust property to another off-shore company that Mr and Mrs Chiesa had themselves specifically incorporated (the "WIFAR Fiduciary Management Company"). Until August 2011, Mr and Mrs Chiesa were the only directors and shareholders of the WIFAR Fiduciary Management Company.
- 4.9. When Mr and/or Mrs Chiesa wished to access money, they requested it from the WIFAR Trust via the WIFAR Fiduciary Management Company. Mr and Mrs Chiesa received, between them, around £991,000 from the WIFAR Trust

between December 2008 and March 2011, of which Mr Chiesa's share was around £328,800. The payments were made in the form of loans (with interest accruing), however, the Authority's view is that, in reality, those loans were never intended to be repaid during their lifetimes because:

- (1) the WIFAR Trust property comprised assets that would otherwise have accrued to Mr and Mrs Chiesa, including the profits from Planners;
- (2) Mr and Mrs Chiesa had effective control over the actions of the off-shore trustee, due to their power under the WIFAR Trust deed to remove and replace that trustee. This meant the off-shore trustee was unlikely ever to recall the loans made to Mr or Mrs Chiesa from the WIFAR Trust;
- (3) the off-shore trustee had in any event delegated total control of the WIFAR Trust property to the WIFAR Fiduciary Management Company that Mr and Mrs Chiesa had incorporated and legally owned until August 2011 and beneficially thereafter (see paragraph 4.20(3) below); and
- (4) the business of Westwood Trustees, developed by Mr and Mrs Chiesa, involved introducing clients to off-shore remuneration trusts from which the clients were intended to receive financial benefits, in particular the reduction in their tax liabilities, the continued ability to access the funds generated from their trading activities and the protection of those funds from any creditors (see paragraphs 4.12 to 4.13 below for an explanation of Westwood Trustees' business).

### **GTEP complaints**

- 4.10. From around February 2011, the FOS began to receive an increasing number of complaints from customers of Planners who had been advised to buy GTEPs. In May 2011, the Authority issued a Decision Notice to Planners, which set out the Authority's decision to impose a financial penalty of £100,000 on the firm for its failure to give suitable advice in relation to its GTEP sales. Mr and Mrs Chiesa referred that Decision Notice to the Tribunal and in November 2013 the Tribunal upheld the Authority's decision.
- 4.11. In June 2011, four months before their sequestration, Mr and Mrs Chiesa sold Planners' business book to a colleague's company, which received a list of existing and potential customers and did not assume any of Planners' liabilities. At that time, in addition to being aware that significant liabilities were arising to

past customers of Planners, Mr and Mrs Chiesa were also aware that the Authority had decided to impose a £100,000 financial penalty on Planners and that an increasing number of GTEP customers were making complaints.

#### **Mr and Mrs Chiesa's off-shore remuneration trusts business**

- 4.12. From around 2010, Mr and Mrs Chiesa began to focus on another business, Westwood Trustees, a small non-authorized firm which they had founded in 1998. Although that business had been secondary to Planners (it originally provided a will-writing service to Planners' customers), Mr and Mrs Chiesa began to develop the Westwood Trustees business, by acting as an introducer for a firm which established off-shore remuneration trusts. The purpose of these off-shore remuneration trusts, like the WIFAR Trust, was to reduce their client's profits and therefore their client's tax liabilities, whilst permitting their client to continue to gain access to the funds generated from their trading activities, and whilst also protecting those funds from the claims of any future creditors.
- 4.13. Westwood Trustees began to build a network of other introducers and earned commission on every new client introduced, calculated as a percentage of the total value of assets that each new client placed into their own off-shore remuneration trust. Westwood Trustees was a successful introducer and, around 2006, developed its business model so that it included establishing off-shore remuneration trusts itself for its own clients. Westwood Trustees promoted the financial benefits of these off-shore remuneration trusts on its website under headings such as "Protect your Assets from Tax", "Shield your Assets from Creditors" and "You've worked hard for your money, now learn how to keep it".
- 4.14. By 2011, Westwood Trustees had built a large network of its own introducers and was turning over around £1 million per annum, while liabilities from the Planners business continued to mount.
- 4.15. Mr Chiesa was the driving force behind the growth of Westwood Trustees. Mrs Chiesa's role was more limited but she was involved in managing and promoting the business and aware of the services that it offered.
- 4.16. On three separate occasions between June 2008 and June 2011 (when Planners' business book was sold), Mr Chiesa declared to a bank that he and Mrs Chiesa jointly-owned assets with a net worth between approximately £1 million and £2.2 million.

4.17. In June 2011, four months before their sequestration, Mr Chiesa declared to his bank that he owned assets with a net value of £942,600 and that he had an annual income of £325,000.

**The debt giving rise to Planners' and Mr and Mrs Chiesa's sequestration, and Mr and Mrs Chiesa's rearrangement of their financial affairs**

4.18. In the first half of 2011, Planners was overdue in paying commission to two of Planners' advisers, despite having already received the commission payments from the relevant product providers.

4.19. On 16 March 2011, at which time Mr and Mrs Chiesa each owned 50% of Westwood Trustees and were two of the four directors of the company, at Mr Chiesa's instigation, Mr and Mrs Chiesa changed their ownership of Westwood Trustees. They did this by deciding that Westwood Trustees should issue 4,900 new shares in itself directly to the WIFAR Fiduciary Management Company, at a cost of £1 per share, which had the effect of transferring ownership of 98% of Westwood Trustees to the WIFAR Fiduciary Management Company (of which Mr and Mrs Chiesa were the sole directors and shareholders).

4.20. Between June and August 2011, while the commission Planners owed to the two advisers remained unpaid and for which they had joint and several liability as partners in that firm, at Mr Chiesa's instigation, Mr and Mrs Chiesa further rearranged their financial affairs in connection with their more profitable business, Westwood Trustees. They did so in three key ways:

(1) First, from June 2011, they rearranged their personal expense payments so that they were met from Westwood Trustees' bank accounts, rather than from their own personal bank accounts, and also received funds directly from Westwood Trustees' accounts for their own spending:

(i) Mr Chiesa arranged for Westwood Trustees to pay significant expenses on his behalf, such as costs relating to the Bentley car he drove, which amounted to a minimum monthly average of £1,500, and monthly payments to his ex-wife; and

(ii) Mr and Mrs Chiesa together arranged for Westwood Trustees to pay significant joint expenses such as their rental of residential properties in London, travel expenses and investments.

- (2) Secondly, having become the sole directors of Westwood Trustees on 25 July 2011, Mr and Mrs Chiesa resigned as directors on 11 August 2011. By mid-November 2011 two previous members of its administrative staff constituted the board of directors of Westwood Trustees, and they were joined by two other previous members of its administrative staff in February 2012. None of those individuals had any prior experience in being a director of a company.
- (3) Thirdly, Mr and Mrs Chiesa made changes to their ownership of Westwood Trustees. Previously they had owned 100% of Westwood Trustees, 98% of which they had held, since 16 March 2011, indirectly via the off-shore WIFAR Fiduciary Management Company. In August 2011 they resigned as directors of the WIFAR Fiduciary Management Company and transferred legal ownership of that company to the director of an off-shore company, which was also the trustee of the WIFAR Trust, and who also became its sole director. The shares they transferred in the WIFAR Fiduciary Management Company were held in trust for Mr and Mrs Chiesa by the director of the off-shore company, so that Mr and Mrs Chiesa continued to wholly own that company beneficially. This left Mr and Mrs Chiesa each holding only 1% of Westwood Trustees' shares, whereas in fact through the trust each continued beneficially to own, directly and indirectly, 50% of Westwood Trustees' shares.

- 4.21. During the month of August 2011 alone, Mr and Mrs Chiesa received the benefit of £116,370 paid out on their behalf by Westwood Trustees. By the end of 2011, they had received a further £109,000, and in 2012 they received a further £426,000. By the end of 2014, they had received a total benefit of approximately £1.39 million, of which £1.17 million was expenses paid on their behalf, which is a monthly average of over £34,000, paid by Westwood Trustees to cover Mr and Mrs Chiesa's combined personal expenditure. Until December 2013, the minimum benefit they received in any one month was over £20,000. The £1.39 million that they received in total included approximately £20,000 on football and tennis tickets, £86,000 of other payments to a football club, £134,000 on costs associated with their Bentley, Porsche and Mercedes vehicles, £36,000 on party and catering costs, and £124,000 on Mr Chiesa's helicopter flying lessons.
- 4.22. By the end of August 2011, the commission owed to two of Planners' advisers remained unpaid, even though Mr and Mrs Chiesa had rearranged their finances

to continue receiving the benefit of Westwood Trustees' profits, and Mr Chiesa had recently declared substantial personal assets and financial resources to his bank. Funds were therefore available to Mr Chiesa personally to pay these debts.

### **Sequestrations**

- 4.23. Planners and Mr and Mrs Chiesa failed to comply with requests by the advisers to pay them their commission and, on 18 October 2011, one of the advisers petitioned for the sequestration of Planners and Mr and Mrs Chiesa on the basis of the debt owed to him, which amounted to £40,443. The petition was unchallenged and their sequestration was awarded on 16 November 2011. Mr and Mrs Chiesa were discharged from their debts 12 months after being placed in sequestration, on 18 October 2012.
- 4.24. The sequestration of Planners meant that all claims against the firm filed with the FOS at that date were referred to the FSCS, because of Planners' default. Since Planners' sequestration, the FSCS has received over 100 claims against Mr and Mrs Chiesa trading as Planners. As at 19 September 2016, the FSCS had paid out a total of £3,856,618 in compensation. It is likely that these customers would have been entitled to total compensation of over £5 million, however a number of the claims to the FSCS were subject to the FSCS cap of £50,000 per individual.

### **Mr Chiesa's disclosures to the Trustee**

- 4.25. On 16 November 2011, a trustee in sequestration was appointed, whose role was to establish the value of Mr and Mrs Chiesa's assets and income and the level of their liabilities and expenses, realise those assets for the benefit of their creditors and assess whether Mr and Mrs Chiesa were in the position to pay a regular financial contribution to their creditors during their sequestration. The Trustee's role was also to review any transactions at an undervalue that Mr and Mrs Chiesa had made in the five year period prior to the commencement of their sequestration.
- 4.26. In the weeks following his appointment, until early January 2012, the Trustee asked Mr and Mrs Chiesa to provide him with details of their financial circumstances, including at a meeting on 20 December 2011. It was Mr Chiesa who responded to the Trustee's requests and provided the Trustee with details of both his and Mrs Chiesa's financial circumstances, including at the 20

December 2011 meeting. It was also Mr Chiesa who responded to any queries that the Trustee raised about their financial circumstances during their sequestration.

4.27. At the meeting on 20 December 2011, the Trustee reminded Mr and Mrs Chiesa that they had an obligation to disclose fully and accurately all of their financial circumstances, and explained in detail the nature of this obligation. During the meeting, the Trustee asked Mr and Mrs Chiesa questions about their financial circumstances, including about any income that they had access to, the size of their monthly personal expenditure, and whether they possessed any assets of value, or had disposed of any at an undervalue in the previous five years, or had liabilities.

4.28. The Trustee filled in two forms on the basis of the information provided by Mr Chiesa about his financial circumstances: a Statement of Assets and Liabilities (Form 3) and a Supplementary Questionnaire. The Statement of Assets and Liabilities included the following statements: *"I have stated in this statement details of all my assets, liabilities and income as at the date of my bankruptcy on 16 Nov 2011"* and *"I certify that the information I have supplied in Form 3 is true, complete and accurate to the best of my knowledge and belief."* The Supplementary Questionnaire included a similar declaration and both forms included warnings that it was an offence for Mr Chiesa to make false statements in relation to his assets, liabilities and financial affairs. Mr Chiesa signed both of these forms at the 20 December 2011 meeting. He also signed a Statement of Undertakings, dated 16 December 2011, in which he confirmed, among other things, that:

- (1) He had a legal obligation to co-operate with the Trustee and to provide any financial information or documents which the Trustee may require;
- (2) He had made a full disclosure of all assets which he owned or in which he had an interest as at the date of his sequestration, and that he would notify the Trustee if he acquired any further assets during the period of his sequestration; and
- (3) He would immediately inform the Trustee of any change in his financial circumstances during the period of his sequestration.

4.29. The Trustee also filled in a Statement of Assets and Liabilities and a Supplementary Questionnaire on the basis of the information provided by Mr

Chiesa about Mrs Chiesa's financial circumstances. Mrs Chiesa signed these forms at the meeting on 20 December 2011 and signed a Statement of Undertakings on 16 December 2011.

4.30. Despite being aware that he and Mrs Chiesa had a duty to disclose fully and accurately all of their financial circumstances to the Trustee, in the weeks following their being placed in sequestration, including at the 20 December 2011 meeting, Mr Chiesa did not inform the Trustee of the changes they had made to their ownership and control of Westwood Trustees in order to protect their assets and money, or that they had access to significant funds. Instead, the information Mr Chiesa provided to the Trustee was designed to give the impression that they did not have access to significant funds, had no net assets, and had limited income and relatively modest personal expenditure, to the extent that they each could only afford to contribute £200 per month to the sequestrated estate for the benefit of their creditors. In particular, Mr Chiesa misled the Trustee by telling him (or by omission leading him to believe) that:

- (1) they were receiving very limited income and were therefore dependent on loans from third parties to cover their monthly expenses (see (2) below);
- (2) their combined monthly expenses were relatively modest: around £2,745 per month to cover their mortgage payments, bills, and very limited personal expenses;
- (3) they had no valuable assets: in particular, he did not disclose details of their continued beneficial ownership of Westwood Trustees and the WIFAR Fiduciary Management Company, the likely value of their unassigned and assigned life assurance policies, the latter of which he led the Trustee to assume had no residual value, or that Mrs Chiesa owned valuable jewellery;
- (4) they had not transferred any valuable assets to third parties at an undervalue in the previous five years; and
- (5) they owed a debt of £991,000 to the WIFAR Trust, for which two of their properties were charged as security.



### **Mr Chiesa's failure to disclose his and Mrs Chiesa's access to Westwood Trustees' profits**

- 4.31. Contrary to Mr Chiesa's representations to the Trustee that he and Mrs Chiesa were reliant on loans from a third party, had limited income and expenditure and no net assets, in reality, they had access to ample funds to sustain a luxurious lifestyle.
- 4.32. Mr Chiesa was aware when he told the Trustee (or by omission led the Trustee to understand) that he and Mrs Chiesa were reliant on loans and had limited income and expenditure and no net assets, that his relationship to Westwood Trustees had not changed in any material sense upon their sequestration, and that in fact he continued to drive the business forward and retained de facto control of it, and that they both had access to its significant profits.
- 4.33. Mr Chiesa remained the principal sales consultant at Westwood Trustees after he and Mrs Chiesa were placed in sequestration, bringing in the majority of new business. He also continued to provide advice to, and exercise influence over, the previous members of Westwood Trustees' administrative staff who, during their sequestration, were the only appointed directors of Westwood Trustees. One of these directors resigned in June 2013 but the other three directors remain in place.
- 4.34. As set out at paragraphs 4.20(1) and 4.21 above, from June 2011 Mr and Mrs Chiesa had their expenses paid from Westwood Trustees' accounts and received further funds into their personal bank accounts directly from Westwood Trustees. Although Mr Chiesa provided the Trustee with bank statements which showed that Westwood Trustees had made three payments of either £1,000 or £2,000 to Mr and Mrs Chiesa's personal joint bank account between 23 November 2011 and 4 January 2012, he did not disclose to the Trustee the scale of the funds that they were receiving directly from Westwood Trustees, nor that Westwood Trustees was paying significant personal expenses on their behalf on a regular basis.
- 4.35. These expenses included £166,000 of legal costs incurred by Mr and Mrs Chiesa during the Tribunal proceedings relating to their reference of the Decision Notice given to Planners by the Authority in May 2011. In February 2012 Mr and Mrs Chiesa's legal representatives drew up the documentation to enable the new directors of Westwood Trustees to continue to make these payments, and that

documentation described the expense to Westwood Trustees as a reflection of the continued “fundamental commercial importance” of both Mr and Mrs Chiesa to the business.

- 4.36. From April 2012, six months into their sequestration, Mr and Mrs Chiesa also began to receive funds from Westwood Trustees via an off-shore remuneration trust, the WTR Trust. The WTR Trust was established by Westwood Trustees’ directors on 7 February 2012 and is similar in structure to the WIFAR Trust that Mr and Mrs Chiesa had used to direct the profits of Planners.
- 4.37. The WTR Trust is structured so that Mr and Mrs Chiesa, or parties closely connected to them, can retain access to the trust property, which comprises funds derived from the profits of Westwood Trustees. Those profits are intended to be protected in the WTR Trust from tax liabilities and from creditor claims.
- 4.38. The WTR Trust is administered by an off-shore trustee, which was also the trustee of the WIFAR Trust, but also by another company, based in the UK, which was specifically incorporated for the purpose of the WTR Trust (the “WTR Fiduciary Management Company”) and which acts on behalf of the off-shore trustee.
- 4.39. When Mr and/or Mrs Chiesa wished to access the WTR Trust funds from April 2012 onwards, they made a request to the WTR Fiduciary Management Company. The directors and controllers of the WTR Fiduciary Management Company have always been the directors of Westwood Trustees and therefore closely connected to Mr and Mrs Chiesa.
- 4.40. Payments are made from the WTR Trust in the form of loans (with interest accruing). However, the Authority’s view is that, in reality, those loans are never intended to be repaid by Mr or Mrs Chiesa during their lifetimes because:
  - (1) the business of Westwood Trustees, developed by Mr and Mrs Chiesa, involved introducing clients to off-shore remuneration trusts from which the clients were intended to receive financial benefits, in particular the reduction in their tax liabilities, the continued ability to access the funds generated from their trading activities and the protection of those funds from any creditors;

- (2) monies in the WTR Trust were derived from the profits of Westwood Trustees, which Mr and Mrs Chiesa continued, directly and indirectly, to wholly beneficially own;
- (3) Mr Chiesa, by remaining the primary driver of new business and exercising influence over the firm's directors, continued throughout their sequestration to exercise de facto control over the business of Westwood Trustees, and sought to gain the benefit of the profits generated in that period;
- (4) Mr and Mrs Chiesa, or parties closely connected to them, have had effective control over the off-shore trustee, due to their power under the WTR Trust deed to remove and replace that trustee. This means the off-shore trustee is unlikely ever to recall the loans made to Mr or Mrs Chiesa from the WTR Trust; and
- (5) the off-shore trustee has in any event delegated total control of the WTR Trust property to the WTR Fiduciary Management Company, of which the directors and controllers are individuals closely connected to Mr and Mrs Chiesa.

4.41. As much as 97% of Westwood Trustees' profits were paid into the WTR Trust in the 12 months up to August 2014. These profits were paid into a designated UK bank account held in the name of the WTR Fiduciary Management Company. Together, Mr and Mrs Chiesa received approximately £780,000 of Westwood Trustees' profits via the WTR Trust in 2012, and a total of approximately £2.6 million between April 2012 and December 2014, at an average of over £84,000 per month. Of this, they used £1.42 million to regularly 'repay' the money they had either received directly from Westwood Trustees or had been paid in the form of expenses (as per paragraph 4.34 above). In total, Mr and Mrs Chiesa received approximately 53% of the funds derived from the profits of Westwood Trustees paid into the WTR Trust between February 2012 and December 2014. In contrast, the Westwood Trustees directors during that period received between them approximately £420,000 from the WTR Trust, which is approximately 8.6% of Westwood Trustees' profits.

4.42. In June 2013, Mr Chiesa declared in a banking application that he was receiving income of £230,000 per annum and income after tax of £15,000 per month, in connection with his full-time employment at Westwood Trustees.

4.43. Mr and Mrs Chiesa were aware, having each signed a Statement of Undertakings, that they had a duty to declare material changes in their financial circumstances during the period of their sequestration to the Trustee. In May 2012, October 2012 and November 2012, the Trustee wrote to each of Mr and Mrs Chiesa, reminding them of their duty to provide any information that the Trustee may require regarding their assets and financial affairs, and asking them to complete a form detailing the current state of their affairs. Mr and Mrs Chiesa did not respond to the May 2012 and November 2012 letters. In response to the October 2012 letter, Mr Chiesa sent the Trustee two completed forms, one signed by him and the other by Mrs Chiesa. Both of these forms stated that Mr and Mrs Chiesa were receiving monthly income from consultancy work of £2,000 and £1,700 respectively and that their monthly expenditure was £1,980 and £1,612 respectively (including the £200 they were each contributing to the sequestrated estate). Mr Chiesa did not inform the Trustee of the funds they were receiving from the WTR Trust, or that Westwood Trustees was paying significant personal expenses on their behalf. The Trustee therefore continued to administer Mr and Mrs Chiesa's sequestrated estate on the basis that their financial position had not materially changed since December 2011.

**Mr Chiesa's failure to disclose his and Mrs Chiesa's high personal spending**

4.44. Contrary to Mr Chiesa's disclosure to the Trustee in December 2011 that his and Mrs Chiesa's joint living expenses amounted to around £2,745 per month, and his and Mrs Chiesa's disclosure to the Trustee in October 2012 that their combined living expenditure was about £3,600 per month (including their £400 contribution to the sequestrated estate), in reality, they continued to enjoy a much higher standard of living. Their joint living expenses at these times were, in fact, at least £9,000 per month, and they had significant additional expenses.

4.45. In June 2011, four months before their sequestration, Mr Chiesa declared to a bank that he and Mrs Chiesa had combined living expenses of £9,425 per month. This included monthly rental/mortgage costs of £6,000.

4.46. In July 2013, nine months after they had been discharged from their debts, but while they were still in sequestration and therefore continued to have a duty to disclose changes in their financial circumstances to the Trustee, Mr and Mrs Chiesa declared to a bank combined total monthly expenses of £9,300 and a combined monthly disposable income after expenses of £10,700.

- 4.47. From May 2011 until at least October 2012, Mr and Mrs Chiesa's monthly rental on their London address was around £5,000. This was paid for them out of a Westwood Trustees account, which had the effect of concealing this expense from the Trustee. Mr Chiesa did not notify the Trustee of this rental liability.
- 4.48. In addition to their monthly living expenses, Mr and Mrs Chiesa's other monthly spending was high, and of a nature which conflicted with Mr Chiesa's representations to the Trustee that they had limited income and expenditure and no net assets, and with the minimal contribution of £200 per month that they were each paying to their sequestrated estate. By way of example, between August 2011 and December 2014 Mr Chiesa spent an average of £12,000 per month on flying lessons, tennis tickets, football tickets and club membership, and various financial investments. Mr Chiesa did not disclose either the level or nature of this spending to the Trustee at any time during his sequestration.
- 4.49. Mr Chiesa did not disclose to the Trustee the true level and nature of his and Mrs Chiesa's personal spending in order to minimise the chance of further investigation into the source of the funds they were receiving. He led the Trustee to believe that the loans they were living from were relatively modest and designed to cover relatively modest day-to-day living expenses.
- 4.50. Mr Chiesa therefore misled the Trustee by failing to disclose to him, at the meeting on 20 December 2011 and at any other time during his sequestration, the reality of his and Mrs Chiesa's financial situation. This was that Westwood Trustees was not just paying them funds to cover day-to-day living expenses, but was meeting their considerable personal expenses, such that they had the benefit of a monthly average of around £34,000 in expenses and/or spending money, and that from April 2012 they continued to access the profits of that company in the form of loans which were not arms-length commercial loans and which were never intended to be repaid within their lifetimes.

**Mr Chiesa's failure to disclose valuable assets and/or the transfer of valuable assets at an undervalue in the five years before sequestration**

- 4.51. Mr Chiesa's disclosure to the Trustee that he and Mrs Chiesa owned no valuable assets at the time they were placed in sequestration, and had not transferred any valuable assets to third parties at an undervalue in the five years before sequestration, was inaccurate and misleading.

- 4.52. In fact, they each had legal ownership of 1% of Westwood Trustees and beneficial ownership of 50% of the WIFAR Fiduciary Management Company, which owned 98% of Westwood Trustees (see paragraph 4.20(3) above). Although Mr Chiesa informed the Trustee that he and Mrs Chiesa each had legal ownership of 1% of Westwood Trustees, he did not disclose to the Trustee that Westwood Trustees was a valuable company capable of paying over £1 million per annum into an off-shore remuneration trust for the benefit of Mr and Mrs Chiesa and others connected with Westwood Trustees. Mr Chiesa also did not disclose his and Mrs Chiesa's beneficial ownership of the WIFAR Fiduciary Management Company, and therefore of the remaining 98% of Westwood Trustees, nor the transfers of ownership that had taken place in March 2011 and August 2011 which resulted in him and Mrs Chiesa no longer having 100% legal ownership of both companies (see paragraphs 4.19 and 4.20(3) above). The Authority considers that these transfers were made as part of the steps taken by Mr and Mrs Chiesa to protect their assets and money from creditors, and that he did not disclose these transfers, their beneficial ownership of the companies or that Westwood Trustees was a valuable company for the same reason.
- 4.53. Mr Chiesa failed to provide adequate details to the Trustee of the interest that he and Mrs Chiesa had, between them, in three unassigned life assurance policies and in five assigned life assurance policies. The Authority estimates that, at the time they were placed in sequestration, these seven policies had a combined surrender value of at least £270,000. Mr Chiesa chose to disclose his and Mrs Chiesa's interest in these life assurance policies to the Trustee via his lawyer, and did so in a manner that did not convey to the lawyer or the Trustee the likely value of the policies. He did this in order that they might retain the benefit of the policies throughout their sequestration.
- 4.54. Mr Chiesa also did not disclose to the Trustee valuable jewellery that Mrs Chiesa either owned or had disposed of in the previous five years. In a June 2008 bank application, Mr and Mrs Chiesa had disclosed that Mrs Chiesa owned jewellery with a total value of over £100,000. At an interview with the Authority on 18 February 2015, Mrs Chiesa disclosed that she still owned jewellery which, in the June 2008 bank application, they had valued at over £50,000, including a £17,000 Cartier diamond watch and a £15,000 diamond ring, and informed the Authority that she had lost, given away, traded in or sold the other items of jewellery.

4.55. Further, Mr Chiesa did not disclose to the Trustee unidentified valuable assets which he had disclosed to a bank in December 2010 as being owned by him and Mrs Chiesa. These assets included a £136,000 investment, which was mentioned in the "Other Significant assets" section of the bank application form. In June 2011, Mr Chiesa informed his bank that there had been no material change in respect of the information he had provided in December 2010. Mr and Mrs Chiesa did not provide the Trustee with details of these assets or of any disposal or loss of value of any such assets in the four months prior to their sequestration, or respond to the Authority's requirement that they provide the Authority with details of the assets.

**Mr Chiesa's misleading disclosures about a debt secured against his and Mrs Chiesa's properties**

4.56. Mr Chiesa disclosed to the Trustee that there were charges against two properties he owned jointly with Mrs Chiesa, as security for a £991,000 debt they owed to the off-shore trustee of the WIFAR Trust. However, Mr Chiesa failed to explain the nature of the apparent debt and the charges against those two properties.

4.57. The Authority's view is that, in reality, those loans were never intended to be repaid during their lifetimes because, for the reasons explained at paragraph 4.9 above, Mr and Mrs Chiesa retained effective control over the WIFAR Trust property at all times, and that Mr Chiesa was aware of this. Had the loans been repaid, Mr and Mrs Chiesa would have retained access to such funds.

4.58. The two properties to which the charges applied were presented as having little or no value to Mr and Mrs Chiesa due to the loan arrangement described in paragraph 4.56 above. By placing charges against them in favour of the trustee of the WIFAR Trust, Mr and Mrs Chiesa were acting to ensure that any future realisable equity in those properties would be paid to the WIFAR Trust for their use, rather than to their creditors. Such information was relevant to the Trustee's understanding of their financial circumstances and should have been disclosed when the loans and charges were made known to the Trustee.

**5. FAILINGS**

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

- 5.2. By reason of the facts and matters set out in this Notice, the Authority considers that Mr Chiesa is not a fit and proper person as he lacks integrity.
- 5.3. Mr Chiesa misled the Trustee in order to protect his and Mrs Chiesa's wealth from the liabilities in Planners which, as partners in that firm, they were jointly and severally liable for.
- 5.4. Specifically, he misled the Trustee in the weeks after he and Mrs Chiesa were placed in sequestration, including at a meeting on 20 December 2011, by making misleading disclosures, and/or failing adequately to disclose the true position, in relation to:
- (1) the changes they had made to their ownership and control of Westwood Trustees in order to protect their assets and money;
  - (2) the scale of the funds they were receiving directly from the successful non-authorized business of Westwood Trustees;
  - (3) Westwood Trustees' payment of significant personal expenses on their behalf;
  - (4) the full extent of their high level of personal expenditure immediately before and around the time of their sequestration;
  - (5) valuable assets that they still owned or had disposed of at an undervalue in the previous five years; and
  - (6) their interest in any funds repaid under, and their control over, a £991,000 debt secured against two properties that they jointly owned.
- 5.5. Further, Mr Chiesa misled the Trustee by failing to disclose, and/or making misleading disclosures so that the Trustee was unaware of, changes to his and Mrs Chiesa's financial circumstances during the period of their sequestration. As a result, the Trustee was misled in relation to:
- (1) their access to significant funds from Westwood Trustees, including via the WTR Trust;
  - (2) Westwood Trustees' continuing payment of significant personal expenses on their behalf; and
  - (3) the very high level of their personal expenditure during their sequestration.



- 5.6. Mr and Mrs Chiesa must have known that Planners would face significant customer claims and regulatory action. They therefore, from November 2008, started to take active steps to protect their assets and business interests from potential claims. Whilst making declarations to banks which indicated that he and Mrs Chiesa had a high level of income and assets, and whilst living a luxurious lifestyle, Mr Chiesa made it appear to the Trustee that they had limited income and expenditure and no net assets.
- 5.7. Mr Chiesa was aware that the effect of the misleading and inadequate disclosure of his and Mrs Chiesa's financial circumstances to the Trustee was to increase the prospect that the steps that they had taken, both before and after they were placed in sequestration, to protect their assets and money from creditors' claims would succeed. He misled the Trustee in order to preserve his and Mrs Chiesa's wealth.
- 5.8. Save for £200 per month, Mr Chiesa did not apply any of the wealth that he declared to one bank in June 2011 and another bank in June 2013 towards paying any of his creditors. Instead, around £3.8 million of Planners' liability for over £5 million of customer claims in respect of mis-sales of GTEPs was ultimately borne by the FSCS following Planners' default.

## **6. SANCTIONS**

### **Withdrawal of approval and prohibition**

- 6.1. The Authority has had regard to the guidance in Chapter 9 of EG and considers it is appropriate and proportionate in all the circumstances to withdraw Mr Chiesa's CF4 (Partner), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting) and CF30 (Customer) controlled functions at Planners and to prohibit him from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm, because he is not a fit and proper person.
- 6.2. The Authority considers that Mr Chiesa is not a fit and proper person as he lacks integrity. Further, he poses a risk to consumers and to confidence in the financial system. First, because of the serious and prolonged nature of his conduct, which began with his misleading disclosures to the Trustee in the weeks after he entered sequestration and continued during his sequestration, in particular when he failed to give a true account of his financial circumstances when requested by the Trustee. Secondly, because Mr Chiesa misled the

Trustee in order to reduce the risk of having to make payments to creditors, which he knew would include Planners' former customers, which demonstrates that he is willing to put his own interests above those of consumers and regulated firms and individuals. Thirdly, because Mr Chiesa has close ties to the regulated community due to his involvement with Westwood Trustees, which has a network of introducers including approximately 30 approved persons. The Authority considers there is a significant risk that Mr Chiesa's involvement with Westwood Trustees and those approved persons could continue and/or increase in future.

- 6.3. In the circumstances, the Authority considers that it is appropriate and proportionate to prohibit Mr Chiesa from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm.
- 6.4. These sanctions support the Authority's operational objectives of securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.

## **7. PROCEDURAL MATTERS**

### **Decision maker**

- 7.1. The decision which gave rise to the obligation to give this Final 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.

### **Publicity**

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

## **Contacts**

- 7.5. For more information concerning this matter generally, contact Rachel West of the Enforcement and Market Oversight Division of the Authority (direct line: 020 7066 0142).

**Bill Sillett**

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

## **ANNEX A**

### **RELEVANT STATUTORY PROVISIONS**

1. Section 56 of the Act provides that the Authority may make an order prohibiting an individual from performing a specified function, any function falling within a specified description or any function, if it appears to the Authority that that individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.
2. The Authority has the power, pursuant to section 63 of the Act, to withdraw an approval given under section 59 of the Act – to perform the CF4 (Partner), CF10 (Compliance Oversight), CF11 (Money Laundering Reporting) and CF30 (Customer) controlled functions - if it considers that the person is not a fit and proper person to perform the functions.

### **RELEVANT HANDBOOK PROVISIONS**

#### **Fit and Proper Test for Approved Persons (FIT)**

3. FIT sets out the Fit and Proper test for Approved Persons. The purpose of FIT is to outline the main criteria for 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.
4. FIT 1.3 provides 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.
5. FIT 2.1.1G provides that in determining a person's honesty and integrity the Authority will have regard to all relevant matters.

#### **The Authority's policy for exercising its powers to make prohibition orders and to withdraw approvals**

6. EG 9.1.1G provides that the Authority's power under section 56 of the Act to prohibit individuals who are not fit and proper from carrying out functions in relation to regulated activities helps the Authority to work towards achieving its

regulatory objectives. The Authority may exercise this power to make a prohibition order where it considers that, to achieve any of those 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.

7. EG 9.1.2G provides that the Authority's effective use of the power under section 63 of the Act to withdraw approval from an approved person will also help ensure high standards of regulatory conduct by preventing an approved person from continuing to perform the controlled function to which the approval relates if he is not a fit and proper person to perform that function. Where it considers this is appropriate, the Authority may prohibit an approved person, in addition to withdrawing their approval.
8. EG 9.2.2G sets out the general scope of the Authority's powers in respect of prohibition orders, which include the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant.
9. EG 9.2.3G provides that the scope of a prohibition order will depend on the range of functions that the individual performs in relation to regulated activities, the reasons why he is not fit and proper, and the severity of risk which he poses to consumers or the market generally.
10. EG 9.3.2G provides that, when deciding whether to make a prohibition order against an approved person and/or withdraw their approval, the Authority will consider all the relevant circumstances of the case which may include, but are not limited to, the following factors (among others):
  - (1) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of an approved person are contained in FIT 2.1 (Honesty, integrity and reputation), FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness);
  - (2) the relevance and materiality of any matters indicating unfitness;
  - (3) the length of time since the occurrence of any matters indicating unfitness;

- (4) the particular controlled function the approved person is (or was) performing, the nature and activities of the firm concerned and the markets in which he operates;
- (5) the severity of the risk which the individual poses to consumers and to confidence in the financial system; and
- (6) the previous disciplinary record and general compliance history of the individual.